

The 42nd Amendment of the Indian Constitution was effected during the time of Emergency. There was the feeling that in India people were demanding too much of rights without being prepared to fulfil their constitutional obligations or duties. Rights and duties are complementary to each other. Mere insistence on rights is likely to vitiate the constitutional process. The Constitution of U.S.S.R. also provided the inspiration for inclusion of the provision of Fundamental Duties in our Constitution.

DIRECTIVE PRINCIPLES OF STATE POLICY

The framers of the Indian Constitution followed the Irish precedent in making a declaration of social and economic policy in the framework of the Constitution. The Weimar Constitution of Germany for the first time made a constitutional declaration of the social and economic policies in 1919. Since that time many countries have followed the practice of incorporating a number of directives in the constitutions of their country, e.g. the Constitution of Austria (1929), Spain (1931), Eire (1937), New York State (1941), Brazil (1942), France (1946), Italy (1947) and East Germany (1949). They are also incorporated in the Constitutions of Czechoslovakia, China and Yugoslavia. These principle are included in the chapter on Fundamental Rights in the Constitution of USSR in most of the Constitutions no distinction is made between justiciable and other rights. But India has followed the Irish example where the justiciable rights of the individual are separated from non-justiciable social policy.

The founding fathers of the Indian Constitution were convinced that Indian should be made a welfare state. They were also greatly influenced by the trading surge of socialism. But they did not like to prescribe any cut and dried scheme to be followed by everybody. They only desired to prescribe that every government shall try to bring about economic democracy. Mere political democracy in the absence of economic democracy would be devoid of its vital substance. Hence, for the attainment of economic democracy certain provisions have been made in the form of directives to the legislature

and the executive. The legislatures of the Union and the States while making the law and the governments while executing the law should keep these directives in mind. Whether the judiciary shall keep them in mind while interpreting the laws is not clear in the Constitution. But as the directives are fundamental in the Governance of the country, they may be used in case of doubt in the interpretation of legislation.

The purpose of incorporating the Directives of State Policy in a separate chapter of the Constitution has been explained by Dr. B.R. Ambedkar in the following words: "It was not the intention of the framers to prescribe any rigid programme for the attainment of the ideal of economic democracy. Parties were to be completely free to advocate their own programmes and appeal to the electorate for a mandate for them. But the framers desired to prescribe that every government shall try to bring about economic democracy."

Most of the Directive Principles aim at the establishment of a welfare state based on socialistic principles. They constitute a very comprehensive political, social and economic programme for a modern "democratic state." The framers of the Constitution considered that these are the basic principles of a new economic and social order. But as no legal effect could be given to these principles they were incorporated in the Constitution in the form of directives to the legislature and the executive. They are mostly in the nature of moral precepts and economic maxims unexceptionable in content having to legal force. They may be used for political criticism, They confer no legal rights and create no legal remedies."

Distinction between Fundamental Rights and Directive Principles. There is a difference between the Fundamental Rights mentioned in Chapter III and the Directive Principles mentioned in Chapter IV Of the Indian Constitution. The Fundamental Rights are justiciable. If a Fundamental Right is violated a legal remedy is provided for that. But the Directive Principles are non-justiciable and if they are violated there is no provision of legal remedy Article 38, says that the state shall strive. It does not mean that the state

must fulfil these principles. If for example, the state does not make provisions for compulsory free education for children under the age of 14 or if the judiciary is not separated from the executive nobody can challenge it in the court of law. However, on thing should be kept in mind that the Directive Principles have been declared as fundamental in the governance of the country. This mean that these principles are not to be lightly taken and the legislatures and the governments must maen sincere efforts to fulfil these principles. In the words of Dr. Ambedkar, "the word strive" was purposely used because their intention was that however adverse the circumstances that stand in the way for a government in giving effect to these principles and however unpropitious the time may be, they should always strive for the fulfilment of the principles. Otherwise, it would be open to the government to say, that the circumstances were not good and the finances were so bad that they could not implement them.

The Directive Principles are subsidiary to the Fundamental Rights and in case of conflict with Fundamental—Rights they shall be declared unconstitutional. In the case of State of Madras V. Champakan Dorairajan, the Supreme Court observed: "The Directive Principles of State Policy which are expressly made unenforceable by a Court cannot over-ride the provisions in Part III which are made enforceable by appropriate writs, orders of directions under Article 32." Thus the Directive Principles must have to conform to and run subsidiary to the chapter on Fundamental Rights. The State can act in accordance with the Directive Principles if that does not amount to the infringement of the Fundamental Rights conferred by the Constitution. The legal superiority of the Fundamental Rights over the Directive Principles has been established by the decisions of the Supreme Court of India.

Another difference between the Fundamental Rights and the Directive Principles is that the former are negative in character whereas the latter are positive. The Fundamental Rights are in the nature of injunctions requiring the state not to do certain acts and are prohibitive in character. The Directive Principles, on the other

hand, are positive directions to the state to perform certain things for the good of the citizens. They urge that it is the duty of the state to implement the social and economic policy as embodied in the directives for the attainment of economic democracy and social justice. In the words of Gledhill, "Fundamental Rights are injunctions to prohibit the government from doing certain things; the Directive Principles are affirmative instructions to the government to do certain things."

CLASSIFICATION OF DIRECTIVE PRINCIPLES

The Directive Principles are embodied in as many as 16 Articles. It is difficult to classify these principles because they are not arranged in accordance with any logical plan. They cover a wide range of state activities. They are concerned with the social, economic, legal, educational and international principles. For the purpose of a systematic study these principles have been classified into three categories, namely, the socialistic, Gandhian and liberal. However, there are certain principles which cannot be included in either of these categories. These may be included in a fourth category called as the general category.

(a) **Socialistic Principles.** Most of these Directive Principles aim at the attainment of a socialist society. The socialistic principles were considered essential for the purpose of establishing a welfare state.

Article 38, provides that the State shall strive to promote the welfare of the people by securing and protecting a social order in which justice, social, economic and political, shall inform all the institutions of national life.

Article 39, provides that the State shall direct its policy towards securing, (i) the citizens, men and women equally, have the right to an adequate means of livelihood; (ii) that the ownership and control of the material resources of the community are so distributed as to subserve the common good; (iii) that the operation of the economic system does not result in concentration of wealth and means of

production to the common detriment; (iv) that there is equal pay for equal work for both men and women; (v) 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 to enter vocations unsuitable to their age; (vi) that childhood and youth are protected against exploitation and moral and material abandonment.

Article 41, seeks to ensure the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement and other cases of underserved want. Article 42, provides that provisions shall be made by the State for securing just and human conditions of work and for maternity relief. Article 43, exhorts the State to secure to all worker-industrial, agricultural or otherwise—work, a living wages, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. Article 46, provides that the State shall take special care of the economic and the educational interests of the weaker section of the society and in particular of the Scheduled Castes and Scheduled Tribes and to protect them from social injustice and all forms of exploitation. According to Article 47, the State is made duty bound to raise the level of nutrition and the standard of living of its people and the improvement of the public health.

(b) Gandhian Principles. The framers of the Constitution were greatly influenced by Gandhian ideology. During his life Gandhiji became the undisputed leader of Congress party and the nation as well. The Gandhian philosophy finds its expression in many Articles of this chapter. It can be noticed in the following principles:

- (i) The state shall organise village panchayats and endow them with such powers as may enable them to function as units of self-government.
- (ii) The State shall promote, with special care, the educational and economic interests of Harijans, Scheduled Tribes and weaker sections of the community.

(iii) The State shall endeavour to promote cottage industries on individual or co-operative basis in rural areas.

(iv) The State shall take steps for preserving and improving the breeds of milch and draught cattle, including cows and calves and for prohibiting their slaughter.

(v) The State shall endeavour to effect prohibition of the consumption, except for medicinal purposes, of intoxicating drug and drinks which are injurious to health.

(c) Liberal Principles. This category of the Directive Principles contains what may be called the liberal principles. These principles were advocated by the liberal intellectuals for the betterment of the citizens of India. The liberal principles are embodied in the following provision of the Constitution:

(i) The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

(ii) The State shall endeavour to provide within a period of ten years from commencement of the Constitution for free and compulsory education for children below and up to 14 years of age.

(iii) The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines.

(iv) The State shall take steps to separate the judiciary from the executive in the public service of the State.

(v) The State shall endeavour to promote international peace and security; maintain just and honourable relations between nations; foster respect for international law and treaty obligations; encourage settlement of international disputes by arbitration.

(d) General Principles. As it has been said earlier, there are certain Articles in this chapter which cannot be included in anyone of the three categories into which the Directive Principles have

been classified by Dr. M.P. Sharma. These principles may be included in the category of general principles. Articles 36 and 37 deal with the definitions and application of the Directive Principles. According to Article 36, unless the context otherwise requires, the State shall have the same meaning as in Part III of the Constitution. Article 37, provides that these principles shall not be enforceable by any court of law and at the same time declares that they 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. Article 49, which provides that it is the obligation of the State to protect every monument of place or object of artistic or historic interest which Parliament of India has declared of national importance, may be included in this category.

Criticism of the Directive Principles. The Directive Principles have been subjected to serious and searching criticisms. They are considered as mere platitudes without having any practical use for the people. There is no immediate practical social and economic programme and as such they fall flat upon the people. These principles do not have any attraction for the masses because. They are silent about the means of implementation. The formulation of the directives of State policy can hardly be considered inspiring. It is both vague and repetitive. The directives are neither properly classified nor logically arranged". The Directive Principles are evasive and ambiguous and by mixing up important matters like prohibition, compulsory education for the children below and up to the age of 14 etc. With relatively less important matters such as that the State shall protect places of artistic or historic interest, they have reduced their urgency and importance. The Directive Principles like the formulation of rights in some of the European Constitutions do not have clear objectives and are evasive on the decisive social issues of labour management relations and the property complex as the key to the alternatives of private capitalism or socialisation, laissez faire of planning.

As there is no legal force behind them, the Directive Principles are dubbed as mere pious ambitions, or superfluous platitudes or

political manifesto devoid of any constitutional importance. A member of the Constituent Assembly (Nassiruddin) described these principles as a set of New Year resolutions. In the words of Professor K. T. Shah these principles are like a cheque on a bank, payable only when the resources of the bank permit". It is pointed out that mere platitudes have no place in the Constitution. Principles which are legally enforceable should not have been mentioned in the Constitution. They unnecessarily increase the bulk of the Constitution. Sir B.N. Rau is of the opinion that the Directive Principles of State Policy are in the nature of moral precepts for the State authorities and are open to the facile criticism that the Constitution is not the place for moral precepts. The Directive Principles have been characterised by K.C. Whear as a manifesto of aims and aspirations. The illogical arrangement and the curious combination of the different principles have also been criticised by many critics of the Indian Constitution. It combines rather incongruously the modern with the old and provisions suggested by reason and science with provisions based purely on sentiment and prejudice.

Some critics are of the opinion that the Directive Principles are redundant and are incompatible with the sovereign status of the country. There is hardly any necessity of such instructions for a sovereign country. Moreover, the Directive Principles cannot be followed and implemented at all times and under all circumstances. A sovereign State must have the freedom to change its policy in accordance with the requirements of the time. It would be unwise to restrict its activities through certain rigid principles formulated at a particular time. In a parliamentary democracy different political parties have the freedom to have their independent social, economic and political programmes with which they would try to seek the mandate from the people. Thus, with every change in the government there is the likelihood of a change in the political philosophy which differs from party to party. Hence, the Directive Principles of State Policy which constitute a political philosophy can never be expected to be followed by all the governments for all times to come. They are rightly described as parade of high sounding sentiments couched in vain glorious verbiage."