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# **ROLE OF CONSTITUTIONAL DUTIES IN NATION BUILDING**

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## **ABSTRACT**

In the words of late Prime Minister Indra Gandhi, “The moral value of fundamental duties would not be to smother rights but to establish a democratic balance by making people conscious of their duties equally as they are conscious of their rights”. When the citizens of a nation are conscious about their constitutional duties it creates a great impact in nation building. Constitutional duties can be defined as the moral obligation of all citizens to help promote a spirit of patriotism, brotherhood and to uphold the unity of a nation. Nation building means creating a country that function out of a non-functioning one either because the old one has been destroyed in a war, has fallen apart, or never really worked properly. It refers to government policies that are designed to encourage a strong sense of national identity.

The goal of nation building is to unify the people within the country so that it remains politically viable and stable over the term. The Australian Constitution describes the composition role and powers of the Australian Parliament. It sets out how the Australian and State Parliament share powers to make laws for Australians. The Australian Constitution sets out the basis of Australia’s federal system of governance. The Australian Parliament and government are responsible for national decision making and law making. It is a bi-cameral Parliament including the Queen (represented by the Governor-General), the Senate and the House of Representatives. It has six state governments responsible for state matters. There are power sharing arrangements between the Australian and State Parliaments. The High Court which is the final court of appeal interprets the Constitution and decides its meaning and settling disputed between the Australians and State Government. While Indian Constitution is democratic and republic, Australia is a Constitutional monarchy.

**Keywords-** Moral Values, Fundamental Duties, DPSP, Federal, Bi-cameral.

## **AIM OF THE STUDY:**

Aim of the study is to show role of constitutional duties in nation building. It further includes a comparative study of the constitutional duties and fundamental rights of the Constitution of India with the Constitution of US and the Constitution of France.

## **INTRODUCTION:**

A Constitution can be defined as the supreme law of any land. A country cannot function without any proper Constitution. Constitution of any country contains various obligations in the form of rights, duties, statutes, acts etc. Constitutional Duties play an important role in the nation building. As discussed above in the abstract, constitutional duties can be defined as the moral obligations of all the citizens to help promote a spirit of brotherhood, patriotism and to uphold the unity of a nation. These Constitutional duties impose an obligation on the individual to respect and work in accordance with them. On the other hand nation building can be defined as a means of functioning the country in accordance to the governmental policies that are designed to encourage a strong sense of national identity.

This paper includes detailed information of all the constitutional duties of India, US and France. These duties help in nation building as they promote a spirit of unity amongst the citizens of the country provide for the rights duties, obligations alongside the safeguards and measures. All this constitutes in making a nation united and we always say ‘united we stand, divided we fall’.

Therefore these duties provide a pathway to the citizens in uniting themselves and standing together for their nation. This paper will focus not only on the fundamental duties of each of the mentioned three countries but will also focus on the rights, Directive Principle of State Policy, preamble, legislature, executive, judiciary as they are also a part of the constitutional duties as without them a nation can never be united and therefore nation building is only left to be a dream. These duties compute the nation and fulfill the dream of nation building.



## **FORMATION OF THE CONSTITUTION:**

**India** adopted its constitution on 26<sup>th</sup> November, 1949. A Constituent Assembly was formed in 1946 under the Indian Independence Act, 1947. The first sitting of the Assembly was on 9<sup>th</sup> December, 1946. Various resolutions were passed. Pandit Jawahar Lal Nehru moved his objective resolution. The Constituent Assembly formed several other committees for effective and efficient working of the assembly. Dr. B.R. Ambedkar, who was chaired to drafting committee, drafted the constitution of India which was signed by the president Dr. Rajendra Prasad on 26<sup>th</sup> January, 1950. It took 2 years 11 months and 18 days for the Constituent Assembly to make the constitution.

**France** adopted its constitution on 4<sup>th</sup> October, 1958. In the year 1958, it was a critical situation for France. The National Assembly of the French Parliament handed over its law making power to Gen. De Gaulle. A Cabinet Committee was formed to draft the constitution. The constitution was prepared within 2 months. A consultative committee consisting of 39 members was formed to check the draft. After then the committee approved the new constitution. It was submitted for approval at referendum held on 29<sup>th</sup> September, 1958 and was ratified by majority and became operative which led to the end of 4<sup>th</sup> Republic and beginning of 5<sup>th</sup> Republic.

**The US** adopted its constitution on 17<sup>th</sup> September, 1787. It was signed by 39 delegates out of 55 delegates to the Constitutional Convention in Philadelphia, Pennsylvania. The delegates believed that there was a need of an effective Central Government with a wide range of powers that could replace the Congress that was established by Articles of Confederation. There were several committees formed to draft the constitution. The Constitution was written by several committees in the year 1787. The Committee of Style and Arrangement was tasked with obtaining the Convention's approval of the articles and putting them into a order. Alexander Hamilton, William Johnson, Rufus King, James Madison and Gouverneur Morris were the members of the committee that drafted the constitution.

## **DISTINCTIVE FEATURES**

### **PREAMBLE**

**The Preamble of Constitution of India** constitutes India into a sovereign, socialist, secular, democratic, republic. The authority of the Constitution lies with the people of India. The objective of the preamble is to secure justice, liberty, equality to all citizens and promote fraternity to maintain unity and integrity of the nation.

**The Preamble of Constitution of France** derives its sovereignty from the people of its country. It recalls its declaration of Rights of man and of the citizen from 1789 and establishes France as a secular and democratic country.

**The Preamble to Constitution of United States of America** serves its fundamental purposes and guiding principles. It does not assign any powers to its federal government. It sets out the origin, scope and purpose of the Constitution. It helps establish Justice, insure domestic tranquility, provide for the common defense and promote general welfare and secure the blessings of liberty and posterity.

### **FUNDAMENTAL RIGHTS**

The nature of rights given in the Indian Constitution is fundamental. These fundamental rights are provided in Part III of the Constitution i.e. Article 12-35.

Fundamental rights are essential as they protect the rights and liberty of the people against their Government. It is essential as it preserves the public and private rights.

Fundamental Rights are prohibitions against the state. The state cannot make any law which abridges these fundamental rights of citizens guaranteed under Part III of the constitution. Fundamental rights are the basic rights essential for intellectual, moral and spiritual development of individuals.

**The Constitution of India** provides for the following six fundamental rights:

#### **Right to Equality (Article 14-18)**

The Right to Equality deals with the general principles of equality before law and prohibits unreasonable discrimination between the citizens of India. It further lay down the specific

application of the general rule of equality i.e. the prohibition of discrimination on grounds of religion, race, caste, sex or place of birth and guarantees of opportunity in matters of public employment and abolishes untouchability.

### **Right to Freedom (Article 19-22)**

The Right to Freedom deals with different aspects of basic rights which gives the citizens of India the Freedom of Speech and Expression, Freedom of Assembly, Freedom to form Associations or Unions or Co-operative Societies, Freedom of movement, Freedom to reside and settle, Freedom of Profession, occupation, trade or business. It further deals with the Protection in respect of conviction for offences, Protection to life and personal liberty, Protection against arrest and detention in certain cases.

### **Right against Exploitation (Article 23 & 24)**

The Right against Exploitation deals with the Prohibition of Traffic in Human beings and beggar and any other forms of forced labor. It further deals with Prohibition of employment of children below the age of fourteen years in factories, industries, mines or any other hazardous employment.

### **Right to Freedom of Religion (Article 25-28)**

The Right to Freedom of Religion deals with the Freedom of conscience and free profession, practice and propagation of religion as a subject to public order, morality, health etc. It further deals with the Freedom to manage religious affairs and to maintain institutions for religious and charitable purposes and the Freedom as to payment of taxes for promotion of any particular religion. It gives the Freedom as to attendance at religious instruction or religious worship in certain educational institution.

### **Cultural and Educational Rights (Article 29 & 30)**

The Cultural and Educational Rights deals with the Protection of interests of minorities i.e. any section of the citizen residing in any part of India has the right to conserve its own distinct language, script or culture. It further deals with the right of minorities to establish and administer educational institutions of their own choice.

## **Right to Constitutional Remedies (Article 32-35)**

The Right to Constitutional remedies is one of the most important fundamental rights of India. It empowers the citizens to move to a court of law in case of any denial of the fundamental rights i.e. a person have right to go to the High Court and the Supreme Court to get its Fundamental rights protected. The Parliament has the power to modify the rights conferred by this part in their application to forces. While there is a martial law in force in any area, there is a restriction on rights conferred by this part. The Legislation has the right to give effect to the provisions of this part.

Initially there were 7 fundamental rights of the citizens but with the 44<sup>th</sup> Constitutional amendment of 1978, the Right to property was shifted from Article 31 to Article 300-A, that provides: ‘No person shall be deprived of his property save by (except) authority of law’.

J.D.M Jabalpur v. S. Shukla, popularly known as the *habeas corpus* case, it was held that Article 21 was the sole repository of the Right to Life and personal liberty and if the Right to Move to any court for the enforcement of that right was suspended by the Presidential order under Article 359 the detente had no *locus standi* to file a writ petition for challenging the legality of their detention.

**The French Constitution** provides several rights and freedom to the citizens of France. These rights and freedoms are as follows:

- The citizens of France have the right to liberty, equality, security, property etc. Right to Liberty is the power to do which that does not injure the rights of others. Equality means that the law is the same for all, weather it protects or punishes. Security is the result of the cooperation of all in order to assure the rights of each. Property is the right to enjoy and to dispose of one’s goods, income, and the fruit of one’s labor and industry.
- The law is the general will expressed by the majority of the citizens of France or their representatives. Everything that is not forbidden by law cannot be prevented i.e. it is allowed.
- No one can be constrained to do that which it does not ordain which means no one can be summoned into court, accused, arrested or detained except in the cases determined by the law and according to the forms which it has prescribed.

- Those who incite, promote, sign, execute, or cause to be executed arbitrary acts are guilty and ought to be punished. Every severity which may not be necessary to secure the person of a prisoner ought to be severely depressed by the law.
- No one can be tried until after he has been heard or legally summoned.
- The law ought to decree only such penalties as are strictly necessary and proportionate to the offense.
- All treatment that increases the penalty fixed by the law is a crime. No law, either civil or criminal can have retroactive effect.
- Every person can Contract his time and his services, but he cannot sell himself nor can be sold; this person is not an alienable property.
- Every tax is established for the public utility, it ought to be apportioned among those liable for taxes, according to their means.
- Sovereignty resides essentially in the totality of the citizens. No individual or assembly of part of the citizens can assume the sovereignty.
- No one can without legal delegation exercise any authority or fill any public function.
- Each citizen has a legal right to participate directly or indirectly in the formation of the law and in the selection of the representatives of the people and of the public functionaries.
- The public offices cannot become the property of those who hold them.
- The social guarantee cannot exist if the division of powers is not established, if their limits are not fixed and if the responsibility of the public functionaries is not assured.
- All French citizens enjoy equal civil and political rights.
- If the freedom of any person in any foreign country is violated, he can come to France and seek shelter. France can give shelter to all such person.

Article 1 accepts liberty, equality and fraternity as the objective of the Republic and Articles 2 and 3 grants political rights to the people. The French constitution has been a very strong votary of human rights. However, it provides for no formal constitutional guarantee for the protection and security of rights. These are devoid constitutional protection. These are of the nature of solemn declarations that are always respected in France. These are backed by the sanctions of history and traditions of France.

**The Constitution of United States of America** has the Bill of Rights came into effect on 15<sup>th</sup> December, 1791 restricting the powers of the Federal Government of the US and protecting the rights of the citizen, residence and visitors in American territory. This Bill of Rights gives the citizen of the US the following fundamental rights:

### **Freedom of Speech**

- The First Amendment guarantees freedom of speech. Freedom of speech gives Americans the right to express themselves without having to worry about government interference. It's the most basic component of freedom of expression.
- *Schenck v. United States, 1919*<sup>1</sup>: In this case, the Supreme Court upheld the conviction of Socialist Party activist Charles Schenck after he distributed fliers urging young men to dodge the draft during World War I. The Schenck decision helped define limits of freedom of speech, creating the 'clear and present danger' standard, explaining when the government is allowed to limit free speech. In this case, The Supreme Court viewed draft resistance as dangerous to national security.

### **Freedom of Press**

- This freedom is similar to freedom of speech, in that it allows people to express themselves through publication. There are certain limits to freedom of the press. False or defamatory statements called libel aren't protected under the First Amendment.
- *New York Times Co. v. United States, 1971*<sup>2</sup>: This landmark Supreme Court cases made it possible for The New York Times and Washington Post newspaper to publish the contents of the Pentagon Papers without risk of government censorship. The Pentagon Papers were a top-secret Department of Defense study of U.S. political and military involvement in Vietnam from 1945 to 1967. Published portions of the Pentagon Papers revealed that the

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<sup>1</sup> *Schenck v. United States, 1919*

<sup>2</sup> *New York Times Co. v. United States, 1971*

presidential administrations of Harry Truman, Dwight D. Eisenhower, John F. Kennedy and Lyndon B. Johnson had all misled the public about the degree of US involvement in Vietnam.

### **Freedom of Religion**

- The First Amendment, in guaranteeing freedom of religion, prohibits the government from establishing a ‘state’ religion and from favoring one religion over any other. It established separation of church and state.
- *Sherbert v. Verner*, 1963<sup>3</sup>: The Supreme Court ruled that states could not require a person to abandon their religious beliefs in order to receive benefits. In this case, Adell Sherbert, a Seventh-day Adventist, worked in a textile mill. When her employer switched from a five-day to six-day workweek, she was fired for refusing to work on Saturdays. When she applied for unemployment compensation, a South Carolina court denied her claim.

### **Freedom to Assemble, Right to Petition**

- The First Amendment protects the freedom to peacefully assemble or gather together or associate with a group of people for social, economic, political or religious purposes. It also protects the right to protest the government. The right to petition can mean signing a petition or even filing a lawsuit against the government.
  - *Edwards v. South Carolina*, 1962<sup>4</sup>: On March 2, 1961, 187 black students marched from Zion Baptist Church to the South Carolina State House, where they were arrested and convicted of breaching the peace. The Supreme Court ruled in an 8-1 decision to reverse the convictions, arguing that the state infringed on the free speech, free assembly and freedom to petition of the students.
- Freedom to vote in election. The 15<sup>th</sup> amendment states that the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any

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<sup>3</sup> *Sherbert v. Verner*, 1963

<sup>4</sup> *Edward v. South Carolina*, 1962

State on account of race, color or previous condition of servitude. The 15<sup>th</sup> amendment granting African-American men the right to vote was adopted into the US Constitution in 1870. It wasn't until the Voting Rights Act of 1965 that legal barriers were outlawed at the state and local levels if they denied African-Americans their right to vote under the 15<sup>th</sup> Amendment.

- Prohibits unjustifiable seizure and search, unusual punishment and forced self-incrimination. The right of the people to be secure in their persons, house, papers and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.
- The 14<sup>th</sup> amendment defines US citizenship: “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” The Bill of Rights restricts the federal government from making any law that deprives any person of his life, liberty and property. It also states that no state shall make or enforce any law that shall abridge the privileges or immunities of citizens of the United States.
- This Bill of Rights requires a grand jury for capital offence and also guarantees a speedy public trial with an impartial jury in the district in which the crime has occurred.
- It prohibits double jeopardy. The second section is commonly referred to as the ‘double jeopardy’ clause, and it protects citizens against a second prosecution after an acquittal or a conviction, as well as against multiple punishments for the same offense. Caveats to this provision include permissions to try persons for civil and criminal aspects of an offense, conspiring to commit as well as to commit an offense, and separate trials for acts that violates laws of both the federal and state governments, although federal laws generally suppress prosecution by the national government if a person is convicted of the same crime in a state proceeding.



Lochner v. New York<sup>5</sup>: In the following case, the Hon'ble court found that the right to make a private contract is a fundamental right. The court focused on the importance of economic contracts in the context of individual liberty.

West Coast Hotel v. Parrish<sup>6</sup>: In the following case, the court however held that there is no as such fundamental right to Contract: “there is no absolute freedom to do as one wills or to contract as one chooses”.

### **FUNDAMENTAL DUTIES**

**The Constitution of India** an adopted its fundamental duties for the citizens on India by the 42<sup>nd</sup> Amendment Act, 1976. Part IV-A consists of only one Article i.e. Article 51-A that lays down the duty of every citizens of India. The following are the duties<sup>7</sup>:

- To abide by Constitution and respect its ideal and institutions, the National Flag and National Anthem
- To cherish and follow the noble ideals which inspired our national struggle for freedom
- To uphold and protect the sovereignty, unity and integrity of India
- To defend the country and render national services when called upon to do so
- To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women
- To value and preserve the rich heritage of our composite culture
- To protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creature
- To develop the scientific temper, humanism and the spirit of inquiry and reform
- To safeguard public property and to abjure violence
- To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievements

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<sup>5</sup> 1905

<sup>6</sup> 1937

<sup>7</sup> Pandey. J.N., The Constitution of India

- Who is a parent or guardian to provide opportunities for education to his child or as the case may be, ward between the age of six and fourteen years.

The fundamental duties serve as a constant reminder to every citizen while the constitution specifically conferred on them certain fundamental rights. These duties not only lay emphasis on human dignity but also creates a feeling of harmony in the community. Our society can only be uplifted if and every citizen focuses on bridging the gaps that have been created in the society by performing their duties towards the nation. These act as warning signal for the people against any type of anti-social activities. Further these duties give a chance to the people to an active participation in the nation rather than being a spectator. They also promote a sense of discipline and commitment towards the nation. The courts can use these fundamental duties for determining the Constitutionality of law. If any law is challenged in the court for its constitutional validity and if that law is providing force to any of the fundamental duties then that law will be held reasonable.

In the case of Ramlila Maidan Incident <sup>8</sup>the court held that the word ‘fundamental’ is used in two separate senses in our Indian Constitution. When this word is used for rights then it means that these rights are very essential and any law that will violate the fundamental rights will be declared as void. But when this word is used for the duties then it is used in normative sense as it sets certain goals before the state that the state should try to achieve. In the case of Unni Krishnan <sup>9</sup>it was provided that all the citizens who are below the age of 14 years have a right to free and compulsory education.

M.C Mehta v. Union of India<sup>10</sup>: In the following case the Supreme Court held that:

- i. It is compulsory for all the educational institutions to organize a teaching lesson of at least one hour a week on the protection and improvement of the natural environment.
- ii. It is the duty of the Central Government under Article 51-A (g) to introduce this lesson in all the educational institution.
- iii. The Central Government should also distribute books free of cost on the same subject in all the institutes.

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<sup>8</sup> (2012) 2 SCC 123

<sup>9</sup> 1993 AIR 2178, 1993 SCR (1) 594

<sup>10</sup> M.C Mehta v. Union of India, 1998

- iv. To give rise to consciousness among the people towards a clean environment, the government should organize ‘keep the city clean’ week atleast one in a year.

Ho’ble Shri Rangnath Mishra v. Union of India<sup>11</sup>: In the following case a letter was written to the President so that he can give directions to the State in order to educate citizens in the matter related to fundamental duties. This letter was treated as a writ petition by the court. But by the time this matter would be heard a report was submitted to the government of India by the National Commission who was reviewing the Constitution at that time. The following suggestion was provided by the Commission in the court:

- i. In order to sensitize the people and to create general awareness regarding the fundamental duties, the State and the Union Government should take proper steps on the lines that were recommended by the Justice Verma Committee.
- ii. For generating awareness and consciousness of citizens related to fundamental duties, modes and manners needs to be adopted.

The court took into account the recommendations made by the National Commission and also directed the Government to take necessary steps. The writ was disposed of.

Dr. Dasarathi v. State of Andhra Pradesh<sup>12</sup>: The following case held that under Article 51(j) every citizen must abide by its duty to always strive towards excellence in all spheres of life and also for the collective activity so that the nation constantly rises to a higher level of endeavour and achievements. For this the State can provide ways to achieve excellence according the methods that are permitted by our Indian Constitution.

Charu Khurana v. Union of India<sup>13</sup>: The Supreme Court held that the State should provide for opportunities rather than curtailing it. The court said that the duty of the citizen have also been extended to the collective duty of the State.

**The Constitution of United States of America** has several duties and responsibilities that the citizens of United States of America should exercise and respect. Some of them are legally binding

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<sup>11</sup> 31<sup>st</sup> July, 2003

<sup>12</sup> 13<sup>th</sup> July, 1984

<sup>13</sup> (2015) 1 SCC 192

but all are important to ensure that United States of America remains a free and prosperous nation.

The duties are as follows:

- To support and defend the constitution.
- To uphold and protect the sovereignty, unity and integrity of the United States of America.
- To participate democratic process.
- To respect and obey federal, state and local laws.
- To stay informed of the issues affecting your community
- To respect the rights believes and opinions of others.
- To participate in your local community.
- To protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.
- To value the preserve the rich heritage of our composite culture.
- To defend the country if the need should arise.
- To develop the scientific temper, humanism and the spirit of inquiry and reform.
- To serve on a jury when called upon.
- To safeguard the public property and to abjure violence.
- To pay income and other taxes honestly and on time to the federal, state and local authorities.
- To abide by the constitution and respect its ideal and institutions, the National Flag and the National Anthem.
- To cherish and follow the noble ideals which inspired our national struggle for freedom.
- To strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endavour and achievement.
- To pay taxes in accordance with the law.

These fundamental duties of the United States of America are legally binding. By applying them the citizens of United States of America are demonstrating their commitment to the nation and to their government.

**The Constitution of France** has the declaration of rights that contains the duties that act as an obligation on the citizens of France. The duties are as follows:

- The declaration of rights contains the obligation of the legislators; the maintenance of society requires that those who compose it should both know and fulfill their duties.
- All the duties of man and citizen spring from these two principles graven by nature in every heart: ‘Not to do to others that which you would not that they should do to you’. ‘Do continually for others the good that you would wish to receive from them.’
- The obligation of each person to society consist in defending it, serving it, living in submission to the laws and respecting those who are the agents of them.
- No one is a good citizen unless he is good son, good father, good brother, good friend, and good husband.
- No one is a virtuous man unless he is unreservedly and religiously an observers of the laws.
- The one who violates the laws openly declares himself in a state of war with society
- The one who, without transgressing the laws, eludes them by stratagem or ingenuity wounds the interests of all; he makes himself unworthy of their good will and their esteem
- It is upon the maintenance of property that the cultivation of the land, all the productions, all means of labor, and the whole social order rest.
- Every citizen owes his services to the fatherland and to the maintenance of liberty, equality and property whenever the law summons him to defend them.

It is the duty of every citizen of France to do their work and occupation and therefore they are provided with the right to get work. The Constitution guarantees several other rights and duties to the citizen of France such as general education, professional education and training to all children and adults. The state has the obligation to provide facilities for the development of these fundamental duties. The State provides for the development of each person and his family, it also provides every worker with the right to participate in the determination of collective agreements in respect of the working conditions of their profession. The Constitution of France also guarantees physical security and security of health, rests and leisure and to children, mothers and old person as a constitutional duty which is legally binding. The people of France irrespective of their religion, on the basis of equality of rights and duties can form the French Union.

### **DIRECTIVE PRINCIPLES STATE POLICY**

**The Constitution of India** has the DPSP contained in Part IV of the Constitution under Article 36-51 that sets out the aim and objectives to be taken up by the states to ensure better governance

of the country. This novel feature of the Constitution is borrowed from the Constitution of Ireland that had copied it from the Spanish Constitution.

The DPSP are implemented in such a way that they boost a high sense of moral duty. They are the ideals that the union and state government must keep in mind while formulating a policy of passing a law.

### **Characteristics of Directive Principles Of State Policy:-**

- 1) The directive principles of state policy aim to create social and economic conditions under which the citizens can lead a good life, although non justifiable fundamental in the governance of the country.
- 2) The legislature should apply these directive principles in making laws as per Article 37 of the constitution that states the application of the principles contained in Part IV.
- 3) All the executive agencies of union and states should be guided by these directive principles.
- 4) These directive principles also play a vital role in the functioning of judiciary in the nation. The judiciary should always keep in mind these DPSP'S before giving decisions in the cases.

### **Categorization of the Directives:**

#### **1) Related to SOCIO ECONOMIC JUSTICE:**

- i. Article 38: This article states to secure a social order for the promotion of welfare of the people.
- ii. Article 39: This article provides for certain principles of policy to be followed by the state.
- iii. Article 39(A): This particular article provides for equal justice and free legal aid to the citizens of the country.
- iv. Article 41: This article provides every individual with the right to work, to education and to public assistance in certain cases.
- v. Article 42: This article contains provisions in regard to the just and humane conditions of work and maternity leave.

- vi. Article 43: This article provides the individual with the provision of living wages for the workers.
- vii. Article 43(A): This article looks after the participation of workers in the management of the industries.
- viii. Article 47: This article provides the state with a duty to raise the level of nutrition and the standard of living and to improve public health. For example: The mid day meal scheme, the ration card yojna, the pradhanmantri awas yojna.

## **2) Related to GANDHIAN PRINCIPLES:-**

- i. Article 40: This article looks after the organization of the village panchayats.
  - Article 43(A): This article provides for the promotion of cooperative societies. Cooperative societies mean the cooperation of management between the public and the private sector.
- ii. Article 46: It provides for the promotion of educational and economic interest of the schedule caste, schedule tribes and other weaker sections.
- iii. Article 47: It provides the state with a duty to raise the level of nutrition and the standard of living and to improve public health.
- iv. Article 48: It talks about the organization of agricultural and animal husbandry.

## **3) Related to LIBERALPHILOSOPHY:**

- i. Article 44: This article provides for a uniform civil code for all the citizens.
- ii. Article 45: This article provides for the provision for early childhood care and education to children below the age of six years.
- iii. Article 48: It provides for the organization of agricultural and animal husbandry.
- iv. Article 48(A): This article looks after the protection and improvement of environment and safeguarding of forest and wildlife. For example: The Wildlife Protection Act.
- v. Article 49: This article provides for the protection of monuments and places and objects of national importance.
- vi. Article 50: This article talks about the separation of the executive from the judiciary.
- vii. Article 51: This particular article is responsible for the protection of international peace and security.

In *M.C. Mehta v. State of Tamil Nadu*<sup>14</sup>, it has been held that in view of Article 39 the employment of children within the match 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 but it should be done in an area away from the place of manufacturing to avoid exposure to accidents.

**The court issued the following directions:**

- i. The court directed for setting up of Child Labor Rehabilitation Welfare Fund and asked the offending employers to pay for each child a compensation of twenty thousand rupees to be deposited in the fund and suggested a number of measures to rehabilitate them in a phased manner.
- ii. The liability of the employer would not cease even if after the child is discharged from work asked the government to ensure that an adult member of the child's family gets a job in a factory or anywhere in-lieu of the child.
- iii. In those cases where it would not be possible to provide jobs the appropriate government would as its compensation, deposit rupees five thousand in the fund for each child employed in a factory or mine or in other hazardous employment.
- iv. In case of getting employment for an adult the parent or guardian shall have to withdraw his child from the job. The parent shall have to see that his child is spared from the requirement of the job as an alternative source of income interest.
- v. As per Child Labor Policy of the Union Government the court identified some industries for priority action.
- vi. The employment so given could be in the industry where the child is employed a public sector undertaking, and would be manual in nature in as much as the child in question must be engaged in doing manual work the undertaking chosen for employment shall be one which is nearest to the place of residence of the family.
- vii. For the purpose of collection of funds, a district could be the unit of collection so that the executive head of the district keeps watchful eye on the work of the inspectors. In view of the magnitude of the task, a separate cell in the labor department of the

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<sup>14</sup> AIR 1997 SC 699



- appropriate government would be created. Overall monitoring by the Ministry of Labor of the Union Government would be beneficial and worthwhile.
- viii. The Secretary of the Ministry of Labor of the Union Government is directed to file an affidavit within a month before the court about the compliance of the direction issued in this regard.
  - ix. Penal provisions contained in the 1986 act will be used where employment of a child labor prohibited by the act, is found.

It is held that the working hours of the child are not more than 4 to 6 hours a day and is provided with education at-least 2 hours each day. The entire cost of education shall be borne by the employer.

The verdict gives a new hope to the children of the country that a beginning is being made to honor the mandate in Articles 24, 39(e) & (f), 41,45 and 47 of the Indian Constitution.

NOTE: There is no concept of directive principles of state policy in France and United States of America.

### **LEGISLATIVE, EXECUTIVE AND JUDICIARY**

**Legislature in India** is responsible for the enactment and making of laws. It is the core basis for the proper functioning of the judiciary and executive in the country. The Indian Parliament is vested with the legislative powers. The judiciary of India, act as an advisory body in giving suggestions to the legislature for the enacting of various laws.

**The executive in India** i.e. the President is vested with the power of implementing the laws made by the legislature for public good. They are responsible in enforcing the will of the state and therefore is known as the administrative head of the government. They keep a proper check while implementing the laws as to no rights are violated in order to function the use of other new law or right.

**The judiciary** in India is the highest authority. It is the backbone of the legislature and the executive. The judiciary in India i.e. the various divisions of courts from the local level to the central level is vested with the power of interpretation of laws made by the legislature and the

executive. The judiciary is responsible in applying the law framed the legislature to various individual cases by keeping in mind the basic principles of equality, justice and good conscience.

**The legislative power in United States of America** rest within three bodies i.e. the Senate, Congress and House of Representative. These three bodies of America are responsible for making laws. The president can veto the legislation created by Congress and has the power to nominate the head of federal agencies. The Congress is responsible for confirming or rejecting the President's nominees and can also impeach the President from his position in extreme critical situations. The justices of the Supreme Court are nominated by the President and confirmed by the Senate.

**The executive power in Unites States of America** rests with three bodies i.e. the President, Vice-President and the Cabinet members. These three are responsible for carrying out and implementing the laws made by the legislature. These three bodies carry out the functioning in the country. If the President is not present or unable to serve the country, Vice-President can hold the office of the President.

**The judicial powers of United States of America** vests in the hands of the Supreme Court and the other federal courts of the country. The judiciary looks after the interpretation of laws by applying them to various individual cases.

**The legislative powers of France** are divided into two houses. The laws are made by these two bodies i.e. the National Assembly and the Senate. The Parliament of France is responsible for the adoption of laws in France. The national assembly is having a higher status in comparison to the Senate. If the two chambers disagree on a particular bill the national assembly is to be approached for the decision which can either be accepted by the Senate or note.

**The executive powers of France** vests with both the President and the Prime Minister since France are a semi presidential economy and nation. The President is termed to be the head of the State while the Prime Minister is termed as the head of the government i.e. the Council of Minister. The President of France works hand in hand with the government of France to design and frame policy for its citizens and to ensure that the policies are executed with the help of parliamentary majority. The Prime Minister of France serves as a deputy of the President. The role of the Prime

Minister involves checking and investigating committees and work of the government and asking oral and written questions in the same regards.

**The judiciary of France** is looked after by the Ministry of Justice. It is responsible for maintaining the judiciary and the administration of courts in France. There are two types of courts which render justice to the citizens of France:

- a) ordinary courts
- b) administrative courts

These courts are vested with the powers of providing justice to the citizens after their laws are violated or infringed in a heinous manner that led to their loss.

## CONCLUSION

Indian Constitution and its Constitutional duties are poles apart from that of the American and French Constitution and their Constitutional duties. India and France are well versed with the concept of principle of equality but both the countries understand the meaning of equality in fundamentally different ways. The Indian Constitution guarantees its citizen the right to equality under Article 14 and 15. Article 14 talks about the equality before law and equal protection of law. On the other hand Article 15 says that no person shall be discriminated on the basis of religion, caste, sex, race, region, place of birth etc to ensure equality before law.

But the French Constitution is completely opposite of this view. They believe that race should not be used as a basis for differentiating one citizen from other. The above is regarded as the derogation of human dignity by the French Constitution. The French declaration of Rights of Man, 1793 guarantees before the law without distinction based on origin, religion or race. India is also termed to be a parliamentary form of the government where there are several fundamental rights and duties, DPSPs that are guaranteed to the citizens to ensure nation building. On the other hand France is unitary and semi-presidential form of republic that has no DPSPs on their own. They only function through the rights and duties given under the French Constitution.

The Constitutional duties of the President of France are that of making laws and implementing them whereas in India these duties are performed by the Prime Minister. Therefore there is a huge difference between the Indian and French Constitution and their Constitutional duties.

Lastly, India and America are two different poles. The Indian Constitution is the lengthiest Constitution in the universe whereas America has the shortest and the oldest Constitution. America has a dual constitution and citizenship whereas India has only one constitution and single citizenship. In America, the President has no privilege of law making power. The President of America is neither the member of House of Parliament nor Senate. In India the Prime Minister and Council of Minister is the real executive of the government. The President of India has to act in accordance to the advice given by the Prime Minister and Council of Ministers

In terms of rights and duties India has incorporated fundamental duties and rights in its constitution whereas America has provided its citizens with additional human rights. The biggest comparison is based on the freedom of press which is explicitly provided under the first amendment to the constitution. In India the same is implicitly provided under the Article 19(i) of the constitution.

Therefore, there are many other constitutional duties of India that differ from that of France and America. In our opinion India is a well built nation and these constitutional duties help in the nation building.