CHAPTER – III

EVOLUTION, NATURE, SCOPE AND SIGNIFICANCE OF DIRECTIVE PRINCIPLES

“Injustice anywhere is a threat to justice everywhere.”...

• MARTIN LUTHER KING Jr.
CHAPTER – III

EVOLUTION, NATURE, SCOPE AND SIGNIFICANCE OF DIRECTIVE PRINCIPLES IN THE CONSTITUTION OF INDIA

Two revolutions, the national and social had been running parallel in India since the end of First World War. But the glory of our national freedom lies in the fact that the goal it set before itself was not only fight for the emancipation of the country from the settlers of British rule but also to reconstruct Indian Society on the dynamic philosophy of social revolution. Freedom was not an end in itself. It was only a means to achieve an end, the end being to free India through a new Constitution to feed the starving millions, to clothe the naked masses and to give every Indian the fullest opportunity to develop himself according to his capacity. Their aim was to break the shackles of colonization and elevate the enslaved individual to the status of a new man a total man who is not desensitized but is aware of his historical role in redeeming humanity.¹

India waged against the British rule under the aegis of the Indian National Congress led by Mahatma Gandhi, Jawaharlal Nehru, Sardar Vallabhbhai Patel and other national leaders. These great leaders realised the supreme importance of the political and civil rights of the individual, because they knew from their experience of the oppressions under the British rule as also from the recent events of history including the two World Wars that these rights are absolutely essential for the dignity of man and development of his full personality. But, at the same time, they were painfully conscious that in the socio-economic conditions that prevailed in the country, only an infinite dismal fraction of the people would be able to enjoy these civil and political rights.

There were millions of people in the country who were stepped in poverty and destitution and for them these civil and political rights had no meaning. It was realised that to the large majority of people who are living an almost sub-human existence to conditions of object poverty and for whom life is one long unbroken story of want and destitution, nation of individual freedom and liberty, though representing some of the most cherished values of free society, would sound as empty words bandied about only in the drawing rooms of the rich and well-to-do and the only solution for making these rights meaningful to them was to remake the material conditions and usher in
a new social order where socio-economic justice will inform all institutions of public life so that the preconditions of fundamental liberties for all may be secured.

It was necessary to create socio-economic conditions in which every citizen of the country would be able to exercise civil and political rights and they will not remain the preserve of only a fortunate few. The national leaders, therefore, laid the greatest stress on the necessity of bringing about socio-economic regeneration and ensuring social and economic justice. Mahatma Gandhi, the father of the nation, said in his inimitable style in words, full of poignancy:

“Economic equality is the master key to nonviolent independence. A nonviolent system of Government is impossibility so long as the wide gulf between the rich and the hungry millions persists. The contrast between the palaces of New Delhi and the miserable hovels of the poor labouring class cannot last one day in a free India in which the poor will enjoy the same power as the rich in the land. A violent and bloody revolution is a certainty one day, unless there is voluntary abdication of riches and the power that riches give and sharing them for common good.”

Jawaharlal Nehru also said in the course of his presidential address to the Lahore Congress Session of 1929:

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“The philosophy of socialism has gradually permeated the entire structure of the society, the world over and almost the only point in dispute is the phase and methods of advance to its full realisation. India will have to go that way too if she seeks to end huge poverty and inequality, though she may evolve her own methods and may adapt the ideal to the genius of her race.”

Then again, emphasising the intimate and inseverable connection between political independence and social and economic freedom he said:

“If an indigenous Government took the place of the foreign Government took the all the vested interest intact, this would not be even the shadow of freedom……. India’s immediate goal can only be considered in terms of the ending of the exploitation of her people. Politically, it must mean independence and cession of the British connection: economically and socially, it must mean the ending of all special class privileges and vested interests.”

The congress resolution of 1929 also emphasised the same theme of socio-economic reconstruction when it declared:

“The great poverty and misery of the Indian people are due, not only to foreign exploitation in India, but also to the economic structure of 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 condition 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 resolution passed by the Congress in 1931 proceeded to declare that in order to end the exploitation of masses, Political freedom must include social and economic freedom of the staring millions. The Congress Election Manifesto of 1945 also reiterated the same thesis when it said that “the most vital and urgent of India’s problems in how to remove the curse of poverty and raise the standard of masses” and for that purpose it is necessary..... To prevent the concentration of wealth and power in the hands of individuals and groups and to prevent vested interests inimical to society from “growing”. This was the socio-economic philosophy which inspired the framers of the Constitution to believe that the guarantee of individual freedom was no doubt necessary to be included in the Constitution, but it was also essential to make provisions for restructuring the socio-economic order and ensuring social and economic justice to the people. This was emphasized by Jawaharlal Nehru when, speaking on the resolution regarding the aims and objectives before the Constituent Assembly, he said:

\[\text{id}\]
“The first task of this Assembly is to free India through a new Constitution, to feed the starving people and clothe the naked masses and give every Indian fullest opportunity to develop himself according to his capacity.”

It was clearly realised by the framers of the Constitution that on the achievement of this great social and economic change depended the survival of India. The first and foremost task of our constituent Assembly therefore was to draft a Constitution that could serve the ultimate goal of social revolution Nehru warned the Assembly:

“If we cannot solve this problem soon, all our paper constitution will become useless and purposeless. If India goes down, all will go down and if India lives all will live.”

3.1 ADOPTION OF OBJECTIVE RESOLUTION:

The constituent Assembly adopted the historic objective resolution on January 22, 1947 which set out the aims and objective before Constituent Assembly in framing the Constitution. The Para V and VI of the objective resolution are very significant and are reproduced here. Para V states:

6 Ibid p.1844
7 Chitkara and Mehta; Op. eit n.1
“Wherein 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.”

Para VI sates: “Wherein adequate safeguards shall be provided for minorities backward and tribal areas and depressed and other backward classes.”

The substance of these articles was substantially incorporated in the preamble and Part III and IV of the Constitution. The right which were mostly of political nature were designated as fundamental rights whereas those of social and economic nature have been included in the Directive Principles of State Policy.

The reason for this division could be traced from the various reports that were submitted to the Constituent Assembly and discussion held thereon.

Pandit Jawaharlal Nehru while explaining the contents of democracy and socialism as contained in the resolution observed:

“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 in this resolution. I stand for

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8  I.C.A.D. 59
socialism and I hope India will stand for socialism and that India will go towards the Constitution of a socialist state and I do believe that the world will have to go that way."\textsuperscript{9}

In the end of his speech, he said; "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."\textsuperscript{10}

The majority of the members of Constituent Assembly participated in the discussion on objective resolution. There was a great emphasis on what we call Fundamental right under the present Constitution but the emphasis on Socio-economic rights did not lag behind rather it appears that a large number of members who spoke considered the incorporation of the latter category of rights in the Constitution of tremendous significance without undermining the importance of Fundamental rights.

Therefore, the Constitution to be framed was to be such as to promote the interest of the masses and to benefit the country as a whole.

Finally Pandit Jawaharlal Nehru told the members: “The First task of this assembly is to free India through a new Constitution to feed the starving people and cloth the naked masses and to give every

\textsuperscript{9} Ibid p.62
\textsuperscript{10} Ibid p.65
Indian the fullest opportunity to develop himself according to his capacity.”

The theme of upliftment of the Indian masses endeared itself to the members of the Constituent Assembly and was predominant in their minds. It was the philosophy of restoring the dignity of the poor, the week and the oppressed that was close to their heart. A redistribution of resources consistent with economic development and implementation of social welfare schemes was central to their thinking. The precise meaning for achieving this objective was left to the future generations.

3.2 RIGHTS: JUSTICIABLE – NON-JUSTICIABLE:

B.N. Rau, the Constitutional adviser to the government of India, suggested that the best way of embodying the assurance contained in Paras V and VI of the resolution was to split them into two sets: First Fundamental rights relating to personal liberty and political freedom and enforceable in the court of law. Secondly, Fundamental principles of State policy relating to social, economic and other matters and unenforceable in the courts. These are certain rights he thought

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11 C.A.D. 316
which require positive action by the state and which will be guaranteed only so far as such action in practicable.\textsuperscript{12}

The framers of the Constitution faced a threefold problem while framing the provisions relating to Fundamental rights namely:

First, the difficulty of defining what a Fundamental right was and making a list of the same.

Second, classification of rights into justiciable and non-justiciable.

Third, devising effective protection for the rights defined therein.\textsuperscript{13}

The subject of Fundamental right 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. Various associations, groups and individuals sent their views on the desirability of India with right of writ of write remedy in case of violation of these rights and the machinery that could be suggested for the enforcement of those fundamental rights which are not justifiable. It was here that the separation of right started first of all.

\textsuperscript{12} B. Shivar Rao; Select Documents II 33 (Notes on B.N. Rau on Fundamental Rights, September 2, 1946)

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 proposals came from all India Depressed class leagues which in its memorandum submitted a detailed list of fundamental rights including the social and economic rights.

Another suggestion came from professor Venkataramaiah who drew a fine distinction between the civil and economic rights. He pleased for the incorporation of the two sets of rights in the Constitution: the former being enforceable in the court of law and the latter, not enforceable. He also gives reason for the distinction between the sets of rights and the utility of social and economic rights in the Constitution set up. Professor Venkataramaiah in his memorandum on the question of fundamental rights observed Civil rights are of justiciable character as they can and ought to be enforced through courts of justice, socio-economic rights cannot be enforced through courts of justice, socio-economic rights cannot be enforced through course because they involve positive action in the form of new legislative measure: 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 court. This does not,
however, mean that rights not justiciable and ineffective as their incorporation in the Constitution serves no purpose. It only means that while for enforcing some right, we have to look to other political institution.

Thus anticipating the inclusion of non-justiciable economic and social rights in the frame work of the Constitution of India, the Sapru committee in 1945 considered the suggestion 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 action and the courts.

Third, that the justiciable and non-justiciable fundamental rights be discussed and pleaded for incorporation in the future Constitution.

Finally the Sapru Committee in its Constitutional proposals recommended that declaration of Fundamental rights in 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 that view in a federal structure the
judiciary was supreme and the final protector and guardian of the
Constitution. It, however, did not suggest how best the 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 by no
means impossible.

The proposals of the Sapru Committee were definitely
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 where not and
recommended the inclusion of the latter in the Constitution.

This suggestion of the Sapru Committee perhaps drew its
inspiration from the Irish Constitution of 1937 which made a distinction
between justiciable and non-justiciable rights and designated the
former as Fundamental Rights and the latter as Directive Principles of
State Policy.

Dr. Lauterpacht also made a similar distinction between
justiciable and non-justiciable rights in his “International Bill of the
Rights of Men”. The substantial provisions of this Bill were in two
parts: Part I dealt with personal or individual rights enforceable in court
of law while Part II set out the socio and economic rights incapable of
or unsuitable for such enforcement.
Sir B.N. Rau, who was the Constitutional Adviser to the Government of India, was considerably impressed by these ideas and he suggested that the best way of giving effect to the objective set out in the Objectives Resolution was to split-up the objectives into Fundamental Rights and Fundamental Principles of State Policy, the former relating to personal and political rights enforceable in Courts of Law and the latter relating to social and economic rights and other matters, not so enforceable and proposed that the Chapter on Fundamental Rights may be split-up into two parts: Part A dealing with the latter kind of rights under the heading “Fundamental Principles of State Policy” and Part B dealing with the former under the heading “Fundamental Rights”.  

Thus, Indian Constitution makers were impressed by the Irish Constitution which made distinction between justiciable and non-justiciable rights. Sir B.N. Rau suggested the adoption of Irish plan classifying the rights into two categories:

Part A dealing with Fundamental Principles of State Policy.

Part B dealing with Fundamental Rights strictly so called.

The Fundamental Rights Sub-committee also recommended that “the list of Fundamental rights should be prepared...

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14 Minerva Mills v. Union of India Supra n.2 1845
into two parts, the first part consisting of rights enforceable by appropriate legal process and the second consisting of Directive Principles of Social Policy.

It will, therefore, be seen that from the point of view of importance and significance, no distinction was drawn between justiciable and non-justiciable rights and both were treated as forming part of the fabric of Fundamental Rights, the only difference being that whereas the former were to be enforceable in Courts of Law, the latter were not to be so enforceable. This proposal of dividing the fundamental rights into two parts, one part justiciable and the other non-justiciable, was however, not easy of adoption because it was a difficult task to decide in which category particular fundamental rights should be included. The difficulty may be illustrated by pointing out that at one time the right to primary education was included in the draft list of Fundamental Rights, while the equality clause figured in the draft list of Fundamental Principles of Social Policy.\footnote{Ibid p.1846}

After examining the various drafts and Fundamental Rights placed before it, the fundamental right 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 guidance of the governments to regulate their
legislative and executive functions was necessary before the fundamental rights were included in the future Constitution of free India. The Sub-Committee first directed its attention towards the rights which were to be justiciable and thereafter set to examine the Directive Principles of Social Policy of March 30, 1947. Thus the first set of Directive Principles of Social Policy as framed by the Sub-Committee on Fundamental Rights on March 30, 1947, read as follows:

“The principles of social policy set forth in this Para are intended for the general guidance of the appropriate legislature and the Government in India (thereinafter collectively called 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 Union and every Unit thereof shall strive to promote the welfare of the whole people by serving 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.

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 material resources of the community are so distributed as to subserve 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 health and strength of workers, men and women and the tender age of children shall not be abused and that the citizens shall not be forced by economic necessity to enter avocation 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 Unit thereof shall, within limits of their economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in case of unemployment, sickness, disablement and other cases of undeserved want.
4) The Union and every Unit thereof shall make provisions for securing just and human conditions of work and for maternity relief for workers.

5) The Union and every Unit thereof shall endeavour to secure, by suitable legislation, economic organisation and in 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.

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 mutual consent of both sexes and it shall be maintained through mutual co-operation with equal rights of husband and wife as a basis. Motherhood has a claim upon the protection and care of the State.\(^1\)

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Speaking in favour of the principles of Policy, Rajkumari Amrit Kaur along with Smt. Hansa Mehta and Prof. K.T. Shah stressed that directives, though non-justiciable, were very vital to social progress of the country. It was, therefore, necessary that mention be

\(^{16}\) Paranjape N.V.; Op. cit Chapt. II n.12 at 17
made either in the foreword or as the end of Clause 35 that the State, was obliged to take necessary steps, as soon as possible, to ensure fulfilment of these directives. Prof. K.T. Shah in particular, reaffirmed that need for the inclusion of non-justiciable rights as objectives of national policy in the Constitution of India.\textsuperscript{17}

Sir B.N. Rau, on the basis of recommendation of the Sub-Committee on Fundamental Rights prepared a draft of the report on April 3, 1947 which was to be submitted by the Sub-Committee to the Advisory Committee. The Annexure to the Draft Report contained two Chapters, the first contained justiciable rights while the second, the principles of policy which formed the non-justiciable rights. This draft was then sent to the members of the Sub-Committee for their comments.

The Fundamental Rights Sub-Committee considered the Draft Report prepared by Sir B.N. Rau in its three consecutive meetings held on April 14, 15 and 16, 1947. In its meeting held on April 15, 1947, the Committee applied its mind to clauses 24, 25 and 26 of Chapter I relating to ‘Justiciable Rights’ of the Draft Report prepared by Shri B.N. Rau. It was directed that Clauses 24 to 26 pertaining to education should be taken out from Chapter I and should be grouped under a separate Chapter entitled ‘Right to Education’.

\textsuperscript{17} \textit{Ibid p.18}
The Committee also resolved that Clause 31 regarding ‘preservation of monuments’ should be transferred to Chapter II as non-justiciable Clause. It was further decided that Chapter I should be entitled ‘Fundamental Rights’ while Chapter II as ‘Fundamental Principles of Governance.’

The Fundamental Rights Sub-Committee met again on April 16, 1947. This time it decided to drop its earlier proposal of dividing Fundamental Rights into two chapters and resolved that all the provisions of Chapters I and II should be arranged under one heading ‘Fundamental Rights’ consisting of two parts, namely, Part I relating to enforceable rights and Part II on directive principles of social policy which were to be non-justiciable.

The advisory committee considered the report of the sub-committee of fundamental rights and the Interim Report of Minority Sub-Committee on April 21 and 22, 1947, and finally submitted its Interim Report to President of the Constitutional Assembly on the next day. The committee mainly directed its attention on justiciable fundamental rights and did not go into detailed discussion on non-enforceable rights. It suggested that Clause 23 enforcing the compulsory free education did not fit in Part I, hence it had to be transferred to Part II which contained Fundamental Principles of

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Minutes of the Sub-Committee on Fundamental Rights, Dated April 15, 1947.
Governance. As regards Shri K.M. Munshi’s suggestion to transfer Clause 35(i) relating to equality before law, to Part I Sir Alladi Krishna swami Ayyar pointed out that it involved certain difficulties so far the enforcement of this provision by the law-courts was concerned. Therefore, concluding the debate on this point Sardar Vallabhbhai 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.\textsuperscript{19}

The Advisory Committee in its subsequent meetings took for consideration Part II of the recommendation of the sub-committee of Fundamental Rights which contained non-justiciable rights entitled ‘Fundamental Principles of Governance’. The Advisory Committee finally submitted its Supplementary Report on fundamental Rights to the President of the Constituent Assembly on August 25, 1947 in which is supported the inclusion of certain ‘directives’ in the body of the Constitution along with the justiciable rights.

The ‘Fundamental Rights’ including the ‘Directive Principles of State Policy’ were finally drafted as Part III in Sir B.N. Rau’s Draft Constitution of October 7, 1947. This Part was divided into three chapters. The first Chapter consisted the ‘Preamble’ of

Fundamental Principles of Governance’ and the second Chapter consisted of ‘Fundamental Rights’ while Chapter III contained the ‘Directive Principles of State Policy’.

Although Sir B.N. Rau, in his Draft Constitution of October 7, 1947 had incorporated the provision 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 transforming these Directives into Fundamental Principles of Governance of the country, he foresaw the possibility of a conflict between the directive principles and the fundamental rights.

Therefore, in his view, it was matter requiring serious consideration whether the Constitution should expressly provide that the laws made or the action taken by the State in discharge of its duties under Chapter III of Part III dealing with the directive principles of State Policy, shall not be invalid merely by reason that it contravenes any of the provisions of Chapter II which deals with the Fundamental Rights, Sir B.N. Rau’s view that there should be an express provision in the Constitution that, ‘no law made and no action taken by the State in discharge of its obligations under Chapter III of Part III shall be deemed to be invalid merely because it may be repugnant to the provisions of Chapter II of the same Part.'
Sir B.N. Rau suggested certain modifications in clauses 9(2) and 10 of his Draft Constitution which he had prepared on October 7, 1947. The modified clauses read as under:

“9(2) Subject to the provision 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 (i.e. Part III) except by way of amendment of this Constitution under section 232 and any law made in contravention of the subjection, to that extent, be void.”

The following new paragraph was added to Clause 10:

“No law which may be made by the State in the discharge of its duty under the first paragraph of this action 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, or is inconsistent with the provisions of Chapter II of this Part.”

The object of these amendments, as explained by Sir Rau, was that in case of conflict between the rights of the individual as conferred in Chapter II and the principles of policy set forth in Chapter III for the welfare of the State as a whole, the general welfare was to prevail over the individual rights.
Finally, on his return from America, Sir B.N. Rau submitted to the president of the Constituent Assembly a Report on the Directive Principles of State Policy vis-à-vis Fundamental Rights on November 18, 1947. But his proposals were not incorporated in the Constitutional document although it was realised that in case of a conflict between Fundamental Rights and Directive Principles, the latter were to prevail over the former.

Sir B.N. Rau’s Draft Constitution of October 7, 1947 was considered by the Drafting Committee of October 27, 1947, and it was decided that the Directive Principles of State Policy should be transferred from Part III to a new Part.

There was also a suggestion to change the title of the Chapter to ‘Fundamental Principles of State.’ Kazi Sayed Karimuddin said that in the heading under Part IV, the word ‘Directive’ be deleted and substituted by the word ‘Fundamental’ as the provisions contained in Part IV were important and fundamental in nature and that the use of the former word would mean that they are not binding on the State. He said that it was no use treating these principles as Directive for such a course would not prove to be good for the people or for the State. It was very necessary, he added, that all these principles should be made mandatory in order that a scheme embodying these principles could be brought into operation within ten years.
This was opposed by Dr. Ambedkar who observed that the word ‘Fundamental’ occurs in the very first article of this part but it was necessary to retain the word ‘directive’ in order to emphasize that in enacting this part of the Constitution, the Constituent Assembly was giving certain directions to the future legislature and the future executive. If the word ‘Directive’ was omitted, the intention of the members of the Assembly in enacting this part would fail in its purpose the directives were meant to be the fundamental principles which should necessarily be made the basis of all executive and legislative action that might be taken subsequently in the matter of the governance of the country. The Constituent Assembly thus rejected the amendment and adopted the title Directive Principles of State Policy.

Though Part III and Part IV appear in the Constitution as two distinct fasciculus of Articles, the leaders of our Independence movement and framers of Constitution drew no distinction between two kinds of states obligation negative and positive. The whole scheme was based on a philosophy postulating a dialogue between individualism in the equal importance of the two sets of right as a cardinal tenant of their philosophy.

Human Rights for them were indivisible and civil and political as well as social economic rights had got to exist to make for
true human happiness and lead to the fullest flowering of each human personality and not in individual but in wider community interest.

Granville Austin has rightly rewarded about the origin of these rights in the following words:

Both types has developed as a common demand of the national and social revolutions of their almost inseparable inter twinning and of the character of Indian politics itself.\(^\text{20}\)

3.3 DIRECTIVE PRINCIPLES – NATURE, SCOPE AND SIGNIFICANCE:

The Directive Principle of the State Policy epitomes the ideals, aspirations, the sentiments, the precepts and the goals of our entire freedom movement. They may be visualised as reconciliation between the ideals and reality. The directive principles can be most appropriately compared with a vast beautiful vase in which everyone was permitted to place a bunch of flowers of his own philosophical ideals, sentiments, precepts and goals.

Directive Principles of the state policy are enshrined impart of IV of the Constitution of India, without which the glory of human rights would not have flourished in the Indian Constitution. The

\(^{20}\) Dr. Meena Rao; Op. cit chapt. II n.2 p.34
wisdom of the fathers of the Constitution was justified in incorporating non-justiciable human rights in the concrete shape of the Directive Principles in part IV by the subsequent creation of the separate International Covenant of Economic, Social and Cultural rights.

Directive principles jurisprudence is based on the philosophy that in a democratic socialistic society, an individual has a right to the most basic necessities of life including food, clothing, housing, medical care and the right of social security.

These principles embody the hopes, the aspirations the sentiments and the precepts of the freedom movement in India. Directive principles are the ideals of welfare state, the realisation of which is dependent primarily upon finance and the time factors. They are dynamics as against the Fundamental Rights which are static. If Fundamental Rights are essential in a modern democratic state with a written Constitution, the Directive Principles of State Policy are equally essential in a welfare state with a written Constitution.21

Directive Principles of State Policy are outstanding feature of the Indian Constitution in Part IV which contains the Directive Principles of State Policy. Through these directives the framers of the Indian Constitution sought to incorporate certain basic principles which they considered essential to be followed by welfare state for its social

21 Sudesh Kumar Sharma; Directive Principles and Fundamental Rights p.5 (1990)
and economic progress. Truly speaking, these directives are guideline to the parliament, state legislatures the Union and the State executive governments as also to local bodies and the other authorities to formulate their legislative and administrative policies in such a manner that the social and economic interests of Indian people are well protected. Although these are directive are mostly in the nature of moral precepts and economic maxims without any binding forces yet the state is directed to give effect to these principles through legislative measures.

As evident, the provisions of Article 38 clearly define the obligations of the state to strive to promote a social and economic order in which social, economic and political justice prevails. This in other words, means that the state is to secure the welfare of the citizens. It is note-worthy that the framers of the Constitution were not content with merely laying down these ideals but they enjoined a duty upon the state to direct its policy towards securing to the citizens, equality the right of adequate means of livelihood the equitable distribution of ownership and control of material resources of the country so as top subserve the common good. The provisions containing the directive principles are thus intended to lay down in
general terms the objects which the state should pursue in guiding the destinies of the nation.\textsuperscript{22}

The idea of embodying a code of Directive Principles of State Policy has evidently been borrowed by our Constitution makers from the Irish Constitution of 1937 which contain a number of similar provisions called Directive Principles of Social Policy. These principles require a careful and imaginative approach and faithful adherence. Directive principles connect Indians future, present and past and give strength to the pursuits of the social revolution in our great and ancient land.\textsuperscript{23}

The Indian Constitution is first and foremost a social document. When the Constitution Assembly was assigned the task to prepare a draft Constitution for free India, a great emphasis was placed by its makers on socio-economic revolution designed not only to bring about the real satisfaction of the fundamental needs of the common millions but to go much deeper and bring about fundamental change in edifice of Indian society.

The Directive Principles of State Policy contained in Part IV of the Constitution set out the aims and objectives to be taken up by the states in the governance of the country. The ideal of welfare state

\textsuperscript{22} Joshi G.N., Aspects of Indian Constitution (Setalvad Lectures, Bombay, 1964)

\textsuperscript{23} Hegde K.S., The Directive Principles of State Policy in the Constitution of India p. 22(1972)
envisaged in our Constitution can be achieved if the state endeavours to implement them with a high sense of moral duty.

The Directive Principles strengthen and promotes the concept of welfare state by seeking to lay down some socio-economic goals which the various governments in India have to strive to achieve. These principles obligate the state to take positive action in certain directions in order to promote the welfare of the people and achieve economic democracy. These principles give directions to the legislatures and the executive in India as regards the manner in which they should exercise their power.\textsuperscript{24}

Fundamental rights imposes negative duty on the state which enjoin the state to refrain from taking pre-judicial action against an individual, whereas Directive Principles imposes positive duty on the state which depends upon the material resources and time factor.

In the Constituent Assembly Dr. Ambedkar has said that a party failed to implement these principles would stand to lose in the next elections. Thus the accountability to enforced through judicial process.

The main idea underlaying these principles was that they would serve an educational purpose and might serve as restrains on those who came to power. They could be held accountable for

\textsuperscript{24} C.A.D. Vol. VII 476
ignoring these principles before the electorate if not before court of law.

The preamble of the Constitution lays down the goals of political-socio-economic democracy for the citizens of India. The Constitutions makers’ rights perceived that mere political democracy would be meaningless in a country of the poor millions without economic justice. The directive principles therefore spell out in greater detail the goal of economic democracy, the socio-eco-content of political freedom the concept of welfare state. The directive principles thus supplement the preamble to the Constitution. These principles have been characterised as ‘basic to our social order’ as they seek to build a social justice society.

The Salient Features of the Directive Principles in general are:

1. The Directive principles are embodied in the Constitution and form a part of Constitution of India.
2. The Directives which are non-justiciable in nature are, in fact, specie of Fundamental Rights. They are called ‘Directives’ and not Fundamental Rights so as to distinguish them from the justiciable rights enumerated in Part III of the Constitution.

25 Jain M.P.; The Indian Constitutional Law p.737 (1993)
3. The directive principles impose a positive obligation on the state to formulate its legislative and executive policies in accordance with the provisions contained in Part IV of the Constitution. Thus, they are the guidelines on which the Government is to frame its laws and conduct its administrative activities.

4. The sanction behind the ‘directive’ is not the law-court but the fear of ousted by the electorate.

5. The contents of Part IV are broadly speaking a variable concept subject to dynamic social and economic conditions of the country and the ideals of the political party in power.

6. The Directive Principles of State Policy enumerated in Part IV along with the Fundamental Rights enshrined in Part III of the Constitution formulate an integrated scheme, the former imposing a positive duty on the State while the latter containing negative restrictions on the state activities.

7. Non-justiciability of the directive should, however, not mislead one to believe that they are non-cognizable. The courts do take cognizance of the directive principles in determining the reasonability of restrictions imposed by the legislative enactments on any of the Fundamental Rights of the citizen or to adjudge whether a particular State action was for ‘public purpose’ or otherwise.
8. Directive Principles does not confer any power, bestow rights or create remedies but it merely embodies the policies which aim at securing the social order as contemplated by the Constitution.

9. The Directive principles can be amended only by a formal Amendment of the Constitution under Article 368.

10. The directive embodies policies to secure the constitutionally desired social order.

11. The directive provide and have been employed as providing justification for Constitutional exercise of law making power and also as guidelines for statutory and Constitutional interpretations.

These features of Directive Principles are very important and explained their significance in the Constitutional scheme as compared to the directives in the Irish Constitution.

The crucial difference between the Irish Constitution and the India scheme is that the principles on the Irish Constitution are expressly intended for the general guidance of oireachtaes, their application in the making of law is entrusted to the care of oireachtaes exclusively and the principles shall not be cognizable if any court under any provision of the Constitution.
The principles under the Irish Constitution are thus addressed to the national legislature exclusively. Even they are intended to provide general guidance and are not enshrined as in India as percept fundamental in the governance of the country. In India, it shall be the duty of the state to apply these principles in making laws.

The Irish Constitution by addressing these directives exclusively to the legislature narrows the sphere of their operation while the India directive are addressed to the state in the widest sense to the term.26

These principles have been drafted in flexible and general language and leave enough leeway to the various governments in the country to frame their policies from time to time in accordance with contemporary needs and circumstance to achieve the goals set out therein. These principles do not impose any particular socio-economic philosophy on the country. These principles have played a crucial role in legislative and administrative policy making in the country. They have inspired the idea of socialistic pattern of the society.

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3.4 CLASSIFICATION OF DIRECTIVE PRINCIPLES:

3.4.1 DR. M. P. SHARMA’S THREEFOLD CLASSIFICATION

The Directive Principles can be classified into threefold category. They are (i) the Socialistic principles, (ii) the Gandhian Principles and (iii) the Liberal-Intellectual Principles.\(^\text{27}\)

I. The Socialistic Principles (Articles 39, 41 and 43)

Articles 39 provides that the State shall direct its policy for securing the citizen both men and women.

a) Equal right to an adequate means of livelihood.

b) Equal pay for equal work.

c) Fair distribution and control of the material resources so as to serve the common good.

d) Decentralisation of wealth and means of production.

e) Preservation and promotion of health and strength of the workers, men and women and children against forcible abuse.

f) Protection of childhood and youth against exploitation and material abandonment.

\(^{27}\) Sharma M.P.; The Government of the India Republic (Ed. 5\(^{th}\) 1968) p.74
Article 41 states that the State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement. Article 43 states that the State shall endeavour to secure, by suitable legislation of economic ensuring a decent standard of life, full enjoyment of leisure and social and cultural. The socialist principles as embodied in the above Articles aim at the provision of economic justice.

II. The Gandhian Principles (Articles 40, 43, 46, 47, 48 & 49)

In order to fulfil the dreams of Mahatma Gandhi, his ideas and aspirations have been included in the Directive Principles. These principles deal with matters like establishment of village panchayats, promotion of cottage industries, development of weaker sections, improving the health and strength of people etc.

Article 40 calls upon the state to take the steps for establishing and organising village panchayats as units are self-government. This Article directs the state to
provide village panchayats with autonomous powers. Article 43 provides that the State shall endeavour to promote cottage and small scale industries on individual and co-operative basis in rural areas. Article 46 calls upon the State to promote (with special care) the educational and economic interests of the weaker sections of the people in order to protect them against social injustice and all forms of exploitation.

Article 47 states that the State shall raise the level of nutrition and standard of living of its people and improve public health. The state shall endeavour to bring about prohibition of the consumption (except for medical purposes) of injurious to health. Article 48 provides that the State shall endeavour to organize agriculture and animal husbandry on modern and scientific lines. Particularly, it shall take steps for preserving and improving breeds and prohibiting the slaughter of cows and other milking cattle. Article 48 A mentions that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. Article 49 declares that it shall be the obligation of the State to protect every monuments, place
or object of artistic or historic interest declared by parliament to the National importance from destruction, disfigurement, removal, disposal or export.

III. Liberal intellectual principles (Articles 44, 45, 50 and 51)

These Articles in Directive Principles aim at the provision of basic education, Uniform Civil Code, independence of judiciary and promotion of international peace.

Article 44 prescribes Uniform Civil Code for the people, Article 45 provides that State shall endeavour to provide, within a period of ten years from the commencement of the Constitution, free and compulsory education for all children until they complete the age of fourteen years. Article 50 directs that the State shall take steps to separate judiciary from the executive in public services of the State. Article 51 provides that the State shall endeavour to:

a) Promote international peace and security.
b) Maintain just and honourable relations between nations.

c) Foster respect for international law and treaty obligations and

d) Encourage settlement of international dispute by arbitrations.

3.4.2 DR. P.B. GAJENDRAGADKAR’S FOUR-FOLD CLASSIFICATION OF THE INDIAN DIRECTIVES:

The former Chief Justice of India, Dr. P.B. Gajendragadkar, however, preferred a four-fold classification of the various directives contained in Articles 36 to 51 of the Constitution of India. In his view, Part IV relating to the directive principles contained as amalgam of several subjects which can be classified under four principal groups:

1) The first group deal with general principles of social policy requiring the Governments in different States and at the Centre to create a social order in which three fold justice (social, economic and political) will inform all the institutions of national life.
2) The second group deals with socio-economic rights of the citizens.

3) The third one sets out the principles of administrative policy for the Government.

4) The fourth group contain the international policy of the Republic.\textsuperscript{28}

Thus Part IV gives a broad picture of the progressive principles on which the Constitution wants the government of the country to be based.

Perhaps this classification of directive principles as advocated by Dr. Gajendragadkar is more acceptable at least from two standpoints. Firstly, it covers a seriatim analysis of the provisions relating to the directive principles without any overlapping and Secondly, it is more precise and lucid so as to be easily understood.

The Forty Second Constitutional amendment act of 1976 added the following to the Directive Principles:

1) Provision of free legal aid to the poor.

2) Participation of workers in the management of their factories or productive enterprises.

3) Preservation of natural environment, animals and forest.

\textsuperscript{28} Gajendragadkar P.B.; The Constitution of India (1969) p.18
4) Creation of opportunities for the development of children and old age workers.

5) Provision of decent life to the people.

Thus the directive principles included a variety of subjects ranging from preserving natural environment and forest wealth to the protection of the interests of children, old age workers they also cover aspects of social life such as education employment, entertainment health, sanitations, etc., they also deal with international peace and amity.

A statement made by Justice Kania explains the importance of Directive Principles. The Directive Principles represent not the temporary will of majority but the deliberate wisdom of the nation exercised while setting the permanent law of the country.

3.5 DIRECTIVE PRINCIPLES : FUNDAMENTALNESS AND JUSTICIABILITY FUNDAMENTALNESS:

Article 37 of the Constitution stipulates that the provisions contained in Part IV of the Constitution shall not be enforceable by any court but they are fundamental in governance of the country.
In order to understand Article 37 it is saviour faire to compare it with the corresponding provision in Irish Constitution. Article 45 of the Irish Constitutions provides that;

“The principles of social policy set forth in this Article are intended for the general guidance of the oireacatas. The application of these principles in the making of laws shall be the care of the oireacatas exclusively and shall not be cognisable by any court any of these provision of this Constitution.”

Article 37 of Indian Constitution makes significant departure from the language used in Article 45.

1) Article 45 of Irish Constitution provides that principles of social policy cannot be cognizable by any court while Article 37 states that they shall not be enforceable by any court.

2) Article 45 provides that principles are for general guidance but Article 37 makes the directive principles fundamental.

3) Article 45 declares that it shall be duty of legislature exclusively under Article 37 it imposes duty on the ‘State’ to apply directive principles.

In Article 37, there is a fine distinction between the words “provisions contained in Part IV and the principles therein laid down” while the provisions shall not be enforceable by any court the
principles are nevertheless fundamental in the governance of the country and a duty is imposed upon state to apply these principles through the instrumentality of laws.

The unenforceability of the principles contained in Part IV does not mean that principles contained therein are non-cognizable and the State can avoid the duty of applying these principles in making laws. Though the duty is not made compellable a departure from the duty can be prevented.\(^{29}\)

Thakur Das Bhargava regarded them as the essence of the Constitution and justified the way in which they were worded. He has said they give us a target; they place before us our aim as we shall do all that we can to have this aim satisfied.\(^{30}\)

The Directive Principles of State Policy are the principles of Rajya Dharma. The fundamental principles of governance mean dharma or the path of duty of government. Thus these principles can be traced either to divine will or right reason. They are equally fundamental with the Fundamental Rights.

\(^{29}\) T. Devidas,; Directive Principles sentiments or Sense 17 J.I.L.I. 478 at 480 (1975)

\(^{30}\) VII C.A.D. 277
**Justiciability of Directives:**

The directive principles seek to give later directives to the legislature and governments in India as to how and in what manner and for what purpose, they are to exercise their power.

But as stated in Article 37, these principles are not enforceable by any court of law; There as on behind the legal non-enforceability and non-justiciability of these principles is that they impose positive obligations on the state. Nevertheless the Constitution declares that these principles are fundamental in governance of the country and the State has been placed under an obligation to apply them in making laws.

The court however does not enforce directive principles as it does not create any justiciable right in favour of an individual. In *Rajan Diwedi v. India*\(^{31}\) the Supreme Court held that a court will not issue an order or writ of mandamus to the government to fulfil directive principles. The directive principles guide the exercise of legislative power but do not control the same. Nor do directive principles confer any legislative competence one legislature which it does not have otherwise.

It is discerned that in the beginning the non-justiciability of the directive principles weighted heavily on the judicial consistence.

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\(^{31}\) A.I.R. 1983 S.C. 624
According to Prof. Diwan: To this may be added the fingering attachment of the some of the judges to the analytically school of jurisprudence dogma that obligations without correlative rights have no meaning. Yet some judges did articulate that the non-justiciable directive principles are not less fundamental than the Fundamental Rights and for the existence of obligations correlative rights are not essential.\(^{32}\)

It is necessary that every rule of law should be backed by a sanction. It is now well accepted that authoritativeness and not coercion is the test of law. If a principle is recognized as binding on the legislature then it can be covertly described as a legal rule even if there is no court than can enforce it.

Roscoe Pound draw attention to contain *jura postulates* which form the foundations of the functioning of just societies thus those who are entrusted with certain duties and function should fulfil them in good faith and according to the expectation of the community.\(^{33}\)

The question of right duty relationship and the necessity of sanction as an enforcing agency are not the necessary ingredients of all laws. The directive principles are to be looked at from this angle.

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\(^{33}\) Roscoe Pound.; Social control through Law 112-116 (1942)
Once we accept that the essence of a legal right is not its enforceable then there cannot be any difficulty in comprehending the true import of directive principles.

In *Minerva Mills v. Union of India*\(^{34}\) Justice Bhagwati observed that:

There may be a rule which impose an obligation on an individual or authority yet it may not be enforceable in a court of law and therefore not give rise to a corresponding enforceable right in another person. But it would still be a legal rule because it prescribes a norm of conduct to be followed by such individual or authority. A rule will exist despite of any problem relating to its enforcement otherwise the convention of the Constitution and even rule of International law would no longer be liable to be regarded as rule of law.

### 3.6 SIGNIFICANCE OF DIRECTIVE PRINCIPLES:

The Constitutional validity and usefulness of the Directive Principles has always remained a controversial issue and opinions have often differed on this point. Some critics regard these directives as unnecessary appendages to a written Constitution like ours

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\(^{34}\) *Minerva Mills v. Union of India* Supra n.2 p. 1989
because they are nothing more than a mere political manifesto devoid of any Constitutional value.\textsuperscript{35}

Similar views were expressed by certain members of the Constituent Assembly while the directives were being considered in the house. Mr. Naziruddin Ahmad from West Bengal characterized these principles as a set of resolutions made on New Year’s Day which are broken at the end of January.\textsuperscript{36}

While Prof. T. Shah likened it to be a cheque on a bank payable at the convenience of the bank\textsuperscript{37} because of its non-justiciable and non-binding nature. For one critic, the inclusion of these directives in the Constitution of India was undemocratic and also against the principles of Parliamentary democracy and as such needed to be deleted. Mr. Hussain Iman said; I do not think there is any need for having any ineffectual directives at all… all the directives principles can be ignored by the State government and there is no remedy for it… Even the President of the Union cannot do anything to see that the directive principles are observed. He further said these principles have been brought in just to silence criticism and to have a good

\textsuperscript{35} Joshi G.N.,; The Constitution of India (2\textsuperscript{nd} Ed.) p.108
\textsuperscript{36} C.A.D. Vol. II p.p. 475-76
\textsuperscript{37} Ibid p.p. 479-80
signboard that we have good intention, without having any intention of following these directives.\textsuperscript{38}

Dr. P.S. Deshmukh was opposed to the borrowing of these provisions from the Irish Constitution and incorporating them in Part IV of the Indian Constitution as they were vaguely worded, non-justiciable and devoid of any binding force. He was of the opinion that the Indian Conditions were altogether different from those of Ireland and as such there was no point in adopting their Fundamental Rights in the Indian Constitution.\textsuperscript{39}

To sum up the criticism against the inclusion of Directive Principles in the body of the Constitution mainly ensued from the fact that such declaration would tend to remain a dead letter unless the legislatures initiate effective measures for the transformation of the social and economic structure of the country in accordance with them.

Those who supported the inclusion of Directive Principles in the Constitution of India pleaded that far from being mere platitude and pious wished these directives served a very useful purpose. Dr. Ambedkar who was an ardent supporter of this view categorically observed: In enacting this part of the Constitution, the Assembly is giving certain directions to the future legislatures and future executive to show in what manner they are to exercise the legislative and

\textsuperscript{38} C.A.D. Vol. VII p. 487  
\textsuperscript{39} C.A.D. Vol., V p.p. 369-70
executive power they will have. Surely it is not the intention to introduce in this part these principles as mere pious declarations.\(^\text{40}\)

Elaborating this point further he said: The directive principles are like the instruments of instructions which are issued to the Governor, the colonies and those if India by the British Government under the 1935 Act. What is Directive Principles is merely another name for instrument of instructions to the legislatures and executives. Whosoever captures will not be free to do what he likes with it. In the exercise of it, he will have to respect these instruments of instructions which are called Directive Principles. He cannot ignore them.\(^\text{41}\)

It would thus appear that the enunciation of Directive Principles in the Constitution serves as educative purpose. These Directives are also useful as much as they define tendency and indicate the principles of a new process of guarantee of social rights which will be effective in future.\(^\text{42}\)

Referring to the policies contained in Part III and IV of the Indian Constitution, Granville Austin observed “the Indian Constitution is first and foremost a social document... the core of commitment to the social revolution lies in Part III and IV in the Fundamental Rights

\(^{40}\) Gajendragadkar P.B.; Op. eit Chapt. III n.28 p.18
\(^{41}\) C.A.D. Vol. VII p.p. 41-42
\(^{42}\) Guetzevitch.; Les Constitution del’ Europe Nonvelle Vol. I p.38
and in the Directive Principles of State Policy. These are the conscience of the Constitution.

Writing about the Directive Principles, Sir Ivor Jennings, in his book entitled “some characteristics of the Indian Constitution” observed that it marks “a line which began with Jeremy Bentham and developed in England by radical movement.” These principles in his view are embodied in the Constitution with a view to evolving a society marked by humanism, tolerance and unity.

The preamble to the Constitution of India provides that the people of India have solemnly resolved to secure to all its citizens’ justice, social, economic and political and equality of status and of opportunity. These objectives are achieved through the implementation of policies in accordance with Part III and IV of the Constitution. Part III set out certain Fundamental Rights which cannot be transgressed by anyone. Thus, these rights seek to impose restrictions on the State to not to encroach upon individual liberty. But it is to be noted that these rights through indispensable can have no meaning for the poor and economically backward classes of people who constitute a bulk of the population of India.

The only solution for making these rights meaningful to them would be to usher a new social order where social economic and political justice prevails so as to secure the general welfare and
economic prosperity of the people. The framers of the Constitution, therefore, declared socio-economic justice as the goals in the preamble of the Constitution and enumerated social and economic precepts under the Directive Principles of State Policy to be implemented by the state to attain this end. These directives, therefore, constitute the most important and creative part of the Constitution and embody the hopes and aspirations of the people.

They aim at making the Indian masses free in the positive sense, free from the passivity engendered by the centuries of coercion by society and by nature free from subject physical conditions that had prevented them from fulfilling their best selves and seeking to bring about socio-economic transformation.

Sir Alladi Krishnaswami Ayyar, on behalf of Draft Committee, observed: “The Constitution while does not commit the country to any particular form of economic structure or social adjustment gives ample scope for future legislature and future parliament to evolve any economic order and to undertake any legislation they choose in public interests though they are not enforceable legal rights in a court of laws”.  

It has become clear by now that there was mixed reaction as to the significance and utility of the Directive Principles in the

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Constituent Assembly. Some members favoured the incorporation of these principles in the body of the Constitution while the others discarded them as useless precepts on account of their non-enforceability.

The phraseology used in the Directive Principles imposes positive obligations on the State towards the Constitution. To quote Dr. B.R. Ambedkar:

“The Directive Principles are nothing but obligations imposed by the Constitution upon the various governments in this country that they shall do certain things, although it says that if they fail to do them, no one will have the right to call for specific performance. But fact that they are, obligations of the Government, I think, stands impeached.

Although the actual utility of the ‘directive’ in the Constitution has always been controversial issue and the critics have gone even to the extent of calling them as pure window dressing or pious superfluities yet these principles have a great significance from the political standpoint. These directives being in the nature of a standing reminder to the Government as to what it has to do for its people, any Government violating these mandates would be called upon to answer the electorate at the election time.
It may be said that far from being mere wishful ideals or pious thoughts, the Directive Principles of State Policy have served a useful purpose in visualizing India is a Welfare State. Some of the Directive Principles would not only serve the cause of socialism but would also help in ensuring the real enjoyment of Fundamental Rights in the context of the twentieth century.