

Human Rights

Unit 3 - Constitutional Guarantees.

Directive principles of state policy

The Sapru Committee in 1945 suggested two categories of individual rights. One being Justiciable and the other being non-Justiciable rights. The Justiciable right, as we know, are the fundamental rights, whereas the non-Justiciable ones are the Directive principles of state policy.

Dpsp are ideal which are meant to be kept in mind by the state while formulating policies and enacting laws. There are various definitions to Directive principles of state which are given below.

- * They are an instrument of instructions which are enumerated in Government of India Act, 1935

- * They seek to establish economic and social democracy in the country.

- * Dpsps are ideals which are not legally enforceable by the court for their violation.

Classification of Directive Principle of State Policy.

Indian Constitution has not originally classified Dpsps but on the basis of their content and direction they are usually classified into three types - Socialistic, Gandhian and Liberal intellectual principles.

Dpsp - Socialistic principles.

The principles that aim at providing social and economic justice and set the path towards the welfare state. Under various articles, they direct the state to:

- Article 38 promote the welfare of the people by securing a social order through Justice - social, economic and political and to minimise inequalities in income, status, facilities and opportunities.

- Article 39 Secure citizens.

- * Right to adequate means of livelihood for all citizens

- * Equitable distribution of material resources of the community for the common good

- * Prevention of concentration of wealth and means of production.

- * Equal pay for equal work for men and women.

* Preservation of the health and strenght of workers and children against forcible abuse.

- Article 39A promote equal justice and free legal aid to the poor.

- Article 41 - In cases of unemployment, old age, sickness and disablement, secure citizens:

- * Right to work

- * Right to education

- * Right to public assistance.

- Article 42 - make provision for just and humane conditions of work and maternity relief.

- Article 43 Secure a living wage, a decent standard of living and social and cultural opportunity for all workers

- Article 43 A - Take step to secure the participation of workers in the management of industries.

Article 47 - Raise the level of nutrition and the standard of living of people and to improve public health.

Dpsp - Gandhian principles

It is based on Gandhian ideology used to represent the Programme of reconstruction enunciated by Gandhian during the national movement. Under various articles they direct the state to.

- Article 40 - Organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government.
- Article 43 - promote cottage industries on an individual or co-operation basis in rural areas.
- Article 43B - promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.
- Article 46 - promote the educational and economic interests of SCs, STs, and other weaker sections of the society and to protect them from social injustice and exploitation.
- Article 47 - Prohibit the consumption of intoxicating drinks and drugs which are injurious to health
- Article 48 prohibit the slaughter of cows, calves, and other milch and draught cattle their breeds

Dpsp - Liberal - intellectual principles.

These principles reflect the ideology of liberalism. Under various articles, they direct the state to.

- Article 44 Secure for all citizens a uniform civil code throughout the country
- Article 45 provide early childhood care and education for all children until they complete the age of six.

- Article 48 Organise agriculture and animal husbandry on modern and scientific lines.
- Article 49 - Protect monuments, places and objects of artistic or historic interest which are declared to be of national importance.
- Article 50 - Separate the Judiciary from the executive in the public service of the state.
- Article 51 - Promote international peace and security and maintain just and honourable relations between nations.

New DPSP added by the 42nd Amendment Act, 1976.

- Article 39 To secure opportunities for the healthy development of children.
- Article 39A To promote equal justice and to provide free legal aid to the poor.
- Article 43A To take steps to secure the participation of workers in the management of industries.
- Article 48A - To protect and improve the environment and to safeguard forests and wildlife.

Universal Declaration of Human Right

The countries that participated in the conference held at San Francisco organisation by the founders of United Nations realised the need and importance of Promoting human rights and fundamental freedom. This made them to universally adopt an international bill of human rights.

During the first and second world war citizens of various countries were the pathetic victims of large scale violations of Human Rights. The atrocities showered on Jews by Nazis and Mussolini's cruelty to war victims created a very bad impression about the deprivation of their basic rights and freedom. This made

National Human Right Commission

For a better protection of human rights the Indian Constitution encouraged the enactment "The Protection of Human Rights Act 1993" which empowered to establish a 'National Human Rights Commission and State Human Rights Commission for every Indian state.

Human Rights Court are also established for protection and recognition of Human Rights.

Constitution of National Human Rights Commission.

National Human Rights Commission is formed by the central government to exercise the power laid out in "The Protection of human rights act 1993" and to perform the assigned functions under the act.

The National Human Rights Commission is formed under the headship of a chairperson, who must have been the chief Justice of Supreme Court and set of 4 members. The members of the National Human Rights Commission must be of the following calibre.

- * One member who has been the Judge of Supreme Court.
- * One member must be person who has been the chief Justice of a High Court.
- * Two members appointed among person having knowledge and practical experience in matters relating to human rights.

Apart from this the members of this Commission also include the following.

- * The chairperson of 'National Commission of minorities'
- * The chairperson of 'Scheduled caste and scheduled tribe'

* The chairperson of 'National Commission for women'.

The office bearers of the Commission include

Secretary general who shall be the chief executive officer (CEO) of the Commission to exercise such function and powers delegated to him.

State Human Rights Commission

The protection of Human Rights Act 1993 provides for the establishment state Human rights Commission.

The state Human Rights Commission is set-up at the state headquarters every state. State commission at present are now in existence in the following India State:

- * Himachal Pradesh.
- * West Bengal
- * Assam
- * Madhya Pradesh.
- * Punjab
- * Kerala.
- * Tamilnadu and
- * Uttar Pradesh.

Constitution of state Human Rights Commission.

A state Commission consists of a chair person who has been a chief Justice of High Court.

- * One member who has been a Judge of High Court
- * One member has been a District Judge in that state
- * Two members to be appointed amongst persons having knowledge or practical experience relating to human rights.

Thus the state Commission has a chair person and four members to administer its operations.

The chairperson and other members are appointed and other members are appointed by the governor of the state and such appointment is made on the recommendation of a committee. The committee consists of chief minister, Speaker, Home minister, leader of opposition in the legislative assembly as its members.

The members hold office for a period of 5 years and are eligible for reappointment. The Secretary is the Executive Officer of the Commission and he is the person who carries out the activities of the Commission with the help of delegated powers.

Administration of the State Human Rights Commission

The state Commission has powers to submit annual report to the state government and special report in matters of urgency or importance. Like national Commission the state Commission also submits the reports along with the annexures to the house of parliament and legislative assembly. The annexure includes the memorandum of action to be taken, reasons for non-acceptance of the recommendations.

The state Commission has power to perform all the functions which are entrusted to it by national Human Rights Commission. The activities of both the Commission are similar in nature.

State Human Rights Courts.

Human Rights Courts are established in every district of the state for a fast-track trial of offences that arise out of Human Rights violation.

The state Government appoints the public Prosecutor or an advocate with seven years of legal Practice to act as a special public prosecutor. But however special legislations have not been Passed and therefore the functions of human right

Courts are not clear cut and thus the Court of Sessions act as human rights court. This clearly indicates that human rights courts are at an infant level.