

# **Constitutional Law and Public Administration in India**

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## **DPSPs and Fundamental Duties**

Some of the important directive principles of state policy are what is called DPSP. As for example, we are talking of the Constitutional mandate to provide equal justice and equal access to justice. In India, a lot of people are not aware of how to get their rights realized. They do not know what happens in case the state or any other person has infringed their rights. And these are impoverished communities or the people who are from the economically weaker sections of the community or socially backward. The Constitution of India does recognize that the access to the court or access to justice must be equal for every Indian citizen.

And to further this kind of an aim, we have Article 39A under which legal aid now has become a Constitutional right. Legal aid is an aid provided to a person who has been arrested but doesn't know that he can seek bail or a person who has been accused of an offence is to be represented before the court of law to prove his innocence or to justify his cause. And it is the courts that have established the National Legal Services Authority at the national level. There is a State Legal Services Authority at the state level and District Legal Services Authority at the district level. So, this kind of arrangement through the Legal Services Authority, provides legal services to those who have such services. For example, anyone who has less than one lakh income per year can straightaway go to the Legal Services Authority and seek legal aid. And free lawyers will be given, and the lawyer will be paid by the state.

So, the poor and the disadvantaged community will have the right of representation in the court of law, and their plight will be heard by the court. And that is how the importance of legal aid comes into picture. Usually, legal aid is a matter of guaranteed right to all accused in criminal cases. However, this income below one lakh criteria may be applicable to civil cases of minor nature, land litigation etc. Legal aid provision is a very important component of democracy, that someone should have the right to free and fair trial.

Someone should have the right to legal aid, like any other aid, and can be compared to medical aid which is a matter of right. And it is the responsibility of the state to provide

such kind of aid to those who cannot afford it or those who cannot access the same. *Hussainara Khatoon v. State of Bihar* is a very interesting case in which for the first time the Supreme Court highlighted the plight of undertrials. The Supreme Court time and again has asked the jail authorities to speed up the cases of under trials, so that they can seek bail. Under trials are prisoners who are in jail without getting bail.

So, their conviction or guilt has not been proved, but they languish in jail for several years, because they do not have the right to legal representation. *State of Maharashtra v. Manubhai Vashi*, is also an important case in which directions were provided to the states to provide legal aid in all criminal cases, regardless of their economic status. *A R Antulay v. R S Nayak* also is a very famous case in the same manner. So, these are some of the very important DPSPs, which have seen the light of the day. They have been implemented, not only at the national level, but also at the state level.

Legal aid as a matter of priority due to the cooperation of the executive and the judiciary has become a full-fledged reality in the country. Legal aid was not part of the original Constitution; it was the 42<sup>nd</sup> amendment that brought in legal aid to DPSP and the states have achieved a great degree of success in providing the same. Article 39 of DPSP, is a very, very important fundamental directive. This one article in six parts speaks about social and economic justice. It says that the state shall direct all its policies in securing the following objectives.

The objectives outlined are as follows. Men and women shall be treated equally and there is a right to adequate means of livelihood. So, in India, in terms of gender equality, the Constitution itself is the driving force. And today, men and women are treated equally without, no discrimination on the grounds of sex. This means that the state must have its policy, not only vis-a-vis its own state employment, but in private employment also the state must derive that kind of a policy.

Under 39B, the ownership and control of material resources of the community are so distributed as to best subserve the common good. So, all material resources of the community are to be distributed equally for the common good of the community. The operation of the economic system, like corporate, economic, business, growth must not result in the concentration of wealth and means of production to the common detriment. That means against common good, there cannot be concentration of wealth or means of production. So, you cannot just have a kind of a monopoly granted to certain companies or to certain industries, so that they can take advantage of the entire system. Having a healthy competition or having a law that promotes and protects competition was the duty of the state under Article 39. The central government enacted the Competition Act, 2002. In Article 39, there is also an important directive principle that has been put across as the aim and purpose of the state policies. There are quite a few cases on directive principles of state policy, and people have asked why there is discrimination against the state.

For example, in the *Indian Express* case, one issue is that newspapers wanted newsprint, and the state must supply the same. Newspapers serve the common good, they serve the common interest of the community by giving them information, by bringing in some accountability of the government. So, their rights on the Constitution also are something that the state must intend to protect at all given points of time. Now, Article 41 again is about things like the welfare idea of the state, unemployment benefits, disability pension, medical assistance, all which have been introduced by the state to promote the welfare agenda. In cases like *Olga Tellis v. Bombay Municipal Corporation*, the Supreme Court said that the right to means of livelihood of even street vendors is a right that must be protected.

So, the government has an obligation to provide social security and secure the means of livelihood even among those who may be street vendors or those who trade on footpaths and those who sell food. So, we have a separate legislation, which talks about such kind of licensing to street vendors as well, for protecting people from unemployment. For protecting the vulnerable sections of the community like elderly citizens, we have a legislation now, called the Elderly citizens maintenance act. There are several insurances, not only for health, but for crops and against industrial accidents. All of these, in some sense, fulfill the mandate under Article 41. So, these are very successful DPSP. And they have been implemented in letter in spirit as well. Article 45 makes provision for early childhood care and education. It is not no longer just below the age of six years; it is now 14 years as elementary education as a fundamental one.

So, the 86<sup>th</sup> Amendment was an important one, which brought education as a fundamental right under Article 21A. Article 51A(k) is also core and important here. It is a new fundamental duty wherein, whoever is a parent or guardian of a child has the duty to provide opportunities of education to a child. And that is a duty that is there under Article 51A(k). So, it is not only the duty of the state, but it is also the duty of parents and guardians as the case being. *Mohini Jain v. State of Karnataka* was decided at a time when the state alone was providing education, it was subsidizing education. And hence, the Supreme Court did not want education to be like a business. It did not want a capitation fee. It wanted to reiterate the purpose of the state, that the state must provide education at affordable prices, and quality education must also be provided. In some cases, it should be free and compulsory. So the responsibility of the government in providing education was reiterated in some of these cases. Now, coming to the direct principles of state policy and fundamental rights. Directive principles are not enforceable or binding. They cannot be justiciable. But sometimes, you use the courts to bring in or enforce your DPSP.

The fundamental rights have always been justiciable. And directive principles, on the other hand, are non-justiciable. They are guiding principles as these are higher moral norms of the state. And usually the Supreme Court, whenever there is a conflict between fundamental rights and direct principles of state policy, decides that the fundamental rights

will prevail if there is a conflict. So, in a very famous case called *State of Madras v. Champakam Dorairajan*, in 1951, the Supreme Court gave fundamental rights an upper hand over DPSP. And it held that, though fundamental rights can be amended by the Parliament by bringing some Constitutional amendment, this case of *Champakam Dorairajan* was overruled by a case called *Golaknath v. State of Punjab* in 1967. So, in 1951, where *Champakam Dorairajan* said, fundamental rights can be amended by the Parliament, the Parliament has all the freedom to do it.

And hence, few fundamental rights underwent Constitutional amendments in the open stages, right from the First Amendment in 1951 to the 17<sup>th</sup> Amendment in 1964 till the time *Golaknath v. State of Punjab* came in, and the Supreme Court then ruled that, the Parliament cannot take away or abridge any of the fundamental rights. So, fundamental rights are sacrosanct in nature. In the words of the court, fundamental rights cannot be amended for the implementation of directive principles of state policy. So, the fundamental rights are core, and you cannot change them.

So, just to implement the directive principles, you cannot bring any change in the fundamental rights. So, the *Golaknath* case created a difficulty, following which the Parliament wanted to change the power to abridge some of the fundamental rights. And they said that if we want to implement equal pay for equal well, then we may have to take away a right that is there in Article 14 or amend some right in Article 31, right to property. Because the Parliament was meddling with the *Golaknath* case in the 1973 *Kesavananda Bharati* case, in which the Supreme Court declared that there is something called the basic structure of the Constitution, and basic structure of the Constitution cannot be amended at all.

And fundamental rights come within the basic structure of the Constitution. The present position is that fundamental rights gain supremacy over directive principles of state policy. And in the garb of implementing directive principles of state policy, the Parliament or the government cannot abridge or infringe any of the fundamental rights. Directive principles of state policy ought to be implemented without changing, or altering the basic structure of the Constitution. And they cannot in any sense, abridge, amend, or alter fundamental rights. So, this very clearly was the direction given by the courts in reading the Constitution. So, Part III prevails over Part IV, that is fundamental rights prevails over DPSP. So, going by the fact that one always wants the implementation of social reforms, DPSP is a social reform agenda.

It also brings about the socio- economic justice dimension, but that itself should not result in violation of fundamental rights. For example, DPSPs kind of agenda of saying to abolish the Zamindari system, the Jagirs or the Inamdar systems wanted tenancy reforms and surplus land to be redistributed. So, land to the tiller of the soil. We wanted cooperative farming. All these agendas were very important. They were part of the social reform that

the Constitution wanted the governments to undertake. However, while gaining any of these aims, if these violate the fundamental rights of citizens, which prominently was right to property, then that would violate the basic features and the basic structure of the Constitution.

If you compare fundamental rights and direct principles of state policy, it is to be understood in this context; that fundamental rights are stating what the state shall not do with your rights that is, not infringe speech, expression, right to life etc. Whereas directive principles are usually positive assertion of duties towards substitute. Fundamental rights are justiciable. They are legally enforceable by the courts of law in case of violation. Whereas, DPSP are not legally enforceable by the courts. Fundamental rights aim to establish political democracy in our country. And what does DPSP do? It tries to establish the social economic democracy of the country. Fundamental rights are the political democracy. DPSP is the social economic democracy, because here is all about the political rights of the citizens, that is civil and political rights of the citizens vis-a-vis the state. Fundamental rights have legal sanction, they are having legal power. DPSPs have no legal sanction, they are mostly on moral and political considerations. And another major distinction between fundamental rights and DPSP is this that fundamental rights do not require a separate legislation for its enforceability. That it is there in the Constitution itself making it enforceable. Whereas DPSP requires a separate legislation for its implementation, how it should be done and what should be done. So, DPSP are not automatically enforceable. Some states may adopt, some may not. So, DPSP requires some additional act from the state to bring them into force, unlike fundamental rights.

Usually, the way the courts intervene in fundamental rights, is they say that they will declare any law as being unconstitutional and invalid if it infringes fundamental rights. However, the courts cannot declare a law violative of any DPSP as unconstitutional and invalid in case it is challenged as being against DPSP. So, fundamental rights are mostly individualistic, they are personal in character, whereas DPSP promotes the welfare of the community in general. So, it is more societal and more socialistic. So, these are some of the differences between fundamental rights and DPSP.

Fundamental duties exist under the Constitution to promote sustainable development as in the *Vellore Citizens Welfare Forum v. Union of India* case and the *TN Godavaraman* case. The *TN Godavaraman* case is called the forest case. It tried to bring in forest management in India. The Supreme Court said if the executive cannot manage the forest, the Court will do so. So, to promote sustainability, to protect the environment for the future generation, the Supreme Court intervened in these two matters, which is fine under Article 48A, for protection and improvement of the environment safeguard enforcement.

There are some kinds of observations of DPSP. DPSP, do not have any legal force. So, the purpose of having it in the Constitution is often considered, stating it to be a cheque without

any signature. So, it is like having nothing on your hand. And even stated to be a “*dustbin of sentiments*” by T.T. Krishnamacharya. A lot of people have thought that this is important as it is a pious aspiration, a manifesto of aims for the state. So, there are two views. People have criticized the illogical arrangement of DPSP. There is no chronology or a structure or a hierarchy to how these DPSP have been written and which have never been classified properly, socio-economic or whatever is different. So, it is criticized as a structureless chapter, which it does not have any reasons for science or technology. It sometimes is quite prejudicial. And it can be different from state to state because India is divided by five geographical groups. So, necessarily DPSP have never taken that into consideration at all. DPSP is criticized as not being very aggressive in its objectives and motives, though DPSP has been amended only twice. There is no new or fresh impetus infused into DPSP. A review of the Constitution may lead to that. And finally, DPSP has been criticized because DPSP may result in a lot of tension in the federal structure of the state itself. And this has happened quite very often. The conflicts may be between the president and the government. Because the government may not want to implement DPSP as the implementation of DPSPs are mostly based on the economic capacity of the state and the political capacity.

Economic capacity means the state is prepared to fund for example, the Mahatma Gandhi National Rural Employment Guarantee Act, it is a law that is in furtherance of the social justice of DPSP. The state must have that many funds to provide the same means of livelihood as means of guaranteed employment or right to work is ensured through the MGNREGA project. So, because everything is on economic basis and then political basis, it may result in a lot of tension between even the central government and the state government. And very often than not some prime ministers may overrule their cabinet.

These are possibilities to implement DPSP as well. So, it may result in a lot of conflict towards the implementation of some of the objectives under DPSP. Those are some of the pitfalls of observations on what DPSP should have been. However, they continue to be a very important part of the Constitution. To some extent, they have filled the vacuum in the Constitution between fundamental rights and the power of the government. So, if Part IV can be said to be between Part III and Part V. So, before you say what the President can do, what the government can do, you just give them a document about what vision should be there and what policy should be there. And to one extent, one of the justifications of DPSP is, it is not just based on political ideologies of parties, but on a Constitutional ideology. So, in that sense, it passes the crucial test of establishing a non-partisan kind of Constitution, a constitution for the entire country and not necessarily driven by any philosophy, ideology, or any kind of political whims and fancies. So, there is some justification to how it is, but of course, there is always scope for improving DPSP and adding new purposes that may fulfill the aspirations of the current generation.

For example, there is a lot of debate today on Uniform Civil Code. The current generation seems to have imbibed the idea that it is time that the state implements the same because

Article 44 of the Constitution which speaks about uniform civil code had never been attempted to be brought about. Though we have some form of uniform civil code in some states, that is like Goa for example, it is a Goa-Portuguese code. Though not a perfect uniform civil code, it does give you the sense of what that state should aspire to. So, your rights are not dependent upon your religion or to what caste or creed you belong to. Your rights must be protected under the Constitution uniformly. So, one Muslim woman or any other woman need not be discriminated against just because she is Muslim. Every right of every gender every person under the Constitution must have equal protection of rights, especially right to property and right in marriages as well. That is the agenda of Uniform Civil Code and that is being pursued in present times.

Finally, the fundamental duties in the Constitution speak about the duty you have towards your community and your country and that as a human being, you ought to be duty conscious. This is a part of your personality. You have responsibilities not only to your family, but also to your society, to your country and to that extent, you must follow those fundamental duties that are stated in the Constitution. Fundamental duties were not originally there in the Constitution. Article 51A on fundamental duties was brought in through the 42nd Amendment to the Constitution in 1976 and they have made a very important role for citizens participation in the development of the nation. There are eleven fundamental duties of citizens in Part IV A of the Constitution of India. They are:

- A. to abide by the Constitution and respect its ideals and institutions, the national flag and the national anthem.
- B. to cherish and follow the noble ideals which inspired our national struggle for freedom.
- C. to uphold and protect the sovereignty, unity, and integrity of India.
- D. to defend the country and render national service whenever called upon to do so.
- E. to promote harmony and the spirit of common brotherhood among all the people of India, irrespective of religion, linguistic and other sectional diversities, to renounce practice of any kind of derogatory to the dignity of women.
- F. to value and preserve the rich heritage of our composite culture.
- G. to protect and improve the natural environment, including forests, lakes, rivers, and wildlife and to have compassion for living creatures.
- H. to develop a very scientific temper, humanism and the spirit of inquiry and reform.
- I. to safeguard public property and to abjure violence.
- J. to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavor and achievement.
- K. one who is a parent or a guardian, shall provide opportunity of education to their children, between the age of 6 to 14 years.

The last one was added by the 86<sup>th</sup> Amendment in 2002. This is a fundamental duty of parents and guardians. So, these are the eleven duties that are there in the Constitution of

India and every citizen is expected to follow. In case a citizen is found not following these duties, the courts can decide to enforce these duties as well. This is the dimension of public policy, as the Constitution states it. The Constitution is only one of those documents that can state that public policy and there are so many other philosophical ideas and documents and legislations that can also frame or structure the kind of public policy this country ought to accept.