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**UNDERSTANDING DIRECTIVE PRINCIPLES OF STATE POLICY AND
RELEVANCE IN THE CURRENT TIMES**- Shloka Mathur¹**ABSTRACT**

The Directive Principles of State Policy incorporated in Part IV of the Indian Constitution defines certain obligations of the state. They act as definite guidelines to the centre and state governments and are to be followed while forming policies and laws for the state. The Directive Principles of State Policy are a salient feature of the Constitution, but they cannot be enforced in a court of law.

These principles were deemed fundamental in the governance of the state and the government is duty-bound to give importance to these principles to promote justice and equality. The primary aim of a welfare state in the current times is to ensure the fulfilment of human rights. These rights can be evaluated under two heads which are “individual-oriented human rights and society-oriented human rights”²

Fundamental rights are often associated with political and civil rights whereas the DPSPs focus on socio-economic rights.³ The DPSPs were included in the Constitution with an aim to deal with the disparate socio-economic background of the vast Indian subcontinent.

The Directive Principles embody that they “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”⁴

¹ Student at National Law University, Odisha

² A. David Ambrose, ‘Directive Principles Of State Policy And Distribution Of Material Resources With Special Reference To Natural Resources – Recent Trends’ (2013) Indian Law Institute 1-20
<<https://www.jstor.org/stable/pdf/43953624.pdf>>

³ *Akhil Bharatiya Soshit v Union Of India And Ors*, AIR 1981 SC 298
<<https://indiankanoon.org/doc/1111529/>>

⁴ The Constitution of India art. 37 <<https://indiankanoon.org/doc/76375/>>

The constitution does not formally classify the DPSPs but for a better approach and understanding, we can classify them into three categories, Gandhian, Socialistic and Liberal Intellectual Principles. In this article, we will briefly understand the driving force and formation of DPSPs with special emphasis on analyzing Articles 39, 42 & 43.

EMERGENCE OF THE DIRECTIVE PRINCIPLES OF STATE POLICY

The makers of the Constitution took the cue of DPSPs from the Spanish Constitution which was originally inspired by the Irish Constitution. The Irish nationalist movement strongly influenced the makers which made them borrow the concept of 'DPSPs' from the Irish Constitution in 1937.

The pre-independence era saw a pall of gloom cast by the colonial masters. The British government tried its best to exploit the public. The introduction of the Rowlatt Act in 1919 provided disproportionate power to the government which made the public helpless.

The police had the complete leeway to arrest and detain people. Public gatherings were prohibited, and a strict watch was kept on the movement of the public. In fact, all sorts of information which was circulated was censored and monitored.

The Indian people felt helpless and disenfranchised and were at the mercy of the government. The continued atrocities committed in the name of this newly passed legislation created quite an uproar among the people. They finally started revolting against the Act as it was completely unacceptable.

This uproar gave birth to the famous Civil Disobedience Movement which began in 1930 with the beginning of the historic Salt Satyagraha. The only thing which could pacify the people was the complete withdrawal of the British. The Civil Disobedience Movement coincided with the spate of revolutions all over the world like the Irish Revolution, the Chinese Revolution.

The Indian leaders were particularly captivated by the autonomy of Ireland and the advancement of its constitution. Additionally, the Directive Principles of State Policy in the Irish Constitution were viewed by individuals of India as a motivation for free India's administration to extensively handle complex social and monetary difficulties across an immense, various country and populace.

The Nehru report drafted in 1928 which incorporated a Swaraj Constitution proposed far-reaching reform. “NirajaJayal in *Citizenship and Its Discontents* suggested that the Nehru Report, in the context of the international discourse of rights around the late 1920s, was a rather exceptional document in its early envisioning of social and economic rights”

The origin of Fundamental Rights can be traced from this report. In 1931, the India National Congress adopted resolutions dealing with fundamental and socio-economic rights such as untouchability, minimum wage act etc.⁵

On 15th August 1947, when India attained independence, the next major task was to formulate the Constitution which was undertaken by the Constituent Assembly.

The members of the committee belonged to diverse social and political backgrounds had the responsibility of developing national and constitutional laws.

The implementation of the Universal Declaration of Human Rights by the United Nations General Assembly in December, 1948 influenced the makers of the constitution. The UNGA asked all its members to accept and adopt these rights in their respective constitutions. The stakes were high and the aim of the assembly was to safeguard human rights in every possible manner.

Sapru Report of 1945 divided fundamental rights into two categories of justifiable and unjustifiable rights. Justifiable rights were the ones which were enforceable in a court of law and were in Part III of the Constitution. Whereas, non-justifiable rights (included in part IV) were incorporated as directive principles, which just provided the framework for India to become a welfare state.

⁵Rajmohan Gandhi, *Patel, a life* (eBook, 1990) <<https://1lib.in/book/18066170/64ff63>>

ARTICLE 42 & 43

The DPSPs range from Article 36 to Article 51.

In this assignment, we will dwell on the intricacies of Article 42 and its application in public life.

Article 42 henceforth, reads as follows, “Provision for just and humane conditions of work and maternity relief. The State shall make provision for securing just and humane conditions of work and for maternity relief”.⁶

Just and humane conditions of work for all Indian citizens is a Constitutional provision under Article 42. It underscores the importance of the intrinsic value of self-worth which is only possible when all the state’s citizens become entitled to safe and secure occupational conditions, which also provide for decent wages, increasing both moral and cognitive capacity.

A case in example of the harrowing work environment is the 700,00 manual scavengers in India.⁷ These figures are often disputed, and the actual number can be much more.

The term ‘manual scavenging’ in Indian law refers to the practice of sorting and picking of discarded waste. These works often face the stigma of offensive and unclean work. Apart from the social issues, it poses danger to the life and affects the health of the workers. There have been instances where people have died when inside a septic tank. Missing cases are also reported. High-hazard disinfection work is additionally progressively informalized. From recent reports of disinfection laborer deaths, and our commitment with sterilization specialist organizations, we discover that the perished laborers frequently had no institutional relationship with the proprietor of the foundation yet were employed either by workers for hire liable for framework support or on-the-spot for a particular work.⁸ No human should be

⁶ The Constitution of India art.42 <<https://indiankanoon.org/doc/111604/>>

⁷Sumant Sen, ‘Data: Manual scavenging exists in India despite being outlawed in 2013’ *The Hindu* <<https://www.thehindu.com/data/manual-scavenging-exists-in-india-despite-being-outlawed-in-2013/article29508476.ece>>

⁸Arkaja Singh, Shubhagato Dasgupta, ‘Safe and Dignified Sanitisation Work: India’s Foremost Sanitisation Challenge’

subjected to such dreadful work conditions which are also a very risky at the same time. In another instance, we can take the example of snake-catchers, their work particularly is very.

But they are often exploited and disrespected.

Article 43 states “*The State shall endeavor to secure, by suitable legislation or economic organisation 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.*”⁹ Article 43 highlights a very important concern of “wages”.

With the introduction of the term “wages”, we look back at the historic ‘Minimum Wage Act, 1948’, a very controversial yet powerful act enacted by the state. This legislation provided a shield to lakhs of workers and safeguarded their economic interests. In order to curb the rampant exploitation where magnanimous companies use to employ labour at menial rates, this act was introduced where the state set certain minimum wage requirements. Compliance with this act was made mandatory.

The terms of this act were seen as a limitation to the fundamental right of employers and employees to contract in the case of *Bijay Cotton Mills Ltd v The State of Ajmer*¹⁰. The mill disapproved of the act to the extent of closing the company as they were not ready to pay the raised wages in accordance with the ‘Minimum Wage Act’. In an already dire situation of economic imbalance, the employees of the mill were ready to work at lower wages. They were ready to forgo their rights in order to survive. In a surprising move, both the employers and employees collectively formed the petitioners in this case and demanded the nullification of the act. The Supreme Court rejected the plea of arguments and established that these restrictions were introduced keeping in mind the interests of the public. It was the duty of the state to ensure that the weak class is not exploited in any manner and such restrictions will be categorised as reasonable restrictions on fundamental rights and hence are valid in nature.¹¹

⁹Constitution of India art. 43 <<https://indiankanoon.org/doc/1256023/>>

¹⁰*Bijay Cotton Mills Ltd v The State of Ajmer*, AIR 1955 SC 33 <<https://indiankanoon.org/doc/1291554/>>

¹¹Villiers BD, “The Socio-Economic Consequences of Directive Principles of State Policy; Limitation on Fundamental Rights” (*Taylor & Francis*) <<https://www.tandfonline.com/doi/abs/10.1080/02587203.1992.11827860>> accessed July 20, 2022

As discussed earlier, workers like manual scavengers and snake catchers are often paid very less. Their work is given no importance in spite of being so risky and predominant.

The government needs to step in. It is the responsibility of the government to recognize and tackle all these issues.

The governments of the day have been cognizant and have passed path-breaking legislation like the Prevention of Atrocities against the SC and ST Act, Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, the recent Labour Codes enacted are also a step in the right direction. India's collective technological leverage can also be seen by researchers of IIT Madras who developed a robot that can clean septic tanks without people entering having to enter the tanks, the boot is known as Bandicoot.¹²

We will now move towards examining the second facet of the very progressive Article 42, which is the significant issue of Maternity Relief.

Kamaladevi Chattopadhyay, India's tallest feminist, says that "the stereotypical image of Indian women is of a social and domestic parasite living on their husband and contributing nothing".

Indian women and the issue of gender equality of India is subjected to structural social issues like the entrenched patriarchy in the Indian society, economic issues like wage discrimination, financial dependence, political issues like the anticivilization of women in the politics of the nation, though the current "17th Lok Sabha, has the highest number of women MPs," which still is a measly 14% of the total number of MPs.¹³ This results in policy-inertia, as legislations enacted often suffer from a gross underrepresentation of women, which are ironically the intended beneficiaries.

Before the contours of maternity relief is examined, it will be prudent to trace the women's movement in India. Until the 1970s, the women's movement focussed on issues of 'strategic gender interest', wherein incidents of violence against women was the main focus of the

¹²TA Ameerudheen, 'Kerala engineers who developed robot to clean manholes are on a mission to end manual scavenging' *Scroll* <<https://scroll.in/article/869900/kerala-engineers-who-developed-robot-to-clean-manholes-are-on-a-mission-to-end-manual-scavenging>>

¹³Pretika Khanna, 'At 14%, 17th Lok Sabha has highest number of women MPs' *Mint* <<https://www.livemint.com/elections/lok-sabha-elections/at-14-17th-lok-sabha-has-highest-number-of-women-mps-1558699824177.html>>

movement. From the 1970s, there was a significant shift, as the movement moved towards issues of 'practical gender interest' and the deep material inequality faced by women became the highlighted issue. Material inequality is still rampant, as evident by the Global Gender Gap Index, which ranks India 140 out of 156 countries.

After 1991, with the influence of Globalisation, India moves towards, 'State Feminism', which can be seen in the establishment of the National Commission for Women (NCW), also gender budgeting, which began in 2005.

There was also the important trend of the NGOisation of Feminism, where awareness was created about gender-related issues.

It is often seen that working women in India are subjected to the "motherhood penalty", where they are faced with denial of opportunities, working women face dismal discrimination in jobs.

To ensure equality and no disadvantage to women in their careers, the government of India introduced an act to regulate and provide relief to working women before and after childbirth.

The "Maternity Benefit Act, 1961"¹⁴ is applicable to institutions employing 10 or more employees.

"A woman must be working as an employee in an establishment for a period of at least 80 days in the past 12 months to be entitled to maternity benefit under the provisions of the Maternity Benefit Act."

The "Maternity Amendment Act, 2017"¹⁵ was passed by both the houses which made further progressive changes. The period of maternity leave was increased from 12 weeks to 26 weeks. It is to be noted that the extended period is only applicable to the 2 initial kids. This

¹⁴Maternity Benefit Act 1961

<https://labour.gov.in/sites/default/files/The%20Maternity%20Benefit%20Act%2C%201961_0.pdf>

¹⁵Maternity Amendment Act 2017

<<https://labour.gov.in/sites/default/files/Maternity%20Benefit%20Amendment%20Act%2C2017%20.pdf>>

act also extends to working mothers adopting a child under the age of 3 months. They are eligible for a paid leave of 12 weeks. The act aims to cover all the dimensions and type of working mothers. 'Commissioning mothers' are also eligible for 12 weeks of leave when the baby is handed over.

The Amendment Bill introduced 'creche facility' which is defined under "Section 11A" of the Maternity Benefit Act. every establishment which has fifty or more employees must establish a Crèche facility within a distance as may be prescribed through the notification. The objectives of creating a level playing field ground for working women can be achieved by this legislation.

ARTICLE 39A – FREE LEGAL AID

One another very important issue which needs constant attention is providing 'free legal aid'.

A significant number of the population still live in poverty. It becomes very difficult to reach the benefits of the legal process for the poor and to protect them against injustice. It is very important to introduce an exhaustive and extensive legal service programme so that speedy justice can be served to the affected people. "The last official estimate of Poverty in 2011-12 was released by Planning Commission at 21.92%, which was estimated using Tendulkar Committee approach. After that, no estimates have been officially released. SDG 2019 Report by NitiAyog also mentions the Tendulkar Poverty Line of 21.92% adopted in 2011 as the official poverty line."¹⁶

The earliest Legal Aid movement dates to the year 1851 when France introduced some legal enactment to provide free legal assistance to its people. Similarly, in 1944, the British government in Britain appointed Rushcliffe Committee to survey and investigate the status of free legal aid in the country and for making valid suggestions for the same.

Following the DPSPs adopted in the Constitution, the Government of India started recognizing and tackling the status of free legal aid to the needy people. In 1960, a few rules

¹⁶Ministry of Rural Development, *Poverty Measurement in India*
<https://rural.nic.in/sites/default/files/WorkingPaper_Poverty_DoRD_Sept_2020.pdf>

were drawn by the public authority for legitimate legal aid programmes. In various states legal aid plans were drafted through Legal Aid Boards, Societies and Law Departments.

Article 39A as stated in the constitution “The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”¹⁷ As stated in the article it is the responsibility of the state to form and regulate necessary legislations and ensure that justice is denied to none due to their financial limitations. Every person has the right to move to court and fight for their cause. In case of a situation, where the party can't afford a lawyer or has any other hindrance, the state should step in and appoint the necessary mechanism for the same.

The introduction of Lok Adalat paved a new way for the justice redressal system. It is a platform where cases pending in the court of law are settled/compromised harmoniously. There is no court fee payable when a matter is filed in a Lok Adalat. Also, for any transferred case solved in the Lok Adalat, the original fees paid in the court before that is to be returned.

In the landmark case of ‘Hussainara Khatoon’¹⁸ it was recognized that providing free legal aid is essentially a part of Article 21¹⁹ and it is the duty of the state to ensure that the same has been met.

In 1987 Legal Services Authorities Act²⁰ was implemented to provide statutory status to legal aid schemes throughout the country on a uniform basis. The act came into force on 9th November 1987. NALSA (National Legal Services Authority) defines the policies, guidelines, principles, and a proper framework for providing free legal aid to the poor and needy people. Under the Act, a national network for delivering legal aid and support has been envisioned. The National Legal Services Authority is the top authority established to establish policies and guidelines for making legal services available in accordance with the Act's provisions and to provide the most efficient and cost-effective legal services programmes.

¹⁷Constitution of India art. 39A <<https://indiankanoon.org/doc/1331994/>>

¹⁸*Hussainara Khatoon & Ors v Home Secretary, State of Bihar, Patna* AIR 1979 SC 1369 <<https://indiankanoon.org/doc/1373215/>>

¹⁹Constitution of India art. 21 <<https://indiankanoon.org/doc/1199182/>>

²⁰Legal Services Authorities Act 1987 <https://drive.google.com/file/d/1WJ21cJ-zxkxLLq_-5pFRs3qROh16x7Tv/preview>

Additionally, it provides cash and grants to NGOs and State Legal Services Authorities for the implementation of legal aid programmes and schemes.²¹

NALSA is headed by the Chief Justice of India and its office is situated within the Supreme Court of India. Under the legislation, every state has its own, State Legal Service Authority and is headed by the Chief Justice of the respective state, commonly known as the Patron-in-Chief.

It is ensured that in every district of the nation, the Lok Adalats are being constructed permanently and continuously. State Legal Services Authorities have received resources in the form of funding from NALSA and will continue to receive funding for the execution of legal aid projects and programmes, but state governments must provide the necessary infrastructure. Separate Permanent and Continuous Lok Adalats in Government Departments are intended to amicably resolve pending cases as well as the disputes between Government Departments and the general public at the pre-litigation stage in order to decrease the inflow of litigation to regular Courts. These Lok Adalats are now operational in numerous government organisations. As these Lok Adalats gain popularity, it is anticipated and expected that very soon many disagreements between statutory and public bodies will start getting resolved before the litigation situation starts, sparing the different sides from excessive money and litigation-related trouble. State Legal Services Authorities have started taking action in other States as well to persuade the State Governments and statutory organisations, etc. to form permanent Lok Adalats in different districts. Lok Adalats will be now the new weapon to ensure that justice is not diluted due to the limitations of the public.²²

²¹“About Us” (*National Legal Services Authority*! January 8, 2019) <<https://nalsa.gov.in/about-us>> accessed July 20, 2022

²² “About Us” (*NALSA* January 8, 2019) <<https://nalsa.gov.in/about-us>> accessed July 26, 2022

CONCLUSION

The DPSPs enjoy a unique position in the Constitution of India, as across India's divisive political class, the DPSPs have the stature of being the common election manifesto. The government's performance, at both the centre and state levels, can also be gauged by its performance on the DPSPs.

A general criticism levelled against the DPSPs; is they are non-enforceable. The Constituent Assembly provided enforceability status to the political rights i.e. Fundamental Rights but made the socio-economical rights unenforceable. The situation of that time and the current scenario is different. I believe that DPSPs should also be legally enforceable in a court of law. Article 39A which provides free legal shouldn't just be a 'guideline' but be converted to a 'legal right'. Due to the nature of the DPSPs, their significance is often debated and evaluated. We don't want DPSPs to be just considered as a 'wish' or 'guideline'. Due to its enforceability nature, there is not much awareness about the DPSPs, and the states are ill-motivated to follow or consider them.

The aim of the DPSPs is to create a welfare state which is of paramount importance and should be backed by the support of the judiciary. Fundamental Rights and DPSPs together can help in achieving the dream envisaged by the drafters of our Constitution. Putting DPSPs on a supreme platform eventually leads to better implementation and a clear understanding of the fundamental rights. Together, a very powerful weapon can be formed which will help the nation in living the dream envisaged for independent India. India can be a prosperous state.