



## Role of directive principles towards welfare of the state and social development in India

**Srinivas Katkuri**

Research Scholar (UGC-NET in Law), Faculty of Law, Osmania University, Hyderabad, Telangana, India

### Abstract

The Indian Constitution is a living breathing document, wherein ideals stated in Preamble are reinforced through the Directive principles. These require a national effort in education, childhood care, health un-employment and old age and for minimizing inequalities. Directive principles are implemented for social justice by the way of Land reforms Act, Banking nationalization, fixation of minimum wages, welfare schemes for the weaker sections, Panchayati raj system, Equal remuneration act, environmental safeguards, compulsory education for children and etc. This paper attempts to examine and explore the implementation, judiciary response & innovative interpretations of Directive principles. The aim of Directives is to attain a substantial degree of social, economic and political equality. Directive principles are non-justiciable rights and are enforceable by any court even though these are considered as fundamentals and obligate the state to take positive action to promote the welfare of the nation. After Independence several laws were enacted to fulfill socialistic goals of the Constitution contained in the Directive principles. All most all enactments and amendments (eg. Art. 31C & 42<sup>nd</sup> Amendment) were challenged before judiciary. In some cases conflicts between Fundamental rights and Directive principles was prevailed. Although in the earlier decisions the judiciary paid less regard to the Directive principles, in course of time and with the dynamic judiciary, these principles emerged as the jurisprudential foundation for the new era rights. Judicial activism, PILs, Social Action Litigations contributed enormous in the development of directive principles jurisprudence. So recent judgments have declared many directive principles as fundamental rights and have enforced them. Even though there is need to ameliorate the poverty and unemployment, and enhance the human development (health, education). There is huge need to the state to understand their real role towards realizing the goals set in the Directive principles.

**Keywords:** constitution, preamble, directive principles, judiciary, welfare of state

### Introduction

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"<sup>[1]</sup>. 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 19<sup>th</sup> Century. The ideas of Jeremy Benthan, 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<sup>[2]</sup>. 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.<sup>[3]</sup> The Preamble, an integral part of the Constitution, pledges to secure 'socio-economic justice' to all its citizens with stated liberties, 'equality of status and of opportunity', assuring 'fraternity' and 'dignity' of the individual in a united and integrated Bharat<sup>[4]</sup>.

### Directive Principles

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<sup>[5]</sup>.

### Directives Contained in other Parts of the Constitution

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 350A 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 <sup>[6]</sup>.

Though the Directives contained in Article 335, 350A 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 <sup>[7]</sup>.

### **Directive Principles towards Welfare of state**

The makers of the Constitution had realized that in a country like India, political democracy would be useless without economic democracy. Accordingly, they incorporated a few provisions in constitution with a view to achieve amelioration of the socio-economic condition of the masses <sup>[8]</sup>. These principles have played a crucial role in legislative and administrative policy-making in the country, as they seek to build a social justice society. Constant efforts are being made to improve the position of backward and economically weaker sections of society. Even though there have been deficiencies in the implementation of the policies. Originally, the Directive Principles “shall not be enforceable by any court, but the principles there in 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” <sup>[9]</sup>. Directive principles were akin to moral, rather than to legal, Precepts as they did not have much value from a legal point of view. Thus the accountability to enforce these principles was left to the political parties. This principles were described as the “bank cheque issued on bank payable as per bank’s convenience” by the critics <sup>[10]</sup>.

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.

### ***Directive principles are implemented through:***

- Land reforms Act,
- Nationalization of Bank and industries,
- Welfare schemes for the weaker sections,
- Panchayati Raj system,
- Equal remuneration act,
- Environmental safeguards,
- Compulsory education for children and *etc.*

The Constitution has been amended, successively (e.g., first, fourth, seventeenth, twenty fifth, twenty- fourth <sup>42<sup>nd</sup></sup> and <sup>44<sup>th</sup></sup> 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 <sup>[11]</sup>.

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 the 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 <sup>[12]</sup>.

All these laws were made in order to implement the Directive Principles of State Policy contained in Articles 38, 39 and 46 of the Constitution by strengthening agrarian economy. The directive in Article 39 (b) has influenced legislation to fix land ceilings, remove intermediaries such as Zarnindar, abolish hereditary proprietors, etc, and made the tiller of the soil real owners of the land were the socialistic goals of the Constitution of the Directive principles of State policy. The enactment of the Hindu Marriage Act (1955) and the Hindu Succession Act (1950) have been important steps to implement the directives of *Uniform Civil Code* <sup>[13]</sup>.

In Part-IV of the Constitution, <sup>[14]</sup> Article 40 provides that the State shall take steps to organise village Panchayat and endow them with such power and authority as may be necessary to enable them to function as units of self-Government. For organising Village Panchayats the 73<sup>rd</sup> Amendment was brought into force on 24.4.93 to give effect to one of the Directive Principles of State Policy, namely, Article 40 of the Constitution, That the 73<sup>rd</sup> Amendment to the Constitution added Part-IX. By Part-IX Parliament had sought to provide a self-contained code for the Constitution, reservation of seats, powers, authority, responsibilities and elections to the Panchayat <sup>[15]</sup>.

“A historic step forward in ensuring that the Directive Principles of the Constitution; decisions of the Supreme Court; and the recommendations of the Law Commission are given effect to Article 48A of the Constitution of India, which is part of the Directive Principles, says that: “The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.” <sup>[16]</sup> Forest and Environment which fell within the Directive Principles of State Policy finding place in Part-IV of the Constitution of India <sup>[17]</sup>.

In the case of *Randhir Singh V. Union of India*, <sup>[18]</sup> the Supreme Court held that though the principle of ‘equal pay for equal work’ is not expressly declared by our constitution as a fundamental right, but it is the goal of constitution by Art.14, 16 and 39(c). But it certainly is a constitutional goal. Article 39(d) of the Constitution proclaims 'equal pay for equal work for both men and women' as a Directive Principle of State Policy. 'Equal pay for equal work for both men and women' means equal pay for equal work for everyone and as between the sexes. Directive Principles, as has been pointed out in some of the judgments of the Court have to be read into the Fundamental Rights as a matter of interpretation <sup>[19]</sup>. Article 39(d) contained in Part IV of the Constitution ordains in the chapter on Directive Principles of State Policy, but it is

fundamental in nature. The purpose of the Article is to fix certain social and economic goals for avoiding any discrimination amongst the people doing similar work in matters relating to pay. The *doctrine of equal pay for equal work* has been implemented current decade to emphasise upon the feature that equal pay for equal work and providing security for service by regularising casual employment within a reasonable period have been unanimously accepted by this Court as a constitutional goal to our socialistic polity. Parliament has stepped in as early as 1976 by enacting the Equal Remuneration Act (25 of 1976), that Act is a legislation providing equality to pay for equal work between men and women which certainly is a part of the principle which we are considering.

The *Directive Principle* contained in Article 45 has made a provision for free and compulsory education for all children upto the age of 14 years within 10 years of promulgation of the Constitution of India but the nation could not achieve this goal even after 50 years of adoption of the provision. The task of providing education to all children in this age group gained momentum after *National Policy of Education (NPE)* was announced in 1986. It was felt that though the Government of India in partnership with State Governments had made strenuous efforts to fulfill the mandate and though significant improvements were seen in various educational indicators, the ultimate goal of providing universal and quality education still remained unfulfilled. In order to fulfill that goal, it was felt that an explicit provision should be made in the Part of the Constitution relating to Fundamental Rights. Right to Education is now a guaranteed fundamental right under Article 21A. It commands that the State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law, determine. The State as at present is under the constitutional obligation to provide education to all children of the age of 6 to 14 years [20].

It is remarkable that India was the first country in the world to enshrine environmental protection as a state goal in its Constitution. Article 21 reads as "*Protection of life and*

*personal liberty. No person shall be deprived of his life or personal liberty except according to procedure established by law.*" In the impugned judgment; the Court also gave reference to the Directive Principles of the State Policy. In articles 48A and 51-A(g) of the Constitution, a strong foundation has been laid down pertaining to environment, preservation of forests, wild life, rivers and lakes. The Constitutional philosophy enshrined in these Constitutional Provisions must be implemented. An ARTICLE 48A reads as under: "*48A. Protection and improvement of environment and safeguarding of forests Carta of our environment*". First time at the international level importance of environment has been articulated.

The Preamble to the Constitution read with Directive Principles in Art.38,42,43,46 and 48A promotes the concept of social justice. The aim of social justice is to attain a substantial degree of social, economic and political equality. Social justice is a device to mitigate the suffering of poor, weak, tribals and the deprived sections of the society and to elevate them so that they can live with dignity [21].

## Innovative Interpretations of Directive principles and Jurisprudence

### a. Conflict between Directive Principles & Fundamental Right

While enforcing the Directive Principles conflict arised between the Constitutional goals and rights. In several early cases, the Supreme Court took the literal interpretive approach to Article 37 and ruled that Directive Principles could not override a Fundamental Right, and in case of a conflict between the two, the Fundamental Right would prevail over the Directive Principles. It has been held that the Fundamental Rights and Directive Principles are the two Wheels of the chariot as an aid to make social and economic democracy a truism [22]. The Fundamental Rights are known to be static, while the directive principles as dynamic. The judiciary interpretation was different in different phases of journey of judgements shown in below table.1

Table 1

S.No.	Supreme Court Case	FR <sup>®</sup> v. DPs <sup>®</sup>
1.	State of Madras v. Champakam Dorairajan A.I.R 1951 SCR 525	FRs Prevail over DPs
2.	Venkataramana v. State of Madras AIR 1951 SC 229	DPs subsidiary to FRs
3.	M.H. Qureshi v. State of Bihar, AIR 1958 SC 731.	doctrine of harmonious construction
4.	Sajjan Singh v. State of Rajasthan, [1965] 1 SCR 933 Bijoya Lakshmi Cotton Mills Ltd. v. State of West Bengal, AIR 1967 SC 1145.	Co-Equal
5.	I.C. Golak Nath v. State of Punjab [1967] 2 S.C.R. 762.	'Integrated Scheme'
6.	Kesavananda Bharti v. State of Kerala,	Subordinated FRs to DPs
7.	C. B. Boarding and Lodging v. State of Mysore	Complementary and supplementary to Each Other

### b. Doctrine of Harmonious Construction

The Directive Principles constitute an operative part of the Constitution and an important part at that, through them the Constitution seeks to achieve the ideal of a democratic welfare state set out in the Preamble and to bring about the social and economic revolution of which the founding fathers of our republic dreamt [23]. Though the judiciary continued to hold that the Directives were subordinate to the Fundamental Rights, an attempt was made to achieve the ideals mentioned

Directive Principles. The *doctrine of harmonious construction* as a new technique of interpretation was introduced in *Hanif Quareshi Mohd. v. State of Bihar*, [24] where the court invalidated a ban on the slaughter of all cattle, on the ground that it constituted an unreasonable restriction on the right to carry on a butcher's business, as guaranteed by Article 19(1)(g), notwithstanding the Directive under Article 41. However it was stated that the Constitution has to be interpreted harmoniously, and the Directive principles must be

implemented, but it must not be done in such a way that its laws take away or abridge the fundamental rights. Otherwise the protecting provisions of Chapter III will be "a mere rope of sand". However, Das C.J., was said that the courts must not entirely ignore the Directive Principles and the *principle of harmonious construction* should be adopted to give effect to both Fundamental Rights and Directive Principles as much as possible.

### c. Jurisprudence

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* [25] that the Fundamental Rights cannot be abridged to implement the Directive Principles, the Government tried to overcome the limitation in 1971, through the 24<sup>th</sup> Amendment which gave Parliament the *right to amend* Fundamental Rights. In the same year, the 25<sup>th</sup> 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 42<sup>nd</sup> 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* [26] which asserted that such total exclusion of judicial review would offend the *basic structure of the Constitution*.

One can know that since the *State of Madras v. Champakam Dorairajan* case [27] the State facing challenges to establish Welfare and Social development. However, the *Minerva Mills Case* (1980) [28] 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 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* (198.1), Sec, 515). Directive principle contained in Article 45 has made a provision for free and compulsory education for all children upto the age of 14 years, Right to Education is now a guaranteed fundamental right under Article 21A.

Supreme Court commented in *Naveen Jindal & Anr* judgement that "*We cannot shut our eyes to the statements made in Article 48-A of the Constitution of India which enjoins upon the State to protect and improve the environment and to safeguard the forests and wild life of the country. What is destructive of environment, forest and wild life, thus, being contrary to the Directive Principles of the State Policy which is fundamental in the governance of the country must be given its full effect.*" [29]

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.

### Conclusion

According to HDR 2011, the HDI for India was 0.547 in 2011 with an overall global ranking of 134 (out of the 187 countries) [30]. Coming to the point of Social Development, measured in Human Development Index (HDI) of the country as whole, was at lower than neighbour countries, according to Human Development Report (HDR) published by the United Nations Development Programme (UNDP), and estimates the HDI in terms of three basic capabilities parameters, i.e; *to live a long and healthy life, to be educated and knowledgeable, and to enjoy a decent economic standard of living*.

Though India is the agrarian country, the agriculture's share in GDP, Growth in agriculture and allied sectors remains an important objective and a 'necessary condition' for inclusive growth and welfare of the state. The share of services in India's GDP at factor cost (at current prices) 56.3 per cent in 2011-12 as per Advance Estimates [31]. While agriculture continues to be the primary employment-providing sector, the services sector is the principal source of employment in urban areas [32]. According to Indian Economic Survey 2011-12 reveals that the economic disparities in the Modern Society, and as well as Urban and Rural still have in considerable measure and also says that Concentration of Economy in hands of the Elite Class. Still Aam Admi is in hunger, Life expectancy at birth in India was 65.4 years 2011 as against 81.1 years in Norway, 81.9 years in Australia, 74.9 years in Sri Lanka, 73.5 years in China, and the global average of 69.8 years. Similarly, the performance of India in terms of mean years of schooling is not only much below that of countries like Sri Lanka, China, and Egypt which have higher per capita incomes but also below that of Pakistan, Bangladesh, and Vietnam which have lower per capita incomes. It is also much lower than the global average. The existing gap in health and education indicators as compared to developed countries and also many of the developing countries indicates the need for much faster and wider spread of basic health and education [33].

The State by virtue of Article 21A is bound to provide free education, create necessary infrastructure and effective machinery for the proper implementation of the right and meet total expenditure of the schools to that extent. Right to Education guaranteed by Article 21A would remain illusory in the absence of State taking adequate steps to have required number of schools manned by efficient and qualified teachers. Before teachers are allowed to teach the children, they are required to receive appropriate and adequate training from a duly recognized training institute [34].

I hope the principal objective of Welfare of State is Social & human development ultimately, and the attainment of higher standard of living for the people. This requires a more equitable distribution of development benefits and opportunities, better living environment and empowerment of the poor and marginalized. Formulation policies and programmes can bridge regional, social and economic disparities in as effective and sustainable a manner. *Information and Communication Technology and Space*

*Technology* have great thrust to lower the disparities in the Society. Scholarly utilization of modern technologies can fulfill the goal enshrined in the Directive Principles like education (Art.45), standard of living & health (Art.47), employment and difficulties like Land Records, problems in access of services avoided to the great extent.

However, on the whole, above discussion implementation of the legislations giving importance to Directive Principles has been slow and has not shown the effect of removing economic, social and political injustices. Even though the Directive Principles have played a crucial role in legislative and administrative policy-making in the country, as they seek to build a social justice society. Constant efforts are being made to improve the position of backward and economically weaker sections of society. Even though there have been deficiencies in the implementation of the policies. While a surfeit of laws have been enacted to promote the programmes and policies envisaged by directive principles have been failure on the part of the administration by way of non-administration, maladministration, and misadministration of these laws<sup>[35]</sup>.

The recent trend in this regard, is that though the Directive Principles are unenforceable, and a State cannot be compelled to undertake a legislation to implement a Directive, the Supreme Court has been issuing directions to the State to implement the Principles. Hence various aspects of Part IV are being enforced by the courts indirectly. Today thus, the Directive Principles no longer remain merely a moral obligation of the Government.

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