CHAPTER - II
DIRECTIVE PRINCIPLES OF STATE POLICY IN INDIA:
ORIGIN AND DEVELOPMENT

2.1 INTRODUCTORY

Directive Principles of State Policy contained in Part IV of the Constitution are the guiding principles for the State. There is a long history relating to the evolution of these Principles. Most of the contemporary scholars trace them to the Indian freedom struggle. In the words of Granville Austin, “the Fundamental Rights and Directive Principles\(^1\) had their origins in the Indian independence movement, which strove to achieve the values of liberty and social welfare as the goals of independent Indian State.”\(^2\) They have their roots in the history of the last several centuries. In this chapter, researcher has made an attempt to trace the origin and development of DPSP contained in the Constitution. The evolution of these Principles has been discussed comprehensively in proper chronological order prior to and after setting of the Constituent Assembly.

2.2 ORIGIN AND DEVELOPMENT OF DIRECTIVE PRINCIPLES OF STATE POLICY BEFORE SETTING UP OF THE CONSTITUENT ASSEMBLY

The political vacuum created by the death of Aurangzeb in 1707 was ultimately filled by the British after they won the battle of Plassy in 1757. During the intervening period the British established a new legal and political order, in certain respects largely based on their own and in others greatly modified to suit Indian condition and their own interest. The major portion of the Indian subcontinent was, thus, almost completely under British rule from 1857 to 1947. The impact of economic, political and social development during this period helped the gradual rise of the Indian independence movement to gain independence from foreign rule. Under this heading researcher has made an attempt to discuss the evolution of DPSP from the arrival of Britishers to the setting up of the Constituent Assembly of India.

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\(^1\) Fundamental Rights and Directive Principles are mainly the product of history. They are the outcome of cash of ideas and ideals and social power. The idea of rights is canvassed as of modern origin and usually traced to historical documents, such as the Magna Carta of 1215 of Great Britain, the Petition of Rights of 1628, the Bill of Rights of 1689, the Virginia Declaration of 1776, the first ten Amendments of the Constitution of U.S.A and the French Declaration of the Rights of Man 1789. See H.R Khanna, *Constitutional and Civil Liberties* 35-36 (Radha Krishna Prakashan, New Delhi, 1978).

2.2.1 Development during the British Rule till the formation of the Indian National Congress, 1885

The Britishers came to India to trade and through the East India Company, secured a Royal Charter\(^3\) from the British monarchy. The British had come to India as traders to make profits out of Eastern trade. The attainment of political power led them to drain as much wealth from India as possible. With this object in view, they started to exploit the country economically and attacked Indian economy in various ways.\(^4\) Consequently, some of the economic consequences of the British rule were disintegration of rural economy and decline of trade and industry.\(^5\) The village craft and industry also suffered a serious setback at the British who threw open the village to foreign imports and rendered the village artisans as landless laborers. This added to poverty.\(^6\)

The British authority recognized and regulated India’s economy in the interest of British trade and industry and organized a modern administrative system to guarantee order and security. But no one felt any responsibility for the welfare of the people. The Indian officials who had administrative responsibility had no effective power to enforce their decision. The whole system continued to be exploited to further their commercial interests. However, till 1813 they did not interfere in the religious and cultural life of the country, but after 1813 they took active steps to transform the social and cultural life of the Indians.\(^7\) Because of the industrial revolution which had begun in the middle of the

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\(^3\) The Charter granted to the Company monopoly right for trade with India and some areas of South East Asia. The Company acted under the authority of the Crown. The latter granted to the Company certain legislative and judicial authority to be exercised within its possessions. The Charters of 1600 and 1601 authorized the Governor and the Company to make, ordain and constitute reasonable ‘laws, Constitutions, Orders and Ordinances’ for good government of the Company and its officers, and to execute its laws. See Ranbir Singh and A.Lakshminath, *Constitutional Law* 7 (Lexis Nexis Butterworths, New Delhi, 2006).


\(^5\) Jawahar Lal Nehru, *The Discovery of India* 315-322 (Oxford University Press, Delhi, 1946).


\(^7\) The Charter Act of 1813 which proclaimed the sovereignty of the Crown over the Company’s territorial acquisitions had also made certain provisions for the welfare of the people of the country. It was provided that the Company would set apart a sum of rupees one lakh every year which would be applied to revival and improvement of literature and encouragement of the learned natives of India and for the introduction and promotion of knowledge of the sciences among the inhabitants of the British territories in India. See G.S.Chhabra, *Advanced Study in the Constitutional History of India* 70, 74 (Parkash Brother, New Delhi, 1973).
eighteenth century, the British wanted to make India a big market for their goods. Science and technology also opened new vista of human progress. The eighteenth and nineteenth centuries witnessed a great ferment of new ideas in Britain and Europe which influenced the British outlook towards the problem of India. The great French revolution of 1789 with the message of liberty, equality and fraternity generated powerful democratic sentiments and unleashed the force of modern nationalism. The three outstanding characteristics of new thought were rationalism or faith in reason and science, humanism or love of man, and confidence in the capacity of man in progress. The humanistic outlook gave birth to the doctrine of individualism, liberalism and socialism. Nothing was or could be static and the societies, according to the doctrine of progress must change with times.

By the end of 1858, economic decline of the country was accomplished by a social revolution. The village community which fostered co-operative living was destroyed. New economic relation based on the western ideas of individual property and enterprise, competition and market economy began to prevail. In India… Labor was released from industry but there was no development of industries or extension of agriculture to absorb that labour. The economic development of the country became an appendage of a foreign exploitative system.

The loss of territory, the establishment of the foreign rule and the economic drain resulting in the impoverishment of the people created discontentment and resentment among the people who made an armed attempt to throw British out of India in 1857. The uprising, however, failed and the Government of India was transferred from Company to the Crown in 1858. Even thereafter, the Government of India was carried on somewhat in the similar way as before though the changes were made in the legal and political set up and other areas.

Many administrative changes also took place after the revolt of 1857, for example, local bodies were first of all created in 1864-1868; reduced the age for the

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11 *Id.* at 115.
12 Supra note 6 at 391-92.
public services for twenty one to nineteen years. The earlier attitude towards the advancement of the education was changed and the British started showing hostility towards the educated Indians because they were analyzing the imperialistic charter of the British rule and putting forward the demand of Indian participation. They also abandoned the policy of social reform. The condition of workers in the factories was not good. They worked for twelve to sixteen hours a day and there was no provision for weekly day of rest. The wages were ranging from Rs.4 to 20 per month. The factories were badly lighted and aired and completely unhygienic. The factories were over-crowded and work on machine was hazardous and accidents were very common.  

Thus, the period that followed the political event of 1858 was marked by some legal and Constitutional changes, the expansion of the means of communication and transport and increase in the foreign trade of India and modernization of her economy. Foundation of modern industry and mining was also laid. The result was that Indian capitalism started developing on the pattern of British type of business organization. In particular jute and textile industry and other industries made headway. As a result of this, the position of zamindars and traders improved. But on the whole, however, the pace of advance of trade and industry was slow. The important social consequences of even limited industrial development of the country were the birth and growth of two near social classes in the Indian society. First, industrial capitalist class and secondly the modern working class. Amidst overall progress of the country was in the grip of a series of calamities and millions died for food. For the greater part of this, the financial position of the Government remained unsatisfactory. The economic distress, caused by operative taxation, the decline of Indian handicrafts and lack of employment opportunities for the Indian caused the great discontent.

The fact that India was not a free State was due to poverty, the crushing burden of

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14 Supra note 8 at 151-163. The Government of India took some half-hearted and totally inadequate measures to mitigate the sorry state of affairs in the modern factories. The first Indian Factory Act was passed in 1881 which primarily dealt with the problem of child labour that child below the age of seven could not work in factories, while children between seven and twelve would not work for more then nine hours a day. The Act also provided for the proper fencing off dangerous machinery. By the Factory Act of 1891, weekly holiday for workers and the fixed working hours, seven for women, were land down. But these Acts were not applicable to British owned tea and coffee plantations.

15 Supra note 6 at 278-283,306,347.

16 Id. at 347.
taxation, the wasteful expenditure and the drain of wealth. The analysis of the economy of India leads inevitably to the conclusion that basically the poverty was the consequences of the foreign rule, the system of administration introduced by the British in India. It followed that no improvement in the socio-economic conditions of the people could be expected without a radical change in the character of the Government. It was, therefore, necessary to agitate for a change in the Government for the introduction of representative and dynamic system, for the transfer of political power from British to the Indians hands. Hence, the solution of these socio-economic problems which the country was facing depended upon the attainment of self-rule by India. The objective of attainment of Swaraj, that is self rule, was to be achieved by the Indian National Congress, perhaps then the only organization that fought for independence.

2.2.2 Development after the formation of the Indian National Congress till the Commonwealth of India Bill, 1925 and Swaraj Constitution, 1927

The Indian National Congress was founded in December 1885.\(^{17}\) In the early years of its formation, it asked for increasing Indian participation in political affairs of the country. Speaking from the Congress platform, Surinder Nath Banerjee, a leader in Bengal claimed that Indians, as born British subjects, were entitled to the same rights and privileges as were guaranteed to the English by their own Constitution. He said that they were determined to have such rights through Constitutional means.\(^{18}\)

The earliest demand for recognition of Fundamental Rights commenced with the Constitution of India Bill, 1895 probably issued under the inspiration of Lokmanya Bal Gangadhar Tilak and described as the Home Rule Bill by Annie Besant.\(^{19}\) A glimpse of the rights and directives may be found in the provisions of this Bill. Article 16 of the Bill, \textit{inter alia}, contained the rights of free speech and imprisonment by competent authority.\(^{20}\) The Bill also had provisions for guaranteeing by State free and compulsory primary


\(^{18}\) Supra note 13 at 37.


\(^{20}\) B. Shiva Rao, \textit{The Framing of India’s Constitution: A Selected Documents} (a project completed under the Chairmanship of B. Shiva Rao) 5-7 (Indian Institution of Public Administration, New Delhi, Vol. I, 1967) (Hereinafter cited as \textit{Select Documents}).
In 1906 the Congress made a demand that the system of Government operating in the self-governing British colonies should be extended to India. Self Government or Swaraj was the only main remedy for the economic ills and poverty of Indian people. It was also resolved to boycott British goods and start Swadeshi Movement to promote the growth of indigenous industries and to stimulate the production of indigenous articles. The object was obviously an economic one. In 1916 a Home Rule Movement was started by Annie Besant and Tilak. A series of Congress Resolutions were passed between 1917 and 1919 and repeated the demand for civil rights and equal status with those of Englishmen.

It is evident that in the wake of first quarter of the twentieth century, there was enough political awakening in India. In fact by the mid-twenties, the Congress and Indian leaders generally achieved a new forcefulness and consciousness of their Indians and the need of the people. By now Gandhi had appeared on the political scene of the country. There was no longer demand for establishing the rights of the Indians vis-à-vis Englishmen, a goal that was to be achieved through Independence Movement, the purpose now was to assure liberty among Indians.

A view got currency that political and personal freedom would be impaired if not rendered nominal, unless its enjoyment was made practicable by the reasonable guarantee of social and economic freedom. It was felt that the precious rights of personal liberty and political freedom might become a shame if not a mockery for those whom the existing social and economic order left starving, insecure in the livelihood, illiterate and deprived of their just share in the progress and well being of the society as a whole. As a result, in the new Constitutional arrangements made after the I World War, specific declaration of Constitutional principles regarding social and economic policy was made. In other words,

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21 Ibid, the Bill contained 111 Articles.
22 G.A.Natesan, The Indian National Congress 834 (Natesan & Co., Madras, 2nd edn., 1917). The Congress had asked for the admission of elected members to the Legislatures, for right of interpellation, for the submission of the budget to their vote, and for the institution of councils in all the Provinces. See Annie Wood Besant, How India Wrought for Freedom 11(Theosophical Publishing House, Madras, 1915).
25 Supra note 2 at 53-54.
enunciation of social and economic policies became a regular feature in the Constitutions framed in the post war years. This in fact gave recognition to the fact that justice was to be secured not only in the political field for the individuals alone but also in the social and economic spheres for the society as a whole.²⁶

Again by the mid-twenties a large section of nationalists’ opinion considered it vital that the Constitution of India should be framed by the Indian themselves. Consequently, the next major development was the drafting of Mrs. Annie Besant’s Commonwealth of India Bill of 1925,²⁷ which was adopted at the National Convention and presented to the House of Commons by Mr. Lansbury and it sought to achieve for India, self governing dominion status except for foreign and defense affairs. This Bill for the first time contained an Article relating to the grant of Fundamental Rights. Article 4 of the Bill which was entitled as ‘Declaration of Rights’, contained the following provisions: Liberty of person and security of his dwelling and property; freedom of conscience and the free profession and practice of religion; free expression of opinion and the right of assembly peacefully and without arms and of forming associations or unions; free elementary education; use of roads, public places, Courts of justice and the like; equality before the law irrespective of considerations of Nationality, and equality of the sexes.²⁸ Article 8 of the Bill, the substance of which was approved by the Indian National Convention enumerated, inter alia, provisions for education stating that all persons in Commonwealth of India have the right to free elementary education and such right shall be enforceable as soon as due arrangements shall have been made by the competent authority.²⁹

In November 1927, just two years after the printing of the Bill, an Indian Statutory Commission³⁰ was appointed under Sir John Simon to examine whether Indians

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²⁷ Supra note 20 at 43-50. The Bill was in terms practically identical with the relevant provisions of the Irish Constitution of 1921.
²⁸ Article 4 was divided into seven clauses (a) to (g). See supra note 20 at 44.
²⁹ Article 8(d). See supra note 26 at 53.
³⁰ The Indian Statutory Commission was a group of seven British Members of Parliament of United Kingdom that had been dispatched to India in 1928 to study Constitutional reform in Britain's most important colonial dependency. It was commonly referred to as the Simon Commission after its Chairman, Sir John Simon. One of its members was Clement Attlee, who subsequently became the British Prime Minister and eventually oversaw the granting of independence to India and Pakistan in 1947. Available at http://en.wikipedia.org/wiki/Simon_Commission (Visited on February 15, 2015).
were fit for being entrusted with a further installment of responsible Government.\textsuperscript{31} The Commission was appointed to study the possibility of Constitutional reforms in India.\textsuperscript{32}

On 17 May 1927, at the Bombay Session of the Congress, Motilal Nehru moved a resolution calling upon the Working Committee to frame a Constitution for India in consultation with the elected members of the Central and Provincial Legislatures and leaders of political parties.\textsuperscript{33} Based on a declaration of rights, a Swaraj Constitution was formed to give momentum to the fight for Swaraj, \textit{i.e.}, self Government. In its introduction, it was said that the declaration of rights of Indians as against others and of Indians as against their Government must indeed form the most important feature of the Constitution.\textsuperscript{34} Its Preamble declared Swaraj as the inherent and inalienable right of the people of India. The Constitution was welcomed all over the country and endorsed by the Motilal Nehru Committee in 1928.\textsuperscript{35}

\subsection*{2.2.3 Development of Directive Principles of State Policy in the term of Socio-Economic Rights in the Nehru Committee Report, 1928}

In compliance with the directions contained in the Congress Resolution of 1927, the Working Committee of the Congress convened an All-Parties Conference\textsuperscript{36} to draft a Swaraj Constitution for India. The Conference appointed a small committee with Motilal Nehru as its Chairman and seven other members,\textsuperscript{37} to determine the principles of the Constitution for India. The report of the Committee\textsuperscript{38} which is known as “The Nehru Report” was based on the principle of dominion status with full responsible Government.

\begin{thebibliography}{100}
\bibitem{31} Supra note 20 at 53.
\bibitem{32} For this purpose Simon Commission was sent to India in 1927. Most of the Indian political parties decided to boycott the Commission on the plea that it lacked Indian representation. The British decided to throw the ball in the court of Indian Politicians. Lord Birkendhead, Secretary of State for Indian Affairs, challenged the Indians, “If they have any political capability and competence then they should form a unanimous Constitution and present it to us and we will implement it. Available at: http://historypak.com/nehru-report/ (Visited on February 15, 2015).
\bibitem{33} Supra note 20 at 55.
\bibitem{35} Id. at 42-43.
\bibitem{36} The All Parties Conference held its meeting at Delhi in January and at Bombay in May 1928. The Conference was attended by around hundred delegates from all the important parties including Indian National Congress, All India Muslim League, National Liberal Federation, Hindu Mahasabha, Central Sikh League etc. Available at: http://historypak.com/nehru-report/ (Visited on February 16, 2015).
\bibitem{37} The other members of the Committee were: All Imam, Tej Bahadur Sapru, M.S. Aney, Sardar Mangal Singh, Shuaib Quareshi, Subhas Chandra Bose and G.R. Pradhan. See Supra note 20 at 58.
\bibitem{38} The Report was submitted on 10 August 1928. For details see supra note 17 at 51-53.
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on the parliamentary pattern.\textsuperscript{39} It contained an explanation of its draft Constitution that the first concern of Indians was to secure Fundamental Rights that had been denied to them and which are not to be withdrawn in any circumstances.\textsuperscript{40}

The recommendations made in the report contained a number of Fundamental Rights.\textsuperscript{41} The report, \textit{inter alia}, contained right of personal liberty, freedom of conscience and the free profession and practice of religion subject to public order and morality, the right to free expression of opinion, as well as the right to assemble peacefully without arms, and right of equality.\textsuperscript{42} It also enumerated certain social and economic rights. For example\textsuperscript{43}, right of free elementary education without any distinction of caste or creed in the matter of admission into any educational institutions, maintained or aided by the State and such right shall be enforceable as soon as due arrangements shall have been made by competent authority; freedom of combination and association for the maintenance and improvement of labour and economic conditions were guaranteed to everyone and of all occupations; maintenance of health and fitness for work of all citizens, securing a living wage for every worker, protection of motherhood, infirmity and unemployment. This Constitution was hailed by the Congress as a great contribution towards the solution of India’s political and communal problem.\textsuperscript{44}

The Fundamental Rights of the Nehru Report\textsuperscript{45} were reminiscent of those of the American and post war European Constitutions, and were in several cases word for word from the rights listed in the Commonwealth of India Bill. Several clauses had, however, a more particular Indian origin, such as, no breach of contract of service or abetment there of shall be made a criminal offence, which related directly to the forced labour. The rights of the Nehru Report were a close precursor of the Fundamental Rights of the Constitutions; ten of nineteen sub-clauses re-appear materially unchanged and three are included in the Directive Principles.

\textsuperscript{39} \textit{Supra} note 20 at 58.
\textsuperscript{40} \textit{Report of the Motilal Nehru Committee} at 89-90 (1928).
\textsuperscript{41} \textit{Id.} at 101-103.
\textsuperscript{42} Article 4 of the ‘Recommendations’ of the Nehru Report which was divided into 19 clauses, contained these rights.
\textsuperscript{43} See Clauses (v), (xv) and (xvii) of Article 4 of the Report; See Also \textit{supra} note 20 at 59-60.
\textsuperscript{44} \textit{Supra} note 13 at 330.
\textsuperscript{45} \textit{Supra} note 40 at 101-103.
The report was presented to British but unfortunately, the Commission\(^{46}\) did not support the general demand for the enumeration and guaranteeing of Fundamental Rights in the Constitution of India. The Commission merely observed:\(^{47}\)

Many of those who come before us have urged that the Indian Constitution should have contained definite guarantees for the rights of the individuals .......and a declaration of the equal rights of all citizens......... Experience, however, has not shown them to be of any great practical value. Abstract declarations are useless, unless there are existence of the will and the means to make them effective.

As nothing concrete came out of the report, at the historic session of Lahore of 1929, of which Jawahar Lal Nehru was made the President, it gave voice to the new militant spirit and passed a resolution declaring Purna Swaraj (complete independence) to be the Congress objective.\(^{48}\) The Congress Resolution of 1929 also emphasized the theme of socio-economic reconstruction when it declared:\(^{49}\)

The great poverty and misery of the Indian people are not only due to foreign exploitation in India but also to the economic structure of the society, which the alien rulers support so that their exploitation may continue. In order, therefore, to remove this poverty and misery and to ameliorate the conditions of the Indian masses, it is essential to make revolutionary changes in the present economic and social structure of society and to remove the gross inequalities.

The newly adopted tricolor flag of freedom on 31 December 1929 was hoisted and 26 January was fixed as the first Independence Day, which was to be celebrated every year with the people taking the pledge that it was ‘a crime against man to submit any longer to British rule.’\(^{50}\) The inalienable right of the Indian people to have freedom and equality was asserted. It was said that the British Government not only deprived the people of India of their freedom but based itself on the exploitation of masses and ruined

\(^{46}\) Indian Statutory Commission known as Simon Commission, see supra note 30.

\(^{47}\) II Indian Statutory Commission Report 1930 at 23.

\(^{48}\) Supra note 8 at 267.


\(^{50}\) G.S. Halappa (ed.), *Dilemmas of Democratic Politics in India* 1-19 (Manaktalas, Bombay, 1966).
them economically, politically, culturally and spiritually.\textsuperscript{51}

Subsequently in all the three Sessions of the Indian Round Table Conference, efforts for the inclusion of a chapter on Fundamental Rights in the Constitutional document for Indian were made.

2.2.4. Discussion Regarding Directive Principles of State Policy in the Three Round Table Conferences, 1930

Demands for Swaraj or Self-rule, in India had been growing increasingly strong. By the 1930s, many British politicians believed that India needed to move towards dominion status. Further, the three Round Table Conferences of 1930–32 were a series of conferences organized by the British Government to discuss Constitutional reforms in India. They were conducted as per the recommendation by the report submitted by the Simon Commission in May 1930. In all the three Round Table Conferences held in London, the subject of Fundamental Rights, designed to secure either to the community in general or specified sections of the people of India, rights and immunities were discussed at length and memorandum were submitted by individuals and groups for the provision on Fundamental Rights in the proposed Constitution.

At the First Round Table Conference,\textsuperscript{52} N.M. Joshi, a representative of the Indian Labour Organization emphasized the need of incorporating certain Fundamental Rights (including economic rights also).\textsuperscript{53} B.Shiva Rao, another representative of the same organization presented in fact a draft of ten such rights.\textsuperscript{54} B.R. Ambedkar also drew attention of the British Government towards the urgency of incorporating adequate provisions for the enforcement of Fundamental Rights in the Constitution. He pleaded that these rights should also include a right of redress when any Fundamental Right is violated.\textsuperscript{55} Despite various efforts of the Indian delegates, the attitude of the British Government towards the grant of Fundamental Rights to the people of India remained unchanged and the proposal was rejected at the First Round Table Conference.\textsuperscript{56}

\textsuperscript{51} Supra note 34 at 45.
\textsuperscript{52} The First Round Table Conference was held during the period from 12 November 1930 to 19 January 1931.
\textsuperscript{53} Indian Round Table Conference Proceedings comd. 3778 at 11 (hereinafter cited as IRTC Proceedings).
\textsuperscript{54} These rights were primarily meant for safeguarding the economic life of the labour community. See IRTC, Presented Sub-committee III, Minorities, at 81-82.
\textsuperscript{55} IRTC, \textit{id.} at 130-131.
\textsuperscript{56} Supra note 26 at 35-36.
The necessity of ensuring certain Fundamental Rights to Indians in the future Constitution of India was again discussed during the Second Round Table Conference. A joint statement entitled as “Labor under the New Constitution” signed on 13 November 1931 by N.M.Joshi, B.Shiva Rao and V.V.Giri, included the same set of rights as were put forward by Rao at the First Conference and concluded by saying:

The real problem of the future will be economic and social and it would be wrong to build the Constitution in a manner which has no relation to the realities of tomorrow.

The Third Round Table Conference again echoed the discussion on Fundamental Rights. Dr. Ambedkar wanted to include an additional rider in the form of Instrument of Instructions to the Governor General and Governors. This view of Dr. Ambedkar is important to note because the self same idea was expressed by him in the Constituent Assembly while justifying the inclusion of the directives in the Draft Constitution of India.

A separate memorandum was submitted by Sir Tej Behadur Sapru and M.R. Jayakar on 27 December 1932. The British Government admitted the importance of such rights but expressed the doubts about their feasibility. Ultimately, however, there was substantial support for the view that, as the means of searching fair treatment for majority and minorities alike, some of the Fundamental Rights could be ensured through the ‘special responsibilities’ of the Governor-General and Governors, some other could be incorporated into the Constitution and such of them which were found unsuitable for statutory enactment could be accommodated in the Royal Proclamation to be issued on the inauguration of the new Constitution.

Finally, however, in the white paper, which was issued by the British Government in March 1933, outlining the proposals for Indian Constitutional reforms in India, no detailed declaration of Fundamental Rights was made. The white paper which did not mention any Fundamental Right including social and economic, was the subject of

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57 The Second Round Table Conference was held during the period from 7 September 1931 to 1 December 1931.
58 Supra note 24 at 37.
59 Supra note 26 at 37.
60 This Conference was held during the period from 17 November 1932 to 24 December 1932.
61 IRTC Proceedings Report (Third Session) at 66.
62 Ibid.
criticism in various resolutions adopted on the White Paper and for the first time a demand for the convening of the Constituent Assembly to frame an acceptable Constitution for India was made.63

At a special session in April 1933, the National Trades Union Federation reiterated the above demand for a declaration of Fundamental Rights in the Constitution. The Bengal Trades Union Federation, in its memorandum to the Sub-Committee of the Joint Select Committee also insisted upon the need to include rights similar to those contained in Articles 39 (e) and (f), 41, 42 and 43 of the Indian Constitution.64 The memorandum said:65

The socio-economic conditions of the poorer and working classes in India are indeed depressing..... It is necessary for its protection that certain Fundamental Rights of the working classes should be specially declared enjoining that Indian Parliament should make suitable laws to ensure fair rent and fixity of tenure to agricultural tenants from whom industrial workers are recruited, for the maintenance of health and fitness of workers, securing minimum wages for them, the protection of motherhood, welfare of their children and the economic consequences of their old age, infirmity and unemployment. The Indian Parliament shall also pass laws to ensure sanitary housing for industrial workers..... Nothing short of statutory obligations (Housing is a Fundamental Right in German and other post-war Constitutions) will remove the grave menace to the Indian workers health..... In the frame work of the future Constitution, provision should be made for an organization (the Industrial Council) which would enable representatives of employees, of employers of labour, and of the Government to meet regularly in Conference, to

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63 Supra note 20 at 76-78.
64 Article 39(e) says that the health and strength of workers, men and women, and of tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Clause (f) provides that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. Article 41 relates to right to work, to education and to public assistance in certain cases. Article 42 deals with the provision for just and human conditions of work and maternity relief. And Article 43 deals with living wages, etc., for workers.
65 Supra note 26 at 40-41.
discuss labour measures and labour policy.

While clarifying the position in this respect a spokesman of the Sub-Committee of the Joint Select Committee on Indian Constitutional Reforms, suggested that in the declaration of the Fundamental Rights for citizens of India, the plan that had found favour in the Constitutions of the Soviet Union, Czechoslovakia, Germany and Ireland wherein economic rights where specifically guaranteed could be adopted for India. He regarded the grant of economic rights as more important and advisable for the citizens of India than the grant of political rights such as personal liberty and safety of property. He said that as a matter of fact those political rights are the usual rigmarole of rights, if I may say so, but what we really need in India, are as you may say, the bonafide right, the right to have an old age pension, the right to have sickness benefit, the right to insurance, the right to have compulsory and free elementary education.66

It is clear from the foregoing account that it was incomprehensible to the British to think of a declaration of Fundamental Rights of as anything more than expression of political ideas. At the same time, it is interesting to note that Sir Samuel Hoare, the Secretary of State for India, who could not think of a declaration of Fundamental Rights in any Constitution for India, eleven years later, made an impassioned appeal for a declaration of Fundamental Rights as necessary for the unification of Europe and the preservation of European civilization.67

Although, there was general apprehension of the basic proposition advanced, there was strong opposition to declaration of Fundamental Rights especially when there could be no effective machinery for enforcing the same.68

2.2.5. Revolutionary Expression of Directive Principles of State Policy in Karachi Resolution, 1931

Apart from the discussions and memoranda submitted on the subject of Fundamental Rights at the London Round Table Conferences and the meetings of the Joint Committee on Constitutional Reforms, on the political plan in India, the Indian National Congress passed a historic resolution on the declaration of Fundamental Rights

66 Ibid, referring to evidence before Sub-Committee of the Joint Select Committee on Indian Constitutional Reform, at 2235, 19 July 1933, Vol. 20.
67 Supra note 40 at 43, referring to House of Lords Debates (Hansard), 19 December 1944 Cols. 380-385.
68 Id. Cols. 388-389.
at its 45th Session held at Karachi on 29 March 1931. It was explained that in order to end the exploitation of the masses, political freedom must include real economic freedom of the starving millions.\textsuperscript{69} The Congress, therefore, declared that any Constitution to be agreed to on its behalf should provide, or enable the Swaraj Government to provide, for Fundamental Rights and duties and economic and social programs.\textsuperscript{70}

Subsequently, the resolution was modified in the All India Congress Committee meeting held at Bombay on 6 August 1931. The modified version of the resolution was finally adopted under the title ‘Fundamental Rights and Duties and Economic program’ at the 47th Session of the Indian National Congress held at Calcutta on 1 April 1933. There were in all seventeen Articles in this resolution, divided into 4 heads. First, Fundamental Rights and duties,\textsuperscript{71} which, \textit{inter alia}, stated that the culture, language and script of the minorities and of the linguistic areas shall be protected, the State shall provide for free and compulsory primary education. Second, labour\textsuperscript{72} which, \textit{inter alia}, provided that the organization of the economic life must conform to the principles of justice, to the end that it may secure a descent standard of living; the State would safeguard the interests of industrial workers, and especially adequate provisions for leave during maternity period; children of school going age shall not be employed in the mines and factories. Third, taxation and expenditure,\textsuperscript{73} which \textit{inter alia}, provided that the system of land tenure and rent and revenue would be reformed and an equitable adjustment made of burden on agricultural land, immediately giving relief to the small peasantry by a substantial reduction of existing agricultural rent and revenue paid by them, and in case of uneconomic holdings, exempting them from rents, so long as necessary, with such relief as might be just and necessary, to holders of small estate as affected by such exemption or reduction in rent, and to the same ends imposing a graded tax on net income from land above a reasonable minimum. Forth, economic and social program,\textsuperscript{74} which \textit{inter alia}, stated that the State shall protect indigenous cloth; and for this purpose pursue the policy of exclusion of foreign cloth and foreign yarn from the country; intoxicating drinks and

\textsuperscript{70} \textit{Supra} note 67.
\textsuperscript{71} Article 1 with 14 Sub-Sections. For text of these Articles, see \textit{supra} note 26 at 43-44.
\textsuperscript{72} Articles 2 to 6.
\textsuperscript{73} Articles 7 to 11.
\textsuperscript{74} Articles 12 to 17.
drugs shall be totally prohibited, except for medicinal purposes; the State shall own and control key industries and services, mineral resources, railways, waterways, shipping and other means of public transport; relief of agricultural indebtedness and control of usury-direct and indirect. It is evident from the provisions of Karachi resolution that they reflected what we today call Fundamental Rights and Directive Principles of State Policy. Then there was no separation. It might perhaps have been thought that all these had to constitute an integral whole to bring about social revolution in India.

The Karachi resolution was emphatic not only on the State’s negative obligations but also on its positive obligations to provide its people with economic and social conditions in which their negative rights could have actual meaning. It meant that the social revolution would have a vital share in shaping India’s future Constitution and the provisions did in fact become the spiritual, and in some cases the direct antecedents of the Directive Principles. There was an explicit pledge to end exploitation and secure real economic freedom.

In this context, Granville Austin characterized the resolution as both ‘a declaration of rights and a humanitarian socialist manifesto’. Michael Edwards characterized it a little differently by saying that It was not a particularly revolutionary document. But even with its cautious approach and its watered down socialism it was to be a milestone on the road of India’s political development. It led after independence to the endorsement by Congress of national economic planning and the ‘socialist pattern of society’ as the natural fulfillment of the legacy.


The subject of Fundamental Rights and its incorporation in the future Constitution of India was discussed at length by the Sapru Committee in 1945, with Sir Tej Bahadur Sapru as its Chairman. It issued a questionnaire to various associations, groups and

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75 Supra note 2 at 56.
76 Ibid.
77 Ibid.
79 Ibid.
80 The Committee was appointed by Sir Tej Bahadur Sapru under the authority of the Standing Committee of the Non-Party Conference. See supra note 20 at 151.
individuals inviting their views on the desirability of inclusion of Fundamental Rights in the future Constitution of India and the machinery that could be suggested for the enforcement of those Fundamental Rights, which were not justifiable. It was here that the separation of rights started first of all.

Several individuals and organizations responded to the questionnaire and some of them worked out the details of Fundamental Rights which they wanted to include in the future Constitution of India. One of such proposal came from All India Depressed Class League which in its memorandum submitted a detailed list of Fundamental Rights including the social and economic rights. Another suggestion came from Professor Vankatarangaiah who drew a fine distinction between the civil and economic rights. He pleaded for the incorporation of the two sets of rights in the Constitution, the former being enforceable in a Court of Law and the later not. He also gave reasons for the distinction between the two sets of right, the difficulty involved in respect of non-justifiable rights and the utility of social and economic rights in the Constitutional set up. Professor Vankatarangaiah in his memorandum on the question of Fundamental Rights observed:

Civil rights are of a justifiable character and they can and ought to be enforced through Courts of justice. Social and economic rights….cannot be enforced through Courts because they involve positive action in the forms of new legislative measures, administrative organization, accumulation of large financial resources and perhaps the total transformation in some cases of the economic system in the country. These cannot be accomplished through decrees issued by the Courts…. This does not, however, mean that rights not justifiable are ineffective rights and that their incorporation in the Constitution serves no purpose. It only means that while for enforcing some rights we have to look to Courts and for enforcing others we have to look to other political institutions.

Thus, he anticipated the inclusion of non-justifiable economic and social rights in the frame-work of the Constitution of India.

81 Supra note 26 at 45 referring to the Conciliation Committee Information Service, Pamphlet No. 6.
82 Ibid, Pamphlet No. 8, at 8-9.
83 Ibid.
Consequently, the Sapru Committee in 1945 considered the suggestions received from various quarters on the subject of Fundamental Rights and reached the following conclusions: First, protection of minority rights was absolutely necessary. Second, there was a need for laying down adequate and appropriate standards for legislative and administrative actions and the Courts. Third, that the justiciable and non-justiciable Fundamental Rights be discussed and pleaded for incorporation in the future Constitution.\textsuperscript{84}

Finally, the Sapru Committee in its ‘Constitutional Proposals’ recommended that a declaration of Fundamental Rights in an Indian Constitution was absolutely necessary. It envisaged that Fundamental Rights had to be of two classes- one Justiciable and the other non-justiciable. The Committee reconciled the British view of sovereignty of Parliament with the view that in a federal structure the judiciary was supreme and the final protector and guardian of the Constitution. It, however, did not suggest how the best division could be made. It left the whole question to be decided by the Constitution making body with the observation that though the task was ‘difficult’ it was by no means ‘impossible’.\textsuperscript{85}

The proposals of the Sapru Committee were definitely a significant advancement on earlier proposals because it classified these rights into two main categories, justiciable and non-justiciable, the former being enforceable whereas the latter were not, and recommended the inclusion of the latter also in the body of the Constitution.\textsuperscript{86}

The atrocities committed during the Second World War and world-wide agitation for human rights, the liberties guaranteed in the Atlantic Charter, the U.N. Charter, and the Declaration of Human Rights by the Human Rights Commission, strengthened the demand for the incorporation of Fundamental Rights in our Constitution.

\textsuperscript{84} \textit{Constitutional Proposals of the Sapru Committee} at 257 (1945).

\textsuperscript{85} \textit{Ibid.} To quote the words of the Committee: The real difficulty will be in dividing Fundamental Rights into classes: (1) Justiciable, and (2) Non-Justiciable, but this difficulty must be faced... This task cannot obviously be undertaken by us. It will be for the Constitution-making body first to settle the list of Fundamental Rights and then to undertake the division...”

\textsuperscript{86} The Sapru Committee drew its inspiration from the Irish Constitution of 1937. The Irish Constitution made a distinction between justiciable and non-justiciable rights and designated the former as Fundamental Rights and the latter as Directive Principles of social welfare policy.
2.3 DIRECTIVE PRINCIPLES OF STATE POLICY AND THE CONSTITUENT ASSEMBLY, 1946.

During the final stages of the British Raj, the 1946 Cabinet Mission to India proposed a Constituent Assembly to draft a Constitution for India as part of the process of transfer of power.\(^{87}\) Hence, the duty of giving effect to these pre-independence pledges was completed by the Constituent Assembly\(^ {88}\) set up in 1946. The Assembly, which was assigned the tremendous task of framing a Constitution for India, was mainly an elected body and represented almost all shades of public opinion.\(^ {89}\) Researcher has made an attempt to probe into the history of the making of our Constitution, with an intent and purpose of understanding the significance of Directive Principles of State Policy from its origin to its final shape had to go through various resolutions and discussions as Objective Resolution, B.N.Rau’s Notes & Draft on Fundamental Rights and Directive Principles, Deliberations of Sub-Committee on Fundamental Rights, Report of the Sub-Committee on Minorities, Deliberations of Advisory Committee on Fundamental Rights, Deliberations of the Drafting Committee and debates etc.

2.3.1 Adoption of the Objective Resolution, 1947 and Notes on Directive Principles of State Policy

The Assembly, first convened on 9\(^{th}\) December 1946, elected Rajendera Prasad as its permanent Chairman on 11\(^{th}\) December 1946. The first great achievement was the adoption of the historic Objectives Resolution on 22\(^{nd}\) January 1947, moved by Pandit Jawaharlal Nehru on 13\(^{th}\) December 1946.\(^ {90}\) The Resolution laid down the fundamental

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\(^{87}\) Durga Das Basu, *Introduction to the Constitution of India* 475 (Prentice Hall of India, New Delhi, 15\(^{th}\) edn., 1993).

\(^{88}\) The Constituted Assembly which had been elected for undivided India and held its first sitting in the 9\(^{th}\) December, 1946, reassembled on the 14 August, 1947, as the sovereign Constituent Assembly for the Dominion of India. See D. D. Basu, *Introduction to the Constitution of India* 18 (LexisNexis Butterworths Wadhwa, Nagpur, 20\(^{th}\) edn., 2009).

\(^{89}\) Special efforts were made to represent women, Scheduled Tribes, Scheduled Castes and minority-communities. Almost all were represented. However, it has been argued that the members of the Assembly were not directly elected by the people on the basis of adult suffrage and that fifty percent of the State representatives were nominees of the princes. See K.V. Rao, *Parliamentary Democracy of India* 3 (The World Press Private Ltd. Calcutta, 1\(^{st}\) edn., 1961); A.C. Banerjee, *the Making of the Indian Constitution* 358 (Mukherjee & Co., Calcutta, 1948).

\(^{90}\) The Resolution could not be passed earlier due to the non-participation of the Muslim League in the Constituent Assembly. But when the Muslim League purposely avoided its participation, the Assembly unanimously adopted the Resolution on 22 January 1947. For reasons of its non-participation, see *supra* note 19 at 108-109.
prepositions on the basis of which a Constitution for free India had to be framed; it formed the basis not only of various provisions of the Constitution, but also of its Preamble. The relevant parts of the Resolutions are reproduced below:  

(1) This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent sovereign republic and to draw up for her future Governance a Constitution…

(5) Where shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and

(6) Wherein adequate safeguard shall be provided for minorities, backward and tribal areas and depressed and other backward classes; and……

(8) This ancient land attains its rightful and honorable place in the world and makes its full and willing contribution to the promotion of world peace and the welfare of the mankind.

While commending the Resolution for acceptance, Jawaharlal Nehru delivered an eloquent speech. According to him, the Resolution was a declaration, a firm resolve, a pledge, an undertaking, for all dedication. Pt. Nehru observed:

There is a duty cast upon us and… to remember always that we are here not to function for one party or one group, but always to think of India as a whole and always to think of the welfare of the four hundred millions that comprise India.

Explaining the democracy and socialism in the Resolution he said:

We have given the content of democracy in this Resolution and not only the content of democracy but the content, if I may say so, of economic democracy…. I stand for socialism and I hope, India will stand for socialism and that India will go towards the Constitution of a socialist State and I believe that the whole world will have to go that way.

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91 For a complete text of the Objectives Resolution, see B.Shiv Rao, The Framing of India's Constitution: A Selected Documents 3, 4 (Indian Institution of Public Administration, New Delhi, Vol.II, 1967) (Hereinafter cited as Select Documents); Also see I Constitutional Assembly Debates at 57).
92 Select Documents, id. at 60.
93 Id. at 62.
In the end of his speech Nehru said:94

I would beg of this House to consider this Resolution in this mighty prospect of our past, of the turmoil of the present and of the great and unborn future that is going to take place soon.

A large number of members of the Constituent Assembly participated in the discussion on the Objective Resolution. There was great emphasis on what we call Fundamental Rights under the present Constitution as well as on socio-economic rights. While speaking on the importance of the Resolution, M.R.Jaya, a prominent member of the Constituent Assembly observed that the Resolution was intended to lay down the fundamentals of the Constitution.95 Further highlighting the economic and socialistic importance of the Resolution, it was said that the Resolution went as far as it could in satisfying the most ardent socialist among us. It envisaged far reaching social changes-social justice in the fullest sense of the term. It took away the liberty of the individual to the extent that the people really desired it. The Resolution pointed the direction to a Constitution where the people would be in power, where the individual personality would be the main aim of our social good.96

Visualizing the need and importance of Fundamental Rights under the Resolution, Dr. S. Radhakrishnan said that it was the socio-economic revolution which they were attempting to bring about. He emphasized that though State regulation was necessary to improve economic conditions, it should not be done at the expense of human spirit.97 N.V.Gadgil who spoke on the Resolution just after Dr. S. Radhakrishnan, said that these Fundamental Rights were, what were most cherished by the common man. He emphasized that the freedom contemplated is supported by the various principles which were incorporated in the Resolution and that has given balance and poise to the structure.98

Emphasizing the positive aspect of the Resolution, Mrs. Vijayalakshmi Pandit99 said that there were two aspects before them – the negative and positive. The negative

94 Id. at 65.
95 Id. at 72; Also see the speech of Krishna Sinha, Id. at 87
96 M.R. Masani’s speech, Constituent Assembly Debates, supra note 91 at 91-94.
97 II Constitutional Assembly Debates at 273.
98 Id. at 275.
99 In 1946, she was elected to the Constituent Assembly from the United Provinces.
aspect is concerned with the ending of imperialist domination but the more important side of the question was the positive side, which meant the building up in the country social democratic State which would enable India to fulfill her destiny and point the path of lasting peace and progress to the world. She further added that India must free herself socially, economically and then free others and this Resolution was a step towards that direction.  

Keeping in view the conditions of the Indian people, Professor Ranga, a member of Constituent Assembly while speaking on the Resolution observed:

It is a miserable fact that millions and millions of our countrymen are not yet able to take advantage of the various liberties that we have laid here, the various privileges that we say, are being through open for everyone to enjoy. They are not educated. Economically they are oppressed and suppressed also, and socially they are backward and downtrodden. For these people so many things have to be done, may be for some time to come, before they come to enjoy these rights. They need support. They need a ladder by which they can reach on to the stage when it will be possible for them to come to appreciate the value of the rights that we are placing before them and enjoy them.

The obvious reference of all these observances was to the present Directive Principles under the Indian Constitution.

However, Dr. Ambedkar expressed his disappointment with the content of the Resolution he expected in it a clear enunciation of the doctrine of socialism. He wanted rights, principles remedies thereof to be in more explicit terms. In this connection his following observation is worth noting:

If this Resolution has a reality behind it and sincerity of which I have not the least doubt, coming as it does from the mover of the Resolution. I should have expected some provisions whereby it would have been

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100 Supra note 97 at 278-279.
101 Gogineni Ranga Nayukulu, better known as N. G. Ranga, was an Indian freedom fighter, parliamentarian, and kisan (farmer) leader. He was an exponent of the peasant philosophy, and considered the father of the Indian Peasant Movement after Swami Sahajanand Saraswati. Available at: http://rajyasabha.nic.in/photo/princets/p16.html (Visited on February 16, 2015).
102 Supra note 97 at 280.
103 Constitutional Assembly Debates, supra note 91 at 100.
possible for the State to make economic, social and political justice a reality and should have from that point of view expected the Resolution to state in most explicit terms that in order that there may be social and economic justice in this country, that there would be nationalization of industry and nationalization of land. I do not understand how it could be possible for any future Government which believes in doing justice socially, economically and politically, unless its economy is a socialist economy.

Ambedkar, however, made it clear that he had no doubt in his mind about the question of the future evolution and the ultimate shape of the social, political and economic structure of the country.

Finally in the concluding speech, Nehru said: 104

The first task of the Assembly was to free India through a new Constitution, to feed the starving people and clothe the naked masses, and to give every Indian fullest opportunity to develop himself according to his capacity. If we cannot solve this problem soon, Nehru warned the Assembly, ‘all our paper Constitution will become useless and purposeless’.

In the light of the Objectives Resolution, B.N.Rau, the Constitutional Advisor to the Government of India suggested that the best way to give effects to the assurances contained in Clauses (5), (6) and (8) of the Resolution 105 was to split up the assurances into Fundamental Rights and Fundamental Principles of State policy. According to Rau, the former was to contain civil and political rights enforceable in the Courts of law and the latter should contain social and economic rights not enforceable in the Courts.

Rau made an elaborate study of the various European Constitutions and his study, inter alia revealed that most of them retained certain rights which were non-justiciable in nature. 106 The study and analysis further revealed the existence of two broad classes of

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104 V Constitutional Assembly Debates at 367.
105 Select Documents, supra note 91.
106 Reference in this connection was made to Amendments 1-X, XIII-XV and XIX to the Constitution of USA, Articles 4, 31, 44, 45, 49, 50, 55, 58, 60 and 65 of the Swiss Constitution; Articles 109-160 of the German Constitution; Articles 118-128 of the Constitution of the USSR and Articles 40-44 of the Constitution of Ireland.
rights. There were certain rights which required positive action by the State and which could be guaranteed only so far as such action was practicable, while others merely required that the State abstained from prejudicial action. By way of example of the former, he mentioned the right to work, which in his words cannot be guaranteed further than by requiring the State…to direct its policy towards securing that the citizens may, through their occupation, find the means of making reasonable provision for their domestic needs. As regards the latter, he referred to the rights which required that the State shall not deprive any citizen of his liberty without due process of law. Rau characterized the first type of rights as not suitable for judiciable enforcement and the second as enforceable by legal action.

Rau maintained that Fundamental Rights imposed a positive duty on the State while the others required a positive action on its part. In Irish Constitution, he found that the distinction was clearly recognized. In this context referring to that Constitution, he observed that it followed the plan of separating Fundamental Rights from Directive Principles of State Policy. The former were to some extent enforceable by the Courts, but latter not at all. The principles of social policy set forth were intended for the general guidance of the Oireachtas (Irish Parliament) and were not to be cognizable by any Courts.107

Rau also noticed a similar distinction recognized by Professor Lauterpacht108 in his International Bill of Man (1945)109. The Bill dealt with two types of rights, one enforceable by the ordinary Courts and other unsuited for such enforcement. He provided for two Articles110 dealing with social and economic rights and distinguished them from the others relating to personal or individual rights. He observed that the latter could be enforced by judicial or administrative process, but the same degree of enforceability was

107 Select Documents, supra note 91 at 32. In the Irish Constitution the Fundamental Rights are set out in Articles 40-44, and the Directive Principles of Social Policy are contained in Article 45. In the case of Fundamental Rights, there is no provision which excludes judicial review.
109 An International Bill of the Rights of Man, first published in 1945, is one of the seminal works on international human rights law. Its author, Sir Hersch Lauterpacht, is widely considered to be one of the great international lawyers of the 20th century. It continues to influence those studying and working in international human rights law today. It includes Professor Lauterpacht's study of natural law and natural right and Professor Lauterpacht's own draft Bill of Human Rights.
110 Articles 15 and 16, International Bill of Man, 1945.
not feasible with regard to social and economic rights. The reason advanced by Dr. Lanterpacht for making the above distinction can best be described in his own words:\textsuperscript{111}

These two Articles represent the social and economic provisions of the Bill of Rights. ....The main difficulty connected with this category of the rights is that of International supervision and enforcement... (For) there is no specific test of observance, in an individual case of the obligation to secure just and human conditions of work, or the right to work, or adequate opportunities in education.... The securing of right to work, or education and to public assistance in case of unemployment and old age depends upon the economic conditions and development of each State. Moreover, while with regard to personal rights of freedom, the test is absolute.... The social and economic rights are related to the predominant standard of life and a variety of social and economic factors in the country concerned.

Rau was greatly impressed by this analysis, therefore, he suggested the incorporation of similar provisions in the Constitution of India on Irish model and separated the two classes of rights. Part A dealing with Fundamental Principles of State policy and Part B with Fundamental Rights strictly so called. Part A as discussed by Rau is as follows:\textsuperscript{112}

\textbf{Part A}

The Principles set forth in this Part are intended for the general guidance of the appropriate Legislatures and Governments in India (hereinafter referred to collectively as ‘the State’). The application of these Principles in legislation and administration shall be the care of the State and shall not be cognizable by any Court.

1. The State shall promote international peace and security by the elimination of war as an instrument of national policy, by the prescription of open, just and honorable relations between nations by the firm establishment of the understanding of international law as actual rule of conduct among Governments and by the maintenance of justice and the surplus respect for treaty obligations in the dealings of

\textsuperscript{111} Quoted in K.C. Markandan, \textit{supra} note 26 at 52.

\textsuperscript{112} \textit{Select Documents, supra} note 91 at 33-34.
organized people with one another.

2. The State shall promote internal peace and security by the elimination of every cause of communal discord.

3. The State shall, as far as possible, secure to each citizen:
   (1) The right to work; (2) the right to education; (3) the right to rest and leisure; (4) in particular the State shall make provision for free and compulsory education primary education.

4. The State shall, promote with special care the educational and economic interests of the weaker sections of the people and, in particular of the Scheduled castes and the aboriginal tribes and shall protect them from social injustice and all forms of exploitation.

5. The State shall protect the culture, language and scripts of the various communities and linguistic area in India.

6. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvements of public health as among its primary duties.

7. The State shall ensure that the strength and health of workers, men and women, and the tender age of children shall not be abused and that they shall not be forced by economic necessity to take up occupations unsuited to their sex, age or strength.

Rau also indicated the various sources which he used for drafting the provisions in Part A. The preliminary portion was taken from Article 45 of the Irish Constitution with one major change in it, that is, the Principles in that Constitution were meant for the guidance of the Oireachtas (Irish Parliament) alone, but in the Indian Constitution they were to be for the general guidance of the Legislatures and Governments to be collectively known as the State. The 1st and 3rd clauses were taken from Havana and Russian Constitutions respectively. The 6th clause pertaining to the standard of nutrition was modeled on the lines of recommendations of the United Nations Conference.

\[\text{\footnotesize{\textsuperscript{113}}}\] Article 45 of the Irish Constitution provides that the Principles of social policy set forth in this Article are intended for the general guidance of the Oireachtas. The application of those Principles in the making of laws shall be the care of the Oireachtas exclusively, and shall not be cognizable by any Court under any of the provisions of this Constitution.

\[\text{\footnotesize{\textsuperscript{114}}}\] The Constitution of Havana 1939 contained declaration of Rights which were included in the first clause of Part A of the draft plan.

\[\text{\footnotesize{\textsuperscript{115}}}\] The objectives of social and economic policy in the clause 3rd were similar to those embodied in Articles 118 to 122 of the Russian Constitution of 1936.
on food and Agriculture, 1943 and provides as to raise the levels of nutrition and standard of living of its own people.\textsuperscript{116}

The Principles contained in clauses 2\textsuperscript{nd}, 4th and 5\textsuperscript{th} of Part A were without any Constitutional precedent and had their origin in the peculiar conditions in India.\textsuperscript{117} The ultimate object of those provisions was to ensure a stable working Constitution for India.

A close examination of the Fundamental Principles of State policy as suggested by Rau for inclusion in the Constitution indicate that he did not regard them as anything more than moral precepts and being moral precepts, they would obviously have an educative value if not anything else. He did not attach any importance to the directives and they were only for general guidance and care of concerned without any binding effect on them.\textsuperscript{118}

Long standing affinity of the Indian National Congress with the Irish nationalist movement made the example of Constitutional socialism expressed in the Irish Directive Principles of Social Policy especially attractive to a wide range of Assembly Members.\textsuperscript{119} The real difficulty before the Constituent Assembly was to implement the draft scheme of Rau in the Constitution of India. Expressing the difficulty in regard to the justiciable and non-justiciable rights, Somneth Ishiri, a member of the Assembly, said that it was rather difficult to make fine distinction between justiciable and non-justiciable rights. For example, in the case of nationalization of land, if it was said that land belonged to the people and nobody else, that would be a social and Fundamental Right no doubt, but nevertheless that would also be a justiciable right, to be given effect to. Therefore, it would rather be arbitrary to make any fine distinction between these two kinds of rights.\textsuperscript{120} The Sapru Committee had also expressed a similar view on this point of dividing the rights.

Radhakrishnan believed that India must have socio - economic revolution designed not only to bring about the real satisfaction of the fundamental needs of a

\textsuperscript{116} Select Documents, supra note 91 at 34-35.
\textsuperscript{117} These peculiar needs of the country were: (a) the elimination of communal discord, (b) the safeguarding of the interest of weaker sections of the people, and (c) the protection of the culture, language and script of the various communities and linguistic areas.
\textsuperscript{118} It would be seen that later Rau changed his opinion regarding the nature and character of the directives as a result of some alterations of his draft in the Constituent Assembly.
\textsuperscript{119} Supra note 2 at 76.
\textsuperscript{120} III Constitutional Assembly Debates at 403-404.
common man, but to go much deeper and bring about a fundamental change in the structure of Indian society.\textsuperscript{121} Similar views were also expressed by many other members of the Assembly. They said that it was the Dharma of the Government to remove hunger and render social justice to every citizen.\textsuperscript{122}

K. Santhanam,\textsuperscript{123} was a member of the Indian Constituent Assembly explained the situation in terms of three revolutions: First, the political revolution that would end with independence. Second, the social revolution meant to get India out of medievalism based on birth, religions, custom and community, and reconstruct her social structure on modern foundations of law, individual merit, and secular education. Third, the economic revolution - the transition from primitive rural economy to scientific and planned agricultural industry.\textsuperscript{124}

The framers of the Constitution faced a three-fold problem while framing the provisions relating to Fundamental Rights, namely, first, the difficulty of defining what Fundamental Rights were and preparing a list of the same, second, classification of rights into justiciable and non-justiciable and third, devising effective protection for the rights defined therein. The last problem could be solved by allowing the more easily definable rights to be enforced in the ordinary Courts and keep the rest out of their purview. Finding is difficult to come to conclusion with regard to the first two problems, Govind Vallabh Pant moved a Resolution in the Constituent Assembly on 24 January 1947 for the appointment of an Advisory Committee\textsuperscript{125} to work out a practical solution to the problem. The first meeting of the Committee was held on 27 February 1947 and Vallanbh Bhai Patel was unanimously elected as its Chairman.\textsuperscript{126} The Advisory Committee constituted five Sub-Committees, one of which was the Sub-Committee on Fundamental Rights.

\textsuperscript{121} Supra note 97 at 269-273.
\textsuperscript{122} Ibid.
\textsuperscript{123} He was a member of the Imperial Legislative Assembly, and from 1946 was a member of the Indian Constituent Assembly, from 1948 serving as Union Minister for Railways and Transport in Jawaharlal Nehru's cabinet. See “New Lieutenant-Governors” The Hindu, February 15, 1952.
\textsuperscript{124} Supra note 2 at 26.
\textsuperscript{125} Supra note 97 at 328; Select Documents, supra note 91 at 56-53. Initially the Committee was to consist of only the 50 member named in the resolution, but the President was authorized to nominate 22 more members to the Committees. See supra note 97 at 347-348.
\textsuperscript{126} Patel’s name was proposed by Jaipal Singh and seconded by Harnam Singh.
2.3.2. Directive Principles of State Policy and Sub-Committee on Fundamental Rights

The Sub-Committee on Fundamental Rights held its first meeting on 27 February 1947 and elected J.B.Kriplani as its Chairman.\(^{127}\) Initiating the discussion on the subject, Alladi Krishnaswami Ayyar pointed out that citizen’s rights embodied in a Constitution should consist of guarantees enforceable in Courts of law and that it was no use laying down precepts which remained unenforceable or ineffective. To support his contention, the relevant provision from the United States Constitution was cited.\(^{128}\) M.R. Masani was also not in favour of including rights which could not be enforced by law. He, therefore, suggested for setting up an independent supreme judicial authority for pronouncement of judgment on the validity of laws which might infringe the Fundamental Rights.\(^{129}\) A similar view was also expressed by K.M. Munshi and B.R.Ambedkar.\(^{130}\) K.M. Munshi said that the Sub-Committee had to consider whether Fundamental Rights of the nature of mere precepts should be embodied in the Constitution and if not, what should be the justiciable rights. He was emphatically of the view that the Constitution should provide for Writs to be issued by the Courts.\(^{131}\) Raj Kumari Amrit Kaur also agreed with the view of Professor Shah and Munshi. Professor K.T. Shah emphasized that alongwith rights, there should be some obligations on the citizens.\(^{132}\) He categorized rights as civil, political, economic and social. The most important of these rights, said Professor Shah, were social and economic rights. He described them as ‘Indispensable’.\(^{133}\) According to him, these rights formed corresponding obligations of the State which guaranteed them.

The meeting of the Sub-Committee, however, ended without making any final decision whether the non-justiciable rights were to be included or not in the new Constitution of India. Ultimately, however the Sub-committee resolved that a difference should be drawn in the list of Fundamental Rights which were enforceable by appropriate

\(^{127}\) Select Documents, supra note 91 at 64.

\(^{128}\) Select Documents, supra note 91 at 115. The Fourteenth Amendment to the United States Constitution prevented the State from depriving any person of his life, liberty or property otherwise than by due process of law. Alladi wanted that the Sub-committee should take the United States as their model for safeguarding the rights of the citizens, Ibid.

\(^{129}\) Ibid.

\(^{130}\) Ibid.

\(^{131}\) The United States Constitution, supra note 128.

\(^{132}\) Ibid.

\(^{133}\) Professor Shah Draft’s contained 59 clauses, Select Document, supra note 91 at 49-55.
legal process and provisions which were in the nature of fundamental principles of social policy that were to regulate the Governments concerned.

The second meeting of the Sub-Committee was held on 24 March 1947 and lasted till 31 March 1947 to consider the proposals, suggestions and memorandas on Fundamental Rights which were reviewed by the various public bodies, individuals, and the members of the Sub-Committee itself. These included the notes on Fundamental Rights prepared by Alladi Krishna swami Ayyar, Munshi, Prof. Shah, Ambedkar and Harnam Singh, which contained proposals for the inclusion of such rights in the Constitution of India. On 27 March 1947, the Sub-Committee came to the conclusion that clauses relating to the right to work etc., right to primary education, to secure living wages etc. recommended by Munshi were not justiciable and could not be included in the chapter of justiciable rights.  

After examining the various drafts on Fundamental Rights placed before it, the Sub-Committee finally resolved that a distinction between the rights which were enforceable in law Courts and the rights which were in the nature of principles of social policy for the guidance of the Government to regulate their legislative and executive function was necessary before the Fundamental Rights were included in the future Constitution of free India.

At the meeting on 30 March 1947, the Sub-Committee turned its full attention to the positive rights using Rau’s draft, his collection of precedents and in particular the example of Irish Constitution, the members adopted in rapid succession provisions laying down that the State should promote, social, economic and political justice. The members also drafted provision based on Munshi’s draft Fundamental Right and on Articles in Lanterpacht’s International Bill of the Rights of Man.

The first set of Directive Principles of social policy as framed by the Sub-Committee on 30 March 1947 read as follows:

1. The Union and every unit thereof shall strive to promote the welfare of the whole people by securing and protecting effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

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134 Ibid.
135 Supra note 2 at 79, referring to Rau’s Constitutional Precedents (3rd Series) at 21-22.
136 Select Documents, supra note 91 at 133-136.
2. The Union and every unit thereof shall, in particular, direct their policy towards securing
(i) that the citizens men and women equally, have the right to an adequate means of livelihood;
(ii) that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;
(iii) that the operation of free competition shall not be allowed so to develop as to result in the concentration of the ownership and control of essential commodities in a few individuals to the common detriment;
(iv) that there shall be equal pay for equal work for both men and women;
(v) that the strength and health of workers man and women, and the tender age of children shall not be abused and that citizens shall not be forced by economic necessity to enter avocations unsuited to their age and strength;
(vi) that childhood and youth are protected against exploitation and against moral and material abandonment.

3. The Union and every unite thereof shall, within the limit of their economic capacity and development, make effective provisions for securing the right to work, to education and public assistance in case of unemployment, old age, sickness, disablement, and other case of undeserved want (Lanerpacht, at 155).

4. The Union and every unit thereof shall make provision for security just and human conditions of work and for maternity relief for workers (Lanterpatcht, at 155).

5. The Union and every unit thereof shall endeavor to secure, by suitable legislation, economic organization and in other ways to all workers, industrial or otherwise, decent standard of life and full enjoyment of leisure and social and cultural opportunities. (Article VII, Clause (1) of Mr. Munshi’s draft. The substance of Clause (2) of Mr. Munshi’s draft is included in rule 3 above).

6. The Union and every unit thereof shall endeavour to secure for the citizens a Uniform Civil Code.

7. Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis. (Japanese Constitution Article XXIV). Motherhood has a claim upon the
protection and care of the State (Weimar Republic i.e. German Reich at 119).

The Principles of social policy set forth in this Part are intended for the general guidance of the appropriate Legislature and Governments in India (hereinafter called collectively the State). The application of these principles in legislation and administration shall be the care of the State and shall not be cognizable by any Court.

The next meeting of Sub-Committee took place on 31 March 1947 and it was decided to introduce the Directive Principles of social policy, as they were called, with a Preamble explaining that they were for the general guidance of the Government and were not cognizable in any Court. The Preamble read as “The principles of social policy set forth in this Part are intended for the general guidance of the appropriate Legislatures and Government in India (hereinafter called collectively as the State). The application of these principles in legislation and administration shall be the care of the State and shall not be cognizable by any Court.”

The Committee then considered Rau’s draft “Fundamental Principles of State Policy” and decided that items (1), (2), (4), and (6) under Part A should be incorporated in the non-justiciable rights with necessary modification. The members adopted Rau’s draft to the effect that the State should raise the level of nutrition and the standard of living of the people, and promote international peace and just dealings between nations. Rau, on the basis of recommendations of Sub-committee on Fundamental Rights prepared a draft of the report on 3 April, 1947 which was to be submitted by the Sub-committee to the Advisory Committee for their comments. The annexure of the Draft Report contained two chapters. The first chapter enumerated justiciable rights and the second chapter, non-justiciable rights.

Explaining the nature of the recommendations, the Sub-Committee, stated in its Draft Report that those rights which could normally be enforced by legal action were put down as ‘justiciable rights’ and other rights which are neither capable of or suitable for, enforcement by legal action, were named as ‘non-justiciable rights’. As an example of the

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137 Id. at 136.
138 The modifications omitted the word “and” from the second sentence of item (4) and the expression “in particular, of the Scheduled Castes and Aboriginal Tribes” was put in the bracket. It was also decided that the word “Scheduled Caste” which referred to the G.I. (Government India) Act, 1935 should be amended later on. Id. at 137.
139 Clauses 9, 10, 12 of the Supplementary Report, id. at 304.
140 See Appendix A for Rau’s Draft Report.
later, the Sub-Committee mentioned the clause requiring the State to endeavor to secure a decent standard of life for all workers. Obviously, it was as impossible for a worker to prove, as for Court to find, that a general right of this kind had been infringed in a given case. The Sub-Committee, therefore, deemed it fit to place such rights in the chapter on ‘non-justiciable rights’ and made it clear that these rights were intended to be directions for the general guidance of the State and were not cognizable by any Court.\textsuperscript{141}

Commenting on the Draft Report, Raj Kumari Amrit Kaur and Mrs. Mansa Mehta, members of the Constituent Assembly observed that these rights, though not enforceable by legal action, were none the less fundamental in character in as much as they were vital to the well being and ordered progress of the State. They urged therefore that a suitable provision should be incorporated in the chapter enjoining the State to take as soon as possible the necessary action in fulfillment of these directives.\textsuperscript{142}

This shows that even during the separation of these two kinds of rights the members of the Assembly wanted to give the due importance to these directives. They, in their view were fundamental to the well being and ordered progress of the society. This can further be demonstrated from the letter of Professor Shah,\textsuperscript{143} dated 10 April 1947, in which while appreciating the distinction between justiciable and non-justiciable, he apprehended that due to this distinction, the latter were likely to be treated as “so many pious wishes”. Referring to the right to useful work or employment, Prof. Shah observed that, even though this was considered non-justiciable, it could be made real and effective if the State was charged with a categoric obligation to provide useful work for every citizen who was able and qualified. It would then be necessary for the State to prepare a comprehensive well-knit plan for the development of all the resources of the country for maintaining a given standard of living for every member of the community. He suggested that the principles included in the so called non-justiciable rights should not be treated as mere directions of policy for general guidance, they must be regarded as the “objectives of national activity” and it must be the endeavour of every unit as well as the Union to give effect to them.\textsuperscript{144}

\textsuperscript{141} Select Documents, supra note 91 at 137.
\textsuperscript{142} See Raj Kumari Amit Kaur’s letter to B.N.Rau, dated 31 March 1947, id. at 146-47.
\textsuperscript{143} Id. at 153-54.
\textsuperscript{144} Ibid.
Thus, the members of Sub-Committee wanted to make these so called non-justiciable rights not merely for the direction or general guidance but much than that so as to make it possible that every citizen of the country may enjoy its fruit. It was due to this fact that the Sub-Committee, in finalizing its report on 15 April 1947 decided to place special emphasis on the fundamental character of these principles. Accordingly, the opening clause was re-drafted as follows: The principles of social policy set forth in this Part are intended for the guidance of the State. While these principles shall not be cognizable by any Court, they are nevertheless fundamental in the governance of the country and their application in the making of laws shall be the duty of the States.\(^\text{145}\)

On 15 April 1947, the Sub-Committee accepted Clauses 24, 25 and 26 of the Draft Report\(^\text{146}\) relating to education and also decided that the provisions relating to preservation of monuments should be transferred to the non-justiciable rights section as an obligation of the State.\(^\text{147}\)

While forwarding its report to the Chairman of the Advisory Committee, the Sub-Committee stated that the distinction was based on the Irish Constitution model and adopted a middle course between the one adopted in the Constitution of the U.S.A. and one perused in recent European Constitutions which had mixed up the two sets of rights.\(^\text{148}\) At the same time, the peculiar conditions and complexities of Indian life were also borne in mind.

The report of the Sub-Committee on Fundamental Rights was sent to the Minorities Sub-Committee\(^\text{149}\) for its comments and suggestions. The Minorities Sub-Committee considered the various clauses and had one comment on the clause proposing

\(^{145}\) See Minutes of the meeting of the Sub-Committee, \textit{id.} at 168.

\(^{146}\) Clause 24: Every citizen is entitled as of right to free education, and it shall be the duty of the State to provide within a period of ten years from the commencement of this Constitution for free and compulsory primary education for all children until they complete the age of 14 year.

Clause 25: Every citizen is entitled, as part of his right to free primary education, to have facilities provided for learning the national language either in the Devanagari or the Persian script at his option.

Clause 26: Equal opportunities of education shall be open to all citizens - provided that, nothing herein contained shall preclude the State from providing special facilities for educationally backward sections of the population.

\(^{147}\) It may be pointed out that earlier this provision, which was contained in Munshi’s draft was placed by the Sub-Committee in the category of justiciable right. See \textit{Select Documents}, \textit{supra} note 91 at 125, 141, 166.

\(^{148}\) \textit{Select Documents}, \textit{id.} at 169.

\(^{149}\) The Sub-Committee on minorities was appointed on 27 February 1947 along with the Fundamental Rights Sub-committee. Its first meeting was held on 17 April 1947 to examine the drat clauses recommended by the Fundamental Rights Sub-Committee.
a Uniform Civil Code for all citizens and felt that the application of such a code should be made on an entirely voluntary basis. In its interim report, the Sub-Committee recommended that the clause regarding a Uniform Civil Code be suitably re-drafted.

Some of the members of the Sub-Committee were still not fully satisfied with the report. Prof. Shah expressed his fear that the whole scheme of the directives might be reduced to a ‘needless fraud, an excellent window dressing without any stock behind that dressing.’ In a dissenting note dated 20 April 1947, Professor Shah submitted that he was not satisfied with the distinction drawn by the Fundamental Rights Sub-Committee between the justiciable and non-justiciable rights. He pointed out that there were very many rights which it might not be possible to give effect to. By way of example, he mentioned the justiciable right of citizen to a given standard of education, free of cost to the recipient, his parent or guardian. He admitted that such a policy might not be feasible all at once for reasons of finance and personnel. It was in order to meet such difficulties that this right was made enforceable within a period of not more than ten years. He made it clear that if no such difficulties that this right was made enforceable within a period of not more than ten years. He made it clear that if no such responsibility was placed on those who are responsible for its implementation, then they might be inclined to avail themselves of every excuse to justify their own failure in the matter. He, therefore, wanted to make these principles of social policy as categoric injunctions or obligations of the State to be given effect to as soon as possible.

Thus, from this note it becomes clear that the distinction between justiciable and non-justiciable right was made because at that time the State was at nascent stage (beginning) and not in a position to carry out all its obligations. But at the same time, it was suggested that a time limit must be fixed during which even the non-justiciable rights should also be made justiciable so as to subserve the common good of all the citizens.

2.3.3 Deliberations of the Advisory Committee on Directive Principles of State Policy

The Advisory Committee met on 21 and 22 April 1947, to discuss the final Draft

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150 Select Documents, supra note 91 at 206.
151 Id. at 209.
152 Id. at 192.
153 Id. at 191-92.
Report submitted by the Sub-Committee on Fundamental Rights and the interim report of the Sub-Committee on Minorities. Vallabh Bhai Patel, the Chairman of the Advisory Committee observed that the report on non-justiciable Fundamental Rights was yet to be discussed by the Committee and the desirability of transferring certain clauses from one Part to another could be discussed at the appropriate time.¹⁵⁴

Submitting its supplementary report on Fundamental Rights for the consideration of the Constituent Assembly on 25 August 1947, Sardar Vallabhbh Bhai Patel, the Chairman of the Advisory Committee, observed:¹⁵⁵

We have come to the conclusion that, in addition to justiciable rights the Constitution should include certain Directive Principles of State policy which, though not cognizable in any Court of law, should be regarded as fundamental in the governance of the country.

On 30 August 1947, Sardar Patel moved the supplementary report submitted by the Advisory Committee for the consideration of the Assembly. Sardar Patel, the Chairman of the Advisory Committee, laid much stress on the fundamental nature of the directives and the need to include them in the Constitution. In spite of that, three members in Constituent Assembly¹⁵⁶ expressed their doubt regarding the necessity of including a list of ineffective Directive Principles. R.K. Sidhwa was of the opinion that unless the Directive Principles were made justiciable, they would not give any satisfaction to the common man in the India.¹⁵⁷

A critic of the report was P.S. Deshmukh, he held the view that the Directive Principles mentioned in the list were of such great importance that no modern State would dare to disown them. He accused the Committee for blindly copying the provisions of the Irish and some other Constitutions without giving much thought to their usefulness. Questioning the sanctity of these Principles Deshmukh said:¹⁵⁸

¹⁵⁴ See Interim Report of the Advisory Committee on Fundamental Rights 23 April 1947, id. at 294.
¹⁵⁵ Supra note 104 at 373; Select Documents, supra note 91 at 304.
¹⁵⁶ It was regarded as First reading of the Draft in the Constituent Assembly.
¹⁵⁷ Supra note 104 at 335-337.
¹⁵⁸ Id. at 340-341. Projecting the difficulties and the problems of the Indian people, Deshmukh observed: our difficulties and impediments are diverse. The first is the poverty of our people, then ignorance and illiteracy, then lack of food, lack of vitality, lack of morals, inhuman greed and consequent exploitation, ruthless profiteering and consequent oppression – moral, mental, social, spiritual these Fundamental Rights going to protect us from this oppression, that is the question. Id. at 342.
Instead of having all these several items, let the framers of our Constitution give us a definite program that they are determined to give effect to. The whole of India is thirsting for it.

In fact, Deshmukh wanted that the Constitution, instead of laying down so many principles should lay down the effective means as to when and how these principles are going to be translated into practice.

Welcoming the provision of free and compulsory primary education, V.D. Tripathi said: 159

This would afford on equal opportunity to every child to receive education up to a minimum standard. He pleaded for incorporating four more Fundamental Rights in the Constitution, namely, first, the poor should have the right to raise to the highest position in life and should be provided with the means to do so, second, for maintaining cultural unity, there should be one national language (He pleaded for making Hindi as the national language), third, India being predominantly an agricultural country, cow slaughter should be banned, and fourthly, to make the nation strong, every Indian, who is physically fit should receive military training. He made it clear that until these fundamental principles are added, the country cannot become strong.

This shows that the members wanted to give due importance to these directives under the new Constitutional framework of India and did not at all want to make them inferior from what we now call Fundamental Rights. They were fully aware of the Indian conditions and wanted the social upliftment of the downtrodden people of India, in their opinion it was not proper to demarcate the functions of the Government into justiciable and non-justiciable and emphasized that the primary duty of the Government was the social upliftment of the Indian people.

2.3.4 Directive Principles of State Policy in Rau’s Draft Constitution

The Constituent Assembly, after a brief discussion in the supplementary report of the Advisory Committee on Fundamental Rights, Minorities etc. on 30 August 1947, sent

159 Id. at 343-348.
it to the Constitutional Advisory for being adopted in the Draft Constitution and for further consideration by the Drafting Committee.

In the Draft Constitution of 7th October 1947,\(^ {160}\) prepared by the Constitutional Advisor, B.N. Rau, all the provisions regarding Fundamental Rights and Directive Principles were included in Part III which was entitled as “Fundamental Rights including Directive Principles of State Policy”. This Part was divided into three chapters, the first containing general provisions, the second Fundamental Rights, and the third, Directive Principles of State Policy. The Preamble of the fundamental principles of Government found place in Rau’s draft in Chapter 1 as clause 10 and the “principles” in Chapter III as clauses 31 to 41. Thus, Rau’s Draft was divided into three chapters which are discussed as follows: \(^ {161}\)

**Chapter I - General**

10. The principles of policy set forth in Chapter III of this Part are intended for the guidance of the State. While these principles are not cognizable by any Court, they 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.

**Chapter II – Fundamental Rights from Clauses 2 to 30**

**Chapter III – Directive Principles of State Policy 31 to 41**

31. The State shall strive to promote the welfare of the whole 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.

32. The State shall, in particular, direct its policy towards securing:

(i) that the citizens, men and women equally have the right to an adequate means of livelihood;

(ii) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(iii) that the operation of free competition does not result in the concentration of the ownership or control of essential commodities in a few individuals to the common


\(^ {161}\) *Id.* at 7-14.
detriment;
(iv) that there is equal pay for equal work for both men and women;
(v) that the strength and health of workers, men and women, and the tender age of
children are not abused and the that citizens are not forced by economic necessity to
enter avocations unsuited to their age or strength;
(vi) that childhood and youth are protected against exploitation and against moral and
material abandonment.
33. The State shall, within the limits of its economic capacity and development, make
effective provision for securing the right to work, to education and to public
assistance in case of unemployment, old age, sickness, disablement, and other cases
of undeserved want.
34. The State shall make provisions for securing just and human conditions of work and
for maternity relief for workers.
35. The State shall endeavour to secure, by suitable legislation or economic organization
or in any other way, to all workers industrial or otherwise, work, a living wage,
conditions of work ensuring a decent standard of life and full enjoyment of leisure
and social and cultural opportunities.
36. The State shall endeavour to secure for the citizens a Uniforms Civil Code.
37. Every citizen is entitled to free primary education, and it shall be the duty of the State
to provide, within a period of ten years from the commencement of this Constitution,
for free and compulsory primary education for all children until they complete the age
of fourteen years.
38. The State shall promote with special care the educational and economic interests of
the weaker sections of people and, in particular, of the scheduled castes and the
scheduled tribes, and shall protect them from social injustice and all form of
exploitation.
39. The State shall regard the raising of the level of nutrition and the standard of living of
its people and the improvement of public health as among its primary duties.
40. It shall be the obligation of the State to protect every monument or place or object or
artistic or historic interest, declared by Federal law to be of national importance, from
spoliation, destruction, removal, disposal or export, as the case may be, and to
preserve and maintain according to Federal Law all such monuments of places or objects.

41. The State shall promote international peace and security by the prescription of open, just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among Governments and by the maintenance of justice and the scrupulous respect for treaty obligations in the dealings of organized people with one another.

Although Rau, in his Draft Constitution of 7 October 1947 had incorporated the provisions relating to Fundamental Rights and Directive Principles of State Policy in a single Part, namely, Part III yet he wanted these directives to be retained merely as guidance for State action. In the altered status and the importance accorded to the directives,\textsuperscript{162} he foresaw the possibility of a conflict between the Directive Principles and Fundamental Rights. He was not happy with the wording of Clause 10 which imparted a fundamental character to these directives. He therefore, suggested that a provision should be made in the Constitution to make it clear that no law made by the State in discharge of its obligations contained in the directives shall be deemed to be invalid merely because it contravenes the provisions of Fundamental Rights.\textsuperscript{163}

Rau pointed out that on certain occasions, it might be necessary for the State to invade private rights in discharge of one of its fundamental duties, for example to raise the nation’s standard of health, of living etc. But the Fundamental Rights being justiciable and Directive Principles being without legal force, the private right may override the public weal.\textsuperscript{164} To give some examples the State might be required to take possession of unhealthy slums or demolish them in the interest of public health as directed under clause 39.\textsuperscript{165} But clause 25 might hinder such action of the State, unless adequate compensation is paid to the slum owners.\textsuperscript{166} The scheme of nationalization

\textsuperscript{162} The Fundamental Rights Sub-Committee on being pressed by Raj Kumari Amrit Kaur, Hansa Mehta and Prof. K.T. Shah had transformed these “directives” into fundamental principles in the governance of the country and imposed upon the State the duty of giving effect to them in making laws.
\textsuperscript{163} Supra note 160 at 199.
\textsuperscript{164} Ibid.
\textsuperscript{165} Id. at 108.
\textsuperscript{166} In England, under section 36 of the Housing Act, 1935, the Local authority in certain circumstances can enter into and demolish unhealthy slums without payment of compensation and even sell the material in order to recover demolition expenses.
(clause 32)\textsuperscript{167} might also be impeded similarly as it would invade the property rights of the persons.\textsuperscript{168}

Munshi, Ambedker and Shah would have gone even further than Rau. They would have made the Directive Principles or an even more rigorous social programme, justiciable. They disliked mere precepts and in the end, supported them in the belief that “half a loaf was better than none.”\textsuperscript{169} Later Munshi came out strongly in favour of the principles. He had included in his draft the “Right of workers” and “social Rights” and remarked:\textsuperscript{170}

Even the non-justiciable rights have to be announced in order to form the basis of protest against arbitrary legislation. They are body of doctrines to which public opinion can rally.

Thus, all these members had in their mind that these principles should prevent any arbiter legislation. They wanted all the social rights to be expressly incorporated in the Constitution of India.

The danger of conflict between Directive Principles and Fundamental Rights occupied Rau’s mind even during his visit to abroad. On the completion of the draft of the Constitution for consideration by the Drafting Committee, the Constitutional Advisor, Rau visited the United States of America, Canada, Ireland and the United Kingdom for personal discussions with some of the leading personalities and Constitutional experts on important features of India’s Draft Constitution. While in U.S.A. he discussed the issue with Justice Frankfurter and Justice Hand of the Supreme Court of America and also John Hearne, the High Commissioner for Ireland in Ottawa.\textsuperscript{171}

Justice Frankfurter agreed with Rau’s views that there should be an express provision in the Constitution that when a law enacted by the State in the discharge of one of the fundamental duties imposed upon it by the Constitution happens to conflict with one of the Fundamental Rights guaranteed to the individual, the former should prevail over the latter. In other words, the general welfare should prevail over the individual right.\textsuperscript{172}

\textsuperscript{167} Supra note 160 at 99.
\textsuperscript{168} Ibid.
\textsuperscript{169} Supra note 2 at 78.
\textsuperscript{170} Ibid, referring to Munshi’s notes on Constitution.
\textsuperscript{171} Supra note 160 at 217.
\textsuperscript{172} Id. at 218
Hearns also expressed the similar view. Justice Hand, however, held a different view and said it would be a mistake to have any justiciable Fundamental Right at all in the Constitution. He preferred to retain all Fundamental Rights as moral precepts rather than as legal fetters in the Constitution.¹⁷³

From the above observations it is amply clear that the conflict between the Fundamental Rights and the Directive Principles was visualized by Rau at the time of the presentation of the Draft Constitution and he wanted to give more importance to the social welfare rather than to the individual right. And his intention become clearer when after the above mentioned discussions, he suggested certain modifications in clauses 9(2) and 10 of his Draft Constitution which he had prepared on 7 October 1947. The modified clauses read as follows:¹⁷⁴

9(2): subject to the provisions of section 10, nothing in this Constitution shall be taken to empower the State to make any law which curtails or takes away or which has the effect of curtailing or taking away any of the rights conferred by Chapter II of this Part except by way of amendment of this Constitution under section 232 and any law made in contravention of this section shall, to the extent of the contravention be void.

The following new paragraph was added to clause 10:¹⁷⁵ No law which may be made by the State in the discharge of its duty under the first paragraph of this section and no law which may have been made by the State in pursuance of the principles of policy set forth in Chapter III of this Part shall be void merely on the ground that it contravenes the provisions of section 9, if is inconsistent with the provision of Chapter II of this Part. Explaining the object of this consequential amendment, Rau observed:¹⁷⁶

The object of these amendments is to make it clear that in a conflict between the rights conferred by Chapter II, which are for the most part rights of the individuals, and the principles of policy set forth in Chapter III which are intended for the welfare of the State as a whole, the general welfare should prevail over the individual rights. Otherwise it would be meaningless to say…that these principles of policy are fundamental and

¹⁷³ Ibid.
¹⁷⁴ Id. at 7, 98, 226.
¹⁷⁵ Id. at 226.
¹⁷⁶ Ibid.
that is shall be the duty of the State to give effect to them in its laws. In the
Constitution of the United States of America there are no express
Directive Principles of State Policy, but the Courts have developed what is
equivalent thereto, namely, the doctrine of the “police power” which has
been defined as the power ‘to prescribe regulations to promote the health,
peace, morals, education and the good other of the people, and to legislate
so as to increase the industry of the State, develop its resources, and add to
its wealth and prosperity.’ In the exercise of this power the State may
make laws for the general welfare which would otherwise be inconsistent
with the American Bill of Rights. The Courts in India might have been
able to develop a similar doctrine but for the language of section 9 of the
Draft Constitution. Hence, the amendments proposed.

Thus, the only purpose of the amendment was to give binding effect to the
principles which the State could apply irrespective of the fact that they might contravene
Fundamental Rights.

2.3.5 Deliberations of the Drafting Committee on Directive Principles of State Policy

On 29 August 1947, the Assembly appointed a Drafting Committee to scrutinize
the Draft Constitution prepared by Rau. Dr. Ambedkar was elected Chairman of the
Committee.\textsuperscript{177} The Drafting Committee started its deliberations on the Draft Constitution
with effect from 27 October 1947. The provisions relating to Directive Principles of State
Policy came before the Committee for consideration on 30 October 1947. It was decided
that the Directive Principles of State Policy should be transferred from Part III to a new
Part. It was further decided that clause 10\textsuperscript{178} of Chapter I entitled “General” relating to
the principles of policy set forth in Chapter III should also be transferred to a new Part
containing the Directive Principles of State Policy.\textsuperscript{179} It appears that the Committee
wanted to be more specific about the position of Fundamental Rights \textit{vis-a-vis} Directive
Principles of State Policy. Therefore, it thought it better to integrate all the provisions
concerning the Directive Principles of State Policy at one place.

\textsuperscript{177} Id. at 313; \textit{supra} note 104 at 293, 294.
\textsuperscript{178} \textit{Supra} note 160.
\textsuperscript{179} Minutes of the Proceedings of the Drafting Committee, \textit{id.} at 325.
The Drafting Committee in its subsequent meeting held on 3 November 1947 affected further changes in clauses 36 and 40 of the newly introduced Part III A of the Draft Constitution. The Committee suggested that at the end of clause 36, the words “throughout the territory of India” should be added. It also made certain modifications in clause 40. The revised clause read as: It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by Parliament by law to be of national importance, from spoliation, destruction, removal, disposal or export, as the case may be, and to preserve and maintain according to law made by Parliament all such monuments or places or objects.\textsuperscript{180}

Clauses 30B, 34 and 37 of the Directive Principles were further modified by the Drafting committee in the meeting held on 30 January 1948.\textsuperscript{181}

After a careful scrutiny of the Draft Constitution of Rau and other available materials, the Committee prepared a revised Draft Constitution and submitted it to the Assembly on 21 February 1948.\textsuperscript{182} The amendment suggested by Rau to strengthen the Constitutional position of the Directive Principles does not seem to have been considered. It appears that the amendment in question may have been treated as unnecessary because on a fair reading of the entire Constitution it was abundantly clear that the Fundamental Rights must need be consonant with the Directive Principles.

Subsequently, the Drafting Committee again on 23, 24 and 27 March 1948 to consider these recommendations and made certain amendments in the original draft.\textsuperscript{183} The original Draft Constitution together with the proposed amendment was considered by a Special Committee which held its meetings on 10-11 April 1948.\textsuperscript{184} The Special Committee was consisting of certain members of the Union Constitution Committee, the Union Powers Committee and the Provincial Constitution Committee, and the final Draft as settled by the Drafting Committee was prepared for being approved by the Constituent Assembly.\textsuperscript{185}

\textsuperscript{180} Id. at 334-337.
\textsuperscript{181} Id. at 410.
\textsuperscript{182} Id. at 509.
\textsuperscript{183} B.Shiva Rao, The Framing of India’s Constitution: select Documents (a project completed under the chairmanship of B. Shiva Rao) Vol. IV, 392 (Government of India Press, New Delhi, 1968).
\textsuperscript{184} Id. at 408.
\textsuperscript{185} Id. at 415.
2.3.6 Reading of the Draft Constitution in the Constituent Assembly

The first reading of the Draft Constitution relating to Directive Principles was commenced on 19 November 1948 and lasted for five days. The Assembly also adopted five amendments for the addition of new provisions in the chapter on Directive Principles of State Policy. The first amendment moved by K. Santhanam, sought to add a new Article providing that the State shall take steps to organize village panchayats and endow these with such powers and authority as may be necessary to enable them to function as units of self Government. The members of the Assembly felt that the panchayats were ancient institutions and they were in their blood. This amendment was accepted by Dr. Ambedkar without any comment. However, earlier while introducing the Draft Constitution and referring to criticisms thereof, Ambedkar had expressed himself strongly against the system of village panchayats, characterizing the village as “a sink of socialism” and “a den of ignorance, narrow sidedness and communalism. Thus, at least the Assembly incorporated the amendment of Santhanam into the Constitution under draft Article 40, echoing in a way the words of Granville Austin, If India is to progress, it must do so through re-awakened village life.

The second amendment, moved by T.A. Ramalingam Chettiar, proposed the addition of a clause providing that the State shall endeavour to promote cottage industries on co-operative lines in rural areas. The amendment was supported by several members. Ambedkar was prepared to accept the amendment after some changes and add it to the Article which dealt with the State’s obligation to secure to all workers a living wage, good condition of work and decent standard of life, etc. The third amendment relating to prohibition of intoxicating drinks and injurious drugs was moved by Mahavir Tyagi and modified by Prof. Saksena to make their use for medical purposes permissible. But

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186 See the speech of Prof. Shibban Lal Saksena, VII Constitutional Assembly Debates at 520.
187 Id. at 316 (Gokul bhai Bhatt).
188 Id. at 39. In the Draft Constitution of India, there was no provision for village panchayat. Neither the Union Constitution Committee nor the Provincial Constitution committee made any provision for the same. When the Draft Constitution was published, Rajendra Prasad, the President of the Constituent Assembly, wrote a letter to B.N. Bau, expressing his willingness for introduction of village panchayats and making them the Electoral College for electing representatives to the Provinces and the Centre. But the Constitutional Advisor showed his inability in incorporating the panchayat scheme in the Constitution. See Panchanand Misra, The making of the India Documents 108-109 (Scientific Book Agency, Calcutta, 1966).
189 Supra note 2 at 38.
190 Supra note 186 at 498, 555.
B.H. Khandekar opposed it.\textsuperscript{191} Jaipal Singh also warned that as far as the Adibasis were concerned no religious function would be performed without the use of rice beer.\textsuperscript{192} Ambedkar, however, accepted the amendment as it had wide support. He said that there should be no anxiety to Khandekar as there was no compulsion on the State to act on this principle.\textsuperscript{193} Thus, the Article, as amended, was adopted by the Assembly.

The fourth amendment which was moved by Takurdas Bhargava, sought the addition of the Article 48-A which states that the State shall endeavour to organize agriculture and animal husbandry on modern and scientific lines and shall in particular take steps of preserving and improving the breeds of cattle and prohibit the slaughter of cows and other useful cattle, especially million and draught cattle and their young stock.\textsuperscript{194} Bhargava wanted complete prohibition of cow slaughter. He pointed out that even during the Muslim rule cow slaughter was not practiced in India. Similarly, in china cow slaughter was a crime. It was banned in Afghanistan and Burma as well. He pleaded that the provision in question should be provided in the chapter on Fundamental Right itself. But as a way of compromise, he agreed to include it in the Directive Principles of State Policy.\textsuperscript{195}

The fifth amendment which emanated from the Drafting Committee and was moved by Ambedkar, sought the addition of a new Article enjoining the State to take steps to secure the separation of judiciary from the executive within the period of three years from the commencement of the Constitution.\textsuperscript{196} This demand had been continued right from the time the congress was founded. During the debate, Ambedkar agreed to drop three years time limit on the suggestion of T.T. Krishnamanchari who stated that no useful purpose could be served by imposing three years limit when the provisions of the Article themselves are not enforceable or mandatory\textsuperscript{197} Thus, the Article, as modified was

\textsuperscript{191} \textit{Id.} at 556-59.
\textsuperscript{192} \textit{Id.} at 559.
\textsuperscript{193} \textit{Id.} at 556-67. Ambedkar made it clear that the scheme envisaged in paragraphs 12 of the sixth schedule was that the law made by the State shall not automatically apply to such areas. He pointed out that only the District councils or the Regional Councils which may be set up under the Constitution for the purpose of running administration of those areas would decide whether any such law enacted by the Centre or the State should be applied to that particular region or an area. \textit{Ibid.}
\textsuperscript{194} \textit{Supra} note 186 at 568.
\textsuperscript{195} \textit{Id.} at 570-72.
\textsuperscript{196} \textit{Id.} at 582
\textsuperscript{197} \textit{Ibid.}
finally adopted by the Assembly.

There were a number of other amendments designed to modify one or the other of the directives as formulated in the Draft Constitution. Demodar Swarup Seth proposed the imposition on the State of an obligation to promote the welfare of the people by establishing and maintaining a democratic socialist order. Again, in the Article 198 which imposed a duty on the State to secure the distribution of the ownership and control of the material resources of the community so as to subserve best the common good, Prof. Shah sought the insertion of a clause vesting the ownership, control and management of all natural resources of the country in the Government.199

Ambedkar, opposing all these amendments and suggestions, said that the main object of incorporating the Directive Principles in the Constitution was to lay down that future Governments should strive for the achievement of the ideal of economic democracy, but not to prescribe any particular or rigid method or way, whether individualist, socialist, or a communist, to achieve it.200

Another Article201 enjoining the State to secure for the citizens a Uniform Civil Code throughout the territory of India evoked considerable controversy. A number of Muslim members - Mohammad Ismail, Mahboob Ali Being, B. Pocker Sahib and Hussain Imam opposed it on the ground that its enforcement would impinge on the right of a group or community to follow its own personal law. Accordingly, the imposition of a Uniform Civil Code would not only conflict with the freedom of religion guaranteed by draft Article 19, but would also amount to tyranny over those who wanted to follow their own personal laws.202 Dealing with the apprehensions that a Uniform Civil Code might be forcibly imposed on unwilling minorities or groups, Ambedkar said that there was nothing in the draft Article to suggest than the State would enforce a Uniform Code upon all citizens merely because they were citizens, and it was possible that a future Parliament might make a provision that to begin with, the code would apply only to those who declared that they were prepared to be bound by it.203 After Ambedkar’s speech the

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198 Articles 31 Clause (3).
199 Supra note 186 at 486-87, 508.
200 Id. at 494-95.
201 Article 35.
202 Supra note 186 at 540-546.
203 Id. at 551.
motion for the adoption of above provision was passed and it was included in the Constitution.

The discussion on Part IV was completed on 25 November 1948 and the Assembly also accepted a few verbal amendments to improve the language of the draft.\textsuperscript{204}

The second reading of the Draft Constitution which had commenced on 15 November 1948 came to an end on 17 October 1949. The Assembly then asked the Drafting Committee to re-draft the Constitution in the light of the amendments adopted and recommendations made. Accordingly, the Committee re-drafted the Constitution and submitted it to the President of the Assembly on 3 November 1949.\textsuperscript{205} In this new Draft the Committee, with some consequential and formal modifications, re-arranged the scheme of Articles contained in Part IV and they appear as Articles 36 to 51 of the Constitution.

The Constituent Assembly started the third reading of the Constitution on 17 November 1949. It was not a clause to clause reading but a general discussion. No material amendment was made to the revised Draft Constitution.\textsuperscript{206}

At the third reading stage also many members expressed their views on the general nature, content and contour of the provisions concerning the Directive Principles of State Policy. Seth Govind Das observed that:\textsuperscript{207}

\begin{quote}
Since we have provided in the Fundamental Rights that untouchability is an offence, we should also declare that “cow killing” is also a crime.
\end{quote}

While N.V, Gandil elaborated the concept of socio-economic justice in the Constitution, B.G. Kher hailed the provision of prohibition and said that this was a subject of great concern for Gandhiji.\textsuperscript{208} Smt. Renuka Roy hoped that the State shall spare no time in making these principles fundamental in the near future.\textsuperscript{209} Thakur Das Bhargawa who spoke in favour of both Fundamental Rights and Directives Principles described them to be “the soul of the Constitution” and a guiding star” for the future Governments.\textsuperscript{210}

\begin{flushleft}
\textsuperscript{204} \textit{Id.} at 606.
\textsuperscript{205} \textit{Supra} note 183 at 745.
\textsuperscript{206} See Appendix A (i) for Revised Draft Constitution; XI \textit{Constitutional Assembly Debates} at 607-922, 938, 996.
\textsuperscript{207} \textit{Id.} at 613.
\textsuperscript{208} \textit{Id.} at 660, 666.
\textsuperscript{209} \textit{Id.} at 716.
\textsuperscript{210} \textit{Id.} at 686.
\end{flushleft}
Professor Shibhan Lal Saksena, however, doubted the implementation aspect of the directives. He pointed out that so long as Article 31 remains in the Constitution, it was very difficult to translate these directives into practices.\(^{211}\) Jaspat Roy Kapoor said that the provisions relating to organization of village panchayats, cottage industries prohibition and promotion of internal peace, bear a Gandhian mark.\(^ {212}\) The provisions regarding women and children were welcomed by Rohini Kumri Chandhari, but she regretted that the Assembly did not make any provision for protection needed against women.\(^ {213}\) Expressing his views on the utility of the directives, Nand Kishore Das observed:\(^{214}\)

The Directive Principles of State Policy represent the quintessence of all that is the best and noblest in any code of social, political, cultural or economic ethics that prevail in any part of the world.

But Kamlapati Tiwari was not satisfied with the hopes held out in Part IV. He said that the Constitution has failed to give anything for the poor, the naked and the hungry. It gives them no guarantee against poverty and unemployment.\(^ {215}\) Kameshwari Prasad Yadav also spoke in the same voice. He pointed out that:\(^ {216}\)

The word “the State shall endeavor to” in Articles 40 to 50 may appear to be attractive but there was no life in them. He said that this was nothing but another way of evading responsibility.

At the end of the discussion, Rajendra Prasad, the President of the Constituent Assembly gave a very illuminating speech. He described the task accomplished by the Assembly as of “tremendous magnitude”. He observed that the success or failure of the Constitution would depend on those who operate it. The Constitution can be worked as well as wrecked by its people. It lays down a plan for peace, progress and prosperity. To quote him:\(^ {217}\)

After all, a Constitution like a machine is a lifeless thing. It acquires life because of the men who control it and operate it and India needs today

\(^{211}\) Id. at 706.
\(^{212}\) Id. at 760-61.
\(^{213}\) Id. at 791.
\(^{214}\) Id. at 851.
\(^{215}\) Id. at 865.
\(^{216}\) Id. at 972.
\(^{217}\) Id. at 993.
nothing more than a set of honest men who will have the interest of the country before them.

2.3.7 Adoption of Directive Principles and Commencement of the Constitution, 1950

The Constitution as settled by the Constituent Assembly was adopted on 26 November 1949 and came into force on 26 January 1950. Part IV of the Constitution as enforced dealt exclusively with the Directive Principles of State Policy. The text of the Articles contained in this Part is given as below.\(^\text{218}\)

36. In this Part, unless the context otherwise requires “the State” has the same meaning as in Part III.

37. 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.

38. 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.

39. The State shall in particular, direct its policy towards securing:
   (a) that the citizens, men and women equally, have the right to an adequate means of livelihood;
   (b) that the ownership and control of material resources of the community are so distributed as best to subserve the common good;
   (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;
   (d) that there is equal pay for equal work for both men and women;
   (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
   (f) That childhood and youth are protected against exploitation and against moral and material abandonment.

\(^{218}\) Supra note 183 at 762-64.
40. The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self Government.

41. The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement, and in other.

47. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

48. The State shall endeavor to organize agriculture and animal husbandry on modern and scientific lines and shall in particular, take steps for improving the breads of milch and draught cattle including cows and calves and prohibiting their slaughter.

49. It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest declared by Parliament by law to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

50. The State shall take steps to separate judiciary from the executive in the public services of the State.

51. The State shall endeavor to:
(a) Promote international peace and security;
(b) Maintain just and honorable relations between nations;
(c) Foster respect for international law and treaty obligations in the dealings of organized peoples with one another;
(d) Encourage settlement of international disputes by arbitration.

Taken together these principles lay down the foundations on which a new democratic India will be built up. They represent the minimum of the ambitions and aspirations cherished by the people of India, set as a goal to be realized in a reasonable period of time.
2.4 CONSTITUENT ASSEMBLY DEBATES REGARDING THE NATURE AND SIGNIFICANCE OF DIRECTIVE PRINCIPLES OF STATE POLICY

In order to evaluate the nature and significance of the Directive Principles, it is necessary to analyze the views expressed on them by the Members of the Constituent Assembly. There was a big debate on the nature and significance of Directive Principles in the Constituent Assembly. On one hand some members considered them as just pious wishes devoid of any Constitutional value. On the other a number of members assigned them a place of real significance in the Constitution.

K.T Shah linked them to “a cheque on a bank payable when able” because of its non-justifiable character. He observed that every citizen should have the right to compel the State to enforce these obligations by whatever means may be found practicable and effective, and conversely the State also should have the right to see that every citizen fulfills his obligation to the State. 219

Syed Karimuddin said that what stated in Part IV was vague. There was a view of economic pattern of the Country in which lot of poor masses could be improved, but the Constitution made no promise for nationalization and for the abolition of Zamidari. It was nothing but a drift. Not to have a definite economic pattern in the Constitution of free India was a great tragedy. 220

Nusiruddin Ahmed said that these were “pious expressions” and “picas superfluities”. Every Constitutional principle should give a right, and every right should be justifiable in the Court of law and in other places. If these principles were purely of directive character without a binding force, then there was some other principles also which should also be equally introduced, for example, do not tell a lie etc. If there was any principle which required to be mentioned it must be justifiable, it must be enforceable in a Court of law. To his view, if these principles were introduced without making them justifiable, then they would become “like resolutions made on New Year’s Day which are broken at the end of January.” 221

P.S. Deshmukh called its inclusion in the Constitution as undemocratic and opposed to parliamentary democracy and want to the extent for suggesting its deletion

219 Supra note 186 at 479-80.
220 Id. at 244.
221 Id. at 475-76.
from the Constitution.

On the other hand, Prof. Shibban Lal Saksena considered it to be “an important chapter Laying down the principles which would govern the policy of the State” and which, therefore, would ensure to the people of the country the realization of the great ideals laid down by the Preamble. He further observed that the more fact that they were being included in the Constitution shows that every Legislature would be bound to respect these principles and any act which offended the directives shall be ultra virus. 222

Somnath Lahri, however, criticized the distinction made between justifiable and non-justifiable rights. He observed that it was really very difficult to say as to what constituted social, economic and non-justifiable rights. 223

Thakur Das Bhargava regarded them as the essence of the Constitution and justified the way in which they were worded, he said that they give us a target, they place before us our aim and we shall do all that we can to have this aim satisfied. 224

When the Supplementary report on Fundamental Rights was presented to the Assembly, Biswenath Das observed that under the Constitution the trimming millions do not find any hope that would ensure them the freedom from hunger, secure them social justice and ensure them a minimum standard of living and of public health. In the principles there was nothing which made it obligatory on the State to discharge its responsibilities to the people about common welfare. 225

Hessian Imam went to the extent of saying that these principles were very easily capable of being ignored by the party in power as they were non-obligatory in character. He pointed out that in the Instrument of instructions issued to the Governors under the Government of India nothing like that was provided. So there must be some superior authority to examine whether the Directive Principles were followed or not. 226

To clarify the above mentioned divergent views on the concept of directives, Ambedkar and Alladi Krishna swami Ayer on behalf of the Drafting Committee, gave a lucid exposition of what they intended the Directive Principles of State Policy to be.

Ambedkar compared the directives to the Instrument of Instructions which were

222 Id. at 482.
223 Supra note 120 at 384.
224 Supra note 186 at 277.
225 Supra note 120 at 367-68.
226 Supra note 186 at 491-92.
issued to the Governors by the British Government. The only difference was that they were instructions to the Legislatures and Executives. He said that such a thing was to be welcomed.\textsuperscript{227} Ambedkar while speaking on the significance and importance of Directive Principles observed:\textsuperscript{228}

There are various ways by which economic democracy may be brought about … We have left enough room for people of different ways of thinking, with regard to reaching of the ideal of economic democracy, to strive……. in their own way of reaching economic democracy, the fullest opportunity to acting the way in which they went to act.

Ambedkar’s observations in respect of the objective’s Resolution are worth nothing: \textsuperscript{229}

I do not understand how it could be possible for any future Government which believes in doing justice, socially, economically and politically, unless its economy is a socialist economy.

Explaining the object of the framing of the Constitution, he said that it was two-fold; one, to lay down that our ideal was political democracy, and two, to lay down that our ideal was economic democracy, and also to prescribe that every Government would strive to bring about economic democracy. He said that if this was born in mind, then much of the misunderstanding under most members were laboring disappear. Ambedkar categorically made it clear that the Directive Principles are nothing but obligations imposed by the Constitution upon the various Governments in the country. They were meant to supplement Fundamental Rights and for broad basing political democracy and securing the collective well being of the people. It is, therefore, no use saying that the Directive Principles have no value. \textsuperscript{230}

Aladdin remarked that the Constitution while it does not commit to any particular form of economic structure or social adjustment, gives ample scope for future Legislatures and the future parliament to evolve any economic order and to undertake any Legislation they choose in public interest. He observed that the various provisions concerning the Directive Principles were not without significance and importance. While

\textsuperscript{227} \textit{Id.} at 41-42.
\textsuperscript{228} \textit{Id.} at 494.
\textsuperscript{229} \textit{Constituent Assembly Debates, supra note} 91 at 98.
\textsuperscript{230} \textit{Supra} note 186 at 494-95.
from the very nature they are unenforceable in a Court of law, but they are nevertheless fundamental in the governance of the country and the State have been directed to apply them in making Laws.\(^{231}\)

Besides, Alladi and Ambedkar, another legal stalwart Ananthasyanam Ayyangar answered those critics who held the view that the distinction between those justiciable and non-justiciable right was arbitrary. He pointed out that it was not the Court which could enforce these non-justiciable rights. It is the public opinion and the strength of the public opinion that is behind a demand that can enforce these provisions. This is the real sanction, and not the sanction of the Court of law.\(^{232}\)

From the above discussion which took place in the Constituent Assembly on the nature of directives, the following points may be deduced: First, that the directives are the instructions of the ultimate sovereign, the people of India to the future Legislatures and Executives in India that may be established by or under the Constitution. The directives in that sense are imperative and mandatory obligations on the State. Second, that the directives cannot be ignored by any responsible Government because the sanction behind them is not the Court but the strength of public opinion. Third, that the directives, wedded as it is, to the ideal of economic and social democracy, represent a dynamic move towards certain objectives. Fourth, that the Directive Principles enumerated in Part IV and the Fundamental Rights enshrined in Part III of the Constitution formulated an integrated scheme, the former imposing a positive duty on the State while the latter containing negative restrictions on the State activities. Fifth, that the non-justifiability of the directives should, however, not mislead one to believe that they are non-cognizable. The Courts can take cognizance of the Directive Principles in determining reasonableness of restrictions imposed by the legislative measures on the Fundamental Rights of the citizens or to adjudge whether a particular State action was for public purpose or otherwise. Finally, Part IV containing the Directive Principles does no confer rights or create remedies but it merely embodies the policies which aim at securing the social order as contemplated by the Constitution.

The Directive Principles are designed to supplement the Fundamental Rights and

\(^{231}\) Id. at 336.
\(^{232}\) Id. at 475.
secure for collective well being certain rights different from Fundamental Rights in nature and which Part III of the Constitution cannot secure to the individual. They are rights which the individual enjoy in his collective capacity by virtue of being a member of welfare State. They are not rights in the sense that they are inherent and the individual can demand as a matter or right, but rights which are conferred by the State on the individual for the specific objective of promoting the social well being. Similarly, they are duties upon the State only to the extent that they have to establish a social order in which social, economic and political justice would prevail. They are not the duties in the legal sense, duties for the non-performance of which the State shall be answerable in the Court of law, but they are duties definitely in the Constitutional sense.

The directives are not wholly “obligations” because through them certain rights can be conferred on the people and they have a legal character also by virtue of being a part of the Constitution which is a legal document. Also they are not mere “principles” though its title or heading States so. The directives, unlike principles, are binding in character and their non-observance could mean breach of faith. They aim at achieving social and economic democracy in addition to political democracy thereby supplementing and no supplanting the rights enjoyed by the individual under Fundamental Rights. Some critics have alleged that the statement “the principles enunciated in this Part are not enforceable by a Court of law” has stood in the way of appreciating the real nature and significance of the directives in the Indian Constitution. To this criticism K.C Markendan\textsuperscript{233} has replied that in Constitutional matters, there are such things as conventions which are not enforceable through Courts. But Constitutional conventions are often of equal value and effect.

Describing the nature and importance of the Directive Principles under the Indian Constitution, Granville Austin says that in these principles one can find a clear statement of social revolution. They aim at making the Indian massed free in the positive sense, free from the passivity engendered by centuries of coercion by society and by nature, free from the abject of physical conditions that had prevented them from fulfilling their best selves.\textsuperscript{234}

\textsuperscript{233} Supra note 26 at 145-46.
\textsuperscript{234} Supra note 2 at 50-51.
It is submitted that to have a proper understanding of the nature and significance of directives, the expression, “Justice – social, economic and political occurring in Article 38\(^{235}\) is of great significance. This significant expression forms the foundation on which the whole structure of Directive Principles is built up. This is intended to emphasize the fundamental aim of every democratic State in the modern times with a written Constitution. The Directive Principles included in the Indian Constitution are flexible and adjustable with changing times and circumstances and keeping in view this, Nehru regarded them as “dynamic” as against the Fundamental Rights which he called “static.”\(^{236}\)

The main question in the present context is whether these Directive Principles have helped to bring Indian society closer to the Constitutional goal of social, economic and political justice for all? This will be discussed in the subsequent chapters that how these principles have been cited by the Courts to support their decisions; how and to what extent they have been a guide for the Union Parliament and State Legislatures in the enactment of laws; how the Government bodies have guided by these provisions. In other words, what is the role of these various agencies of the State including the judiciary in the implementation of these principles? Thus, it is submitted that a policy for the economic development of Indian should conform to the “objectives” laid down in the … Directive Principles of State Policy.\(^{237}\)

### 2.5 CONCLUSION

Thus, the idea of Directive Principles of State Policy along with what are termed as Fundamental Rights in the Indian Constitution was mooted during our struggle for independence. In their early preparatory stage the Directive Principles and Fundamental Rights were not considered separable.

The main object of the British dominion of India was economic exploitation of the country and its people. Neither the people had any political or civil rights nor the Government had any economic or social responsibilities. The colonial era was marked by

\(^{235}\) Article 38 reads : (1) 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.

\(^{236}\) See observations of Nehru in Lok Sabha on 16 May 1951. See II Lok Sabha Debates, Cols.2822-3.

\(^{237}\) Supra note 2 at 114; Third Five Year Plan at 1-6.
the disintegration of rural economy – a consequence of agricultural disintegration due to oppressive land revenue system, the disintegration of village arts and crafts, the decline of indigenous industry; the development of British monopolies, and the creation of a few Indian capitalists and some other privileged classes, largely serving the British political and economic interests. The economic ruin was thus a direct consequence of the British rule.

On the other hand, spread of English education, impact of modern political thought and the idea of liberty and equality led to the growth of political consciousness and intense nationalism and consequent regeneration of Indian people. They were convinced that the solution of socio-economic ills of the country lay in the political freedom. Their movement under the Congress leadership was, therefore, directed to achieve that goal. During the national struggle the Congress not only demanded certain rights from the British but also pledged to secure for the people these rights as also social and economic rights in a Constitution of free India. It pledged to create a new social order based on social and economic justice and welfare of the people of India. The emphasis at that time was to have both negative\textsuperscript{238} as well as positive\textsuperscript{239} rights in the future Constitution of India. The leaders of our independence movement drew no distinction between these two sets of rights. The question of superiority of one over the other was neither contemplated nor discussed at any stage. But it was definitely emphasized that the rights might become a shame if not a mockery if the progress and well being of the society as a whole was not achieved. They did not go beyond this and both kinds of rights were enumerated together in various documents of resolution of the Indian National Congress without making any distinction between what we call Fundamental Rights and socio-economic rights.

Due to the post-war Constitution’s impact and keeping in view the socio-economic conditions of the poor people of India, it was rightly considered that the grant of socio-economic rights was more important and advisable for the people of India than the grant of other rights which were thought as usual rigmarole of rights.

\textsuperscript{238} Negative rights generally mean today Fundamental Rights enshrined in Part III of the Indian Constitution.

\textsuperscript{239} Positive rights generally mean today the rights enshrined in Directive Principles of State Policy (Part IV of the Constitution).
The concrete formation of the ideas and precepts of socio-economic justice policy, first of all took place in the Karachi Resolution but without making them separable from other rights. Although there was equal emphasis on both negative as well as positive rights, yet there was explicit pledge to end the exploitation and secure real economic freedom, and that is why Austin has rightly characterized it as both declaration of rights and a humanitarian socialist manifesto. The first ever distinction between the two sets of rights started appearing in the Sapru Committee in which an attempt was made to separate civil and justiciable rights on the one hand, and the socio-economic non-justiciable rights on the other. The main reason for such a separation was the difficulty involved in respect of the socio-economic rights through the Courts. But it certainly did not mean that these non-justifiable rights were inferior to or less important in comparison with, what we call as Fundamental Rights. Moreover, the Committee observed that there must be certain guidelines for the legislative and administrative actions and the Courts, which was obviously a reference to the present Directive Principles. It was also there in the mind of the Committee that the role of judiciary was to protect the Constitution because it was the guardian of the Constitution.

It was for the Constituent Assembly which was assigned the task of framing the Constitution must adopt these views of the leaders who represented the people. The Assembly, as already mentioned, was truly a popular body representing almost all shades of public opinion and consisting of inter alia, leaders of political movement were men of vision and experience. It embodied in the organic law pledges and commitments of pre-Independence era.

In the very first resolution, that is, the Objectives Resolution, the Assembly enumerated certain rights including those of social-economic ones and the general emphasis of which was all well being not only of a few individuals but of all. Rather, it was rightly demanded that the socio-economic rights should be in more explicit terms. Both Fundamental Rights and Directive Principles were designed by the members of the Assembly to be the chief instrument of bringing about the great reform of social revolution.

The Assembly divided the rights into justifiable Fundamental Rights and non-

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240 Supra note 2 at 56.
justifiable Directive Principles and emphasized the significance of both. The distinction was based on the Irish Constitution and also because of the reason that the enforcement of socio-economic rights depended upon the resources of the country. There was a prolonged debate in the Assembly on the issue of separation of rights. It was considered as Dharma of the Government to remove hunger and secure social justice to every citizen. Thus, the emphasis was on the welfare of massed and the positive role of the State to ensure the same.

During the deliberation of the Sub-Committee on Fundamental Rights the difficulty of such separation was discussed and finally separate principles were announced with a Preamble that they were for the general guidance of the Legislature and Government of India and not cognizable by Court. Though the principles were made non-justifiable because of their nature, yet their vital role in the social progress was asserted. It was in the realization of these directives that the salvation of the people lay. Therefore, their quick implementation was regarded as the objectives of national policy so that every citizen of the country could enjoy the fruit of it. Hence the opening clause was re-drafted so as to make the Directive Principles as “fundamental in the governance of the country’ and imposing on the State the duty to apply them in making laws. This was nothing else but providing a binding force to the principles without which they could be just of a theoretical value. The distinction was made because at that time the nation was at a nascent stage and was not in a position to carry out its positive obligations with immediate effect.

After making these principles fundamental in the governance of the country it was apprehended that a conflict between Fundamental Rights and Directive Principles might arise. It was rightly observed that occasionally, it might be necessary for the State to invade private rights in the discharge of one of its fundamental obligations. The Draft prepared by B.N. Rau, in which he said that in case of such a conflict, the general welfare should prevail, makes it ample clear that he wanted to give more importance to the welfare of all than to the welfare of some individuals. It was due to this fact that an amendment was suggested that no law giving effect to principles be declared void because it contravened any of the Fundamental Rights, so much so that in order to make

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241 Constitutional Assembly Debates, supra note 91 at 33.
directives as fundamental. It was suggested that the title “directive” should be replaced by the word “fundamental”. But in fact, they were in the nature of guidance to both Legislature and Executive and as they had already been declared fundamental in the governance of the country, the amendment was not accepted.

The main object of incorporation the Directive Principles was to lay down that the future Governments should strive for the achievement of the ideal of economic democracy. It is worth noting that at the time of introduction of the Draft Constitution in the Assembly, it was expressly stated that the distinction between the two kinds of rights did not mean that the Fundamental Rights were absolute and non-fundamental rights were not absolute. The real distinction was that non-fundamental rights were created by the agreement of the parties whereas the Fundamental Rights were the gift of law. Because the Fundamental Rights were the gift of the law, it did not follow that the State could not qualify them.

The nature and significance of the directives was debated at length in the Assembly and both views, that is, one leveling them as mere pious wishes and other highlighting their significance was expressed. But definitely the emphasis was on to latter view. The mere fact that they were being included into the Constitution shows that every Legislature would be bound to apply and respect these principles. They represented our target and aim which we shall have to achieve in the shortest possible time. They were rightly regarded the “germs of socialistic Government” and the chapter on them as most cardinal, important and creative chapter of the Constitution. The members while framing these rights and principles had very much in their mind the role of judiciary. It was acknowledged that the judiciary was an extension of rights and it was the Courts that would give the rights force. In this regard, Austin rightly says that the judiciary is an arm of social revolution upholding the equality that Indians had longed for during the colonial days.\textsuperscript{242} The Courts are idealist as guardians of the Constitution and as such they have to protect both rights and principles equally because they form the part of the same Constitution.

\textsuperscript{242} Supra note 2 at 164.