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Practical retrain on the Enforceability of DPSP, should DPSP be Enforceable?

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The directive principle of state policy is a fundamental law that shaped the different aspects of governance in India. Though they are not enforceable they have paved a way for the development of law and upheld the spirit of the law. This article aims to study how the DPSP of the constitution strengthened the enactment of different laws and thereby protect the development and the basic structure of the constitution in the changing era.

Keywords: *directive principles of state policy, enforceability, fundamental rights.*

INTRODUCTION

The directive principles of state policy or commonly short-named DPSP is enshrined in Part IV and from Article 36¹ to 51² of the constitution of India. The directive principles of state policies are not enforceable rights and so are non-justiciable rights in nature. These principles make a moral obligation in the governance of the nation or a state. The concept of DPSP was borrowed

¹ Constitution of India 1950, art. 36

² Constitution of India 1950, art. 51

from the Irish constitution. The Irish constitution has borrowed from it from the Spanish constitution. The Directive principle of state policy is widely mentioned as the soul of the constitution as described by Dr. B R Ambedkar and as the consciousness of the constitution as mentioned by Granville Austin. The Irish constitution was enacted in 1937 and their DPSP is known as Socio-Economic Rights or as directive principles of social policy and is a huge part of their state welfare in their constitution. The part covering Articles 45³ to 50⁴ describes these principles. This part of the constitution of Irish was amended 32 times as of 2020.

THE PREAMBLE

The preamble⁵ of the Indian constitution is the key to unlocking the Constitution. It is a bird's eye view of the established laws inside the constitution and the first explanation of the spirit of the constitution. The expression Justice- social, economic, political is embedded in the constitution through the DPSP. Though the constitution marks the DPSP as non-enforced in court, it is an essential feature in the executive aspect of the governance, the DPSP acts as a guideline for any government in power to establish the final goal of securing justice, equity liberty, and fraternity in the Nation. It also has given potency to the idea of a welfare state in incongruence with British-era India.

DIRECTIVE PRINCIPLE OF STATE POLICY

The Directive Principles of State Policy can be classified as Socialistic Principles, Gandhian Principles, and Liberal-Intellectual Principles. The principle deals with matters mentioned below; Article 36⁶ defines the State as the same as Article 12⁷ in Part 3 of the constitution. Article 38⁸ authorizes the state to secure a social order for the promotion of the welfare of people. Article 39⁹ is about certain principles of policies to be followed by the State. In Article 39A¹⁰ the

³ Constitution of India 1950, art. 45

⁴ Constitution of India 1950, art. 50

⁵Constitution of India, Preamble.

⁶ Constitution of India 1950, art. 36

⁷ Constitution of India 1950, art. 12

⁸ Constitution of India 1950, art. 38

⁹ Constitution of India 1950, art. 39

¹⁰ Constitution of India 1950, art. 39A

provision for equal justice and free legal aid is enshrined. Article 40¹¹ is about the organization of village panchayats. Article 41¹² is about the right to work, education, and public assistance in certain cases. Article 42¹³ is about the provision for just and humane conditions of work and maternity leaves. Article 43¹⁴ is the provision for living wage etc. for workers. And Article 43-A¹⁵ is about the participation of workers in the management of industries along with Article 43-B¹⁶ is about the promotion of cooperative societies. Article 44 is about the Uniform civil code for the citizens. Article 45¹⁷ deals with providing early childhood care and education to children under the age of six years. Article 46¹⁸ promotion of education and economic interests of SC, ST, and other weaker sections. Article 47¹⁹ is about the duty of the state to raise the level of nutrition and the standard of living and to improve public health. Article 48²⁰ is the provision for the organization of agriculture and animal husbandry, along with Article 48-A²¹ which has the provision for the protection and improvement of the environment and safeguarding of forests and wildlife. Article 49²² is about the protection of monuments and places and objects of national importance. Article 50²³ is the provision for the Separation of the judiciary from the executive. Article 51²⁴ is for the promotion of international peace and security.

ENFORCEABILITY OF DPSP

The most important of these provisions is Article 37²⁵ talks about the application of the principles contained in this part 4.²⁶ This provision expressively says that part 4 of the constitution is not

¹¹ Constitution of India 1950, art. 40

¹² Constitution of India 1950, art. 41

¹³ Constitution of India 1950, art. 42

¹⁴ Constitution of India 1950, art. 43

¹⁵ Constitution of India 1950, art. 43A

¹⁶ Constitution of India 1950, art. 43B

¹⁷ Constitution of India 1950, art. 45

¹⁸ Constitution of India 1950, art. 46

¹⁹ Constitution of India 1950, art. 47

²⁰ Constitution of India 1950, art. 48

²¹ Constitution of India 1950, art. 48A

²² Constitution of India 1950, art. 49

²³ Constitution of India 1950, art. 50

²⁴ Constitution of India 1950, art. 51

²⁵ Constitution of India 1950, art. 37

²⁶ *Ibid*

enforceable by any court and that the principles in this part are nevertheless fundamental to the governance of the country and the state must apply these principles in the law-making.

Many of the provision in the DPSP is now nevertheless new law and is enforceable in a court. The states have made rules and regulations regarding these matters. International law and some bilateral treaties are also enforceable regarding the matters in DPSP like the protection of wildlife and protection and safeguarding of the environment. India's judicial history has shown that when in cases dealing with the matters of grey areas in law the new laws or provisions are created by judicial reasoning by keeping in mind the vital roles of DPSP and the constitution.

DPSP AND FUNDAMENTAL RIGHTS

The directive principle of state policy and fundamental rights are two branches of law and are used similarly in different circumstances. DPSP is made for the government and to be a guideline to the governance of the government whereas the fundamental rights in part 3 of the constitution are made for the citizens of the country and in reality, work for the benefit of the individual right in the State. When the fundamental rights are in practicality enforceable by the high courts and supreme Court in the Nations across, the application and enforceability of the rights mentioned in the DPSP, in reality, are by their power given by the constitution are mostly enforceable by the concerned authorities as per their Acts.

PRECEDENTS IN CONGRUENCE WITH DPSP

In India, the word judicial activism is mostly seen as a judicial overreach by the Judiciary plays a pivotal role in maintaining justice and upholding the rights of the citizens. The matter of whether the fundamental rights or DPSP is presiding over the other has been a debatable matter from the institution of the constitution and the court in some landmark cases has given an interpretation that is relevant and acceptable to the judiciary executive and the citizens.

In *Madras v Champakan*²⁷, a case dealing with the matter of the reservation of seats in a college, the Supreme Court of India in 1951 said that "*The directive principles of State policy laid down in*

²⁷ *Madras v Champakan* (1951) SC 226

Part IV the Constitution cannot in any way override or abridge the fundamental rights guaranteed by Part III. On the other hand, they have to conform to and run as subsidiary to the fundamental rights laid down in Part III.”

In the famous landmark case of *I. C. Golaknath v state of Punjab*²⁸ the court of the strong view that fundamental rights cannot be curtailed by the laws made by the parliament. The court also pointed out that the power to amend any matters in part 4 is vested by the constitution as per Article 368 and so, Article 226 is a subsidiary part of Article 368. In a subsequent famous case of *Keshavnanda Bharati v the State of Kerala*²⁹, the supreme court gave the order that the DPSP is more important than the fundamental rights, and the DPSP was then considered to be immune from Articles 14, 19, and 31(Fundamental rights).

But as a presiding law that is still relevant, the court in *Minerva Mills v Union of India*³⁰ took a hardcore stand on the matter and gave the actual decision on the matter that was intended by the constitutional assembly during the drafting of the constitution. The Supreme Court held that the doctrine of Harmonious construction should be applied and that Part 3 and Part 4 do not have precedence over each other, both of the provisions in the constitution are complementary and are needed to be balanced out.

ALL AXILLARY ACTS THAT SUPPORT THE DPSP

Policies like Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) get their authority from Article 39(a) which talks about the right to adequate means of livelihood. This policy is a gateway to several policies in India as of 2022 like the National Employment guarantee schemes and several rural employment yojanas. Laws such as the Child Labour (Prohibition and Regulation) Act 1986 bolster the canons of Article 39(g) which deals with the protection of children. Laws about the prohibition of slaughter of cows and bullocks get their sanctity from Article 48 which deals with the organization of agriculture and husbandry.

²⁸ *I. C. Golaknath v State of Punjab* (1967) SCR (2) 762

²⁹ *Keshavnanda Bharati v State of Kerala* (1973) 4 SCC 225

³⁰ *Minerva Mills v Union of India* (1980) SC 1789

The 29 labour laws including the Workmen Compensation Act, Minimum Wages Act, Industrial Employment (Standing Orders) Act, The Factories Act, and Maternity Benefit Act depict the implementation of Article 41, Article 42, and Article 43A. Article 45 of part 4 deals with the provision that enabled the amendment that made article 21A a fundamental right in India which provides free and compulsory education to the citizen. Part 9 of the constitution which deals with that panchayath was inserted by the 73rd Amendment of 1978, as a result of Article 40 of the constitution. Most of the International treaties on protection and safeguarding of the environment including the nuclear policy and carbon control treaties that India is a part of have their roots in the provision in Article 48-A and Article 51 of the constitution. Article 51 is the sole act that enables India's foreign relations and has helped to make India one of the fifth economic power in the world. India also has several acts like the Indian Forest Act, of 1927, The Air Act of 1981, the Water Act of 1974, and The Mines act of 1952, which are also a result of the provision in DPSP as in Article 48-A. It is impossible to list all the subsidiary acts in one place but the extent of application of DPSP is so vast that it spread throughout the history of and as a living part of the constitution.

RELEVANCE OF DPSP FOR CITIZENS

Fundamental rights are important to the citizen as they provide the basic and necessary rights to citizens. Similarly, the DPSP has the responsibility to ensure the life and obligation of the State or the nation to its citizen. In reality, the knowledge of the provision in DPSP can enable a citizen to keep in check the governance, and the so this will in turn allow the nation to prosper in the long run. The fact that India is a welfare state and so the governance by any political party throughout the timeframe in Indian polity will have to follow the provision in DPSP and ensure a good and prosperous Nation.

CONCLUSION

Taking a deep look at the matter of whether the DPSP is to be enforceable, it can be inferred that it is more or less about 80% enforced by different acts and provisions in each state and is a law that is followed by the people. Some provision in DPSP like the formation of the Uniform civil

code is a matter that is still a bill in the parliament and is yet to be consented to by the President of India. If the bill will be consented to shortly it is a cap to the application of part 4 of the Constitution. The constituent Assembly during the framing of the constitution intended to provide India with a good framework for governance and to ensure a code that will support the need of the Nation at large, this was made practical through the application of DPSP. The Scholarly nation that the government and its system of law along with the executive are like a life of a tree can be taken as an illustration here. The seed of the Nation was planted as a code it grew with the citizen and have different branches like the governmental and quasi-governmental organizations.

The tree roots also spread the ground like the branches of government like the panchayath and local self-government that give access to the people to the provision of the law. The last and foremost part is the growth of the tree or the Nation which comes as a result of the strong base and in case of any unnatural circumstances, the nation as a whole will be able to overcome it if the law policy, and citizens are working as a unity.