

1. Directive Principles of State Policy are enshrined in the Part IV of the Constitution which are described as the novel features of the Constitution. It is also referred to as 'Conscience of Constitution'.

They have been made non-justiciable on account of the following reasons -

- India, at the time of independence did not have sufficient financial resources.
 - India is a land filled with diversity.
 - India faced backwardness back then.
- Though, they are non-enforceable in any court of law, it acts as a code of conduct which is necessary for fundamental governance of the country.

Instrument of Instructions

Amplification of Preamble

Directive Principles of State Policy

→ Constitutional validity of a law

Socio-economic democracy

good governance

deep values

Significance

- i) It is similar to that of Instrument of Instructions as enumerated under the Government of India Act, 1935 as the legislature and executive.
- ii) It acts as beacon of light for Judiciary in determining the constitutional validity of a law.
- iii) It amplifies the lofty goals of Preamble.
- iv) It provides for enhancing the welfare of individuals by promoting socio-economic democracy.
- v) They have to be taken into consideration both by the legislature and the Executive in formulation and implementation of policies.

Realising this significance of the Directive Principles of State Policy, Art 31-c was inserted whereby the validity of a law cannot be challenged on the ground that it violates Art 14 & 19 when the law is enacted to give effect to Art 39 (b) & 39(c) which aim in removing inequalities of income by preventing concentration of wealth in the hands of few and ownership & control of material resources is distributed in a manner to subserve common good.

Thus, importance has been given to Directive Principles of State Policy over Fundamental Rights and harmony between the two is declared as basic structure.

Hence, although unenforceable, they play a prominent role in the fundamental governance required in a welfare state.

Dr B.R Ambedkar said that every government should give fundamental importance to the Directive Principles of State Policy in formulation of key legislation and administration otherwise, it will have to face repercussions in the next upcoming elections. This proves that it acts as a code of conduct for the Legislature and the Executive.

2. Article 15 deals with prohibition of discrimination on grounds of religion, race, caste, sex and place of birth. This right is available against the state. However, this right has a few exceptions.

Exceptions -

- i. For the promotion of women and children as they are considered to be the weaker sections of the society.
- ii. For the promotion of socially and educationally backward classes of the society.
- iii. Promotion of socially and educationally backward classes of the society, SCs, STs and other backward classes by providing reservation in educational institutions.

Hence, special provisions can be made by the state in the above mentioned three cases and will not amount to discrimination.

The way the concept of 'special protection' has qualified the prohibition is -

→ Aristotle rightly says "Justice is treating equals equally and unequals inequally".

- The concept of equal protection of law was enunciated under Art 14 motto for equal treatment of individuals in similar situations and under similar circumstances.
- In India where patriarchy, caste-based discrimination is common and as women, children, SC's, STs, OBCs, and other socially and educationally backward classes of the society are considered to be the vulnerable sections of the society and it is the duty of the state to promote their welfare.
- In order to accomplish the objective of securing justice - social, political and economic, the state has to provide special protection to these classes and hence, would not amount to discrimination.
- The special protection given would bring in equality of status and opportunity as enshrined in the Preamble.

Contribution in bringing social change -

- i. Women - special provisions like minimum reservation in the seats of assembly to contest for elections will enhance their participation & provide equal opportunity.

ii. children - special provisions such as free and compulsory education for children of age group 6-14 yrs which has been made a fundamental right - Art 21-A inserted by 86th Amendment Act will have a positive impact and will shape their future who in turn will contribute to the development of our country.

iii. SCs, STs, OBCs - 93rd Amendment introduced reservations in educational institutions whether aided or unaided except minority whereby 27% quota is reserved for OBCs and the total reservation should not exceed 50%. Concept of 'creamy layer' in OBCs whereby if the annual income is above ₹ 6 lakhs, reservation cannot be claimed and this aims to provide opportunity to the socially & educationally backward classes only.

This enables to secure the goal of social justice whereby every individual is given equal opportunity and would also dismantle the barrier of gender and caste bias.

3. Preamble is often referred to as the soul of the Constitution. It is rightly said that Preamble is a key to open the minds of the constitutional makers. It is referred to as an identity card of the Constitution.

Significance -

i. Preamble is the modified version of Objective Resolution passed by Jawaharlal Nehru which laid down the aspiration and lofty goals which they intended to achieve in future.

ii. It consists of the nature of the state i.e India is sovereign, socialist, secular, democratic and republic.

→ Sovereign - the sovereignty lies with the people and not dependant on any foreign state.

→ Socialist - mixed economy whereby both public and private players take part.

→ Secular - state has no religion of its own.

→ Democratic - whereby the people elect their representatives directly.

→ Republic - whereby the head of the state is elected and not hereditary.

iii. It lays down the objective and aspirations.

→ Equality of status and opportunity → social, economic and political	Art 14 - 18 Art 325, 326
→ Liberty - of belief, faith, worship thought and expression	Art 25 - 28 Art 19
→ Justice - social, economic and political	Art 39(b) & 39(c)
→ Fraternity - a sense of brotherhood	Art 51-A
→ Unity and integrity - a sense of oneness	Art 51-A
→ Dignity - to maintain dignity of an individual	Art 21

iv. As mentioned above various provisions have been made to give effect to these goals under the Fundamental Rights, Fundamental Duties, Directive Principles of State Policy and this acts as a constitutional mandate whereby various legislations have been enacted to achieve these aspirations.

v. It also aids the Judiciary in examining the constitutional validity which shows the significance attributed to it.

Amendments to Preamble -

Berubari case - held that Preamble cannot be amended as it is not a part of the constitution.

Keshavananda Bharathi case - held that Preamble was a part of the Constitution and hence, can be amended, provided the basic structure should not be destroyed.

42nd Amendment, 1976 inserted those words 'socialist', 'secular' and 'integrity'.

Socialist - India had already adopted its own brand of democratic socialism i.e mixed economy.

In Nakara case, it was held that India has its own brand of socialism consisting of both Marxist and Gandhian principles leaning heavily towards Gandhian principles.

Secular - This could be seen under Part III of the Constitution whereby provisions were made for freedom of religion (Art 25-28)

Integrity - a well embedded principle.

This shows the significance attributed to the preamble in the functioning of the Constitution whereby provisions have been made in pursuance of these lofty goals and to achieve them in near future.

4. Recently, the Supreme Court in K.S Puttaswamy's case unanimously held that right to privacy is an inherent right of an individual which comes under the purview of Art 21. It was held that it is an intrinsic right of every individual under Art 21.

Historical Background -

M.P Sharma v. Satish Chandra - it was held that right to privacy is not a FR & state can interfere on the ground of reasonable restrictions.

Kharak Singh v. State of UP

K.S Puttaswamy's case - held to be a FR. However it is not an absolute right and is subjected to reasonable restrictions.

Arguments in favour of right to privacy -

- India does not have a holistic law pertaining to data protection.
- The demographic and biometric data collected for the purpose of Aadhaar is not safe from data theft and such data can be misused.

- India is not in a position to handle such big data.
- India does not have a robust legal or institutional mechanisms for data protection and to impose penalties on such breach of data.

Arguments against right to privacy -

- During the proceedings J. Chelameswar asked when people are so willing to make their private lives public on various social media platforms, then what is the fuss about privacy.
- Why cannot people share their information with the government for effective governance when they disclose their details even when they intend to download a song on IOS.
- India does have certain provisions under IPC and Information Technology Act, 2000 which imposes penalties in case of data breach.
- A committee set up under Justice B.N. Krishna Iyer has submitted its report on Data Protection which can act as a holistic law.

Aadhar case -

UIDAI collects demographic and biometric data

of individuals with the object of providing benefits without any leakages which would lead to imperative governance. VIDA's CEO Ajay Bhushan defended the security of such data collected during the proceedings and such data will be disclosed only in case of national security or order by the court.

Cambridge Analytica case -

whereby Facebook collected data of millions of users without their consent and was misused. This led to data breach and India does not have laws to impose penalties on such companies.

Way Forward -

- In a country like India, it becomes important for the government to collect data and keep constant surveillance on the activities of such individuals.
- It will lead to efficient governance, hence, right to privacy should not be made an absolute right.
- To bring a balance between the two contradictory views, institutional and legal mechanism should be introduced pertaining to data protection and data collected on the pretext of fiduciary relationship should not be misused.

5. Directive Principles of State Policy was enshrined under Part IV of the Constitution are non-justiciable and act as code of conduct for the effective governance of a country. Fundamental rights are enumerated under Part III of the Constitution and are justiciable and enforceable.

Conflict between Fundamental Rights and Directive Principles of State Policy

There has always been a conflict between the justiciable nature of FRs and the moral obligation on part of the state to implement DPSPs.

Champaka Sarairajan Case - Held that FRs are supreme.

However, FRs can be amended by a Constitutional Amendment Act.

Golak Nath Case

- Held that FRs are supreme and cannot be amended to give effect to DPSP.

25th Amendment - where the judgement of the Golak Nath case was overruled and Art 31-C was introduced.

Art 31-C - Any provision made to give effect to

Art 39(b) and Art 39(c) cannot be challenged on the ground that it is violative of Art 14 & 19

→ No such provision can be questioned in any court of law.

Kesavananda Bharathi case

- The second provision of Art 31-C was declared as void as 'judicial review' forms a part of the basic structure.

Minerva Mills case

- FRs enjoy primacy and supremacy over DPSPs. However, FRs can be amended to give effect to DPSPs provided the basic structure is not destroyed. Harmonious construction between FRs and DPSPs was held as a part of Basic Structure.

Arguments in favour of DPSPs being given the same stature as that of FRs -

→ DPSPs only impose a moral obligation, if made practicable, it adds a legal obligation on the government to enforce DPSPs.

→ FRs can be effectively amended to give effect to various DPSPs.

→ Effective implementation of DPSPs will result in

promoting the socio-economic development.

→ If DPSPs are made enforceable, socio-economic democracy of the country will considerably develop.

Arguments against DPSPs being given the same status as that of FRs -

→ India did not have sufficient financial resources.

As a result of which DPSPs were made non-judiciable.

→ Every government has to take these into consideration while shaping their policies as they act as code of conduct otherwise they will have to face the repercussions in the next elections. Thus these add a moral obligation even if they are non-judiciable.

I opine that DPSPs should not be given primacy as that of FRs because the executive and judiciary has realised its importance and as a result of which few DPSPs have been made superior over FRs.

DPSPs act as beacon of light and if necessary the FRs can be amended to give effect to DPSPs.

6. 'Basic structure' refers to a doctrine which was propounded in the Keshavananda Bharathi case and it refers to these features of the Constitution which form the essence of it and if amended it would change the form of the Constitution i.e. from being a Democratic state to an authoritarian state.

Evolution of 'Basic structure'.

Shankari Prasad Case - where the 'first amendment' was challenged as it abridged fundamental rights. However, it was held that constitutional amendment does not come under the purview of Art 13 and hence, can violate FRs and cannot be questioned.

Golak Nath Case - where the 'nineteenth amendment' was in question and the court held that amendment does come under the purview of Art 13 and can thus cannot violate any of the FRs.

24th Amendment - Then, the 24th Amendment was passed wherein it stated that amendment does not amount to law under Art 13 and thus it can violate FRs.

and cannot be questioned in any court of law.

Keshavananda
Bharti case

The SC propounded the doctrine of 'basic structure' whereby it was held that Parliament can amend FRs provided it does not destroy the basic structure and it can be challenged in any court of law.

Indira Gandhi case - whereby an amendment was passed stating that election dispute regarding President's & PM & Speaker of Lok Sabha cannot be challenged in any court of law. This was held to be violative of the basic structure.

Present Position -

The Parliament under Art 368 can amend FRs by passing a constitutional amendment, however, cannot violate the basic structure. If it does, it is subjected to judicial review.

Basic structure -

refers to those core essential features of the Constitution which form the basis or essence of the

Constitution. In India, we follow a mixed blend of rigidity and flexibility with regard to the amendment process, thus, it propounded this doctrine which the Parliament cannot amend and destroy.

It thus saved India from being transformed into a authoritarian and a despotic rule.

Evolving in nature -

This doctrine is evolving in nature as the features which form the basic structure have been put forth by the judges in the form of judicial precedents in different cases.

Eg- Keshavananda Bharathi case → 1. Supremacy of Law

Minerva Mills Case → 1. Judicial Review

2. Limited power of the Parliament to amend.

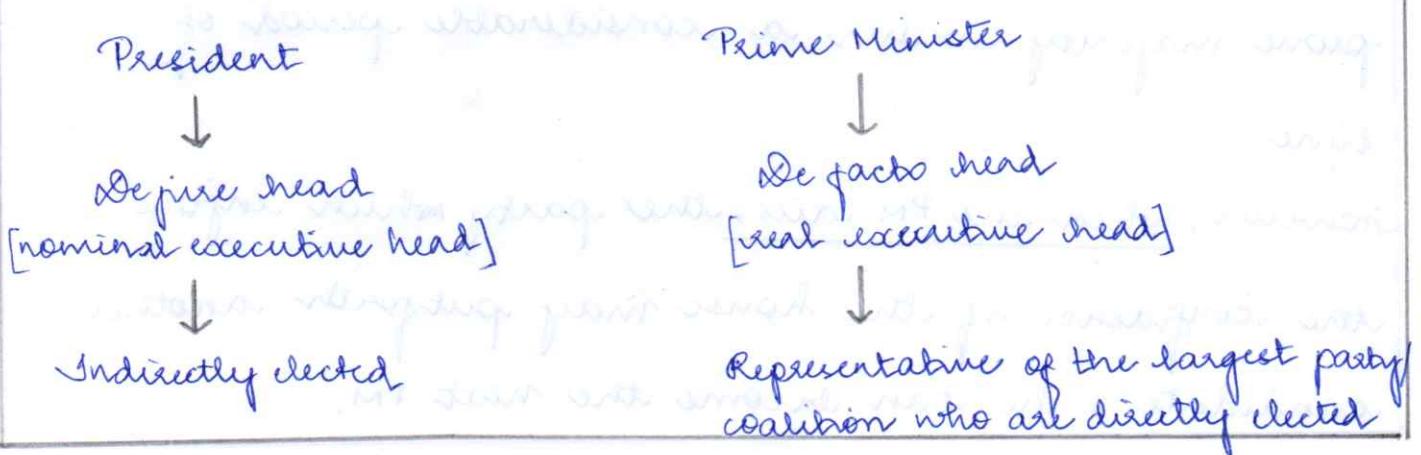
3. Harmony between FRs & DPSPs.

Thus, it is evolving in nature and the court places such features under this doctrine if it opines that it forms the basis of the Constitution.

7. The President of India is an integral part of the Executive. He is considered to be the head of the executive. However, he enjoys only situational discretionary powers and not constitutional discretionary powers.

Position of the President -

- India has adopted a Parliamentary system of government modelled on the British pattern rather than Presidential system which is followed in U.S.
- In a Parliamentary system of government, President is the ~~de jure~~ head whereas the Prime Minister is the ~~de facto~~ head of the state.
- The nominal executive power is vested with the President whereas the real executive power lies with the Prime Minister and his Council of Ministers. Hence, no direct elections are held and President is indirectly elected through a ~~constitutional~~ college.



- It is rightly said that the Prime Minister of India is equivalent to that of the President of U.S. As a result of which wide discretionary powers have not been conferred upon the President of India.
- Dr. Ambedkar also pointed out that conducting direct elections for the post of the President would result in large consumption of time and financial resources, hence, indirect elections suffice on account of his position as enumerated under the Constitution.

Discretionary powers enjoyed by the President -

- Only under three situations, President can exercise his discretionary powers -
- i. Dissolution of the Lok Sabha when they lose the confidence of the house.
 - ii. When the death of the Prime Minister occurs, he can invite a person to become the Prime Minister, however, such a person will have to prove majority within a considerable period of time.

However, when the PM dies, the party which enjoys the confidence of the house may put forth another candidate & he can become the next PM.

This happened when Indira Gandhi died and the party proposed the name of Rajiv Gandhi to become the next PM.

iii. When the Prime Minister/^{COM} loses the confidence of the house, the President invites another candidate who again will have to prove his majority within a reasonable period of time.

Thus, wide discretionary powers have not been conferred on the President of India. The Prime Minister and Council of Ministers enjoy a superior position and the President is bound to act ⁱⁿ accordance with the aid and advice of the Council of Ministers.

42nd Amendment, 1976 made the President bound by such advice and he could not even send it for re-consideration. However, 44th Amendment, 1978 has made a provision for the President whereby he can send such aid and advice for re-consideration but if received without any changes, he is bound by such advice.

3. Part IV-A of the Constitution consists of a list of ~~fundamental~~ fundamental Duties which have been added by way of 42nd Amendment, 1976. India is the only democratic country which has such a provision exclusively for Fundamental Duties.

Background -

No democratic countries have mentioned the fundamental Duties. India followed the pattern of USSR, a socialist country with respect to adding a complete, separate article on Fundamental Duties and Art 51-A was added.

Swaran Singh Committee was set up to make recommendations and based on such recommendations Art 51-A was included.

The then government decided that the people should be aware of their duties just like their rights and thus, it is of paramount importance to include fundamental duties.

Recommendations of Swaran Singh Committee -

Most of the recommendations of the Swaran Singh Committee were accepted.

But two recommendations were not given effect.

1. Payment of taxes as a fundamental duty.
2. Introduction of penal provisions in case of failure on part of the citizens to fulfil their duties.

The criticism is that these two provisions should also have been included which would result in effective implementation of the duties.

Significance -

It is generally said that 'essentially all that is contained in Part IV-A of the Indian Constitution is just a codification of the tasks integral to the Indian way of life'.

However, it is not just a codification of the tasks but also to bring in a sense of commitment and discipline among the masses.

Various duties have been enumerated pertaining to cherish the noble ideals and goals that inspired our national struggle, to show respect to our national flag, emblem and

symbol, protection and conservation of environment, protecting our natural heritage, culture, dignity of women. Recently, 86th Amendment added another duty for the parents and guardians to ensure that free and compulsory education is made available to all children between the age group of 6-14 yrs.

It not just a mere codification but also various legislations have been passed such as Prevention of Insults to National Honour Act, 1971, Prevention of Sexual Harassment against Women at working place in order to give effect to such duties and inculcate a sense of responsibility on part of the citizens to contribute to achieve the lofty goals as mentioned in the Constitution.