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# Directive Principles: A Comparative Study of Irish and Spanish Constitution with That of India

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ANIKET JADHAV<sup>1</sup>

## ABSTRACT

*This abstract discusses the historical background and comparative analysis of Directive Principles of State Policy (DPSP) in the Indian, Irish, and Spanish constitutions. It begins by highlighting the Sapru Committee's recommendation in 1945, which categorized Fundamental Rights as justiciable and non-justiciable, with the latter forming the basis of DPSP in India. The influence of the Government of India Act, 1935, and the Irish constitution is discussed, emphasizing the incorporation of principles of DPSP. The objective of DPSP in Ireland, derived from Spanish DPSP, is outlined, focusing on its non-enforceability but moral obligation for the state to implement social goals. The common goals of justice, liberty, and equality are identified across all three countries, as DPSP aim to achieve socio-economic alignment and promote welfare by ensuring social order, legal aid, and equal rights for all citizens. The abstract concludes by acknowledging both similarities and differences among the DPSP in these nations, emphasizing the importance of a comparative study to understand their respective approaches to achieving social welfare*

**Keywords:** Directive Principles of State Policy, fundamental rights, Constitution, Justice.

## I. INTRODUCTION

In 1945, the Sapru Committee recommended provisions in report titled 'Leading Principles of a New Constitution'<sup>2</sup> wherein Fundamental Rights and Directive Principles of State Policy (Herein referred as DPSP) found its pertinence. The committee categorised the Fundamental Rights into two sections – i.e., justiciable and non-justiciable. The latter was incorporated in Directive Principles of States, that implied these rights are not guaranteed and hence cannot be implemented by the courts. These suggestions were subsequently ratified by the drafting committee, that emphasised that DPSP are moral dictum from the authority of the state. Also, the Government of India Act, 1935 which is an inspirational source of Indian constitution also had the "instruments of Instructions" in it that also became the source of DPSP. Thus, we find

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<sup>1</sup> Author is an Advocate at Bombay High Court, India.

<sup>2</sup>Sapru. "Leading Principles Of A New Constitution." *Constitutional Proposals of the Sapru Committee*. 1945.

that justifiable fundamental rights are found in Part – III and non-justifiable Directive Principles of State Policy are found in Part-IV. Ireland, when became independent and enacted its constitution in the 1937, laid the germane of Directive Principle in its constitution. It states the principles of social programme for state but makes it non-accessible in the courts. India's constitution is greatly inspired by the Irish constitution, it has inculcated principles such as fundamental rights, process of judicial review, separation of powers along with Directive Principles of State Policy from the Irish constitution. Article 45 of the Irish constitution envisage the objective of directive principles of social policy. If we see the term 'social' has been emphasised because although it is not being enforceable by the courts; it is the moral obligation in form of guidance to the state to implement social goals as defined. The Irish sovereign state itself has borrowed their Directive Principles from Spanish. The Spanish DPSP which can be said as the ultimate source to both Irish and Indian constitution also made. All these three countries have principles of Justice, Liberty and equality hence, being a democratic country, the sovereignty is vested in its people Therefore, indistinguishable features in all these countries i.e., the Directive Principles are the objective to achieve justice, liberty and equality, so that better socio-economic alignment can be achieve through this that includes securing of social order for promoting welfare of people, providing legal aid, adequate occupation rights; irrespective of gender, caste, class or any form of discrimination. Even though the ultimate aim of these directive principles is for the welfare of its citizens, there are similarities as well as differences that can be found in the directive principles of these nations, which are analysed in the comparative study herein.

## **II. DIRECTIVE PRINCIPLES OF STATE POLICY: AN INDIAN PURVIEW**

The directive principles represent the nation's roadmap to its future. They act as general guidelines to the state to implement the principles enshrined in the constitution. They have been made unenforceable by the courts because the makers of the constitution might have 'morally' enforced the responsibility of these policy in form of directions to the state. India, Ireland and Spain all had the similar spirit when the directive principles were being inserted. India's directive principles of state policy are dynamic in nature. The preamble objective to achieve justice; social, economic and political is seen reflected in the DPSP. It provides for the roadmap to achieve so. These DPSP derives inspiration and source from mainly three classifications i.e., the Gandhian, Socialistic, Liberal-intellectual Principles which can be seen in articles ranging from 36 to 51. The Gandhian part envisaged are organising village panchayats, promotion of khadi / cottage industries, so to promote rural economy and provide for decent living to Indians. The second part i.e., the socialistic part emphasis on equal distribution of resources, protection

of children and youth, equal pay equal work principle so that gender disparities can be addressed and focuses on education. Thirdly, the Liberal- intellectual principles lays the need for uniform civil code. Thus, by applying these principles our constitution makers have given lot of scope and power vested in the state to look after welfare of people and by framing such policies which will take all the sects and classes of society irrespective of any discrimination. Special provisions with regard to the education and upliftment of scheduled castes and scheduled tribes is being made to ensure justice and equality. The state i.e., the legislature along with the executive branch can exercise these powers under DPSP. Therefore, by keeping the 'DPSP' excluded from the ambit of judiciary, the constitution has given a leeway to the state, for adding welfare guidelines to lead the vision and idea of independent India.

They are fundamental principles in governance of country; making the state, duty-bound. Despite being unenforceable the directive principles played a major role in India that can be seen in amendments as well as judgements of the courts. The first and significant amendment made in the DPSP was the 42<sup>nd</sup> constitutional amendment of 1976 that introduced, **Article 39A**: To provide free legal aid to the poor; **Article 43A**: Participation of workers in management of Industries; **Article 48A**: To protect and improve the environment. Subsequently, the 44th Constitutional Amendment, 1978 brought **Article 38(2)** with provision, "The State in particular shall strive to minimise economic inequalities in income and eliminate inequalities in status, facilities and opportunities not amongst individuals but also amongst groups."<sup>3</sup> The rearmost amendment in the DPSP is the 86<sup>th</sup> amendment act 2002, that inserted **Article 21A** and made elementary education a fundamental right, thereby addressing the subject-matter mentioned in article 45 for free and compulsory education up till the age of fourteen.

In Champakam Dorairajan 1951 case, the government's order of reservation of seats in medical colleges were challenged on the grounds that it was a violation of Article 29(2), the court upheld the government's order thereby justifying Art 46 in DPSP and held that: S.R. Das J.:

*"The Directive Principles... which by Art. 47 are expressly made unenforceable by a court, cannot override the provisions found in Part III which notwithstanding other provisions are expressly made enforceable by appropriate writs, orders and direction under Art. 32. The chapter on Fundamental Rights is sacrosanct and not liable to be abridged by any legislative and executive Acts or Order except to the extent provided in the appropriate Art. in Part III. The Directive Principles ... have to be conformed to and run as subsidiary to the chapter on*

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<sup>3</sup> The Constitution of India, 1950, Art. 38(2), inserted vide The Constitution (Forty Fourth Amendment) Act, 1978

*Fundamental Rights*".<sup>4</sup>

In Kesavananda Bharti 1973 case, which is known for its significance of 'basic structure' doctrine, is also known for laying down the importance of directive principles of state policy. This judgement is so well written by all the opinion of judges in the bench that it pretty much cleared the air between the fundamental rights and the directive principles of state policy. The judgement addressed that both the parts i.e., Part III and Part IV are equally important for safeguarding the rights of individual as well as working in the interest of general public. The apex court observed that the directive principles are the guidelines by which fundamental rights are to be achieved.

J.M. Shelat and A.N. Grover, JJ. Observed that

*"Parts-III and IV which embody the Fundamental Rights and Directive Principles of State Policy have been described as the conscience of the Constitution. The Directive Principles of State Policy set forth the humanitarian socialist precepts that were the aims of the Indian social revolution. The Fundamental Rights and the Directive Principles were designed by the members of the Assembly to be the chief instruments in bringing about the great reforms of the social revolution. They have helped to bring the Indian society closer to the Constitution's goal of social, economic and political justice for all"*<sup>5</sup>

H.R. Khanna, J., observed that

*"The Directive Principles embody a commitment which was imposed by the Constitution-makers on the State to bring about economic and social regeneration of the teeming millions who are steeped in poverty, ignorance and social backwardness. They incorporate a pledge to the coming generations of what the State would strive to usher in". "There should be no reluctance to abridge or regulate the fundamental right to property if it was felt necessary to do so for changing the economic structure and attain the objectives contained in the Directive Principles"*

Y.V. Chandrachud, J., observed that

*"Our decision of this vexed question must depend upon the postulate of our Constitution which aims at bringing about a synthesis between 'Fundamental Rights' and the 'Directive Principles of State Policy', by giving to the former a pride of place and to the latter a place of permanence. Together, not individually, they form the core of the*

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<sup>4</sup> Champakam Dorairajan v. State of Madras, AIR 1951 SCR 525, (per S.R. Das J.).

<sup>5</sup> Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461, (per J.M. Shelat and A.N. Grover, JJ.).

*Constitution. Together, not individually, they constitute its true conscience”<sup>6</sup>*

Hence, this judgement is fulfilling per se that made the ambiguity of Part III and IV much clear. In Minerva Mill 1980 case, the apex court have given historical evidences of DPSP’s essentials. Justice Y.V. Chandrachud traced the historical demand for fundamental rights, and referred to the 'Motilal Nehru' Committee and also made a critical annotate that state

*“The goals set out in part IV have, therefore, to be achieved without the abrogation of the means provided for by Part III. It is in this sense that Parts III and IV together constitute the case of our Constitution and combine to form its conscience. Anything that destroys the balance between the two parts will ipso facto destroy an essential element of the basic structure of our Constitution.”<sup>7</sup>*

This judgement relatively has settled the issue between Fundamental rights and the Directive principles wherein the court observed

*“The Indian Constitution is founded on the bedrock of the balance between Part-III (Fundamental Rights) and Part-IV (Directive Principles of State Policy). To give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance are an essential feature of the basic structure of the Constitution,”<sup>8</sup>*

Apart from these landmark judgements that had their expressions on Part III and part IV; the courts have made obligatory mentioning of DPSP in many significant judgements thereafter. Wherein by studying these judgements, it can be concluded that the judiciary puts weightage on the doctrine of harmonious construction so to construe both the fundamental rights as well as DPSP in such a way that it works harmoniously in coordination with each other. Hence, by analysing the said judgements and the amendments with regard to the DPSP it can be concluded that the doctrine of serration of power plays a pivotal role in keeping the DPSP separate from the purview of judiciary but on other hand also vests power in the judiciary to effective implementation of Part III i.e., the fundamental rights. This helps the state to work more efficiently in achieving the guidelines and work on policy framework of DPSP. Thereby giving equal weightage to judiciary as well as legislature to ensure individual rights and public good, both goes hand in hand.

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<sup>6</sup> Keshavananda Bharati v. State of Kerala, AIR 1973 SC 1461, (Y.V. Chandrachud, J.).

<sup>7</sup> Minerva Mills v. Union of India, AIR 1986 SCR (3) 718 (per Y.V.Chandrachud J.).

<sup>8</sup> Minerva Mills v. Union of India, AIR 1986 SCR (3) 718.

### III. DIRECTIVE PRINCIPLES: A COMPARATIVE STUDY OF IRISH AND SPANISH CONSTITUTION WITH THAT OF INDIA

If we see the history of these countries, we find the sense of freedom struggle and because of this historical pertinence the directive principles are laid down with a strong foundation in these countries, right from the day all these countries enacted their constitution.

In Irish constitution, the Directive Principles of Social Policy, is specified in Article 45 that states:

*‘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 cognisable by any Court under any of the provisions of this Constitution.’<sup>9</sup>*

When Ireland became independent through the Irish war of independence, thereafter followed by the Anglo-Irish treaty. In the year 1937, the Irish constitution was enacted and from that time it paved the vision in form of directive principles for the ‘Oireachtas’. The language of the Preamble to Article 45 closely follows a draft suggested by Gavan Duffy J. on April 2, 1937:

*"The Oireachtas is the guardian of the Constitution. In fulfilling that trust the Oireachtas shall faithfully observe the guiding principles of social policy set down in Articles... The application of these principles in the making of laws shall be the exclusive care of the Oireachtas and shall not be cognizable by any court under any of the provisions of this Constitution."<sup>10</sup>*

In Irish constitution, article 40 to 44 are justiciable that deals with the fundamental rights that are historically of civil and political in nature wherein they have been separated from article 45 that is considered as an amalgamation of modern socio-economic rights. The Irish constitution embodies the principle of social policy, these policy act as a general guideline to the Oireachtas i.e., the Irish legislature. Similar to what India adopted from the Eire, the Irish constitution also had kept their DPSP away from the ambit of Irish judiciary. Thus, any provision of DPSP is made non-cognizable for the courts; the same as we find in India where the Indian legislature is provided with the leeway to implement the DPSP without intervention of courts. In this way, the independence of both the organs, inculcated with the doctrine of separation of powers,

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<sup>9</sup> The Constitution of Ireland, 1937, Art.45.

<sup>10</sup> HOGAN, GERARD. "DIRECTIVE PRINCIPLES, SOCIO-ECONOMIC RIGHTS AND THE CONSTITUTION." *Irish Jurist* (1966-), vol. 36, Irish Jurist, 2001, pp. 174-98, <http://www.jstor.org/stable/44013844>.

proves to be helpful to work according to the policy framework as stated in DPSP without any obstacle of overriding and overreach by the judiciary on the legislature. And further specifies the guidelines in sub-clause of Article 45, that deals with the welfare of people, right to adequate livelihood, application of free competition, establishment of economic security, supplementing of industries, and to eliminate discrimination that of sex, age or strength etc.

Whereas in India the Directive Principles of State Policy is not limited to just in one particular article like that in Ireland, but it is specified more descriptively in Part IV of the constitution from Article 36 to Article 51. These articles emphasis on right to education, upliftment of masses and oppressed sections of society, uniform civil code, protection of national monuments, organising village panchayats, provision regarding work and maternity benefits, preservation of environment etc. When India become independent, the drafting committee took two years eleven months and seventeen days to draft the constitution. The impressions of India's freedom struggle are reflected in the mindset of the drafting committee of constitution. The preamble's objective is broadly classified in Part III and Part IV of the constitution, that is successively based on the objective resolution adopted in the year 1947; excerpt from the resolution reads:

*All people of India shall be guaranteed and secured social, economic and political justice; equality of status and opportunities and equality before law; and fundamental freedoms – of speech, expression, belief, faith, worship, vocation, association and action – subject to law and public morality.<sup>11</sup>*

This was one of the essential aspects in the preamble that was subsequently embodied in the constitution through Fundamental rights and Directive Principles of state Policy. The objective was also in form of guiding principles to the constituent assembly and to the future independent India. The preamble was the baseline when the DPSP were been drafted and the goals of nation depicting the vision of future India was successively enshrined in the DPSP.

In Spain the sovereignty is vested in the people. In Spanish constitution the Directive Principles are termed as 'Guiding Principles of Economic and Social Policy' as the term specifically states, they are the guiding principles envisaged in Article 39 to Article 52. These policies include Protection of the family and children, Redistribution of income, adequate social assistance in form of social security, safeguard public health, preservation and promote the enrichment of the heritage, protection of environment etc. These Spanish principles is said to be the source of Directive Principles for both the aforementioned countries. The Spanish

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<sup>11</sup> Constituent Assembly Debates, December 13, 1946 *speech by Pandit Jawaharlal Nehru* 60, <http://parliamentofindia.nic.in/ls/debates/vol1p5.htm>.



‘Guiding Principles of Economic and Social Policy’ broadly outlines the agenda of state like it is in the DPSP of Indian constitution.

"Social policy" is a vague term the boundaries of which are ill defined, but the content of which is rich. In its widest sense it would include all policies directed toward making some change in the structure of the society, and since no policy could be excluded from this, social policy would simply be another name for government policy. If the term is to become meaningful, obviously it must become some kind of a subset of policy in general'<sup>12</sup> In Irish as well as in Spanish constitution the term ‘Social Policy’ is common whereas in India the term used is the ‘State Policy’ thereby making the scope and ambit of the DPSP much wider for the welfare of the people and giving state the competency to effective implementation of the policy which they may deemed fit for achieving welfare state.

#### IV. CONCLUSION

In every democratic country, the ultimate aim is to achieve the welfare of its people; countries with constitution, finds constitution effective and guiding force to achieve the welfare of people, by implementing the values and principles enshrined in the constitution. Democratic state aims to protect the fundamental rights of individual to achieve the goals of justice, liberty, equality and fraternity as well it also toils to foster the socio-economic development of the nation. So, for the efficient functioning of democratic country an efficient constitution is needed which strives for establishing democratic principles, aiming to promote a favourable environment for overall development.

Excerpt from Dr. Ambedkar’s speech in constituent assembly speech on the eve of adoption of the constitution, states three warnings to preserve democracy not in just form but also in fact:

*“The first thing in my judgement we must do is to hold fast to constitutional methods of achieving our social and economic objectives.”*

*“Bhakti in religion may be a road to the salvation of the soul. But in politics, Bhakti or hero-worship is a sure road to degradation and to eventual dictatorship.”*

*“The third thing we must do is not be content with mere political democracy. We must note that our political democracy cannot last unless there lies at the base of its social democracy. What does social democracy mean? It means a way of life which recognizes liberty, equality and fraternity as the principles of life.”*

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<sup>12</sup> BOULDING, KENNETH E. “The Boundaries of Social Policy.” *Social Work*, vol. 12, no. 1, Oxford University Press, 1967, pp. 3–11, <http://www.jstor.org/stable/23710162>.

-Dr. B.R. Ambedkar<sup>13</sup>

By analysing the aforesaid speech, it can be said that our founding father have paved way for reforms in a democratic means and move forward with constitutional methods for achieving the social economic objectives given to us in the constitution. Further, to prevent degradation of democracy and save ourself from dictatorship we shall be the foot soldiers of the constitution. It is upon us to preserve the constitutional values and our rights. The third and foremost warning given by Dr. Ambedkar, was to adapt social democracy as a way of life so the principles of liberty, equality and fraternity are enriched into our nationhood.

Dr. Ambedkar, while quoting for the Directive Principles of State Policy states:

*“What are called Directive Principles is simply another name for Instruments of instructions to the legislature and the executive...as to how they should exercise their power.”*

The Directive Principles in our constitution are therefore effective means of instructions to the state, to achieve constitutional principles and social democracy through it. As well In Ireland and in Spain their constitution also specifies social policy to achieve social democracy. Hence, the principles in DPSP are reflections of thought and vision that the constitution makers had for the nation, while drafting the constitution. Granville Austin historian of Indian Constitution states fundamental rights as well as directive principles of state policy as conscience of Indian constitution. Austin further argues that despite being non-justifiable, the DPSP are fundamental in governance of the country. He further adds that the “Congress long-standing affinity with the Irish Nationalist movement may have made the example of constitutional socialism as expressed in the Irish directive principles of social policy.”<sup>14</sup> Although the select assembly members have made references to ancient Indian socialism while working on the DPSP. All these countries directive principles have in common is the aim that envisaged the state with duties to do welfare. One of those common agendas in all three countries is the state shall strive to promote welfare of the people. All the three countries freedom movement have inspired their constitution hence, the common goal is to protection of rights, the idea of socialism is deep rooted here since freedom struggle. Ultimately, the constitution’s directive principles of the countries compared herein treats itself as a source of social justice which eliminates social injustice faced historically in these countries as well serves as the principles, which are guiding

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<sup>13</sup> Constituent Assembly Debates, November 25, 1949 *speech by* Dr. B.R. Ambedkar, available at <http://parliamentofindia.nic.in/ls/debates/vol1p5.htm>

<sup>14</sup> Baxi, Upendra. “‘THE LITTLE DONE, THE VAST UNDONE’—SOME REFLECTIONS ON READING GRANVILLE AUSTIN’S ‘THE INDIAN CONSTITUTION.’” *Journal of the Indian Law Institute*, vol. 9, no. 3, Indian Law Institute, 1967, pp. 323–430, <http://www.jstor.org/stable/43949944>.

forces in attaining the objective laid down in the constitution and a vision for developed and discrimination free nation.

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