

DIRECTIVE PRINCIPLES OF STATE POLICY

An important feature of the constitution is the Directive Principles of State Policy. Part IV of the Constitution relates to the Directive Principles of State Policy. Although the Directive Principles are asserted to be “fundamental in the governance of the country,” they are not legally enforceable. Instead, they are guidelines for creating a social order characterized by social, economic, and political justice, liberty, equality, and fraternity as enunciated in the constitution’s preamble. It set forth the ideals and objectives to be achieved by the State for setting up in India a Social welfare state, as distinguished from a mere police State.

Object and purpose behind the Directive Principles

The roots of the Directive Principles may be traced back to the 1931 Karachi resolution, or farther, and to the two streams of socialist and nationalist sentiments in India that had been flowing ever faster since the late twenties. It is not unreasonable to conjecture also that the placing on the government of a major responsibility for the welfare of the mass of Indians had an even deeper grounding in Indian history. Under the Mughal rule or the British Raj, the masses had, generally speaking, looked to the ruler for dispensations both evil and good. Heir to this tradition, the members of the Constituent Assembly believed that the impetus for bringing about the social revolution continued to rest with the government.

The inspiration for including the Directive Principles in the Constitution is drawn from the Constitution of Ireland. The Directive Principles set forth the ideals and objectives to be achieved by the State for setting up in India a Social welfare state, as distinguished from a mere police State. The basic aim of the Welfare State is the attainment of substantial degree of social, economic and political equalities; to provide the means, whereby all its members can reach minimum standard of economic security, civilized living, capacity to secure social status and culture to keep good health. The Welfare State, therefore, should take

positive measures to assist the community at large to achieve the above discussed aspects.

The Directive Principles are indeed the precursor to the Economic, Social and Cultural Rights specified in the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR). They reflect the consensus on the intrinsic necessity of these means and envisage State action which would facilitate the transfer and distribution of power — leading to transmission of power to the citizens and this is loosely called “empowerment” of the people. Democracy will become real when in practice there is sharing of power and responsibility by all sections of the people and it becomes illusory when it is about pursuit of power by the dominant sections alone. The Directive Principles cannot be confined to mere rhetoric or to *ad hoc* policies of electoral appeasement or handouts.

The comparable provisions of the Directive Principles of State Policy enshrined in the Constitution of India and the ICESCR are given below:

Articles of the Constitution	Articles of ICESCR
Article 39	Articles 3, 6 (1) and 7
Article 41	Article 6 and 7
Article 42	Articles 7 and 10.2
Article 43	Articles 11 (1), 11(2) and 15
Article 45	Articles 13 (1), (2)(a), (3) and (4) and 14
Article 47	Articles 12(1), (2), (a) to (d)
Article 51	Articles 1.3 and 2 (1)

The Directive Principles contain the social, economic, cultural and educational objectives of the State. These provide a motivation for a peaceful political revolution. These also provide a



programme for social reconstruction and economic upliftment of the people of India. In the opinion of Dr. L.M. Singhvi, an eminent jurist, "the Directive Principles of State Policy are the life-giving provisions of the Constitution. These principles constitute the stuff of the Constitution and its philosophy of social justice. These principles represent the pledges and the promises of our Constitution which is not merely a literary document but a living instrument."

CLASSIFICATION OF DIRECTIVE PRINCIPLES

The Directive Principles are meant to be the fundamental principles which should necessarily be made the basis of all executive and legislative action that may be taken in the governance of the country. The Directive Principles are unique blend of Socialist, Gandhian and western Liberal principles.

Socialist Principles

Article 38. State to secure a social order for the promotion of welfare of the people.—(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

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

- (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
- (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
- (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
- (d) that there is equal pay for equal work for both men and women;
- (e) that the health and strength of workers, men and women, 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;

- (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.

Article 39A. Equal justice and free legal aid.—The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for Rt. to work, education & public assistance in certain cases.

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

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

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

Article 43A. Participation of workers in management of industries.—The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in any industry.

Article 45. Provision for early childhood care and education to children below the age of six years—The State shall endeavour to provide, early childhood care and education for all children until they complete the age of six years.



Gandhian Principles

Article 40. Organization of village panchayats.—The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

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

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

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

Liberal Principles

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

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

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

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

- (a) Promote international peace and security;
- (b) Maintain just and honorable relations between nations;
- (c) Foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and
- (d) Encourage settlement of international disputes by arbitration.

NATURE OF DIRECTIVE PRINCIPLES

- (1) *These are positive obligations:* The Directive Principles impose positive obligations on the State. The Directive Principles can be implemented by executive action, so long as they do not contravene any law. The other instruments of the state have the moral obligation to follow these Directives and to act in consonance with these Directives.
- (2) *These are in the form of general instructions:* The Directive Principles are in the form of general instructions
- (3) *They are non-justiciable:* article 37 expressly declares that the Directive Principles shall not be enforceable by any court. But this non-enforceable nature does not reduce the importance of the Directive Principles, for these Directives have been, at the same time, declared as fundamental in the governance of the country. It has, been further, been laid down a duty of the State to apply these Directive Principles while making laws.

DIFFERENCE BETWEEN DIRECTIVE PRINCIPLES AND FUNDAMENTAL RIGHTS

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. One can approach the courts even the higher judiciary for the enforcement of Fundamental Rights where as one can not approach the courts for the implementation of the Directive Principles.



3. The directives, however, require to be implemented 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, 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.

RELATIONSHIP BETWEEN DIRECTIVE PRINCIPLES AND FUNDAMENTAL RIGHTS

One of the main objectives of the Constitution makers in including the Directive Principles in the Constitution was to lay down certain principles for the guidance of the Government of the day. While formulating the policies for the governance of the State the Governments are expected to act according to these principles. During the freedom struggle of India our national leaders had made promises regarding the Fundamental Rights that the citizens of free India should get. These Fundamental Rights included not only civil and political rights but also social and economic rights. But when India got independence the leaders realized that it would not be possible for them to grant immediately some of the social and economic rights that they had promised in the past. But at the same time they did not want to go back on their past promises. They wanted some way to get out of this hurdle. They assigned this task to a sub-committee of the Constituent Assembly. The subcommittee suggested that the Fundamental Rights should be divided into two categories. Some rights could be granted immediately and others may be granted in future, if and when the country

was in a position to grant them. This was the genesis of the two Parts of the Constitution. Part Three of the Constitution deals with Fundamental Rights while Part Four deals with the Directive Principles of State Policy.

Article 37 states that *the provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.*

The first important case regarding the relationship between the Fundamental Rights and Directive Principles was the Champakam Dorairajan v/s State of Madras 1951. In this case the Supreme Court ruled that the reservation of seats in the educational institutions and public employment provided by the State of Madras is unconstitutional and void as it violated right to equality. The Supreme Court ruled that the Directive Principles shall remain subordinate to the Fundamental Rights.

The Supreme Court realized the importance of the Directive Principles and in the Re Kerala Education Bill case 1957 formulated the *Theory of Harmonization*. Under this theory the court held that there is no inherent conflict between the Directive Principles and Fundamental Rights. They are supplementary to each other and aim towards achieving the same goal. They together constitute an integrated scheme; it is the duty of the court to interpret the provisions of the Constitution in such a manner so as to harmonize the Fundamental Rights and Directive Principles as far as possible.

The Supreme Court in the Minerva Mills Ltd. Case 1980 viewed that Part III and Part IV of the Constitution are **complementary** and supplementary to each other. The Court observed that the Constitution was founded on the bed-rock of balance between the Fundamental Rights and Directive Principles. To give absolute primacy to one over the other was to disturb the harmony of the Constitution.

In the Rajan Dwivedi v/s Union of India Case 1983, the Supreme Court held that both the Fundamental Rights and Directive Principles aim at the same goal of bringing about a social revolution and the establishment of a Welfare State. It is a mandate of the Constitution not to



the Legislature and the Executive only but to the courts as well.

In conclusion we may hold that there is no inherent conflict between the Fundamental Rights and the Directive Principles. Both are complementary and supplementary to each other and both work towards making the aim of the establishment of social and political democracy a reality.

Supremacy of Directive Principles over Fundamental Rights

It was in 1971 that the first step was taken to provide supremacy for Directive Principles in the form of Article 31C which was added to the constitution by the **Constitution (25th Amendment) Act, 1971**.

The effect of the insertion of Article 31C was to provide supremacy for Directive Principles contained in Articles 39(b) and 39(c) over Fundamental Rights contained in Articles 14, 19 and 31. It enhanced the utility of the Directive Principles which had stood the testimony of the Supreme Court in **Keshavananda Bharti Case 1973**. The Court observed:

In building up a just and social order it is sometimes imperative that the Fundamental Rights should be subordinated to Directive Principles... economic goals have an uncontested claim for priority over ideological ones on the ground that excellence comes only after existence. It is only if men exist that there can be Fundamental Rights.

To further widen the scope of the Directive Principles, the **Constitution (42nd Amendment) Act, 1976**, amended Article 31C for providing supremacy for all the Directive Principles. The effect of amendment was to give overriding effect to Directive Principles and to make them immune from being declared as violative of the rights guaranteed by Articles 14, 19 or 31.

However, the change incorporated by 42nd Amendment was struck down by the Supreme Court in the **Minerva Mills Limited v/s union of India Case, 1980**.

The Court thus restored Article 31C to its original status as inserted by the Twenty-Fifth Amendment act, 1971.

It thus follows that the Directive Principles contained in Articles 39(b) and 39(c) shall have

supremacy over the Fundamental Rights contained in Articles 14 and 19.

Importance of Directive Principles

The Directive Principles are not enforceable in a court of law but they are as important as any part of the Constitution including the Fundamental Rights. Article 37 states that—*The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.*

Doubts were expressed in the Constituent Assembly itself that the Directive Principles were not more than mere pious hopes and they were likely to remain as high sounding platitudes. **Prof. K.C. Wheare** remarked that the Directive Principles were in the nature of a mere homily or a manifesto of aims and aspirations. **Sir Ivor Jennings** observed that Part IV of the Constitution was a product of time and circumstances and that the ideas expressed in this part might survive for a generation, i.e., they had merely a transitory importance.

Thus, the Directive Principles were earlier described as mere window dressing or post-dated cheques which are not encashable but the Directive Principles contain a guideline for the centre. **Prof. Gledhill** held the opinion that it would be superficial to dismiss the Directive Principles as mere good resolutions. These are the life giving provisions of the Constitution. They constitute the stuff of the Constitution and its philosophy of social justice. The success and failure of the government is judged on the implementation of the Directive Principles. **Dr. B.R. Ambedkar** stated:

"Although there is no sanction against the State in the legal sense, if it does not implement these directives. But the state would be answerable to the people every time at the time of elections and people would reject the Government which did not take steps towards the implementation of these directives. It had been considered as an effective sanction against the state in the Constituent Assembly."

More the implementations of Directive Principles mean greater performance by the government and greater the performance of the government; greater are the efforts in establishing a welfare state. The Directive Principles may lack legal sanction but



they enjoy a political sanction. They may not be enforceable in the court of law but in the court of the people. The Directive Principles act as a light house constantly reminding the government of the day which way to go so as to establish an egalitarian society and a welfare state. The Directive Principles of State Policy are meant to be the fundamental principles which should necessarily be made the basis of all executive and legislative action that may be taken in the governance of the country. These must be regarded as the objectives of national activity and it must be the endeavour of every State as well as the Union, to give effect to them.

The importance of the Directive Principles can be judged from the statement made by a retired judge **Justice Kania** that the Directive Principles represent not only the temporary will of the majority of the constituent Assembly but they are the considered wisdom of the people expressed through the Constituent Assembly. In the views of **Dr. L.M. Singhvi**, *'The Directive Principles represent the pledges and the promises of our Constitution which not merely a literary document but a living instrument.'*

A three Judge Bench of the Supreme Court in *Air India Statutory Corporation v/s United Labour Union Case 1997* observed that these Directives are fore-runners of the U.N.O. Convention of Right to Development. These principles are embedded as integral part of our Constitution and that these now stand elevated to inalienable fundamental human rights.

The Directive Principles contain the social, economic, cultural and educational, objectives of the State. These provide a motivation for a peaceful political revolution. These also provide a programme for social reconstruction and economic upliftment of the people of India. The Directive Principles inscribe the ideas and aspirations of the people of India for which they had fought against the foreign rule. In the words of **Dr. K. V. Rao**, *"the Directive Principles are the brain centre of the Constitution which gives the directions for working the mechanism contained in other parts of the Constitution"*.

Amendments made in the Directive Principles

The **Constitution (Forty-Second Amendment) Act, 1976** added the following Directive Principles to the existing list:

1. Article 39- To secure opportunities for healthy development of children,
2. Article 39A- equal justice and free legal

aid to the poor.

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

The **Constitution (Forty-Fourth Amendment) Act, 1978** inserted clause (2) in Article 38 which requires the State to 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.

The **Constitution (Eighty-Sixth Amendment) Act, 2002** amended the subject matter of Article 45. The amended Article 45 provides for early childhood care and education for all children from 0-6 years of age.

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.

