

DIRECTIVE PRINCIPLES OF STATE POLICY : CRITICAL EVALUATION

Many critics have been very vocal in criticising the existence of unenforceable pious declarations in the body of the constitution as stand incorporated in its Part IV (DPSP). They consider these as 'superfluous high sounding principles' with little scope for actual realisation. K.T. Shah compares them to a cheque payable by the bank at its convenience.

(A) Main points of Criticism

1. Lack of Legal Force. The critics hold that as unenforceable directives, these principles do not carry any weight. Their violation or non-realisation cannot be challenged in any court.

"Non-justiceable and abstract Directive Principles which may be safely ignored by the legislator...do not enhance the true prestige of a written constitution." —M. Anantnarayan

2. Mere Declarations. The Directive Principles are mere declaration of intentions or instruments of instructions which are to be observed and secured by the State at will. The Constitution neither makes them justiceable nor fixes the time-limit within which these are to be secured. The legislature is to secure these as and when it may be possible for it. No wonder then, critics like K.T. Shah describe it as "*a cheque payable by the bank at its convenience.*"

3. Unsystematic Enumeration. Another point of criticism against the Directive Principles has been that these have been neither systematically stated nor properly classified. These appear to be a collection of pious declarations recorded in the Constitution.

"These Directives are neither properly classified nor logically arranged. The declaration mixes up relatively unimportant issues with the most vital economic and social questions." —Srinivasan

4. Lack of Clarity. Several Directives lack clarity while several have been repeated at different places. The Directive to promote international peace and friendly cooperation among all the nations is a laudable declaration. But the real issue is how to secure it? No clear guideline has been given for this purpose.

"The formulation of the Directive Principles of State Policy can hardly be considered inspiring. It is both vague and repetitive." —Srinivasan

5. Reactionary in Nature. Many critics hold that several principles laid down as Directive Principles of state policy are reactionary. Written during 1947-49 several of the Directives appear to be reactionary in contemporary times. The party in power at a particular time can use some of the directives for political and selfish ends. Moreover enumeration of these principles involve an attempt to unduly bind the present with the past. "It (Part IV) combines, rather incongruously the modern with the old." (Srinivasan).

6. Impracticability of some of the Principles. Part IV includes some directives which cannot be realised in actual practice. The ideal is to introduce prohibition, but this ideal cannot be really and effectively realised. The states which introduced prohibition had to later on scrap it. Haryana

introduced prohibition but found it almost impossible to implement. The Haryana Government was therefore compelled to scrap it. Prohibition cannot be enforced by law because of practical difficulties involved in the implementation of prohibition laws. Morality cannot be, and should never be imposed. In April 2004, a 3-member bench of the Supreme Court of India held that the principle of Equal Pay for Equal work was not necessary in all cases.

7. Borrowed obsolete Philosophical Foundations. The critics criticise Part IV also for the fact that most of the Directive Principles incorporated in it are based on age old and foreign philosophical foundations—the foundations of Fabian Socialism. The philosophy of Fabian Socialism has lost much of its relevance in contemporary times.

8. Superfluous. Many critics hold that the Directive Principles merely restate the objectives and goals clearly stated in the Preamble of the Constitution. Their enumeration in Part IV has made things more complex and complicated.

9. Mere Promises. Directive principles are designed to serve as pious promises for creating an impression about the just and useful exercise of the power of the State. Their aim is to secure support through promise-making and not action.

“The Directive Principles are no better than New Year day’s resolutions which are broken on the second of January.”
—Nassirudin

On the basis of these arguments the critics severely criticise the existence, nature and content of Part IV of the Constitution. While some of them challenge the very concept of incorporating unenforceable and moral principles in the text of the constitution, several others point out the defective nature and content of the various Directive Principles of State Policy.

JUSTIFICATION/SIGNIFICANCE OF DIRECTIVE PRINCIPLES

A large majority of people accepts the incorporation of Directive Principles in Part IV of the Constitution and justifies it on several grounds.

1. Directive Principles are backed by Public Opinion. It is true that Directive Principles are non-justiceable. These are not backed by legal sanctions. However, these are backed by public opinion, which is in reality also the real sanction behind law.

These Directives constitute a kind of basic standard of national conscience and those who violate, would do so at the risk of being ousted from the position of responsibility to which they have been chosen.”
—M.V. Pylee

2. Provide for a Welfare State. The Directive Principles clearly lay down the philosophical foundations of a welfare polity and make it a responsibility of the State to secure it through welfare legislation. These also provide that a welfare polity means the securing of Justice—social, economic and political for all the people.

3. Importance as Moral Ideals. Directive Principles are indeed of the nature of moral ideals. They constitute a moral code for the State. This does not reduce their value. Through these the founding fathers placed before the nation the goals and ideals which are to be achieved through future legislation. State is a human social institution. Government is always made and managed by the

people. Just as people have a moral code which guides their behaviour in society, likewise there is every justification for a moral code designed to guide the political behaviour of the men who form and run the government of the State.

4. Directives Constitute a Guide for the State. The incorporation of Part IV was governed by the decision to provide a guide to the government for making policies and laws for the purpose of securing justice. This was the reason which made the founding fathers lay down that these were "fundamental in the governance of the country."

"In enacting this Part of the constitution, the Assembly is giving certain directions to the future legislature and future executive to show in what manner they are to exercise the legislative or executive power they will have. Surely it is not the intention to introduce in this part these principles as mere pious declarations. It is the intention of the Assembly that in future both the legislature and executive should not merely pay lip service to these principles but they should be made the basis of all legislative and executive actions, that may be taken thereafter in the matter of the governance of the country."

—Dr. Ambedkar

5. Source of Continuity in Policies. The Directive Principles are a source of continuity in the policies of the government. In a democratic system, the government changes after regular intervals and each new government has to make policies and laws. The presence of Directive Principles ensures that every government, irrespective of the fact whether it is formed by a rightist or a leftist or neo-leftist or neo-rightist party, will exercise the law-making and executive power on the basis of the Directive Principles which every government has to accept these as fundamental principles in the governance of the country.

6. Directive Principles are Supplementary to the Fundamental Rights. Directive Principles are the positive directions to the State for securing and strengthening the socio-economic dimension of Indian democracy. These provide for those socio-economic rights which the constitution makers believed should have been granted to the people but which could not be granted due to the paucity of resources. As such, while making these unenforceable, they made it a responsibility of the government to secure these through future law-making. Directive Principles aim at the establishment of socio-economic democracy. These are supplementary to Fundamental Rights which provide for civil and political rights and freedoms.

7. Yardstick for measuring the Worth of the Government. Directive Principles of State Policy constitute a yardstick with which the people can measure the worth of the government. A government which ignores the task of implementing the Directive Principles can be rejected by the people in favour of a government by another political party which is expected to give due importance to the task of securing the Directive Principles.

"They serve to provide some basis of protest against arbitrary legislation. They are a body of doctrines to which public opinion can rally."

—K.M. Munshi

8. Helpful in the interpretation of the Constitution. The Directive Principles constitute a manifesto of the aims and goals of the nation. These reflect the wisdom of the founding fathers, the goals of the freedom struggle and the demands of national public opinion. These specify into clear-cut goals the objectives stated in the Preamble to the Constitution. These reflect the philosophy of the Constitution and hence provide useful help to the courts in their task of interpreting the Constitution.

9. Ambiguity of Directive Principles is Useful. The Directive Principles have been couched in words which are not very rigid in their meanings. This ambiguity has been helpful in so far as it helps the State to interpret and apply these principles in accordance with the socio-economic environment which prevails at a given time. The Directive Principles are specific enough to guide the path of the State but at the same time ambiguous enough to help the State in moulding these in accordance with the changing times and social needs and interests.

Thus, the inclusion in the Constitution of Part IV containing the Directive Principles of State Policy has been a welcome, worthwhile and useful decision.

“If a chapter on Fundamental Rights is a must for a state of the modern democratic type with a written constitution, a chapter on Directive Principles of State Policy is a must for a welfare state with a written constitution.”
—Dr. K.C. Markandan

The following words of Chief Justice Kania highlight fully the importance of the Directive Principles : “Being a part of the constitution, Directive Principles represent not the temporary will of the majority but the deliberate wisdom of the nation expressed through the Constituent Assembly.” The Directive Principles provide for a necessary and ideal foundation for the Indian polity as a democratic and welfare polity. The securing of Directive Principles alone can complete our democratic system, supplement the Fundamental Rights and freedoms of the people and build a welfare polity characterised by Justice, Liberty, Equality and Fraternity

“If all these principles are carried out, our country would indeed be a heaven on earth...India would then not only be a democracy in political sense but also a welfare state, looking after the welfare of its citizens, a state in which every one would have the same opportunity to educate oneself, to work and reap the rewards of one's labour.”
—M.C. Chagla

ISSUE OF RELATIONSHIP BETWEEN FUNDAMENTAL RIGHTS AND DIRECTIVE PRINCIPLES OF STATE POLICY

Part III and Part IV of the Constitution though designed mutually supplementary parts have remained at times as centres of controversy in respect of their inter-relationship. The differences in the perceptions of the Parliament and the Supreme Court over the issue of relationship between the Fundamental Rights and the Directive Principles remained a reality of Indian political system up to 1980. So much so after the Supreme Court's judgment in the Golaknath Case 1967, there developed a possibility of confrontation over the issue between the Parliament and the Supreme Court. The showdown was avoided by the adoption of a mature view by both these institutions. After 1980 both have accepted the doctrine of harmonious reconstruction which accepts the legal supremacy of the Fundamental Rights over the Directive Principles but at the same time calls for the implementation of both and not any one at the cost of other.

Reason behind some conflict between Fundamental Rights and Directive Principles

No democratic political system can be complete without providing for the politico-civil as well as socio-economic dimensions of democracy. Fundamental Rights as enshrined in Part III of the

constitution constitute the civil-political dimension of Indian democracy. These stand constitutionally granted and guaranteed. The Directive Principles, as enshrined in Part IV of the Constitution constitute the socio-economic dimension of the Indian democracy which the state is to achieve through appropriate legislation. No one as such can question the attempts of the state to implement the Directive Principles. However, the existence of some conflict between some of the Fundamental Rights and Directive Principles, at times, makes such attempts controversial.

In the past, the Right to Equality, the Right to Freedom, and the Right to Property as contained in Articles 14-18, 19-22 and 31 respectively often got involved in a controversy with several laws which were enacted by the State for implementing the Directive Principles contained in Articles 39(b), 39(c) and others. Before the deletion of the Right to Property (Art. 19(1)f and 31) from Part III, *i.e.* before the enactment of 44th Amendment Act, there remained present a continuous conflict between it and the Directive Principles mentioned under Article 39. Article 19(1)(g) guarantees the freedom to practise any profession or to carry on any occupation, trade or business but Article 47 calls upon the state to introduce prohibition and to ban cow slaughter. Fundamental Rights do not involve the right to work, education and public assistance but Art. 41 of Part IV calls upon the State to make effective provisions for securing these. Article 15(1) prohibits discrimination. So is the case of Art. 29(2) which holds that "No citizen shall be denied admission to an educational institution...on grounds only of religion, race, caste, language or any of them. These articles often make difficult the implementation of the Directive Principles contained under Article 46, which calls upon the state to take special care for protecting the educational and economic interests of the weaker sections of the people. This feature has been a source of conflict between Fundamental Rights and Directive Principles.

Further, the Constitution on the one hand declares that the Directive Principles of State Policy are not justiciable but on the other hand observes that these will be fundamental in the governance of the country. It makes it a responsibility of the state to implement the directive principles through appropriate legislation. In doing so, the government often finds itself limited by the existence of constitutionally guarded and legally sanctioned fundamental rights of the people.

Because of these two major reasons, the problem of relationship between the Fundamental Rights and the Directive Principles continued to remain present during 1950-80 in the Indian Political System. There existed a discernible difference between the perceptions of the Parliament and the Supreme Court over the issue of the relationship between these two vitally important parts of the Constitution.

View of the Parliament

The Parliament of India always tried to give more importance to Directive Principles than the Fundamental Rights.

Its logic was :

(a) **Implementation of DPSP alone can complete our democracy.** The Parliament, while recognising the importance of fundamental rights of the people, all along was guided by the view that it was the responsibility of the state to implement the Directive Principles. That without implementing

these, the socio-economic dimension of Indian democracy was bound to remain incomplete and without it the State could not achieve the objectives set forth by the Constitution. The Directive Principles of State Policy represented the will of the founding fathers, the demands of the public opinion and the imperative necessity of a democratic polity committed to secure the socialist goals through effective legislation.

(b) Implementation of DPSP constituted a bigger priority than Fundamental Rights. The attainment of Directive Principles was held to be a sacred duty of the State. For discharging this responsibility the State could amend the rights contained in the chapter on Fundamental Rights. The Directive Principles can be, as the environment may demand, and should be given even priority over the Fundamental Rights. The developmental needs of the society should be the determinant for deciding whether Fundamental Rights should be amended for implementing Directive Principles or not. In case it was felt necessary to amend the rights for implementing the directives the government should do so effectively and certainly.

(c) Fundamental Rights can be amended for implementing DPSP. The Parliament always asserted its right to amend the Constitution, its every part, in accordance with the procedure laid down in Article 368. It always upheld the view that Fundamental Rights could be amended, if need be for implementing the Directive Principles.

The Parliament on several occasions amended the Fundamental Rights for implementing the Directive Principles as well as for overcoming the hindrances resulting from certain judicial decisions.

View of the Supreme Court

Initially *i.e.* before its judgment in the Golaknath case, the Supreme Court had held that Fundamental Rights were legally and constitutionally superior to Directive Principles and that the latter were to run subservient to the former. However, it accepted the Parliament's power to amend the Constitution including its Part III. It asserted its right to determine the constitutional validity of all amendments to the Constitution and the reasonableness of the restrictions imposed on Fundamental Rights for implementing the Directive Principles or otherwise.

In the case of *Champakam Dorairajan vs the State of Madras*, the Supreme Court's Judgement on the issue of relationship between Fundamental Rights and the Directive Principles was, as Dr. K.C. Markandan points out, based upon the following assumptions :

- (i) The Directive Principles cannot override the Fundamental Rights as the latter are enforceable by appropriate writs or orders or directions under Articles 32 and 226, whereas the former are not enforceable.
- (ii) The chapter of Fundamental Rights is sacrosanct and not liable to be abridged by any legislative or executive act or order except to the extent provided in the appropriate articles in Part III.
- (iii) The Directive Principles of State Policy have to conform and run subsidiary to the chapter on Fundamental Rights.
- (iv) The state action under Directive Principles is subject to the legislative and executive powers.

- (v) The state action under Directive Principles is also subject to the limitations conferred on the state under different provisions of the constitution.

The above view was maintained by the Supreme Court till its judgment in the Golak Nath Case 1967. In it the Supreme Court reversed its earlier decisions and held that the Fundamental Rights were sacrosanct and that the Parliament had no power to take away or abridge the Fundamental Rights.

However it again reversed this view in the Keshvananda Bharati case and accepted the Parliament's power to amend all parts of the Constitution including the Part III without, however, changing the 'Basic-Structure' of the Constitution. It asserted its right to judge the constitutional validity of all amendments by exercising the power of judicial review. In the Minerva Mills case it again maintained the legal superiority of Fundamental Rights over the Directive Principles. But along with it also accepted the principle that some parts of Part III can be amended for implementing Article 39(b) and (c) of part IV.

The Present Position

In respect of the relationship between Fundamental Rights and Directive Principles the position that prevails in contemporary times can be summarised as under :

1. That Parliament has the power to amend Fundamental Rights in accordance with Art. 368.
2. The Parliament, however, cannot change the Basic Structure of the Constitution.
3. The Judiciary has the power to conduct judicial review over amendments. It has the responsibility to decide whether any part of any amendment violates the basic structure of the constitution or not. It also determines the reasonableness of the restrictions placed on Fundamental Rights.
4. The Fundamental Rights, being enforceable and being mentioned before the Directive Principles, enjoy a legal superiority over the latter.
5. Article 31(c), as amended by 25th, 42nd and 43rd amendments, continues to be operative. As it stands now, it gives primacy not to all Directive Principles but only to the Directive Principles contained in Article 39(b) and (c) and that too vis-a-vis articles 14 and 19 only.
6. State must implement both Fundamental Rights and DPSP and not either of the two. DPSP are of paramount importance next only to Fundamental Rights. DPSP are to be regarded, as the Constitution lays down, fundamental principles in the governance of the State.

The national consensus is that the State while implementing the Directive Principles should, as far as possible, refrain from amending the Fundamental Rights. Neither the Directive Principles should be implemented at the cost of the Fundamental Rights, nor the latter be maintained as sacrosanct and unamendable parts even when amendments are needed for implementing the former.

The Fundamental Rights and the Directive Principles together constitute the 'Conscience of the Constitution'. The former seek to create an egalitarian society by freeing all citizens from coercion and restriction and by providing them due civil rights and freedoms. The latter seek to fix the goals of socio-economic reforms which are to be attained by the state for securing social, economic and political justice and a welfare society. Hence, both should be respected and maintained.

In the words of Justice Chandrachud, "Our Constitution aims at bringing about a synthesis between 'Fundamental Rights' and 'Directive Principles of State Policy' by giving to the former a place of pride and to the latter a place of permanence. Together, not individually, they form the core of the Constitution. Together, not individually, they constitute its true conscience."

What is needed is a harmonious construction and not attempts at the determination of primacy of one over the other. Both the Fundamental Rights as well as The Directive Principles of State Policy are two integral parts of the Constitution and both must be respected and followed by the State.

Answer the following:

1. Why the critics consider the Directive Principles as 'superfluous high sounding principles' with little scope for actual realisation? — Discuss.
2. Discuss the significance of Directive Principles.