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**CONSTITUTIONALISM OF DIRECTIVE PRINCIPLES OF STATE POLICY IN
PAKISTAN AND INDIA: A Comparative Study**

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CONSTITUTIONALISM OF DIRECTIVE PRINCIPLES OF STATE POLICY IN PAKISTAN AND INDIA: A Comparative Study

*Md. Imran Ali**

[Abstract: Directive principles of State policy (hereinafter referred to as DPSP) are explicit constitutional guidelines addressed to political organs of the State to procedurally ensure certain transformation goals. DPSP are expressive constitutional guidelines that focus primarily on the political bodies of the State to ensure transformative programmatic social, political or economic objectives. DPSP do not confer legal rights or remedies and are general guidelines or recommendations for all government agencies, reminding them of the fundamental principles of a new social and economic order that the Constitution seeks to build. There is growing disagreement about the nature and position of DPSP under the Constitution, and a strange judicial dilemma has prevented the courts from applying a uniform, coherent and balanced approach to these principles and fundamental rights. DPSP are incorporated in the Constitutions of Pakistan and India. This article examines the constitutional entrenchment of provisions imposing binding but generally non-justiciable obligations on the State for the promotion of social values, designed to be implemented. DPSP pose major challenge for legal constitutionalism that has not yet been identified in Pakistan but to some extent recognized in India.]

I

Introduction

This article tends to a significant, yet to a great extent disregarded, advancement of constitutional law: *the constitutional reinforcing of provisions that execute obligatory yet non-justiciable commitments on the State to advance social justice and intended to be done other than direct judicial authorization and enactment.*¹ These constitutional provisions can be found in many national and sub-national constitutional systems. These constitutional provisions often mentioned as Directive Principles of State Policy (hereinafter referred to as DPSP) are a major challenge for a legal constitutionalism

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¹ Jeffrey Usman, *Non-Justiciable Directive Principles: A Constitutional Design Defect*, 15 MICH. ST. J. INT'L L. 64, 67 (2007).

that has not yet been recognized. Constitutional protection of social values is canonical in relation to the judicially enforceable rights provisions. DPSP are constitutional guidelines of people to the government and are controlled by folks to advance their needs, interests, and general rights. The DPSP do not create rights, but describes objectives and targets.²

This article inspects the capability of DPSP for the judicial utilization by analytically looking at the encounters of Pakistan and India from a similar point of view. The DPSP are set out in Chapter II, Part II of the Constitution of Pakistan. However, the effect of this constitutionalism was not important for the implementation of socio-economic rights. The judicial execution of socio-economic rights has been a long way from the populace. Despite the fact that there are different variables for the non-judicial utilization of these rights, the Constitutional specification of socio-economic rights in the DPSP, from one viewpoint, and the instrument for deciphering the constitution and the judicial insignificance to DPSP under the Constitution, forms the most significant element. In spite of the fact that the DPSP give no legitimate rights and make no lawful cures, they seem, by all accounts, to resemble an instrument of instructions, or general proposals routed to all experts in the State helping them to remember the essential standards of the new social and economic directives which the Constitution targets at building. These key adages of State Policy, which however are of no legitimate impact, have been beacon-lights to the Courts. In this manner these standards have helped the Courts in practicing their capacity of legal audit. They have, consequently, not sleeked the structural foundation of all State activity or authority, but have guided, in certain regards, the Courts. The significance of the DPSP for the judiciary has especially extensive goals, as the DPSP are fundamental constitutional guidelines that lead the State to socio-economic and political justice. If the judiciary cannot fight against the rule of the executive and legislative branches, the constitutional democracy enshrined in the constitution will lose its significance.

Conversely, the Indian Constitution extends obligations of the DPSP to all governmental bodies, although judicial adjudication is expressly excluded.³ If one excludes the judiciary from using the DPSP as legal claims, one may consider how it can satisfy this constitutional obligation. Non-justiciability of the DPSP hasn't held the Courts' hands from interpreting the Constitution and the DPSP, yet it restrains the parliament and the legislature from making laws.⁴ Regardless of the non-justiciability of the DPSP, Indian Courts have built up an enormous amount of jurisprudence that they use widely to enforce fundamental rights. India has been

² *Id.*

³ Articles 36 & 37, THE CONSTITUTION OF INDIA, 1950.

⁴ Reddy Chinnappa, THE COURT AND THE CONSTITUTION OF INDIA: SUMMIT AND SHALLOWS 73 (2010).

chosen for comparison because of its extensive DPSP jurisprudence, from which many lessons can be learned by Pakistan.

II

Directive Principles of State Policy

The use of DPSP as a technique for developing provisions on social values dates back to the conception of the Irish Constitution.⁵ The Irish, however, adopted this idea from the Constitution of the Republic of Spain which was the first to assume these principles.⁶ Article 45 of Irish Constitution comprises of a list of DPSP and formulates a separate part of the provisions on social values that differ from other parts of the Constitution on fundamental rights.⁷ These guidelines are part of the Government's commitments to promote a range of socio-economic values, including the equitable allocation of resources, well-being of employees and care of the weaker groups of society.

DPSP are the ideologies that the State should take into account when drafting guidelines and laws that guarantee social, economic, and political justice for all.⁸ DPSP are values that encompass the constitutional objectives of the State. It is a set of rules that offers life to the desire of the individuals and the country.⁹ DPSP have endured as well as have expanded in admiration regardless of noteworthy advancements in the zone of social values. Recently, DPSP have been recommended by the authors of a model written Constitution for New Zealand as the favored construction for social, economic and cultural ideals that go beyond the current statutory bill of rights.¹⁰

DPSP is better comprehended as a constitutional planning technique that responds to the perceived restrictions on the exercise of judicial enforcement as a mechanism for the realization of these social values and for the perceived benefits of the legislation. The essential proposition that underpins the endorsement of the DPSP is that some social qualities are constitutionally established on the ground that they apply the legitimacy of regular legitimate norms, and yet they are more reasonable

⁵ THE CONSTITUTION OF IRELAND, 1937.

⁶ THE CONSTITUTION OF SPAIN, 1931.

⁷ *Supra* note 5, Article 45.

⁸ S.M. Mehta, A COMMENTARY ON INDIAN CONSTITUTIONAL LAW 215 (1990).

⁹ Bertus De Villiers, *Directive Principles of State Policy and Fundamental Rights: The Indian Experience*, 8 S. AFR. J. OF HUM. RTS. 29 (1992) at 30-34.

¹⁰ Geoffrey Palmer and Andrew Butler, A CONSTITUTION FOR AOTEAROA NEW ZEALAND (2016).

for the utilization of enactment than direct judicial enforcement. The early presentation of the DPSP bolsters this postulation in Ireland and India.

The DPSP design reacted to reservations about legal implementation raised by authors who were in agreement about the principal status of the social ideals being referred to and thoughtful to their constitutional entrenchment on that premise. Additionally, in spite of the fact that trepidations about judicial execution were not consistently shared, it was broadly recognized that those social qualities had recently been viewed as improper subjects for constitutional law and normal enactment.¹¹

III

Constitutionalism and DPSP

The discussion on the status of the DPSP in Constitutions differs from the assertion that these are simple Constitutional assurances that are not practical for the basic principles used by citizens. In a general sense, DPSP are ideologies that guide a government in current actions and in future directions to people and country, in general.

DPSP are constitutional directions sent by the folks to the govt. and checked by the individuals to propel their desires, interests and general rights. Despite the non-justiciability of the DPSP, they're going to influence judicial decisions in a similar manner as the *Magna Carta* has influenced the judgments of the English judges, and as the *preamble to the American Declaration of Independence* influenced the decisions of the American judges.¹² The role of DPSP as a constitutional principle mustn't be underestimated despite its non-justiciability.

Therefore, constitutionalizing the DPSP is a useful project for democratic culture, human rights, and social justice, because it is dynamic, evolving over time, and provides a translation to the text of the Constitution in a manner that caters to the needs and expectations of people. Unlike fundamental rights, they give away much room for political talk and define the contours of democratic culture.¹³ Its ethical and political character for the government imbibes among the citizens a sense of authority that manifests itself during the elections.

¹¹ Thomas Murray, *Socio-Economic Rights and the Making of the 1937 Irish Constitution*, 31 IRISH POL. STUDY, 502 (2016) at 515.

¹² Gledhill, *THE REPUBLIC OF INDIA: THE DEVELOPMENT OF ITS LAW AND CONSTITUTION* 161-162s (1964).

¹³ Wiktor Osiatynski, *HUMAN RIGHTS AND THEIR LIMITS* 70, 99 (2009).

The DPSP challenges the standard framework of the constitutionality of social values. First, the challenge is to understand how legal the principles of the DPSP are. This perspective assumes that DPSP are constitutional: they are part of the constitution that encompasses them. But as the DPSP are not legally enforceable, it is, therefore, not clear whether they are the source of the rules of constitutional law.¹⁴ It can be assumed that the state does not respect its constitutional obligations and, therefore, acts unconstitutionally if it does not apply the social values of the DPSP to its policies and administrative actions. But if the courts cannot apply the DPSP, the mechanisms to better guarantee these obligations will be weakened in the best possible way.

Thus, in functional terms, DPSP are equivalent to statements of constitutional values: a wellspring of constitutional goals, however not a wellspring of constitutional legal norms. This allows us to understand the enforceability problem. The legal status of the DPSP, which revolves around the issue of enforceability, is largely virtual and well-deserved based on some strong and too narrow assumptions about the rule of law.¹⁵ There are numerous standards that make these commitments legitimate, yet that courts can't uphold.¹⁶ Furthermore, even when courts can apply and enact legal rules, judicial enforcement may not be sufficient to guarantee the assertiveness of DPSP. Indeed, enforcement mechanisms can also be questioned as an essential component of legal rules, at least when a hard understanding of the law is rejected on the basis of enforcement. These circumstances seem to suggest that the issue of enforceability does not deserve to be taken seriously and should be rejected.

The problem is not understanding how DPSP are the source of legal norms, but understanding how the legal norms they produce can be described as constitutional norms. The basic function of constitutional law is to regulate the validity of other common legal rules. However, an essential element of the DPSP that separates them from the correct provisions is the extension and substance of basic social values to which they apply, as well as the legal standards to which they apply and are defined by direct legislation. The constitutionalizing of the DPSP and its enforcement isn't a particular constitutional issue credited to character of the DPSP. It is also true for alternative constitutional provisions, like the separation of powers and independence of the judiciary. Simultaneously, there are nations like India that have gained better ground with the legal application of the DPSP, while Pakistan has neglected to enforce DPSP. Thusly, the issue of enforcement isn't adequate to legitimize the claim that the DPSP is simply expository.

¹⁴ H. M. Seervai, *THE CONSTITUTION OF INDIA: A CRITICAL COMMENTARY* (2015).

¹⁵ Gautam Bhatia, *Directive Principles of State Policy* in *THE OXFORD HANDBOOK OF THE INDIAN CONSTITUTION* (S. Choudhry, M. Khosla, & P.B. Mehta, eds.) 644 (2016) at 648.

¹⁶ Nicholas W Barber, *Laws and Constitutional Convention*, 125 LQR 294 (2009) at 300-301.

IV

DPSP in the Constitution of Pakistan

Pakistan's first Constituent Assembly on March 7, 1949 adopted a resolution titled *Objective Resolution*.¹⁷ This resolution, with minor omissions, additions and amendments to its language, introduced in the preamble of 1956 and 1962 Constitutions, the Provisional Constitution of 1972 and the Constitution of 1973.¹⁸ In all Constitutions, the objective resolution was pervading spirit. It contains general principles for the administration of the government. The common factors have emerged in the form of a democratic federal government that guarantees all freedoms, equality, tolerance, and social justice, as expressed by Islam, and fully guarantees the independence of the judiciary.

Twelve articles of the constitution are devoted to principles of policy (DPSP). Articles 29 to 40 define principles of policy.¹⁹ These Principles are the efforts of constitutional scholars who have been proposed to accommodate the guiding principles for state policy. It is considered a manifesto of government policies and programs and a guide for decision-makers. These DPSP are non-justiciable non-binding guidelines. These DPSPs are only a beacon for the legislator. Although the Courts cannot annul any law for violating a directive, the court can review the progress of the directive which checks the constitutionality of legislation. Every organ of the State under Article 29(1) of the Constitution is responsible for acting in accordance with these principles set out in Chapter 2, Part II of the Constitution. Any law that delegates powers to a State official, unless otherwise specified, implies that these powers must be exercised to implement these principles.²⁰

Although these principles are called the foundation of government they have not been enforced by a Court. Therefore, no question as to the acquisition of a right under Article 37 of the Constitution has arisen. At the same time, these principles have been made non-justiciable vide Article 30 of the Constitution. The provisions of Articles 37 and 38 are not directly applicable but may be applied indirectly to facilitate the interpretation of other provisions of the Constitution and legislation. Once an organ or authority of government propagates a law in agreement with

¹⁷ Aman Memon and Muhammad Shakeel Ahmed, *Religion and Politics: Early Years of Pakistan's Domestic and External Affairs*, 37(1) J. of South Asian and Middle Eastern Stud. 48 (2013) at 51.

¹⁸ Revival of Constitution of Pakistan Order, President's Order No. 14, Insertion of Article 2-A, (1985).

¹⁹ THE CONSTITUTION OF PAKISTAN, Chapter 2, Part II.

²⁰ *Abdul Farid v. NED University of Engineering*, 2001 CLC 347.

Article 37, the Constitution requires that the act or law be examined to determine whether it has created a right in any person.²¹

DPSP are not just introductory words but define the goal of establishing a State. These DPSP which are now part of the Constitution make it clear that these are the basic ideologies of the Constitution. The realization of the DPSP is the precious goal of any political party brought to power.

In the constitutional history of Pakistan, the provisions of this Resolution have often been brought before the superior Courts to determine whether executive or other acts of government are legal. Although this Resolution referred to by these Courts forms the cornerstone of Pakistani legal jurisprudence and the link that unites the country by exemplifying the spirit and basic standards of the constitutional concept and representative ideology, the ultimate goal and purpose of the country and the nation,²² it was not acknowledged as a *Supra-Constitutional instrument*²³ and was held to be *unjusticiable and a perambulatory provision*.²⁴

The Lahore High Court observed in *Zia-ur-Rehman v. The State*²⁵ that the aim of Objectives Resolution was to manifest the ideology behind Pakistan. Therefore, it was concluded that there were no obstacles to a constitutional provision. Subsequently, the position was clarified by the Supreme Court.²⁶ The Court ruled that the Resolutions were not unconstitutional or antithetical to the tenets of the constitution. The Resolution is a preamble, and although it can be used to clarify ambiguities in the language of the Constitution, it can in no way replace an explicit provision. The Court also ruled in similar lines in the Ghulam Jilani's case,²⁷ the decision only confirmed the principle of exclusive sovereignty of God and the exercise of God's authority by people to the State and that this principle is embodied in the Resolution. It did not hold that the Resolution to be the *grundnorm*. The Court left no doubt and added that the preamble or any Resolution could not review the essential provisions of the constitution. The court ruled that the purpose, after the adoption of the Constitution, *is nothing more than what is described in itself, that is, it is an expression or statement of the objectives that the people must achieve*.

The position of this Resolution, however, changed radically when Martial Law was lifted and Constitution was revived on December 30, 1985.²⁸ The Objective Resolution was incorporated by introducing a new provision in the Constitution,

²¹ *Zohra v. Government of Sindh*, PLD 1996 Karachi 1.

²² *Hussain Naqi v. District Magistrate Lahore*, PLD 1973 Lahore 164.

²³ *The State v. Zia-ur-Rehman*, PLD 1973 Supreme Court 49.

²⁴ *Zh-ur-Rehman v. The State*, PLD 1986 Lahore 428 at 429.

²⁵ *Id.* at page 482.

²⁶ *Supra* note 24.

²⁷ *Ghulam Jilani v. Government of West Pakistan*, PLD 1967 Supreme Court 373 at 376.

²⁸ *Supra* note 19.

called Article 2-A, which made the Resolution an integral part of the Constitution and entered into force accordingly. The condition laid down by the Supreme Court in Ziaur Rehman's case to give the objective resolution the same status and authority as the Constitution itself, so that it would be fulfilled, and the objective resolution became part of the constitution in the preamble.

In *Hakim Khan* case,²⁹ it was argued before the court that the Zia-ur-Rehman's decision on the Resolution stated that it had no control over the constitution because it was not an integral part of it, Article 2-A was introduced to undermine the inevitable effect of the Constitution under the control of the Resolution. However, this position did not prevail. On the contrary the Court ruled that Article 2-A complies with the provisions and principles of objective resolution with other parts of the Constitution, which means that if there is an inconsistency in any part of the Constitution then the interpretation would be such as to harmonize it with the Resolution.

The status of the Objectives Resolution was again discussed in the *Zaheeruddin's* case.³⁰ In this case, the question was whether the word *law* used in article 20 of the Constitution was limited to the approved law or contained Islamic principles which had not been adopted. The Court concluded that Article 2-A recognizes the sovereignty of God as an integral part of the constitution and, generally the Constitution accepts the commandments of Islam in the Qur'an and the Sunnah as the effective law. According to Article 2-A, the restrictions of Article 20 could be restrictions imposed by Islamic principles, not just by the enacted law.

Although DPSP do not confer rights or remedies, they do appear to be a tool for general guidelines or proposals to all government authorities as a reminder of the fundamental standards of new social and financial directive aimed through the Constitution.

The esteemed judges also considered that these basic axioms of State policy, although without legal consequences, serve as useful guidelines for the Courts. The DPSP can be classified into rights, duties, obligations, or even ideologies because the terms are understood in ordinary language, although they are part of the same nature. These are the rights a person enjoyed by participating in a welfare State. These are not rights in the sense that they are an integral part and can be exercised by law as rights, but rather rights that the State gives to the individual for specific purposes to increase social welfare. There are also powers given to the State because they must create a social order in which social, economic, and political justice

²⁹ *Hakim Khan v. Government of Pakistan*, PLD 1992 SC 595 at 597.

³⁰ *Zaheeruddin v. State*, 1993 SCMR 1718 at 1721.

prevails. These rights are not legally binding obligations for which the State is not liable to the Courts, but are to be understood in an ethical and constitutional sense.³¹

The principles contained in Article 38 also stipulate that State must guarantee the well-being of the folks by uplifting the standard of living, guaranteeing justifiable regulation between employers and workers and ensuring all guarantees to the citizens within the accessible assets, work facilities, and resources available in the country together with adequate livelihood and income equality of the people.³² The DPSP should be regarded as the basic ideologies of State governance, but unenforceable by any Court.³³

The objective resolution must be considered by the Court while interpreting the Constitutional provisions, if the wording of the constitutional provision allows discretion, the court must choose this interpretation according to the principles set out therein. However, this does not mean that the Resolution is better than the status of other Constitutional provisions and Resolution can be used to defeat these provisions. A provision of the Constitution cannot be repealed under any other provision. In interpreting the Constitution and legislation, the provisions of Article 2-A were also taken into account, read together with the Resolution, in the sense that there was great or slight doubt to be resolved in such a manner to promote the dictation of justice and the rule that justice must not only be done, but must also be seen to be done. The latter principle is rooted in Islamic jurisprudence as in any other legal system. The Supreme Court has ruled that it seems necessary to rely more on Article 2-A to implement the Resolution to implement the objectives of Resolution to obtain justice as a very essential element of the Constitution.³⁴ DPSP do not confer legal rights or create legal remedies and are only general guidelines or general suggestions to all authorities.³⁵

The inclusion of Article 2-A in the Constitution, by which the objective resolution has become an integral part of the Constitution, has no effect on the other provisions and no other provision of the Constitution can be invalidated in case of conflict between them. Objective Resolution as a substantial part of the Constitution could be used to interpret other provisions. The Resolution could not be made a ground to invalidate any amendments to the Constitution.³⁶

³¹ *Miss Farhat Jalil v. Province of Sindh*, PLD 1990 Karachi 342 para 11.

³² *Ikrum Bari v. National Bank of Pakistan* 2005 S C M R 100 para 8.

³³ *Syeda Shazia Arshad Bukhari v. Government of Punjab*, PLD 2005 Lahore 428 para 9.

³⁴ *Justice Khurshed Anwar Bhinder v. Federation of Pakistan*, PLD 2010 Supreme Court 483 para 17&18.

³⁵ *Ghulam Mustafa v. Province of Sindh*, 2010 CLC 1383 para 10.

³⁶ *District Bar Association Rawalpindi v. Federation of Pakistan*, PLD 2015 Supreme Court 401 para(d).

Objectives Resolution and DPSP can be used to appreciate and interpret the fundamental rights, since they can facilitate the interpretation of fundamental rights in accordance with their constitutional position and without separation from their constitutional institutions. This approach is aimed to fully reconcile the holistic interpretation of the numerous provisions of the Constitution. However, the Objective Resolution, Article 2-A and the principles of policy cannot be used alone or read together to test the validity of statutes and strike them down.³⁷

A provision of the constitution could not be overturned because it violated an extraordinary feature, characteristic or structure of the Constitution. Therefore, basic structure theory was completely rejected. However, each Constitution has its own characteristics and features that play an important role in the formulation of laws and interpretation the provisions of the Constitution. These important characteristics can be found in the scope of the Constitution. This does not mean that the Court implicitly accepts the theory on the basic structure of the Constitution. It is only mentioned to show that each Constitution has its own characteristics. Article 2-A was added to the Constitution in 1973, which makes the Resolution an integral part of it but has no authority to define the basic structure. It is not up to the Court to declare that a provision of the Constitution can be revoked because it is contrary to the objectives of the Resolution or to national ambitions or better ethical designs, philosophical legal concepts or basic structure.³⁸

DPSP supported the orderly growth and development of every citizen's personality, while making fundamental rights solemn and dignified. These principles were not legally applicable but were fundamental to the administration of the governmental authority and the State had to apply these principles in legislation and to build a just social order.³⁹ DPSP helps in the purposive interpretation of the fundamental rights within the constitutional framework in which they find themselves.⁴⁰

DPSP gave Constitutional desires, objectives and statement of purpose for the State of Pakistan and it was a Constitutional commitment of the State and its organs and specialists to synchronize with and advance the said Principles. DPSP sustained underlying foundations of democratic system and realized and prepared Constitutional qualities and were a guide to democratic system and for guaranteeing that the State stayed on course to accomplish social, financial, and political justice.

Objectives Resolution and DPSP can be used to understand and interpret fundamental rights in the Constitution, as they can facilitate the interpretation of fundamental rights in accordance with their constitutional context. The aim of this

³⁷ *Lahore Development Authority v. Ms. Imrana Tiwana*, 2015 SCMR 1739, Para 32.

³⁸ *Mahmood Khan Achakzai v. Federation of Pakistan*, P L D 1997 Supreme Court 426, Para 5.

³⁹ *NESTLE Pakistan v. Director PESSI*, P L D 2019 Lahore 515, Para 3.

⁴⁰ *Muhammad Ahmad Pansota v. Federation of Pakistan*, P L D 2020 Lahore 229, Para 20.

approach was to construct the various provisions of the Constitution in a holistic manner. However, Article 2-A and DPSP, if read together, cannot be used to prove the validity or repeal any statute. Part II of the Constitution contains some guidelines for the State, applying them as DPSP. The Constitution itself applies them as *principles*, not as *laws*. In addition to setting some ideological objectives, it is intriguing to take note of the fact that the provisions of Part II refer to the minimum requirements that they declare arranged financial development, steady increment of beneficial powers and consistent improvement of the material and social way of life to guarantee basic needs and basic rights for its citizens, such as food, clothing, housing, education, medical care, the right to work and so on.

The non-justiciability of the DPSP means that they cannot be enforced by the courts, which means that neither the legislature nor the executive is required to mandatorily follow the DPSP. It has been declared that DPSP are only sacred wishes having no legitimate assent behind them. This can be interpreted to mean that the legislature and executive should formally review and enact laws in accordance with the DPSP.

V

DPSP in the Constitution of India

On January 22, 1947, the Constituent Assembly approved the historic objective resolution which set the objectives for the Constituent Assembly in framing the Constitution. Paragraphs V and VI of the objective resolution are of particular importance, which thus provides that all Indian citizens are subject to economic, social, and political justice, equality of opportunity and freedom of thought, expression of faith, belief, worship, association is guaranteed by law and morality. Where appropriate, precautions should be provided for tribal and backward minority areas, as well as for disconsolate and other regressive classes. The structure of these articles was essentially contained in the preamble and in Parts III and IV of the Constitution. Predominantly, political rights have been identified as fundamental rights while social and economic rights have been incorporated under the Directive Principles of State Policy (DPSP).⁴¹

Indian constitutional scholars have been influenced by the Irish constitution, which recognizes justiciable and non-justiciable rights. The chapter on fundamental rights can be separated into two parts: Part A which deals with non-justiciable rights under

⁴¹ B. Shivar Rao, THE FRAMING OF INDIA'S CONSTITUTION: SELECT DOCUMENTS, II 33 Notes on B.N. Rau on Fundamental Rights, (1946).

the title 'Basic Principles of State Policy' and part B deals with justiciable rights under the title 'Fundamental rights.'⁴²

Part IV of the Constitution contains a list of broad policy which serves as guidelines to the State. These rights are collective and social. Articles 36 to 51 deal with DPSP. The subject recorded in this Part are not less significant as compared to the fundamental rights, however, have a comparative enthusiasm for the growth and progress of the People.

Article 37⁴³ of the Constitution provides that the provisions of Part IV are judicially non-enforceable, but are essential to the administration of the country. To understand, it is reasonable to preserve it by comparing it with Article 45 of the Irish Constitution,⁴⁴ which provides that the standards of social approach set out in this Article are expected as a general rule for Oireacatas (Parliament). The use of these standards in the drafting of laws is the main concern of Oireacatas whereas these guidelines are non-cognizable by any Court. Article 37 dissimilates altogether from the language utilized in Article 45. Article 45 articulates that the standards of social strategy are not cognizable by any court, while Article 37 speaks that DPSP may not be enforceable by any Court. Article 45 declares DPSP are general rules whereas Article 37 affirms DPSP as fundamental. Article 45 pronounces that it is the obligation of the legislature to apply DPSP while Article 37 obliges the State to apply the DPSP.

The unenforceability of applying DPSP does not mean that the principles they contain are non-recognizable and that the State can evade the obligation to apply DPSP during the drafting of the law. Although duty is not mandatory, deviation from duty can be prevented.⁴⁵ The constitutional legitimacy and convenience of DPSP has consistently been dubious, and ideas frequently contrast on this point. A few critics consider DPSP to be as a pointless connection to a composed Constitution, similar to Indian, since it is simply a political declaration with no sacred worth.⁴⁶ It would, therefore, give the idea that the proclamation of the DPSP in the Constitution has a scholarly objective. These DPSP are additionally helpful on the grounds that they set patterns and set out the standards of another procedure of social rights that will be viable later on.⁴⁷

In *State of Madras v. Champakam Dorairajan*,⁴⁸ the Supreme Court was solicited to inspect the suggestions from the DPSP on specific Articles in Part III of the Constitution. The Court decided that the Chapter on fundamental rights is sacred

⁴² *Minerva Mills v. Union of India*, A.I.R. 1980 S.C. 1842, Page 1989.

⁴³ THE CONSTITUTION OF INDIA, 1950, Article 37.

⁴⁴ *Supra* note 6.

⁴⁵ T. Devidas, *Directive Principles Sentiments or Sense*, 17 J.I.L.I. 478, 480, (1975).

⁴⁶ Joshi G.N., THE CONSTITUTION OF INDIA 108 (1975).

⁴⁷ Guetzevitch, LES CONSTITUTION DEL' 1 EUROPE NONVELLE 38 (1928).

⁴⁸ *State Of Madras v. Champakam Dorairajan*, 1951 AIR 226.

and that it is probably not going to be constrained to a progression of executing guidelines or procedures under the significant Articles of Part III. The DPSP must be emulate and run auxiliary to this Chapter. As Court would like to think, this is the right method to comprehend the arrangements of Parts III and IV. In any case, as long as Fundamental rights are not disregarded to the degree that the provisions provided by Part III, the State may not be obliged to act as per the standards of Part IV, yet again as per the Legislature and the Executive, the limitations forced upon the State under the Constitution. Fundamental rights would be decreased to a solitary string if the DPSP were scratched.

In Kerala Education Bill,⁴⁹ the Court noticed significance of utilizing DPSP as an interpretative apparatus. The State attempted to give an arrangement of instruction by which minorities can govern educational institutions in accordance with Article 45 of the DPSP. However, such activity was tested for its incongruence with Article 14. In spite of the fact that the Court decided that bill is illegal for its inconsistency with the Fundamental Rights, it referenced those endeavors ought to be made to amicably decipher the DPSP and Fundamental Rights, however, the later won in case of logical inconsistency. Along these lines, initially the court had offered supremacy to Fundamental Rights over DPSP.

The Supreme Court articulated in *Golaknath* case⁵⁰ that Parts III and IV establish a 'unified scheme' and even an 'independent code,' to portray connection between Fundamental Rights and DPSP. It can very well be sensibly derived that the Court rewarded both Parts similar importance. The doctrine of unified scheme in a manner revoked the hypothesis of subjugation articulated by Supreme Court in *Champakam Dorairajan*⁵¹ and *M.H. Qureshi*⁵² cases. These judgments demonstrated the flexibility of the Fundamental Rights to react to the changing requirements of the general public. Thus, the Fundamental Rights were to be translated so as to empower the State to fulfil the socio-economic commitments contained in the DPSP. The dominant part interpreted that the DPSP can sensibly be authorized without removing or abbreviating the Fundamental Rights.

According to the Supreme Court,⁵³ if Fundamental Rights were made safe to changing methodology of the Constitution; there was a threat that the energetic improvement of Indian Society would become helpless essentially. Though enduring the dispute, the Court suggested that whether or not the Fundamental Rights could be considered unalterable, necessities of reasonable enthusiasm would even now be gratified by suitably disentangling the Fundamental Rights in the light

⁴⁹ *The Kerala Education Bill v. Unknown*, 1959 1 SCR 995.

⁵⁰ *Golaknath v. State of Punjab*, A.I.R. 1967 S.C. 1643

⁵¹ *Supra* note 48.

⁵² *Mohd. Hanif Qureshi & Others v. The State of Bihar* (1959) S.C.R. 629.

⁵³ *Sajjan Singh v. State of Rajasthan*, A.I.R. 1967 S.C. 845.

of possibilities enclosed in DPSP. These guidelines are also fundamental in the organization of the State and the courses of action of part III of the Constitution must be deciphered pleasantly with these principles.

In *Chandra Bhavan Boarding* case,⁵⁴ the Court decided that freedom of trade doesn't mean chance to mishandle. The provisions of the Constitution are not originated as blockade to progress. They give a course of action to precise progression towards the social order contemplated by the preface to the Constitution. While rights introduced under Part III are decisive, guidelines specified under Part IV are significant in the organization of the country. We see no dispute at all between the courses of action contained in Part III and Part IV. They are comparing and fortifying one another. In these cases, the court concluded that DPSP and Fundamental rights are correlative and should be deciphered in a genial manner. The Supreme Court⁵⁵ by striking down Article 31-C amended by 42nd Amendment as unlawful on the ground that it wrecks focal part of the Constitution.

The Court ruled that Article 31C was outside the altering authority of the parliament and was void since it pulverizes major highlights of the Constitution by an entire avoidance of encounter any law on the premise that it was conflicting with or consolidated any of the rights specified by Article 14 or 19 of the Constitution. The dominant part saw that the Constitution is developed on the bedrock of dependability among Part III and IV. To grant superiority to one over the other is to irritate understanding of the Constitution which is basic highlight of the central architecture.

The 42nd Amendment of the Constitution endorsed another change as conferring that no law executing at least one or more of the DPSP will be regarded invalid as it violates the fundamental rights. This revision was proposed to build up the supremacy of DPSP against the Fundamental Rights yet the judgment in the *Minerva Mill's* case affirmed the harmony of Fundamental Rights and DPSP. In this manner, the Supreme Court observed that *our constitution depends on a harmony between Part III and Part IV and that, whenever given the most noteworthy need to one another, it ought to upset the congruity between the two*. Thus, Supreme Court affirmed the connection between Fundamental Rights and the DPSP, which is of vital significance to India in support of equity, democracy and justice.

Fundamental rights which are provided for under part III of the Constitution, without a doubt, establish the ark of the Constitution. In any case, it can't be overemphasized that the DPSP are crucial in the administration of the country.

⁵⁴ *Chandra Bhavan Boarding v. The State of Mysore*, 1970 AIR 2042.

⁵⁵ *Supra* note 42.

What is crucial in the administration of the nation can't without a doubt be less critical than what is ultimate in the life of a person.⁵⁶

There are also contentions dependent on content, history, and organization of the Constitution which recommends all-inclusive attitude towards DPSP in the Constitutional verdict. Anyhow, DPSP doesn't have a legitimate power; it implies that some piece of the Constitution also isn't having a legal sanctity which is contrary to the rule that a constitution all together is an authoritative text. DPSP are major standards which the judiciary should pay heed to in interpreting the Constitution. However, this consistent and adjusted interpretation was insufficient for the judiciary as they went to state that DPSP having higher priority than Fundamental Rights and ought to overcome in times of engagement. In *Maneka Gandhi*,⁵⁷ and *Sanjeev Coke Mfg Co.*⁵⁸ the apex Court offered primacy to DPSP in order to implement them which are not limited by Fundamental rights. In *Shantistar Builders*,⁵⁹ Article 21 and the DPSP are intently connected by judicial manufacturing. This is extensive elucidation of life and liberty empowered the judiciary to bring the socio-economic assurance in DPSP.

Subsequently, what can be found from these cases is that DPSP which were at first regarded to be non-justiciable have afterward been considered by the judiciary as being identical or even (in some instances) more prominent than Fundamental Rights. It was not easy for judiciary to judge the DPSP by a court decision. Initially, judges did not support the DPSP as an explanatory role. In the second stage, the courts ruled in favor of fundamental rights and the DPSP and in the third stage the DPSP took precedence over fundamental rights. In granting the DPSP a legitimate status, the judiciary writhed and committed to social and legal manufacturing. If the legislature and the executive did not take advantage of the opportunity to observe or develop DPSP archetypes, the Courts realized that their previous position on DPSP could not lead to constitutional prestige, particularly the preamble specification of 'socio-economic justice.' To propel these goals, the Courts utilize judicial review as a suitable instrument to have a check on different organs and have been affianced with obstinate interpretation.

⁵⁶ Reddy Chinnappa, THE COURT AND THE CONSTITUTION OF INDIA: SUMMIT AND SHALLOWS 78-79 (2010).

⁵⁷ *Maneka Gandhi v. Union of India*, 1978 SCR (2) 621.

⁵⁸ *Sanjeev Coke Manufacturing v. Bharat Coking Coal Ltd.*, 1983 SCR (1)1000.

⁵⁹ *Shantistar Builders v. Narayan Khimalal Totame*, (1990) 1 SCC 520

VI

A Comparative Analysis of Directives in Pakistan and India

In order to compare the status of DPSP in India and Pakistan, it is important to consider the role of judiciary in constitutional democracy when the two systems come together. The goal is to interpret why constitutional democracy requires the active inclusion of judiciary in the constitution in order to sustain lawful balance by learning from the experience of India.

It cannot be ruled out that the judicial system in Pakistan applies constitutional rights, including the DPSP. The lack of judicial control has almost incapacitated the assessment of constitutional issues in general and particularly the DPSP. In contrast, the Indian experience can be an exemplification; The DPSP jurisprudence was not only a link between law and society, but also important evidence for the protection of the constitution, democracy and the promotion of human rights.

In Pakistan, the idea that the fundamental rights can be enforced but DPSP cannot be enforced is a concept that can be applied at the expense of the full exercise of human rights and freedoms. Therefore, it is necessary that three State organs namely; the executive, the legislature and the judiciary take measures to activate the socio-economic policy provided by DPSP. The role of judiciary should not restrict to the application of Article 29 of the Constitution of Pakistan, under which the DPSP are not enforceable by judiciary. The emerging trend should be the development of a judicial precedent in which DPSP are given respect and enforce the fundamental rights. The non-execution of the DPSP will essentially offer ascent to the infringement of fundamental rights. If this reality is not comprehended, the DPSP will everlastingly stay under the shadow of Article 29.

The Indian judiciary has connected the DPSP to fundamental rights by expanding their part in advancing socio-economic and political justice. The judicial equivalence of DPSP is considered equivalent or even more significant again than fundamental rights. The judiciary adopts a key job in securing and promoting DPSP. If other bodies do not comply with the DPSP, judiciary can play a monitoring and balancing role. Judiciary is the last state body to rely on to protect human rights and the DPSP. It is generally accepted that judges instruct the Constitution, laws and their integrity to carry out their judicial work.

While the Constitution establishes fundamental rights and the DPSP, the Indian commonalities have been victimized from illiteracy, poverty and marginalization. To bridge this gap, judiciary has defended not only the position of activists for social, economic and political justice established by the constitution, but also eased the rules for a free access to Courts. The judiciary has put the DPSP at the amenity

of the common people because of a profound appreciation of its part in constitutional democracy and powers furnished by the Constitution.

In Pakistan, the doctrine of *basic structure of the Constitution* was recognized only to establish essential or basic components of the Constitution. This doctrine cannot be invoked to repeal constitutional amendments. On the other hand, the Indian judiciary has adopted the basic structure doctrine to fortify standards of the DPSP, which are indispensable or ultimate elements of the Constitution. The basic structure doctrine is a novelty of the judiciary in its judicial examination to secure the lucidness and decency of the significant features of the Constitution given by the authors. The judiciary focuses on its commitment towards DPSP.

The unconstitutionality of socio-economic rights is one thing; however, lack of application after constitutionalism is very different and its consequences differ. In a simplified concept, the first is ascribed to the selection of persons in a constitutional formation, the second for non-compliance with a constitution and thus undermines its legality. Regardless of the dialectic of socio-economic rights and justice, the judiciary must take a holistic constitutional attitude in the exercise of these fundamental rights which are included for an objective.

There are no socio-economic rights in the Constitution of India but the DPSP contains socio-economic guarantees in relation to these rights. Simultaneously, these DPSP cannot be judicially enforced and there is no constitutional possibility to implement DPSP as justiciable. Because of these difficulties with the justiciability, the judiciary adopts a comprehensive understanding of the constitution to exercise the socio-economic rights of the Indian citizens. The Constitution and its various parts define the responsibilities of governmental institutions in the execution of these constitutional obligations. What must the judiciary do in this constitutional framework, as guardian of the constitution and as protector for freedom and liberty? With this comprehensive understanding of the Constitution, the judiciary created an atmosphere for DPSP jurisprudence in the field of fundamental rights.

The judiciary can exercise socio-economic rights through the utilization of DPSP in Indo-Pak. The DPSP clearly assumes a significant job in the far-reaching established point of view to the utilization of socio-economic rights. The DPSP can be an instrument of understanding and can, in this manner, award substance to these rights. Because of reliance and indivisibility between human rights and socio-economic rights, they can be executed in concordance with common and political rights guided by the standards of the DPSP.

The DPSP are only one crescent: contained in the Constitution, but which have a less expressive importance than the programs and values permitted by the Preamble and Fundamental rights. This symbolism goes to the focal point of the character and identity of the State, so that it should not be contradictory to the DPSP. Because of this calibrated articulation, the DPSP are an extremely valuable instrument to

recognize even those schemata that could be contrary to the soul of the Constitution in general.

VII

Conclusion

Directive principles of State Policy are not of recent development in the constitutionality of social values, but have largely been ignored. They as an alternative to traditional rights provisions has not been explored. This is mainly because their contra-judicial position has not been appropriately recognized and investigated. By highlighting this aspect of the DPSPs and placing them at the center of their investigation, the proposed structure allows a superior comprehension of the role of DPSP in the constitutionality of social qualities and values. Besides, it gives lost apparatuses for understanding their constitutional function by emphasizing the role of direct legislation in characterizing vital social qualities and basic legal standards, emphasizing that direct legislation is the source of constitutional legal standards. DPSPs are misunderstood because they do not fit into this prayer. They are regularly portrayed and frequently dismissed as 'just desires' or 'non-enforceable rights'.

From this point of view, the DPSPs are demonstrative of a more extensive pattern in social standards where constitution drafters have progressively looked for options in contrast to the worldview instance of direct judicial implementation of constitutionally ingrained rights. This pattern lines up with other ongoing improvements in constitutional law, for example, the expanding enthusiasm for statutory rights instruments, and all the more, the ongoing enthusiasm for constitutional statutes.

DPSPs show the significance of building up a point of view inside legitimate constitutionalism that pays attention to the chance of enactment as a wellspring of established constitutional legal norms. Simultaneously, they show that this viewpoint cannot sidestep vital queries regarding the nature of constitutional law. The constitutional provisions of the DPSPs in Pakistan, from one view point, and the experience of India on the other, bolster the argument that the DPSPs can be utilized for the legal deployment of socio-economic rights. In the ideological settings of Pakistani Constitution, duty of judiciary is to give ideological motivation by deciphering provisions of the Constitution. In any case, a sensible equalization should consistently be kept up at the centre of the primary organs of State, the legislature, the executive and the judiciary.