



# Enforcing Directive Principles of State Policies : A Challenge to Judiciary

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## Introduction

The author begins with the marginal notes of the Indian constitution in regards to Directive Principles of state Policy as it commence from the negative wordings i.e. 'unenforceable' it means no citizens can enforce these Directive Principles of state Policy before anybody or anybody.

Directive principles of state policy are included in part IV of the Indian constitution. Indian constitution is one among few Constitutions of the world that has incorporated such provisions as a part of the main body of the Constitution.<sup>1</sup> The Constitution makers were inspired to include directive principles of state policy in the Constitution by the Constitution of Ireland.

Therefore author had attempted to compel the State to enforce Directive Principles of State Policy to the extent of recognizing it as a part and parcel of basic Fundamental Rights enshrined in the Part III of the Indian Constitution<sup>2</sup>.

## Role of Judiciary in Constitutional Democracy

In a Constitutional democracy, it is believed that the people are sovereign and they are supposed to rule themselves. The government is supposed to be of the people by the people and for the people.

As we all are familiar with a large part of the judiciary is which is recognized as the only organ of the state which has come to the rescue of the people of India and the only organ which has saved the Constitution of India. It is believed that otherwise the Constitution of India would have been totally subverted by the Executive and Legislature.

With respect to the value of a written Constitution, it would be appropriate to reproduce a quotation by Justice Aahron Barak, formerly Justice of the Supreme Court of Israel:

*"To maintain real democracy--and to*

*ensure a delicate balance between its elements--a formal constitution is preferable. To operate effectively, a Constitution should enjoy normative supremacy, should not be as easily amendable as a normal statute, and should give judges the power to review the constitutionality of legislation. Without a formal constitution, there is no legal limitation on legislative supremacy, and the supremacy of human rights can exist only by the grace of the majority's self-restraint. A Constitution, however, imposes legal limitations on the legislature and guarantees that human rights are protected not only by the self-restraint of the majority, but also by Constitutional control over the majority. Hence the need for a formal Constitution."*<sup>3</sup>

## Indian Supreme Court engaged since 1980s in interpreting and introducing new changes in the jurisprudence as unique

Since the last two decades, the Supreme Court of India has been actively engaged, in many respects, in the protection of Life and personal liberty under Article 21 of the Constitution. While conventionally<sup>4</sup> the executive and the legislature play the major role in the governance process, the Indian experience, particularly in the context of Life and personal liberty issues, is that the Court has begun to play a significant role in resolving disputes. Although it is not unusual for Courts in the Western democracies to play an active role in the protection of Life and personal liberty, the way Indian Supreme Court has been engaged since 1980s in interpreting and introducing new changes in the jurisprudence is unique in itself.

Besides the assigned role of interpretation and adjudication of the Court has laid down new principles to protect the Life and personal liberty and created new institutions and structures, and conferred additional powers on the existing ones through a series of illuminating directions and judgments. The Court's directions on protection



of life and liberty issues is involved not just in general questions of law-as is usually expected from the Court of the land but also in the technical details of many cases. International legal experts have been unequivocal in terming the Indian Courts of law as pioneer, both in terms of laying down new principles of law and also in the application of innovative methods in the justice delivery system.

### **Judiciary and its independence for Protection of constitutional guarantees**

The author gives importance to the world's largest Democracy on account of its population. Democracy through the Constitution guarantees the power of the organs of the state particularly about the Judiciary and its independence. Judiciary being the heart of the structure of the Constitution controls and ensures as a credible system of checks and balances in the governance of the state and also acts as an instrument of social change and development. In numerous instances where these limbs of governance have not lived up to the expectations of the people, or have failed to safeguard constitutional guarantees, the higher judiciary has asserted its position not only as a protector of the Constitution but has also interpreted its provisions in a dynamic way to respond to the needs of the times.<sup>5</sup>

### **Government is the provider of social services which includes few directive principles of the State Policy**

Today the Government is the provider of social services; new form of property like jobs, quotas, licenses and mineral rights etc. The dispenser of special services cannot therefore act arbitrarily. Courts laid the standard of reasonableness in Governmental action. Now as far as the role of the writs is concerned, let us go by illustration over the cases on discretion. Conferment of discretionary powers has been accepted as necessary phenomena of modern administrative and constitutional machinery. Law making agency legislatures make the law on any subject to serve the public interest and while making law, it has become indispensable to provide for discretionary powers that are subject to judicial review.

### **Separation of Power and judicial review is crucial and important**

In the context of Separation of Power, judicial review is crucial and important. We have three wings of the state- Judiciary, Legislature and Executive with their function clearly chalked out in our constitution. Article 13 of the constitution mandates that the 'State shall make no law, which violates, abridges or takes away rights conferred under Part III' practically on the part of the legislatures it is need of the hour to also consider the part IV of the Constitution. This implies that both the Legislature and the Judiciary in the spirit of the words can make a Law. But under the theory of checks and balances, the judiciary is also vested with the power to keep a check on the laws made by the legislature.

But where is the judicial accountability of a judicial review. The Judge is accountable to no one, not even to another judge, the question of legislature and executive does not arise. There is supremacy of the constitution that prevails, but the limit of such supremacy has too been left to a judge to decide.<sup>6</sup>

The issue is whether any amendment or any ordinary law is put beyond the scrutiny of judicial review? Frictions between the wings of the state are indeed not new. Every department justifies its actions 'as per the provisions of the constitution'. But, finally, it is the judiciary that has a firm foot in interpreting the constitution, and this was reiterated by nine judge bench<sup>7</sup>

### **Doctrine of Separation of Power and Independence of the judiciary**

The Rule of law pre-supposes that the state is constituted in these three distinct organs. One of the important facets of the Doctrine of Separation of Power is the independence of the judiciary which gives teeth to the maintenance of rule of law. Alexander Hamilton in Federalist 78 remarks on the importance of the independence of the judiciary to preserve the separation of power in the following words:

*"The complete independence of the courts of justice is peculiarly essential in a limited Constitution. By a limited constitution, I understand one which contains certain specified exception to the legislative authority; such for*



*instance that it shall pass no bills of attainder, no ex post facto laws, and the like. Limitations of this kind can be preserved in practice in no other way than the courts of justice, whose duty must be to declare all acts contrary to the manifestation tenor of the constitution void. Without this, all the reservations of particular rights or privileges would amount to nothing.”*

Montesquieu finds that tyranny pervades when there is no separation of powers, I quote:

*“There would be an end of everything, where the same man or same body, whether of the nobles or of the people, to exercise those three powers, that of enacting the laws, that of executing the public resolution and typing the causes of individuals.”*

The Supreme Court of India has held the Separation of Power as the basic Structure of the Constitution.<sup>8</sup> And even before the doctrine of Basic Structure was propounded, the importance of Separation of Power was illustrated by the Supreme Court in the Re-Special Reference No. 1 of 1964<sup>9</sup> (Legislative Privilege Case). Conflict between the judiciary, legislature and the executive has been extant since 1950 and attempts of drawing the line have been dropped including the Judges (Inquiry) Bill, 2006.

### **Law should be interpreted in such a way so as to satisfy needs of our society**

It simply functions on the faith of people. The legitimacy of its decisions is drawn from the public faith. In this modern time when the function of government has increased thousand times, people now expect from government to take care of it from cradle to grave. The function of judiciary is also bound to increase. Law cannot afford to be static and so the judiciary. The purpose of giving justice cannot be solved by simply interpreting law in modern times. Law should be interpreted in such a way so as to satisfy needs of our society.

In a very recent judgment, Delhi High Court legitimated the marriage of a 17 year girl with her boyfriend, asserting that no law in India prohibits love marriage and the girl would not have been safe at her parental home. The Court kept in mind the atrocities done with the couples who run away from their home in love. If the

goal would have been only to interpret the law the Court would have easily invalidated the marriage on the ground that girl was not an adult but that would not have served the purpose. Court should see what is in the best interest of the society.

### **International Scenario for the General welfare of the State**

Universal declaration of Human rights had been adopted by the General Assembly of the United Nations, for India was a signatory to it. It contained a basic and fundamental rights appertaining to all men. These rights were born of the philosophical speculation of the Greek and Roman stoics and nurture by the jurists of ancient Rome. These rights had found expression in a limited form in the accords of 1188 entered into between King Alfonso IX and the cortes of leon, the Magna Carta of 1215 and the guarantees which King Andrew II of Hungary was forced to give by his Golden bull of 1822.

The framers of the Indian constitution inserted these rights and directives for the welfare state in part IV in the Indian constitution. The United States of America contained certain rights akin to Human rights. Section 8 of the article 1 of the U.S constitution contained a Welfare clause empowering the federal Government to enact laws for the overall general welfare of the people. U.S.A, the U.K and Germany had passed social welfare legislation. Constitution of Eire, Japan also contained similar rights and Directive principles as a welfare state.

### **Ideals behind the Directive Principles of the State Policy**

The founding fathers were aware of the drawbacks; the country had been suffering from such as poverty, unemployment, lack of education, social, economic, and political backwardness. They in order to eradicate these evils, set forth in the very preamble, the ideals and objectives to be achieved. The intention of the constitution framers was to establish in India a democracy as to the nature of political, economic and social Justice.

### **Efforts for achieving Cherished Goals enshrined under the Constitution of India**

To achieve these cherished goals, the





framers were unanimous to secure to the people practically all the prevailing political social and economic rights. These rights were broadly speaking divided into two categories. Political and Civil Rights, Social and Economic Rights

The political and Civil rights which were in opinion, with the reach of the individual were provisional as fundamental rights and the latter being considered beyond individual reach under the prevailing circumstances, were titled as Directive Principles of State Policy.

### **View of Dr. B.R. Ambedkar on Economic Democracy**

Dr. B.R. Ambedkar while explaining the object underlying the Directive principles of State Policy observed that we have established political democracy, it is also the desire that we should lay down as our ideal, Economic democracy. We do not want merely to lay down a mechanism to enable people to come and capture power. The constitution also wishes to lay down an ideal before those who would be forming the Government. That is ideal is economic democracy, whereby, so far as I am concerned, I understand to mean one man one vote. By this it is clear that the main object behind the Directive Principle is to achieve the ideal of Economic democracy.

### **Nature of Directive Principles and it's a bindingness to organs of the Government**

Though they are non-enforceable, the directives are the fundamental principles of governance and all the branches of government. The executive, the legislature and the judiciary, have to take cognizance of them. In fact, the judiciary has followed the principle of the harmonious construction between the fundamental rights and the Directive principles of State policy. Judiciary has also taken the help of the Directives while interpreting the various provisions of the constitution.

While dealing with relationship between the fundamental rights and the directive principles, Mr. Chandrachud, Chief Justice of India then, stated in *Minerva Mills case*<sup>10</sup> and held that the Indian constitution is founded on the bedrock of the balance between Parts III and IV to give absolute primacy to one over the other is to

disturb the harmony of the constitution. This harmony and balance between fundamental rights and Directive principles is an essential feature of the basic structure of the constitution.

### **Courts are undoubtedly transgressing its limit**

This is the basis of Judicial Activism. Court is undoubtedly transgressing its limit but they are compelled to do so. The author had discussed the legitimacy of this Judicial Activism in India. No wonder, the judiciary gets legitimacy from the public. But the question is whether public is competent to justify the decision of Courts. In common law system of law is very complicated. Even lawyers at times find difficulty in understanding basis of many decisions.

Further, loads of legislations and complicated procedure. All these things are hindrance in getting a proper criticism of judicial decisions. However, through media and modern techniques people are getting required information to view a particular decision from independent point of view. But that is not enough. Finally, the question of accountability of judiciary is also an important area for discussion. Just like other two organs of the Government judiciary should also be made accountable; to prevent it from becoming arbitrary because "power corrupts and absolute power corrupts absolutely" Judiciary should be accountable to the public but its independence and integrity should not be touched. This may put the process of delivering justice in danger.

### **Directive Principles For the establishment of the welfare state<sup>11</sup>**

The important question is where there is a conflict between the fundamental rights and directive principles, which should prevail?

The Fundamental Rights are the rights of the individual citizens guaranteed by the Constitution. The directive principles lay down various tenets of a welfare state. The conflict arises when the State needs to implement a directive principle and it infringes/ abridges the fundamental rights of the citizens.

The chapters on the fundamental rights & DPSP were added in order of part III and part IV of the constitution. The Fundamental rights are justifiable and guaranteed by the constitution. The Directive principles were directives to the



state and government machinery. But they are not enforceable, by the law.

***Champakam Dorairajan Case is the first major verdict of the Supreme Court on the issue of Reservation.***<sup>12</sup>

This conflict between Fundamental Rights and DPSP came to the Supreme Court for the first time in Champakam Dorairajan Case (1952). Smt Champakam Dorairajan was a woman from the State of Madras. In 1951, she was not admitted to a medical college because of a Communal G.O. (Government Order) which had provided caste based reservation in government jobs and college seats. This GO was passed in 1927 in the Madras Presidency.

The Champakam Dorairajan Case was a first major verdict of the Supreme Court on the issue of Reservation. Champakam Dorairajan Case led to the First amendment of Indian Constitution.

This was the case, which when was in Supreme Court; the Lok Sabha was not formed. Lok Sabha was formed in 1952.

The conflict was between article 16(2) from the chapter of Fundamental Rights and Article 46 of the Constitution. Article 16(2) says that :

No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State. And **Article 46**<sup>13</sup> says: 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.

The Supreme Court held that Article 37<sup>14</sup> expressly says that the directive principles are not enforceable by court. Supreme Court mandated that the chapter on Fundamental rights in the constitution is sacrosanct and the directive principles have to conform to and run subsidiary to the chapter on Fundamental Rights. This means that Fundamental Rights were given superiority over the Directive principles. This continued for a decade and half and some other cases such as Hanif Qureshi v/s State of Bihar,<sup>15</sup> Sajjan Singh V/s State of Rajasthan<sup>16</sup> cases court confirmed this stand.

**Golak Nath Case forced the government to amend the constitution.**<sup>17</sup>

In 1967 came a very important case. This was Golak Nath vs. The State of Punjab (1967). In this case, for the first time a bench of 11 judges of the Supreme Court was formed. The court in this case laid down that Fundamental Rights cannot be abridged/ diluted to implement the directive principles. This decision forced the government to amend the constitution. By the 24th Amendment Act 1971, the Parliament amended Art. 13 and 368. This amendment made it clear that Parliament has the power to amend any part of the Constitution including Fundamental Rights and the word 'law' as used in Article 13 does not include a Constitutional Amendment Act. Kesavanand Bharti Case<sup>18</sup>

In the Kesavananda Bharti Case the Supreme Court ruled that Parliament could amend any and every part of the Constitution including Fundamental Rights but it could not destroy the basic structure of the Constitution.

To nullify the Kesavanand Bharti Case, the 42nd Amendment further amended article 31 (C) and now it said that "No law giving effect to the policy on the ground" that is inconsistent with or takes away or abridges any of the rights conferred by article 14, 19 or 31.

**Minerva Mills Case On basic structure of the Constitution**<sup>19</sup>

The parliament by 42nd amendment further widened the scope of the Fundamental Rights. However in the Minerva Mills v/s Union of India (1980) case, the Supreme Court struck down these provisions. On the ground that it changed the basic structure of the Constitution. The Supreme Court held that the Constitution exists on the balance of part III and Part IV. Giving absolute primacy to one over other will disturb the harmony of the Constitution. This took the Article 31(C) to its prior condition that "a law would be protected by article 31C only if it has been made to implement the directive in article 39(b) and (c) and not any of the articles included in Part IV.

**Summary of Conflict between Fundamental Rights and DPSP**

A member in the constituent assembly moved



an amendment which sought to make the directive principles justifiable. However, this move was turned down on the fact that, there was no use in being carried out away by the sentiments. A court cannot enforce the directive principles and it is the strength of the public opinion which makes these provisions enforceable, because there are elections every five year and the public, if the DPSPs are not implemented can show the door to the government.

It was a view of Jawahar Lal Nehru that where there was a conflict between the Fundamental Rights and Directive Principles the DPSP should prevail. However, where we look into the judicial 'nature' of the above two, we see that Supreme Court should upheld the Fundamental Rights because they are guaranteed by the Constitution and justifiable. But the solution provided by the Supreme Court may be "Judicial" but not "practical" in all cases. It is the parliament which can reach beyond the "Judicial" solution.<sup>20</sup>

When a social conflict arises out of the conflicts of the Fundamental Rights and DPSP, the state should emerge as a "Torch bearer" because ultimately it is the superiority of the "Social Interest" over the "individual interest". However, it is the duty of the Court to resolve a conflict with an eye on the constitution and another on the social harmony. After the *Minerva Mills Case*, The supreme court to the view that there is no conflict between the Fundamental Rights and the DPSP and they were complimentary of each other. There was no need to sacrifice one for the sake of the other. If there is a conflict it should be avoided as far as possible.

## Conclusion

The author had focused, particularly on the role performed by the judiciary in considering these Directive Principles of state Policy as fundamental in the governance of the country, and mandating the states as it is the duty of the State to apply these Directive Principles of state Policy in making laws to establish the society in the country.

The role of the judiciary is, as previously assumed, only to interpret and declare the law and not to make it. But, in an ever-growing and

fast-changing societal set-up, the burden falls on the judiciary to mould the law to ensure its relevance in a changed scenario. So, regardless of the appearance of neutrality, the values and beliefs of the judiciary play a major role in the life of the nation. The author concludes that apart from the provisions of the part III and part IV of the Constitution it is important to take note of the recent scams and scandals held during the year 2010 and 2011. As the task is lying upon the Judiciary no doubt the Judiciary while interfering in its own motion had taken note of the scams and scandals, but the rest of the organs of the state criticizing the act of judiciary and presume that act of the Judiciary is called as Judicial Activism.

## End notes

- 1 <http://www.legalservicesindia.com/article/article/relation-between-part-iii-and-part-iv-of-constitution-of-india-changing-trends-1058-1.html>
- 2 Assistant Professor, A.K.K. New Law Academy, Azam Campus, Camp, Pune
- 3 Owen Fiss author 'Law Is Everywhere'. [www.google.com](http://www.google.com)
- 4 *Speaking constitutionally, the role of the Supreme Court as proclaimed under Article 141.*
- 6 *CONSTITUTIONAL CONTROL PRAXIS IN THE PRESENT DAY*  
Lecture by: JUSTICE K.G. BALAKRISHNAN, CHIEF JUSTICE OF INDIA On 15 August, 2008 At Brazilian Supreme Court
- 7 *I.R.Coelho v. Union of India* (2007) 2 SCC 1
- 8 Quoted by the Supreme Court in *I.R.Coelho v. Union of India* (2007) 2 SCC 1
- 9 *His Holiness Kesavananda Bharati Sripadgalvaru v. State of Kerala & Anr.* (1973) 4 SCC 225.
- 10 (1965) 1 SCR 413.
- 11 *Minerva Mills Ltd . and Ors . vs . Union of India (UOI) and Ors .* AIR1980SC1789
- 12 <http://www.gktoday.in/conflict-between-fundamental-rights-and-directive-principles-of-state-policy/>
- 13 AIR 1957 SC 257
- 14 *Constitution of India*
- 15 *Constitution of India*
- 16 AIR 1958 SC 731
- 17 AIR 1965 SC 845
- 18 AIR 1967 SC 1643
- 19 AIR 1973 SC 1461
- 20 AIR 1980 SC 1789
- 21 <http://www.gktoday.in/conflict-between-fundamental-rights-and-directive-principles-of-state-policy/>