

3/12/14

Directive Principles of State Policy

- Comparison between DPs and FRs
- Relationship between DPs and FRs.
- Criticism of DPs
-

Govt. of India Act 1935, Irish

What are DPs?

These are set of guidelines to be adopted by the govt. of the day in policy making. They are very similar to "Instruments of instructions" under Govt. of India Act 1935.

DPs are also inspired by Constitution of Ireland.

Objective of DPs

- These are constitutional constraints on the govt. of the day.

They cannot sideline the basic values and principles represented by the Constitution.

It is like general will putting a check on the actual will or political sovereignty.

Controversies related to DPs

- They are not enforceable in the court of law

Issue:

- By definition, constitution is the basic law of the land. Constitutions should not have such parts which are not enforceable or merely ornamental. It brings ambiguity.

That is why constitutions in general do not have such features. Constitution of India & Ireland are exceptions.

- It disturbs the federal distribution of power.
 - DPs permit Union govt. to make laws on subjects which are otherwise in the state list, as subjects of S.L. like Land Reforms, Panchayats, Cottage Industries, etc. is in the DPs.
- It is not proper to limit the choices of future generations with the social contract entered by previous generation.
- DPs fail to satisfy those who wanted these rights to be enforceable. From their point of view, DPs represent pious aspirations, they are like new year resolutions, they have been compared with 'dustbin of sentiments'.

◦ To what extent it is appropriate to call DPs as dustbin of sentiments?

- Why such a remark?

Reason is they have not been given the status at par with FRs. Art. 37 clearly mentions they are non-enforceable in the court of law.

- However it is not appropriate to call DPs as a dustbin of sentiments

Reasons: Same Art. 37 also mentions that they are fundamental in governance.

advisor to
Constituent Assembly

- Explanation by Ambedkar B.N. Rao

FRs and DP form the integrated scheme. Both in Motilal Nehru Report as well as they were presented as an integrated scheme in Constituent Assembly. However, considering the resources and prevailing situation, they were classified under 2 heads. This is to avoid the Constitutional crisis.

- Explanation by Ambedkar

If there is no legal force, there is a bigger force, i.e., political force. In country like India, where large no. of people are poor, no govt. can overlook these rights.

- Actual situation

Though they have not remained dead letters, both Union & State govt. have brought necessary legislations, provided statutory guarantee to these rights. But it is also true that implementation has been poor, earning India the title of "soft state".

This shows that neither legal force is enough nor political force is enough.

What is required is "social capital", vibrant citizenship, political will to recognize the entitlements of the people.

Difference between DPs and FRs

- FRs deals with ~~fundamental~~ fundamental rights of Indian citizens. But DPs

contain rights as well as various other provisions ranging from Panchayats to international peace.

- FRs show coherence as they are inspired by liberalism. Whereas DP's represent various political ideologies.
- FRs establish political democracy in the country and DP's aim to achieve social and economic democracy.

Relationship betⁿ FRs and DP's

- There was a lack of clarity because FRs were enforceable and DP's non-enforceable, yet fundamental in governance.
- The 2 set of rights based on 2 different ideologies. One on individualism, other on socialism.
- In initial years we see conflict between DP's given in Art 39 (b) & (c), Art. 45 with FRs 14, 19 & 23.
- Approach of Judiciary has also been changing.
- Champakam Durairajan case.
 - 1st case where Judiciary was expected to clarify the relative status.
 - Position of Judiciary:
 - Guided by pragmatism
 - It established supremacy of FRs but permitted Parliament to make laws for implementation of DP's by creative interpretation of term law used in Art 13(2).

Approach of judiciary was to go for harmonious construction.

- Golaknath case

- Overruled its earlier approach. Gave clear supremacy to FRs and reduced DP to a subordinate status.

Judiciary was criticised for elitist approach.

Govt has brought 25th C.A. Act, 1971

- Kesavananda Bharati case

- Upheld 25th C.A. Act and reestablished the harmony

- 42nd C.A. Act 1976

- This time govt. tried to disturb the harmony. Govt. amended Art. 31(c) and granted protection to all laws giving effect to DPs and not simply 39(b) & (c).

- Minerva Mills case 1980

- SC declared the above amendment null and void and restored the position of 25th C.A. Act.

Still exists in Constitution.

Court reestablished the harmonious construction.

According to the court, attempt should be made so that no part of the Constitution becomes irrelevant.