

Directive Principles of State Policy

1st January 2025

Outline

- What are they?
 - What do they cover?
- Why do we need them?
- How do we access them?
 - Who can access them?
 - Against whom can they be accessed
- Where do we find them?
 - Where do they come from?

What are they

- Referred to as the conscience of the constitution
- Read along with the fundamental rights
- Path to social revolution
- The rights and directives connect India's past, present and future
- Classic dilemma of individual freedom and public good
- "The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life"

Where do we find them

- Part IV of the COI from Articles 36 to 51
- The inspiration is from the Irish Constitution but there are enough elements there which are distinctly Indian
- Distinction between positive and negative obligations
- Annie Besant's Commonwealth of India Bill 1925 fundamental rights which included the right to education and the equal right to use roads, courts of justice
- Nehru Report of 1928 addressed communal differences and rights were intended to secure to all the full enjoyment of religious and communal rights

Why do we need them

- Accommodation for ideological dissenters
- Interpretive aid-for unspecified fundamental rights and reasonable restrictions
- In deeply divided societies, it is important to see constitutions as consent building and consensus building to allow for constitutions to get adopted.
- Non-legal constitutionalism (political constitutionalism)
- That directives are 1.constitutional, 2.directive, 3.expressive, 4.directional, 5.transformative, 6.political, 7.programmatic

How do we access them

Article 37. Application of the principles contained in this Part.—The provisions contained in this Part shall not be enforceable by any court, but the principles therein 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

The understanding of rules and principles as set out by HLA Hart identify principles as authoritative starting points for legal reasoning, employed continually and legitimately where cases are not covered not fully or obviously covered by rules in the narrower sense.

In that sense, the Directive are Principles rather than rights

They are precepts embodied in the constitution and are not derived from judicial decisions

- There are a stream of cases where directives have been held to be enforceable.
- Jacob v kerala water authority 1991) 1 SCC 28-Court should interpret an act to advance a.41.(right to work, education, public assistance)
- Legal aid can be read as part of a.21 Hussainara Khatoon and Khatri v state of Bihar
- Provisions of articles 39 (f), 41 and 47 can be pressed into service to make suitable provisions regarding child labour
- Equal pay for equal work-Randhir vs UOI 1982
- Directives as forerunners of UN Convention on Right to Development

- Classic liberalism is premised upon the moral primacy of the individual whereas other theories focus on the creation of poverty and ill health
- The tyranny of merit
- a person having two children-one who is normal and happy and the other child who has a difficulty-if u had to move to another city, where would you go? To a place where the first child is better or to a place where the second child is better?

conclusion

- Principles of egalitarianism-exploitation of the masses, economic freedoms of the millions-humanitarian socialist manifesto
- Principles of accommodation-some issues were deferred for later
- Program for the state
- Resources:
- Tarunabh Khaitan, Directive principles and the expressive accommodation of ideological dissenters, *International Journal of Constitutional Law*, Volume 16, Issue 2, April 2018, Pages 389–420,
- Upendra Baxi, 'Directive Principles and Sociology of Indian Law: A Reply to Dr. Jagat Narain', *Journal of Indian Law Institute*, Vol 11, No. 3, pp. 245-272
- Neera Chandhoke. " 4.The Antecedents of Social Rights in India." *Indian Constituent Assembly: Deliberations on Democracy*, edited by Udit Bhatia, Routledge, 2018, pp. 83-103