

## Examrace

### Competitive Exams: Directive Principles of State Policy

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- Articles 36 to 51 deal with the provisions of the Directive Principles which are contained in Part IV of the Constitution.
- This novel feature of the Constitution has been adopted from the Constitution of the Ireland.
- This concept is the latest development in the Constitutional Governments throughout the world, with the growing acceptance of a 'Welfare State'
- The Directive Principles of the Constitution of India are a unique blend of Socialism, Gandhism, Western liberalism, and the ideals of the Indian freedom movement.
- They are in the nature of directions or instructions to the State.
- Article 36 clearly directs the State to secure and protect a social order which stands for the welfare of the people.
- Article 37 says that Directive Principles are not justiciable but are fundamental to the Governance of the Country, and the State has the duty in applying the Directive Principles of State Policies (DPSPs) .
- If they are not acted upon by the State, no one can move the Courts.
- The reason for making the DPSPs explicitly unjusticiable are that they require resources which the State may not have at present.
- These principles can be classified under the following categories:

#### **The Socialist Principles**

- Article 38: To secure a social order for the promotion of welfare of the people.
- Article 39: To strive to minimise inequalities of income.
- Article 39 (b) : Ownership and control of material resources of the community shall be so distributed so as to subserve the common good.
- Article 39 (d) : Equal pay for equal work.
- Article 39 (e) : Health and strength of workers, and the tender age of children must not be abused.
- Article 39A: Equal justice and free legal aid.

- Article 42: Provision of just and humane conditions for work and maternity relief.
- Article 43 A: Participation of workers in the management of the industries.

### **The Gandhian Principles**

- Article 40: Organization of Village Panchayats.
- Article 46: Promotion of educational and economic interests of the SCs, the STs and the other weaker sections of the society.
- Article 48: Organization of agriculture and animal husbandry on modern and scientific lines to prohibit the slaughter of cows, calves and other milch and draught animals.
- Article 43: To promote cottage industry.
- Article 47: To bring about the prohibition of intoxicating drinks and drugs that are injurious to health.

### **The Western Liberal Principles**

- Article 44: Uniform Civil Code for the citizens.
- Article 45: Provide free and compulsory education for children below 14 years.
- Article 50: Separation of Judiciary from Executive.
- Article 51: To promote international peace and amity.

### **Implementation of DPSPs**

- Since the commencement of the Constitution, there have been a number of legislations to implement the DPSPs.
- In fact, the very first Amendment Act was for implementing land reforms.
- It was followed by the 4<sup>th</sup>, 17<sup>th</sup>, 25<sup>th</sup>, 42<sup>nd</sup> and 44<sup>th</sup> Amendment Acts, The 73<sup>rd</sup> Constitution Amendment Act (1992) is in pursuit of implementing Art. 40.
- There have been several factory legislations to make the conditions of work humane for the workers.
- Promotion of cottage industries has been one of the main aspects of the economic policy of the government and there exists the Khadi and Village Industries Commission for the purpose.
- The government's position as regards the uniform civil code (UCC) is that the matter

### **Directives in Other Parts of the Constitution (Except Part IV)**

- Article 350 A: It enjoins every State and every local authority within the State to provide adequate facilities for the instructions in the mother tongue at the primary stage to children of linguistic minority areas.

- Article 351: It enjoins the Union to promote the spread of Hindi Language so that it may serve as a medium of expression of all the elements of the composite culture of India.
- Article 335: It says that the claims of SC/ST shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with affairs of the Union or of a State.

### **Relation between Fundamental Rights and Directive Principles**

- The Supreme Court in various cases has evolved a 'Doctrine or Theory of Harmonization'
- It has further stated that both the Fundamental Rights and the Directive Principles are in fact supplementary to each other and together constitute an integrated scheme.
- It has also held that where this is not possible, the Fundamental Rights shall prevail over the Directive Principles.
- The present position is that only Article 39 (b) and Article 39 (c) can be given precedence over Article 14,19 and not all the Directive Principles.

peacekeeping operations of the UN (Somalia in 1992 – 93; Sierra Leone in 2000) ; pioneering and leading the Non-Aligned Movement and so on:

### **Difference between FR & DPSP**

- The Fundamental Rights provide the foundation of political democracy in India whereas the Directives spell out the character of social and economic democracy in India.
- Fundamental Rights are in the form of negative obligations of the State i.e.. . Injunctions against the actions of the State. The Directive Principles are, on the contrary, positive obligations of the State towards the citizen.
- Whereas the Fundamental Rights are justiciable, the Directive Principles are nonjusticiable.

### **Importance of the DPSP**

- Article 37 declares Directive Principles as fundamental in the Governance of the Country.
- Since the Government is answerable to the people, the Directive Principles act as a sign post to all succeeding Governments.
- The Directive Principles provide the yardstick for assessing the successes or failures of these Governments.

### **Uniform Civil Code**

- By uniform civil code, it is meant that all sections of society irrespective of their religion shall be treated equally according to a national civil code, which shall be uniformly applicable to all.
- Civil code covers areas like marriage, divorce, maintenance, inheritance, succession of property and adoption.
- Uniform civil code (UCC) has been provided under Art 44 of the Constitution as a directive principle.
- It will enhance the status of women and therefore, it is vitally desired to achieve the empowerment of women.
- Articles 25 and 26 guarantee right to freedom of religion and UCC is not opposed to secularism or will not violate these articles.
- Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilised society.
- Marriage, succession and like matters are of secular nature and, therefore, law can regulate them.
- The UCC will not and shall not result in interference of one's religious beliefs relating, mainly to maintenance, succession and inheritance. But in matters of inheritance, right to property, maintenance and succession, there will be a common law.
- Article 25 confers right to practice and profess religion, while Article 44 divests religion from social relations and personal law.
- According to Justice R M Sahai Freedom of religion is the core of our culture. But religious practices, violative of human rights and dignity and sacerdotal suffocation of essentially civil and material freedoms are not autonomy but oppression.

## **Earlier Supreme Court Verdicts**

### **Shah Bano Case**

- In Mohammad Ahmed Khan v. Shah Bano Begum, popularly known as the Shah Bano case, a penurious Muslim woman claimed for maintenance from her husband under Section 125 of the Code of Criminal Procedure after she was given triple talaq from him.
- The Supreme Court held that the Muslim woman have a right to get maintenance from her husband under Section 125.
- After this decision, nationwide discussions, meetings, and agitation were held.
- The then Rajiv Gandhi led Government overturned the Shah Bano case decision by way of Muslim Women (Right to Protection on Divorce) Act, 1986 which curtailed the right of a Muslim woman for maintenance under Section 125 of the Code of Criminal Procedure.

## Sarla Mudgal Case

- The second instance in which the Supreme Court again directed the government of Article 44 was in the case of Sarla Mudgal v. Union of India.
- In this case, the question was whether a Hindu husband, married under the Hindu law, by embracing Islam, can solemnise second marriage.
- The Court held that a Hindu marriage solemnised under the Hindu law can only be dissolved on any of the grounds specified under the Hindu Marriage Act, 1955.
- Conversion to Islam and marrying again would not, by itself, dissolve the Hindu marriage under the Act. And, thus, a second marriage solemnised after converting to Islam would be an offence under Section 494 of the Indian Penal Code.

## John Vallamatton Case

- The priest from Kerala, John Vallamatton filed a writ petition in the year 1997 stating that Section 118 of the Indian Succession Act was discriminatory against the Christians as it impose unreasonable restrictions on their donation of property for religious or charitable purpose by will.
- The Supreme Court struck down this Section in 2003 declaring it to be unconstitutional.
- Thus, the apex court has on all these instances directed the government to realise the directive principle enshrined in our Constitution and asked to implement UCC as early as possible.

## Sample Questions

1. Discuss the constitutional provisions relating to the non-justiciable directives binding upon the states (2002) .
2. What is the constitutional position of Directive Principles of State Policy? How has it been interpreted by the judiciary after the emergency in 1975 – 77 (2001) ?
3. What is the importance of Directive Principles of State Policy? Mention which Directive Principles of State Policy have got primacy over the Fundamental Rights (1999) .
4. Besides the Directives contained in Part IV, there are certain other Directives addressed to the state in other parts of the Constitution. What are they (1992) ?
5. Briefly mention why and how the Chapter on Directive Principles gained precedence over the Chapter on Fundamental Rights in the Indian Constitution (1987) .