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**NATURE AND ROLE OF DIRECTIVE PRINCIPLES OF STATE IN INDIA - A
COMPARATIVE STUDY BETWEEN INDIA AND IRELAND**

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Abstract

“The toddler craves independence, but he fears desertion”

-Dorothy Corkville Briggs

The concept of directive principle is not new and was not unknown to framers of the constitution of India. It has ancient linkage and had been practiced by Kings. The present day concept of the directive principles of state policy aims towards noble, ideal and welfare state. Framers of constitution had noble vision about how will be the state of their dreams. And what are the requirement and necessity which the state can fulfill instantly any cost those were incorporated as Fundamental Rights under Part III of the Constitution of India. But the State of their (i.e. framers and people of India at the time of Independence) dreams and what Mahatma Gandhi had envisaged was left on government to achieve according to availability of required resources. But as time passes things get change therefore what had been enshrined as directive principle of state policy regarded unenforceable in the court of law now slowly and gradually become part of Fundamental rights. So, how these directive principles become essential for social, political and economic development of the country that present research paper tries to answer comparing Indian and Irish DPSP and change in approach of court with regard to DPSP.

Keyword: Directive Principle of State Policy, Constitution of India, framers of Constitution, Irish DPSP

1. Introduction

It is true that framers of constitution have borrowed idea of Directive Principle of State Policy from Irish Constitution. But the genesis of Directive Principles of State Policy can be traced from the ancient concept of *Rajyadharma* which declared that it was the personal

responsibility of the king to protect and promote welfare of the people. In the fourth century B.C., we find in Kautilya's *Arthashastra* a specific injunction to the effect that "the King shall provide the orphan, the dying, the infirm, the helpless with maintenance; he shall also provide subsistence to helpless expectant mothers and also to the children they give birth to".¹

Directive Principle in laymen's language are positive directives or mandates given to State to apply these principles in making laws. Directive Principles² are like sword without edge which are so essential to secure a social order for the promotion of welfare of the people. DPs reflects ideology of particular country and its prospective goals. DPs are also rights of the people like fundamental rights but major difference between two is enforceability. Under Article 13 State cannot abrogate FRs incorporated in Part III of the constitution and even if any rights enshrined in Part III is violated people can seek remedy under Art. 32 and art. 226 in form of various writ before SC and HC respectively. But for Directive Principles of State Policy as incorporated in Part IV of the constitution no such mechanism is provided for their enforcement apart from that they are expressly under art. 37 made non-justiciable before court of law. Though art. 31-C is there to give effect to DPSPs and in case of there is violation of FRs in giving effect through enactment by legislature. Which indicates very constitutional jurisprudence of India that whenever there is conflict between individual right and collective rights i.e. DPSPs which are providing for general welfare and public interest the later always prevails subject to reasonableness test.

So after having basic knowledge about DPSPs questions may arise in prudent mind that why rights are divided into two parts whereby one is made enforceable and other not? What is the relation between FRs and DPSPs? And for what purpose such demarcation has been made. And if framer do not want to enforce DPSPs why they are incorporated in Constitution?

These are with regards to Indian Constitution and Its Directive Principles. What above directive principle of social policy of Irish Constitution from which our Constitutional framer have adopted the very idea of incorporation of DPSPs? Drafter of Irish Constitution also adopted this idea of DPSPs form Spanish Constitution. Irish Constitution under art. 45 headed by Directive Principles of Social Policy provides mostly the same rights as that provided in Indian DPSPs and which are also expressly made non-justiciable so questions

¹ Dr. Subhash D. Kashyap, *The Framing of India's Constitution- a study part -5*, edited by B. Shiva Rao, p. 319-320

² Hereinafter referred as DPs

may arise in our mind that What the nature and role of DPs in Irish Constitution as compare to India?

2. Directive Principle of State Policy and Meaning, Nature and Rational

Directive Principles of State Policy³ are incorporated in Part- IV of the Constitution of India. To understand meaning and nature of the DPSP article 37 makes it amply clear that DPSPs are not enforceable but they are fundamental in the governance of the country and it shall be the duty of the State to apply these principle in making laws.⁴

In Indian context it basically indicates vision of framers of the constitution of future India. DPSP is the path or more proper to say it is like a compass which continuously providing direction to achieve that India which framer have visualized through incorporating various principles of welfare state under DPSP. It is not wrong to say that DPSP are the innocent, sacred, pure demands of the people of Independent India represented by framers as they at that time acquainted and fully aware that these demands of people of Independent India was genuine and legitimate, as innocent people had after approx. 150 years of under trial imprisonment finally got acquittal with the help of various panel advocates (i.e., Freedom Fighters), therefore people should have the fullest opportunities for the social, economic and political spheres and that the state should make suitable provision for ensuring such progress.

In the words of Dr. B. R. Ambedkar DPSPs are like the instruments of instructions which are issued to Governor General under Government of India Act 1935⁵ and general guidance for the state in governing its citizens towards achievement of the aims and objectives of the Constitution of India as embodied in the Preamble of the Constitution. Hence therefore State has to keep them in consideration while formulating any act, policy, rules, regulation and by laws because the basic aim to incorporate these principle is to establish welfare state.

The idea to establish welfare state can be envisage from the statement of The Father of the Nation, Mahatma Gandhi in the Second Round Table Conference in London, long before the UN Declaration of Human Rights, 1948 that his aim was "*to establish a political society in India in which there would be no distinction between high class of people and low class of*

³Hereinafter referred as DPSP

⁴ Article-37, Constitution of India

⁵ Constituent Assembly Debates, Vol.VII, p.41

people, that women should enjoy the same rights as men; and dignity, justice, social, economic and political, would be ensured to the teeming millions of India.”⁶

Constitution envisages the establishment of a welfare state at the federal level and State level.⁷ Supreme Court in *Keshavanand Bharti case* observed that the purpose of the DPSP is to fix certain social and economic goals for immediate attainment by bringing about a non-violent social revolution. Further in order to clarify the understanding vis-à-vis to DPSP in the same case Khanna, J observed that “*The Directive Principles embody a commitment which was imposed by the Constitution maker on the State to bring about economic and social regeneration of the teeming millions who are steeped in poverty, ignorance and social backwardness. The incorporate a pledge to the coming generations of what State would strive to usher in.*”⁸

2.1 The Rational Behind the Directive Principle

As we discuss above reason behind incorporation of Directive Principles is foresights of the framers of future India backed by various factors. D. Obot A. Essien in his article rightly generalized the rational of insertion of directive principle into six rational though which are in context of Nigerian Principles but as Nigeria adopted those principle from India in this context become relevant to India also, three of six rational which can be applied to Indian context are as follows;

1. There Directive Principles prescribes on the state definite duty towards its objects i.e. to promote welfare of the people and advancement of the society.
2. Directive Principles are designed as targets which the country must aim in its development. We may take directive principles as yardstick for judging the performance of the government.
3. Directive Principles defines the goals for the nation, without which it would continue to drift aimlessly.⁹

⁶ Report of National commission to review working of Constitution, Chapter 3 Fundamental Rights, Directive Principles and Fundamental Duties, Para - 25.8

⁷ *Passhim Bengal Khet Mazdoor Samity v. State of West Bengal*, (1996) AIR SC 2426

⁸ Hans Raj Khanna, *Making of India's Constitution*, (Second edition 2008, Eastern Book Company, Lucknow) pg. 298

⁹ Pro. K. B. Agrawal and Prof. R.K. Raizada, *Comparative Constitutionalism*, (first published 2004, University Book House) 64

4. Directive Principles embodied in itself ideology of Mahatma Gandhi regarding Welfare State.

Above rational are not exhaustive they are just inactive of the idea that framers could have had while framing Constitution. Supreme Court has also time to time explain rational of the directive principles. In *V. Markandeya v. State of A.P.*,¹⁰ Supreme Court described that they constitute its true conscience and without faithfully implementing the Directive Principles, it is not possible to achieve the Welfare State contemplated under Constitution. It shall be duty of state to apply these Principles in making laws.¹¹

2.2 Nature of Directive Principle of State Policy

As declared under article 37 directive principles cannot be enforceable per se. while incorporating DPSP various fruitful debate had been made in constituent assembly among the members regarding nature of the DPSP. B N. Rau, the Constitutional Adviser who had made the proposal relating to the incorporation of non-justiciable rights.¹² Initially it was opposed by many members of the constituent assembly. K. T Shah member of Constituent assembly in his speech in constituent assembly criticized incorporation of non-enforceable DPSPs and stated that “It looks to me like a cheque on a bank payable when able that is only if the resources at the bank permit.”¹³ But finally B.R Ambedkar in his speech in constituent assembly to answer the objections “*while we have established political democracy, it is also the desire that we should lay down as our ideal economic democracy...Our object in framing the Constitution is twofold: (i) to lay down the form if political democracy and also to prescribe that every government whatever is in power, shall strive to bring about economic democracy...*”¹⁴

In particular, the duty is enjoined upon the State to secure the right to adequate means of livelihood, to regulate the ownership of all material resources of the community in the interests of common good, to preserve the health and strength of workers, to protect men, women, and children from exploitation on account of any supposed force of economic necessity. The State shall enforce a scheme of social security which will secure the right to

¹⁰ 1989 AIR SC 1308

¹¹ *Daulat Singh Surana v. First Law Acquisition Collector*, (2007) 1 SCC 641

¹² Dr. Subhash D. Kashyap, *The Framing of India's Constitution- a study part -5*, edited by B. Shiva Rao, p. 321

¹³ Rajya Sabha TV, ‘*Samvidhaan*’ – *People's Rights, Principles of Governance and Duties Episode 4/10*, Published on April 6, 2014

<<https://youtu.be/JCgyzXe1cbU>>

¹⁴ Constituent Assembly Debates, Vol. VII, p. 494-95.

work, to education, and to public assistance in case of unemployment, old age, sickness, disablement and other cases of undeserved want. The State shall make provision for compulsory education for all children till the age of fourteen years for a period of ten years from the date of the commencement of the constitution. The educational and economic interests of the weaker sections of the people, particularly of the scheduled castes shall receive special care. The raising of the standard of living, of the level of nutrition and the improvement of public health shall be among the primary duties of the State. The foreign policy shall be so shaped as to promote international peace and security.¹⁵

2.2.1 Directive Principle of State Policy (Non)-Justiciable:

An issue is a justiciable issue in the court of law rather than legislature or the executive has the final authority to decide on it. On the other hand, an issue is a non-justiciable issue if the legislature has the final authority to decide on it.¹⁶

Directive Principles are like sword without an edge. As mentioned in art. 37 of the constitution which made it clear that DPSPs are non-justiciable rights in court and they are just non-enforceable duty of the State to take them in view while making laws, but they are nevertheless fundamental in the governance of the country. If for some reasons they do not pass any laws the court cannot force the parliament or the State Legislature to do so.¹⁷ Word “fundamental” in art. 37 means basic or essential, but it is used in the normative sense of the setting before the State goals, which it should try to reach.¹⁸ The expression “fundamental in the governance of the country” and “it shall be the duty of the State to apply these principles in making laws” attracts broad and purposive interpretation to it. The expression in different articles of DPs such as ‘endeavor’,¹⁹ ‘primary duties’,²⁰ ‘strive’,²¹ ‘in particular, direct’,²² ‘secure’,²³ ‘shall take steps’,²⁴ ‘obligation’,²⁵ strongly reflects the duty and obligation-full purpose of the DPs.

¹⁵Rao, T. S. Narayan. "DIRECTIVE PRINCIPLES OF STATE POLICY." *The Indian Journal of Political Science* 10, no. 3 (1949): 16-18. <http://www.jstor.org/stable/42743242>

¹⁶Pro. K. B. Agrawal and Prof. R.K. Raizada, *Comparative Constitutionalism*, (first published 2004, University Book House) 77

¹⁷*Minerava Mills v. Union of India*, AIR 1980 SC 1789

¹⁸Durga Das Basu, *Commentary on the Constitution of India* (first published 2006, Lexis Nexis 2006) 4021

¹⁹Article 43,44,45,48 and 48A of the Constitution of India.

²⁰Article 47 of the Constitution.

²¹Article 38 of the Constitution of India.

²²Article 39 of the Constitution of India.

²³Article 39A and 41 of the Constitution of India.

²⁴Article 43A and 50 of the Constitution of India.

The question which has been often raised in various cases before the Court after Constitution coming into force is regarding justiciability of directive principles and its true nature. Hedge J. said “...a mandate of the constitution, though not enforceable by courts is none the less binding on all the organs of the state. If the State ignores those mandates, it ignores the Constitution.”²⁶The language used in many provisions of DPs indicates the mandatory nature of duties imposed upon the state.

Gradually attitude of the courts have changed towards the enforceability and nature of the Directive Principles. From the commencement of Constitution till the 25th amendment. Earlier Court sought to enforce DPSPs through the process of interpretation what it could not do by issuing a mandate against the State²⁷

No law giving effect to the policy of the State towards securing all or any of the principles laid down in the part IV shall be deemed to be void.²⁸ Article 31-c was inserted by the Constitution 25th Amendment Act, 1971, with the object to overcome the difficulties placed in way of giving effect to the Directive Principles²⁹ by judicial decisions. Now If laws are enacted to give effect to the DPs over FRs, they shall not be invalid on the grounds that they violate FRs (in particular non-discrimination) if they can be shown to aim at promoting the larger interest of society.

As earlier mentioned that DPs are “Sword without an Edge” which is now in present scenario is not applicable because of recent developments which taken place through judicial activism, judicial interpretation and through effect use of judicial review by these tools SC has sharpen the edge. Now these sword can be utilized for achieving welfare state and social order.

3. Fundamental Right and Directive Principle Dichotomy

The Preamble, the Fundamental Rights and Directive Principles can be characterized as the trinity of the Constitution.³⁰ Before determining the relation between Fundamental Rights and Directive Principles we need to understand what Fundamental Rights is and what purpose they serve in Indian Constitution? Fundamental rights are mainly civil and political rights which are basic and inalienable to citizens of any Nation primarily required for their growth

²⁵Article 49 of the Constitution of India.

²⁶H. M. Seervai, *Constitutional Law of India vol-2*, (first Published 1967) 1929

²⁷Durga Das Basu, *Durga Das Basu on Human Rights in Constitutional Law*, (8th Ed. Lexis Nexis, Nagpur)

²⁸Article 31-C, *Constitution of India 1950*

²⁹Hereinafter referred as DPs.

³⁰M. P. Jain, *Indian Constitutional Law Vol- 2*, (First Published in 1962 Lexis Nexis) 1976

and development. Whereas DPs are socio-economic rights. These rights are basically a sort of obligation means somebody owing duty corresponding to the rights as according to jurisprudence, otherwise these rights are not enforceable without corresponding duty. In both rights i.e., FRs and DPSPs the corresponding duty is of State under art. 13 and art. 37 respectively.

One question may come our mind after viewing these two types of right that why there are types of rights? And why DPSPs is non-justiciable right? In answer to these question we need to understand that Fundamental Right³¹ are negative right means they create negative obligation on the state. As most of FRs are in form of restrictions which state cannot do i.e., the state is required to refrain from doing something, and it is easier to enforce through a court a negative, as compared to a positive rights i.e., DPSPs, positive obligation. Accordingly, Art. 13 declares that a law inconsistent with a FR is void. But there has never been such a provision in the Constitution as regards the Directive Principles. Therefore, a law inconsistent with a Directive Principle cannot be declared invalid.³²

As mention earlier there were two types of enshrine in the constitution one is justiciable rights and non-justiciable rights. Justiciable rights are incorporated in Part III of the Constitution while non-justiciable rights are included in Part IV of the Constitution. Fundamental Rights includes right to equality, freedom of speech and expression, right to life and liberty, right against bonded or force labour, right to education etc. these are express right bur there are other rights also which through judicial activism and through judicial interpretation cover under Fundamental right, these are right to privacy, right to adequate means of livelihood, right to health, right to pollution free environment, right to shelter, right to free legal aid and many more.

Another reason behind making DPSP non-justiciable is due to poor financial condition of India at the time of Independence. As we know DPSP are positive rights while requires state to do something to enforce it, and for their enforcement lot of infrastructure is required and for that huge amount of money also required therefore framers of our Constitution left it on the future government to include them while making law.

³¹ Hereinafter refer to as FRs

³² M. P. Jain, *Indian Constitutional Law Vol- 2*, (First Published in 1962 Lexis Nexis) 1977

3.1 Judicial Trend

Judicial trend in determining relationship between FRs and DPSPs has been considerably change since commencement of Constitution till now. Initially, Court adopted a strict and literal legal position in this respect. And hence, then, court was of view that Directive Principles could not override a FRs, and, that in case of conflict between the two, the later would prevail of former.

In *State of Madras v. Champakam Dorairajan*,³³ Supreme Court Observes that “The directive principles of the State policy, which by article 37 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 or directions under article 32. The chapter of Fundamental Rights is sacrosanct and not liable to be abridged by any Legislative or Executive Act or order, except to the extent provided in the appropriate article in Part III. The directive principles of State policy have to conform to and run as subsidiary to the Chapter of Fundamental Rights.”

The Court was erred in preferring individual interest over interest of the society. It defaulted to reconcile competing interests.

3.1.1 Harmony between FRs and DPSPs realized

Later court were of view that in determining the scope and ambit of FRs, the DPSPs should not be ignored and that court should adopt the principle of harmonious construction and attempt to give effect to both as far as possible. The court observed that legislation enacted in furtherance of the directives must be understood as reasonable restrictions in the exercise of fundamental rights³⁴

In Hanif's case³⁵ Das, C.J. observed that “A *harmonious interpretation had to be placed upon the Constitution and so interpreted in means that the State should certainly implement the directive principle but it must do so in such a way that its laws do not take away or abridge the fundamental rights...*”

³³(1951) AIR SC 226

³⁴Shankar, Uday, and Divya Tyagi. "Socio-Economic Rights in India: Democracy Taking Roots" *Verfassung Und Recht in Übersee / Law and Politics in Africa, Asia and Latin America* 42, no. 4 (2009): 527-51.

<http://www.jstor.org/stable/43239539>.

³⁵Hanif Quareshi Mohd. V. State of Bihar, (1958) AIR SC 731

But in Kerala Education Bill Case³⁶ Das, C.J. observed that “*nevertheless, in determining the scope and ambit of the fundamental rights relied on by or on behalf of any person or body the court may not entirely ignore these directive principles of State policy laid down in Part IV of the Constitution but should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible.*” The Supreme Court³⁷ started to assert that there is “no conflict on the whole” between the FRs and DPs. They are complementary and supplementary to each other.”³⁸

Then after the Court adopted a purposive construction the directives while interpreting various legislations. It started referring when there was no conflict between the Part III Part IV of the Constitution. In Golakh Nath Case³⁹ SC emphasized that the FRs and DPs formed as ‘integrated scheme’ which was elastic enough to respond to the changing needs of the society.

3.1.2 Primacy as between Part III and Part IV.

“The question that in case of conflict between the FRs and DPs, which one should prevail? The court taken a purposive construction to apply related provision of DPs while interpreting various legislations. The application of the principle was brought in to examine the validity of legislation. It observed that though principles are not enforceable by the courts of law are nevertheless a part of the Constitution these extended much needed respect to the directives.”

The answer to above question was given by SC by introducing more radical doctrine in the full Bench case of *Kesavananda Bharti*⁴⁰ in which Khanna, J., opined that “*both the directives and Fundamental Rights are equally ‘fundamental’ even though the Directives are not directly enforceable.*” In same judgment According to Mathew, J., “*in building up a just social order it is sometimes imperative that the fundamental rights should be subordinate to Directive Principles.*” Further Lyer, J.,⁴¹ summarize the and further clarified the view taken in *Kesavananda Bharti* case he observed that “*Kesavananda Bharti has clinched the issue of primacy as between Part III and Part IV of the Constitution. The unanimous ruling there is that the court must read the collective directive principles of Part IV into the individual fundamental rights of Part III, neither part being superior to the other; since the days of*

³⁶In re Kerala Education Bill, (1959) AIR SC 956

³⁷Hereinafter referred as SC

³⁸Chandra Bhavan Boarding and Lodging, Bangalore v. State of Mysore, (1970) AIR SC 2042

³⁹Golakh Nath v. State of Punjab, (1967) AIR SC 1643

⁴⁰(1973) AIR SC 1461

⁴¹In State of Kerala v. Thomas, (1976) AIR SC 1461

Dorairajan judicial opinion has unhesitatingly titled in favour of the Part III but in Kesavananda Bharti case the supplementary theory, treating to both part as fundamental, gained supremacy.” In Pathumma v. State of Kerala⁴² SC of view that “the Constitution aims at bringing about synthesis between Fundamental Rights and the Directive Principles.

In Olga Tellis v. Bombay Municipal Corpn.,⁴³ SC opined that DPs are fundamental in the governance of the country they must , therefore, be regarded as equally fundamental to the understanding and interpretation of the meaning and content of Fundamental Rights.

In Finally in Minerva Mills v. Union of India,⁴⁴ Chandrachud, J., said that “fundamental rights are not an end in themselves but are the means to an end.” The end is specified in the DPs. And both FRs and DPs together “constitute the core of commitment to social revolution and they, together, are the conscience of the Constitution.” Therefrom court ushered into a new era by determining and interpreting socio-economic rights as a scheme of fundamental rights. The court started to expand the scope of FRs like meaning of ‘life’ under article 21 also includes ‘dignity’ component into it.⁴⁵

In Randhir Singh v. Union of India,⁴⁶ the Court read the objective equal work enshrined in the Directive Principles into Article 14 and 16 (1) of the Constitution. Whereas in Unnikrishnan v. State of Andhra Pradesh,⁴⁷ right to free and compulsory education up to the age of 14 years was read into right to life and personal liberty. The court observed that “the citizen of this country have a fundamental rights to education. The principle relating to right to free legal aid under Article 39 A has been read into Article 21 in M H Hoskot v. State of Maharashtra.⁴⁸

In conclusion we may say that judicial trend in determining relation between FRs and DPs has considerably changed as compare to just after independence and now. Recently Supreme Court in K. S. Puttaswamy v. Union of India declared that right to Life and Personal Liberty also includes right to Privacy. In another case in order to safeguard the right of quality of Muslim women also nullified the practice of Triple Talak in Sayara Bano v. Union of India.

⁴² (1978) AIR SC 771

⁴³ (1986) AIR SC 194

⁴⁴ (1980) SCC 591

⁴⁵ Olga Telles v. State of Bambay Municipal Corporation, (1986) SC 180

⁴⁶ (1978) AIR SC 1548

⁴⁷ (1993) AIR SC 2230

⁴⁸ (1978) 3 SCC 544

Hence, we can say that judiciary through judicial interpretation trying to expand the scope of the FRs in order to ends specified in the DPSPs.

4. Concept of Directive Principle in Ireland

There is no question about framer of Indian Constitution adopted the idea of the insertion of Directive Principles from Irish Constitution and Irish had adopt that from Spanish Constitution. But question here is about how these Directive Principles works under different constitution? What is the role played by directive principles of different countries in achieving welfare state or constitutional goals? What is the nature of the directive principle and whether they are justiciable or non-justiciable?

4.1 Directive Principles in Ireland

The framers of the Irish Constitution was of opinion and had belief that “They [DPSP] will be there as a constant headline, something by which the people as a whole can judge of their progress in a certain direction; something by which the representatives of the people can be judged as well as the people judge themselves as a whole. We will judge of our progress in a certain direction by asking ourselves how far we have advanced in this direction. They are intended to be directive to the Legislature. They are not to be determined by the courts for this reason-that it is the Legislature that must determine how far it can go from time to time, in the set of circumstances, in trying to secure these ideals and aims and objectives.”⁴⁹

Directive Principles under Irish Constitution is provided in Art. 45 under the heading Directive Principles of Social Policy

Article 45- 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 cognizable by any Court under any of the provisions of this Constitution

Though the makers of Indian Constitution drew the inspiration for including in the Constitution non-justiciable provision in the shape of Directive Principles of State Policy from the Constitution of Eire, in the text of the Provisions as well as their working, certain differences may be noted.

⁴⁹ Jeffrey Usman, ‘Non-Justiciable Directive Principles: A Constitutional Design Defect’ (2007) 15 Mich. St. J. Int’l L. 643

While Art. 45 of the Irish Constitution addresses the Directives to the Legislature only, Art. 36 of the Indian Constitution issues the Directives to the 'State' as defined in Part III, which obviously comprehends all the organs of the State.⁵⁰ The result is that Irish Court cannot take even cognizance of the Directive provision. But the Indian courts though not legally enforce the Directive or rights or duties arising therefrom, they are not debarred from taking cognizance of the Directives as a part of the Constitution for other purposes e.g., for the purpose of interpreting other provisions of the Constitution or laws made by the Legislature. But apart from above difference there is very much similarity in judicial trend in Ireland towards realization and enforcement of Directive Principles. And Irish court have also taken similar approach in defining relation between fundamental rights and directive principles.

4.1.1 Enforcement of Directive Principles under Irish Constitution

Articles 40 to 44 of the Irish Constitution recognize 'Fundamental Rights'. The Fundamental rights under Irish Constitution like Indian Constitution also includes Express Rights which is directly mentioned and implied rights which are unenumerated rights which are due to courts' wider interpretation of expressed rights. As we have witnessed in Indian context that many of the Directive Principles have been made enforceable by judicial interpretation e.g. right to Education, Right have adequate means of livelihood, Right to Shelter and Right to Free Legal Aid etc. Irish court have also through judicial interpretation made many directive principles of social Policy under 45 enforceable.

Like Indian judicial trend toward realization of DPs Irish court also follows same footing. There is quite similarity between judicial trend in both the country vis-à-vis to attitude toward DPs and its enforcement. As Indian courts were initially reluctant to give any sort of attention to DPs same was the case in Irish Judiciary. Thus for example *in McGee v. Attorney General*⁵¹ FitzGerald C.J. said that "Article 45 refers to principles of social policy which are intended for the general guidance of the State in its making of laws and which are declared to be exclusively its province and not cognisable by any court. In my opinion, the intervention by this, or any other court, with the function of the States is expressly prohibited under this Article. To hold otherwise would be an invalid usurpation of legislative authority."

⁵⁰ Kesavananda Bharti v. State of Kerala, 1973 AIR SC 1461

⁵¹(1974) IR 284

In *Attorney General v. Paperlink*⁵² (1984) the right to earn a livelihood has been recognized as an implied constitutional right. In this case, Mr. Justice Costello stated that Article 45 could be considered, when deciding if there was an implied right in the constitution.

The Irish courts have permitted a wide degree of latitude for the government in the implementation of law and policy. In the case of *Ryan v Attorney General*⁵³, Mr. Justice Kenny stated:

“When dealing with controversial social, economic and medical matters on which it is notorious views change from generation to generation, the *Oireachtas* (State) has to reconcile the exercise of personal rights with the claims of the common good and its decision on the reconciliation should prevail unless it was oppressive to all or some of the citizens...”

Another case in which similar like Indian Landmark Case of *Olga Tellis* wherein SC though judicial interpretation included right to livelihood in right to life and Liberty, Irish court also did the same in *Murtagh Properties Ltd. v. Cleary*.⁵⁴ Perhaps the only the case of note where Article 45 has been successfully invoked. Here a female barmaid was effectively excluded from working in a bar because the trade union concerned objected to the use of non-male labour. She claimed that the general personal rights guarantee contained in Article 40.3.10 protected the right to earn a livelihood without discrimination of sex. Held that right to livelihood is an unenumerated personal right.

Similar to India context question arose that if the State legislates in order to give effect to the principles in Article 45 i.e., Directive Principles of Social Policy, that provision can be imposed to justify the legislation in question and to defend it against other constitutional provision. This question was in view in *Re Article 26 and the Planning and Development Bill 1999*⁵⁵ “where the Supreme Court had to consider whether legislation designed to set aside a certain percentage of development land for social housing was repugnant to the Constitution's property rights guarantees.”

The Court duly upheld the constitutionality of the Bill, finding that it served an important social purpose (integrated housing) and that the measures taken to achieve that end were proportionate and involved only slight abridgements of property rights guarantees. The

⁵² (1984) ILRM 343

⁵³ (1965) 1 I.R. 312

⁵⁴ [1972] IR 330.

⁵⁵ (2000) 2 IR 321.

Attorney General had argued in defence of the Bill that the Court was entitled to have regard to the Directive Principles in assessing the constitutionality of this measure and, in particular, the requirement in Article 45.2.ii that: "The State shall, in particular, direct its policy towards securing.... That the ownership and control of the material resources of the community may be so distributed amongst the private individuals and the various classes as best to subserve the common good." ⁵⁶

Ultimately, however, the Court found that it could uphold the constitutionality of the Bill without reference to the Directive Principles. The Court noted the various High Court judgments (including, by implication, *Murtagh Properties*) where account was taken of the Directive Principles, but reserved the question of whether these cases were correctly decided.

After considering the judicial trend in the Ireland in recognising directive principles, and their relation with fundamental rights we may say that though there is similarity in attitude of court of both India and Ireland but Indian Court have come far ahead in terms of justifying and recognizing enforceability of DPs in compare to Courts of Ireland which seems more reluctant to adopt approach like Indian Courts though Irish Court have by interpretation made noticeable effort to expand the scope of FRs by covering DPs in it but still Irish Court have long journey to travel.

5. Conclusion

DPSPs which are in Part IV of Indian Constitution, Directive Principles of Social Policy under Art. 45 of the Constitution of Ireland and implied DPs in form of Police Power in US all have one thing in common i.e., they all are for the welfare of the people and are per se unenforceable primarily.

Researcher have elaborately discuss nature and role of the DPSPs in India. From that research found that though the DPs are made expressly unenforceable but through Art. 31-C and wide judicial interpretation of Part III it now a days becomes nearly enforceable.

Judicial trend regarding relation between DPSPs and FRs have also considerably changed earlier Judiciary was of view that FRs prevails over DPSPs reflected in *State of Madras v. Champakam Dorairajan*,⁵⁷ case thereafter SC formed principles of Harmonious Construction between FRs and DPSPs and put them in equal paddle which is reflected in *Kerala Education*

⁵⁶[2000] 2 IR 321, 344-345.
⁵⁷(1951) AIR SC 226

Bill Case⁵⁸. Court in *Kesavananda Bharti*⁵⁹ put FRs and DPSPs in equal footing and said that both are fundamental even though DPSPs are not justiciable. Finally after *Minerva Mills v. Union of India*,⁶⁰ case adopted approach that FRs concerns with individual interest and DPSPs concerns Public interest so case of conflict later always prevail, further added that FRs are means and DPSPs are end.

In Ireland nature and role of DPs is similar to that of India. Irish Court through judicial interpretation declare many DPs as implied FRs. As Like India right to Education, Right have adequate means of livelihood, Right to Shelter and Right to Free Legal Aid etc. Irish court have also through judicial interpretation made many directive principles of social Policy under Art. 45 enforceable.

In context of USA situation is far different as that from India and Ireland. In US there is no express provision regarding DPs in the Constitution of America while both India and Ireland have. Having no express provision regarding DPs US follows Doctrine of Police Power whereby Government of Individual state is empowered to make laws relating protect safety, health, welfare, and morals of the community.

So, interference can be made from the above fact that DPs in Indian and Ireland is only positive instruction and guidance to the state which indicated positive obligation of the state but in USA it is more power of Individual state to make law on that matter than moral or positive obligation of the State. So far as question of enforcement is there laws made on Police Power can be enforced only in state who enacted it. So, laws on Police Power of one state cannot be enforceable in other state as USA strictly follows federal structure. Further in US as DPs is not framed in Constitution ideology of prospective goals of constitution cannot be seen in US which is there context of India and Ireland.

Hence, research here concludes that though the ways, approaches, ideology, history and regarding DPs may differ in all these countries but they unanimously strive for similar end that is establishment of welfare state through protecting and enforcing social, economic and cultural rights of the people.

⁵⁸In re Kerala Education Bill, (1959) AIR SC 956

⁵⁹(1973) AIR SC 1461

⁶⁰(1980) SCC 591