



# GUIDING PRINCIPLES OF DIRECTIVE PRINCIPLES OF STATE POLICY EMPOWERING WOMEN IN INDIA

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**Abstract--** The Directive Principles of State Policy are the guidelines or principles given to the federal institutes governing the state of India, to be kept in citation while framing laws and policies. The Constitution of India prohibits discrimination based on sex but it equally directs and empowers the government to undertake special measures for women. The principles have been inspired by the Directive Principles given in the Constitution of Ireland relate to social justice, economic welfare, foreign policy, and legal and administrative matters. These provisions, contained in Part IV (Article 36-51) of the Constitution of India, are not enforceable by any court, but the principles laid down therein are considered irrefutable in the governance of the country, making it the duty of the State<sup>1</sup> to apply these principles in making laws to establish a just society in the country. The present research paper endeavors to highlight the guiding principles empowering the government to undertake special measures for women in the light of directive principles of state policy.

**Keywords:** *directive Principles of State Policy, Welfare State, Women's Rights*

## INTRODUCTION

Directive Principles of State Policy contained in Part IV (Article 36-51) of the Constitution of India, are not enforceable by any court, but the principles laid down therein are considered irrefutable in the governance of the country, making it the duty of the State<sup>2</sup> to apply these principles in making laws to establish a just society in the country. The principles have been inspired by the Directive Principles given in the Constitution of Ireland relate to social justice, economic welfare, foreign policy, and legal and administrative matters. The aim of our constitution is to establish a welfare state. Welfare state means a nation where the government bodies take care of the needs of the citizens. The directive principles of state policy are the reflection of governance that India is a welfare democratic state. The Constitution provides many protection rights for women such as Protective discrimination in favor of women, Right to freedom of women, Right of women against exploitation, Rights of women under directives and political representations of women. This policy envisaged equal rights to work, equal pay for equal work, adequate means of decent and dignified livelihood to both men and women, these are guaranteed under the directive principles of State policy. Part IV of the Constitution containing Articles 38, 39 (a) (d) and (e), 42, 44 and 45 deals with the welfare and development of women.

Gender is basically a socio-cultural term which contains in itself the socially ascribed roles, attributes and behaviors given to a man and a woman in the society. Time and again we have seen that Indian society has enslaved the mind of a woman, she has been discriminated from the very inception of birth through female infanticide. Even before birth, female feticide and sex selective abortion, battering during pregnancy, coerced pregnancy etc. are very common in a country like India. After birth too, a woman throughout her life cycle faces discrimination and violence. She faces emotional and physical abuse, differential access to food and medical care, genital mutilation, sexual abuse by family members and outsiders, rape, sexual harassment at workplace, trafficking, forced prostitution, dowry

<sup>1</sup> The term "State" includes all authorities within the territorial periphery of India. It includes the Government of India, the Parliament of India, the Government and legislature of the states of India. It also includes all local or other authorities such as Municipal Corporations, Municipal Boards, District Boards, and Panchayats etc. To avoid confusion with the term states and territories of India, State (encompassing all the authorities in India) has been capitalized and the term state is in lower case.

related violence and what not. Gender inequality should be understood from that era when the Hindu sage, Manu said that a woman should remain under eternal bondage. He said that a woman must be in the custody of her father when she is a child, she must be under the custody of her husband when married and must be under the custody of her son in old age or as a widow. Gender inequality means that when a specific gender is regarded as a minority group and a set of complex images and conceptions are attributed to such gender and is passed on from generation to generation through customs and practices. It is worthwhile to mention here that the position of a woman in India has changed from time to time. While, gender equality refers to the equality in numbers and in relative powers of both the genders in a society and where they are given equal roles, status and importance. Dr Ambedkar was one of the prominent persons in the drafting committee of the Constitution. Not only that, he was the chairman of the drafting committee. As a member of the legislative council, Dr Ambedkar raised provisions relating to equality of women in the Indian Constitution. Even before drafting the constitution, Dr Ambedkar through his works expressed his great concern towards the women mass in India and advocated equality. He always measured the progress of a community in the lights of the progress of women. Ambedkar through his paper<sup>2</sup> -Mechanism, he drew an inference that caste was merely created by the Brahmins of ancient India. These Brahmins enslaved the minds of women and found means of controlling and subjugating them. Dr. Rajendra Prasad in his book<sup>3</sup> education should be given to girls, including those of backward classes and they should be encouraged to earn a living both through skilled and unskilled labor. He also said that women should be included in village council, education councils, local bodies and legislatures in the country and they must be encouraged to fill up political posts. When the Constitution was being drafted, Pandit Nehru talked about the liberty of thought, expression, belief, religion and worship of all citizens of India. He said that women have the right to equality and equity. According to him, the Indian customs and practices very intelligently allotted an inferior status to women and in such a social condition; women were unable to realize their full potential.

The Directive Principles of State policy contained in Part-IV of the Constitution incorporate many directives to the state to improve the status of women and for their protection. Certain rights enshrined in Directive Principles of State Policy as protective rights in favour of women are reproduced below:

**A. Equal justice and Free legal aid**

In Indian Constitution there are provisions to get Equal justice and free legal aid to the needy. "The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities". Legal Services Authorities Act, 1987 also contains many provisions and guidelines to ensure free legal aid and equal justice. Legal Aid which means giving free legal services to the poor and needy who are unable to afford the services of an advocate for the conduct of a case or a legal proceeding in any court, tribunal or before an Judicial authority. In the case of Hussainara khatoon vs. State of Bihar,<sup>4</sup> it was held that if any accused is not able to afford legal services then he has a right to free legal aid at the cost of the state.

**B. Principle of "equal pay for equal work" is a constitutional goal.**

<sup>2</sup> Dr B.R. Ambedkar, Dr. BR Ambedkar Castes in India Their Mechanism, Genesis, SCRIBD, (2nd Sept,2015)

<sup>3</sup> DrRajendra Prasad, DrRajendra Prasad: Correspondence and Select Documents : Presidency Period (2<sup>nd</sup> September,2015)

<sup>4</sup> AIR 1979 SC 1322

India still lacks a comprehensive and transparent wage policy for all the sectors of the economy. Gender equality is the goal, while gender neutrality and gender equity are practices and ways of thinking that help in achieving the goal. Gender parity, which is used to measure gender balance in a given situation, can aid in achieving gender equality but is not the goal in and of itself. The principle of Equal Pay for Equal Work was first considered in *Kishori Mohanlal Bakshi v. Union of India*<sup>5</sup> in the year 1962 where the Supreme Court declared it incapable of being enforced in the court of law. However, it received due recognition only in 1987 through Mackinnon Mackenzie's case.<sup>6</sup> Here the issue of concern was a claim for equal remuneration for Lady Stenographers and Male Stenographers. This was ruled in favour of lady stenographers as the Court was in favour of equal pay. The Apex court in *Randhir Singh v. Union of India*,<sup>7</sup> has expressed the opinion that the principle of "equal work" is not declared in the Constitution to be a fundamental right but it is certainly a constitutional goal. Article 39(d) ensures that there is equal pay for equal work for both men and women. The Parliament has enacted the Equal Remuneration Act, 1976 and to implement Article 39. The doctrine of 'equal pay for equal work' is equally applicable to both men and women, even the daily wagers are also entitled to the same wages as other permanent employees in the department employed to do the identical work.<sup>8</sup>

The court further said that continuing Articles 14 and 16 in the light of Preamble and Article 39(d), the principle of equal pay for equal work is deducible from those Articles and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification though, those drawing the different scales of pay do identical work under the same employer. In the present case, the Supreme Court has held that the principle of 'equal pay and equal work', though not a fundamental right, is certainly a constitutional remedy under Article 32 of the Constitution.

#### ***C. Men and women workers to be protected equally***

According to Article 39(e) of the Constitution is that the state is required to ensure that the health and strength of women workers are not abused and that they are not forced by economic necessity to enter avocations unsuited to their strength and that of the children of underage to be protected equally. They should not be forced to work under inhuman and hazardous condition. In *M.C Mehta v. State of Tamil Nadu*,<sup>9</sup> it has been held that in view of Article 39 the employment of children within the match in view of Article 39 the employment of children within the matches factories directly connected with the manufacturing process of matches and fireworks cannot be allowed as it is hazardous. Children can, however, be employed in the process of packing, etc. away from the place of manufacturing.

#### ***D. Uniform Civil Code and Gender Equality***

Under the Directive Principles of State Policy in Article 44, it is suggested, "The State shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India." In order to establish true equality among the citizens of the country, the State must enforce the Uniform Civil Code. Gender justice means social, political and economic equality for women. It suggests the abolition of the patriarchal system that has infused with the system. Gender justice is indispensable for 'development' in a true sense. The implementation of a uniform civil code and the issue of gender justice, these two are closely connected to each other in Indian socio legal perspective. Women empowerment in core areas like social status, gender bias, health, security and empowerment are of

<sup>5</sup> *Kishori Lal Mohan Lal Bakshi v. Union of India*, A.I.R. 1962 SC

<sup>6</sup> *Mackinnon Mackenzie and Co. Ltd. vs. Audrey D'Costa and Others* (1987) 2 SCC

<sup>7</sup> AIR 1982 SC 879

<sup>8</sup> *Daily Rates Casual Labor v. Union of India*, (1988) 1 SCC 122.

<sup>9</sup> (1991) 1 SCC 283

urgent necessity. Article 44 expects from the State to secure a Uniform Civil Code for all citizens of India. There is no Uniform Civil Code in India but a Uniform Criminal Code exists. The Criminal law is equally applicable to all citizens irrespective of their religious affiliation. However in the case of civil law particularly in the matter of personal laws there is no uniformity. Article 15(1) of the Indian Constitution states, "The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them." World history is evidence to the fact that one of the most neglected ideas has been that of women's rights. Around half of the world's population has been denied equality in almost every sphere of life. This statement is a testimony to the fact that equality without gender justice is no equality at all. In *Sarla Mudgal vs Union of India*,<sup>10</sup> a division bench of the Supreme Court consisting of Kuldip Singh and R.M. Sahai, JJ strongly advocated the introduction of a Uniform Civil Code in India. In this case the Supreme Court held that conversion of a Hindu male to Islam only for the purpose Of contracting bigamous circumvents Section 494 of Indian Penal Code. Such marriages have been declared as bigamous and void by the court. The court after referring to various precedents on the point, categorically held that till uniform civil code is achieved for all the Indian Citizens, there would be an inducement to a Hindu husband who wants to enter in to second marriage while the first marriage is subsisting to become a Muslim. Here the Court was pointing out the injustice done to the first wife, legally wedded. The Bench noted the failure of successive governments till date, to implement the constitutional mandate under Article 44 of the constitution of India. It was suggested that the personal laws of the minorities should be rationalized to develop religious and cultural amity preferably by entrusting the responsibility to the Law Commission and Minorities Commission. The Bench further directed the Government of India to file an affidavit indicating the steps taken and efforts made to have a fresh look at Article 44 in August, 1996. However, the latter direction was treated as "obiter dicta" by the court subsequently. In a recent judgment, *Lily Thomas vs. Union of India*,<sup>11</sup> while dealing with the validity of the second marriage contracted by a Hindu husband after his conversion to Islam, the Supreme Court clarified that the court had not issued any directions for the codification of a common Civil Code and that the judges constituting the different Benches had only expressed their views in the Facts and circumstances under these cases. It appears that the Apex Court in India, which showed great judicial activism initially with regard to uniform civil code, has taken a backward step with this clarification.

#### ***E. Protection of women from prostitution and rehabilitation of their children***

In the past decade the volume of human trafficking has increased to the extent that today it is the third-largest form of transnational illegal trade after arms and drugs. The objective of such trafficking of women and girls is the commercial sexual exploitation. Section 16 of the Immoral Traffic (Prevention) Act, 1956, provides for the rescue of persons living or carrying on, or made to carry on prostitution, in a brothel. In the case of *Gaurav Jain v. Union of India*,<sup>12</sup> the issue that came up before the Supreme Court was the rehabilitation of the children of the prostitutes. The Apex Court observed that, segregating children of prostitutes by locating separate schools, and providing separate hostels, would not be in the best interest of the children and the society at large. The Honorable Court directed that, these children should be segregated from their mothers and should be allowed to mingle with others and become a part of the society. The Court further contemplated that, the children of prostitutes should, however, not be permitted to live in the inferno and other undesirable surroundings of prostitute homes. This was observed particularly so in context of the young girls whose body and mind

<sup>10</sup> AIR, 1995 1531

<sup>11</sup> AIR 2000 SC 1650

<sup>12</sup> 1990 Supp SCC 709: 1991 SCC (Cri) 140

are likely to be abused with growing age for being admitted into the profession of their mothers. Whilst the court did not accept the plea for separate hostels for children of the prostitutes, it felt that, accommodation in hostels and other reformatory homes should be adequately available to help segregation of these children from their respective mothers living in prostitute homes as soon as they are identified.

In the case of Randhir Singh vs Union of India,<sup>13</sup> the Apex Court talked about the doctrine of equal pay for equal work. It was held that the doctrine is applicable in case of both men and women. Art-39(d) of the Indian Constitution provides that there shall be equal pay for equal work for both men and women. But Article-37 on the contrary says that directive principles are not enforceable in nature. But when fixation of pay scales of government employees is based on unreasonable classification which violates Art-14 and Art-16 of the Constitution, the courts are allowed to enforce the doctrine of equal pay for equal work. Thus the court held that the principle of equality is enshrined in the provisions of the Equal Remuneration Act, 1976.

## CONCLUSION

The directive principle plays an ideal before the legislator of India which shows that light while they frame the policies & laws. They are basically a code of conduct for the legislature and administrators of the country. They show the path to the leaders of the country which takes the country to achieve the ideal of the constitution embodied in the Preamble “Justice, Social, Economic, Political; liberty, equality and fraternity”. Prostitutes cannot be seen as individuals with half-rights or no-rights; the Constitution of India guarantees them all rights as are available to all other citizens of the country, the crowning glory of them all being the “right to self-determination”. The only good that can be done to uplift the prostitutes from their situation of crises is to acknowledge them as human beings not only of ‘flesh’ but also of emotions; rights; privileges and liberties; and to make them realize that the Constitution of India shields them, protects them and embraces them, as it does to all other citizens of the country. The problem of trafficking of women and children for the purpose of sexual exploitation is prevalent at various levels—local, inter-district, inter-State and cross-border. Commercial exploitation of women and children takes place in various forms including brothel-based prostitution, sex tourism, entertainment industry and pornography in print and electronic media. Trafficking for commercial exploitation of women and children has resulted not only in violation of right, but also has adverse physical, psychological and moral consequences for the victims.

## SUGGESTIONS

As we all know that India is a male dominated country where males are dominated in every area and females are forced to be responsible for only family care and live in the home including other many restrictions. Almost 50% of the population in India is covered by the female only so the full development of the country depends on the half population means women, who are not empowered and still restricted by many social taboos. In such condition, we cannot say that our country would be a developed in the future without empowering its half population means women. If we want to make our country a developed country, first of all it is very necessary to empower women by the efforts of men, government, laws and women too. Women empowerment has the power to change many things in the society and country. They are much better than men to deal with certain problems in the society. They can better understand the disadvantages of the overpopulation for their family and country. They are

<sup>13</sup> 1982 AIR 879, 1982 SCR (3) 298



fully able to handle the economic conditions of the family and country through proper family planning. Women are capable enough to handle any impulsive violence in comparison to the men whether in the family or society. Through women empowerment, it can be possible to change the male dominated country into the equally dominated country of rich economy. Empowering women may easily help to grow each and every member of the family without any extra effort. A woman is considered to be responsible for everything in the family so she can better solve all the problems from her own end. Empowerment of the women would automatically bring empowerment of everyone. Women empowerment is the better treatment of any big or small problems related to human being, economy or environment. In few last years, the advantages of the women empowerment are coming out in front of us. Women are being more conscious about their health, education, career, job and responsibilities towards family, society and country. They are taking part in the every area and showing their great interest in each field. Finally, after long years of hard struggle they are getting their rights to go ahead on the right track.