

Directive Principles of State Policy and Fundamental Duties: Constitutional Imperatives

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Lecture 01: Theoretical Background of DPSP I

Greetings to all of you. I welcome all of you to a new course on Directive Principles of State Policy and Fundamental Duties: Constitutional Imperatives. This eight-week course will take you through all the salient features of the Directive Principles and the reasons for the incorporation of Fundamental Duties, and how these two important provisions of the Constitution have evolved and strengthened the constitutional fabric. In the first module, we will discuss the evolution and concept of the Directive Principles of State Policy.

In today's session, we will discuss the theoretical background of DPSP, how the Directive Principles strengthen the constitutional idea, and how they facilitate constitution-making, ensuring it is acceptable to all, with the aim of creating a sustainable and tenable document. These are the concepts we will cover today: the theoretical understanding of the Directive Principles, normative and social constraints and Directive Principles, Directive Principles and constitutional bargaining, Directive Principles and the idea of accommodation, and Directive Principles and the endurance of the constitution. So, these are the concepts we will cover today in Lecture 1.

Now, when we talk about an enduring constitution, we understand that the Constitution as a document is drafted by one generation but with the idea that future generations accept it and are governed by the principles laid down in the Constitution. That is why the Constitution needs to endure, be respected, and honored by every generation. That's the reason the process of Constitution drafting is highly fragmented. And, we need to understand that how in a profoundly fragmented society a Constitution can work to integrate the society and it serves the aspiration of the people. That is why Constitution-making becomes an arduous task, it becomes a very difficult

task. The framers face a significant challenge: to accommodate everyone's views and ensure that ideals are well laid down and accountability is fixed.

In the words of Tom Ginsberg, he says that constitution-making is the transaction cost of deliberating, negotiating, and finalizing an agreement. That is how he views a constitution as a document. When he refers to the transaction cost of deliberating, negotiating, and finalizing an agreement, he is describing how the entire process unfolds, where diverse views are accommodated and articulated in such a way that it is acceptable to everyone. Thus, the constitution, as an aim, secures a consensus that ensures the longevity of the document. How do we ensure the longevity where all the stakeholders in the constitutional bargain have a stake in the implementation of the constitution? So, this is very noteworthy here that it is not only important that stakeholders are taken on board while drafting the constitution. But it is also to be ensured that they have an interest in getting the constitution implemented. That is how, and in that process, you would ensure constant support from diverse stakeholders, and different views are going to get assimilated at one point in the name of strengthening the constitution, in the name of implementing the constitution.

The directive principles in that process play a significant role. As the title rightly says, it plays a role in negotiating the deal. How does it serve that? It says that when you undertake the task of drafting the constitution, it is about two major scenarios: it is about fulfilling the aspirations, which is to create an enduring constitution so that every generation accepts it, every generation internalizes it, every generation believes that it is the document which is fulfilling the generational requirements, the aspirations, the very expectations of that generation. Apart from that, the other important aspect which is generally considered is about the very aspect of values, which viewpoint the groups present. Apart from that, the other important aspect which is generally considered is about the very aspect of values, which viewpoint the groups present. And that is why when you look at constitution-making, you would find that groups that believe they have lost out in the constitutional negotiation—how that group is going to get represented, how the viewpoint of that group is going to get acknowledged in the constitutional making. And that is why you find that DPSP play a significant role to ensure endurance and to bring consensus among all the groups. It has been seen that the makers of the constitution look at directive principles as a common ground. Because directive principles, which are generally considered to be non-justiciable in nature, are

not the ones where legal action is the appropriate process of getting enforced. At the same time, it is well accepted that these principles are binding in nature. And that is the reason why we look at DPSP as an important instrument which is to be given force not through legal action—may not be through judicial enforcement—but predominantly by legislation or through a legislative process. That is why it has been said that the DPSP is an important instrument in arriving at the concession; it is an important document for finalizing and negotiating the deal.

Directive principles also play an important role in accommodating divided societies because the Constitution, when seen as a foundational document, we truly believe, must stand on liberal values where individual rights should have precedence; prominence must be given to individual rights. But while doing so, it is equally important that the interests of certain groups not be overlooked. So, how do we really resolve the interest of the group and those liberal ideas that represent individual rights? Scenario may emerge where these groups may not support or accept the liberal constitution because such acceptance may result in constant denial of important amenities that are needed for a quality life. For example, abject poverty must be addressed, considering the requirement of the population which is living below the poverty line; and thus, both equality and equity need to play a role. Constitutional directive principles accommodate these groups and provide the desirable flexibility needed for a constitutional mechanism. validating or legitimizing a constitutional design for addressing the needs of the group. So, the flexibility helps ideological and political groups operate without being restricted by the constitution. There, you find that the directives have got a very phenomenal role in bringing.

How DPSP facilitates the Accommodative Approach of the constitution? What we have seen in the literature suggest that directive principles are generally seen as guidelines in a constitution, sets the policy and governance of the country, and in that process, there is an inherent flexibility attached. So, directives are expressing values and priorities of various ideological groups, which ensures inclusivity and diverse viewpoints are part of the constitutional spirit and in return it ensures the endurance of the constitution. That is why we say that directive principles are an expressive accommodation of ideological agendas. Because it is very important to have a constitution that we expect to be both operational and valid standing up to the expectation of the people for years to come. Such a constitution must be accommodative and must be based on consensus.

This is how the Directive Principles guarantee the stability of the constitution. Because in order to take everyone on board, it is important that everyone consents to that foundational document because the consent to that foundational document would guarantee stability and also legitimacy to the document. Now, when you look at it, these two important aspects—stability and legitimacy—are crucial. There would be a commitment on the part of the interested people, a commitment on the part of the diversified group. And because there is a consensus coming up, one can very well say that the document emerging out of such consensus is legitimate and broadly accepted by the people. So, DPSP in a way ensures support from both allies and opposing groups. When I say allies and opposing groups, you can very well understand that it is about the set of people who are advocating for giving precedence to rights, and the set of people who are talking about giving value to group interests. So, DPSP in a way successfully accommodates both competing views, and in that process, it promotes inclusivity in governance, and also prevents conflict and promotes social cohesion because there is an interest of every group in getting it implemented. So, it involves gradually incorporating elements of different ideologies in a limited way, making the directive principles through this important aspect and channelization process become a very important component of a constitution.

DPSP legitimizes constitutional bargaining theoretically on two important constraints. One is a normative legitimacy constraint, and the other is a sociological stability constraint. What is normative and sociological? Let's look at it.

The normative legitimacy constraints focus on those inalienable values—something which cannot be compromised—values that must align with widely accepted norms, universal norms, for example, justice, rights, freedom. And when you look at these principles, you find that these principles are deeply divided in society. What may be an understanding of justice for one set of people may not be for another set of people, based on socio-economic conditioning. Thus, there may be conflicting views on what is that common point on which people would come and agree and build a consensus. That is why normative legitimacy constraint is a challenge for the making of a constitution.

Now, how do directive principles address this? Directive principles balance these different normative demands. As a document, it must reflect some universal values, while accommodating

diverse perspectives. So, what directive principles do is prioritize certain values and possibly accept them as justiciable ones, as fundamental rights, whereas the rest become non-justiciable. And that is how you find that directive principles prioritize norms as justiciable fundamental rights and non-justiciable values, accommodating the interests of diversified groups. That is how you find that there is a resolution of this constraint—a solution to this normative legitimacy constraint in constitution-making.

The other constraint is sociological stability constraint, which refers to the extent to which a constitution gains popular support to ensure long-term survival. Because, as I said, a constitution is not made for one generation; it is made for generations to come—future generations as well. And future generations must accept it as it has been originally handed over to them. So, it is important that the constitution must have all the important provisions which gain acceptance from future generations without much deviation or destruction. So, sociological stability constraint provides for that social acceptance and social stability of the constitution. It is a directive principle which facilitates that process. How does it do so? It does so by providing that the groups are better off under the existing constitutional arrangement, where important aspects are included in the constitution, and a sort of assurance is given that, over a period of time that concern should be addressed. So, Directive Principles embody that social allegiance, and in self-enforcement of the Constitution, that is the reason why you find that Directive Principles cannot be very effectively enforced through legal action; there is a limitation in that legal action.

So, directive principles resolve that tension by addressing both constraints. Constitution that satisfies normative legal legitimacy, which is about individual freedom, rights, and justice, may not automatically guarantee sociological stability, particularly when certain groups are left out from that process and are not part of the entire documentation and deliberation processes. So, the constitution must reflect normative values while also securing broad-based support to ensure that the political system remains stable over time, meaning thereby that it anchors on those normative values at the same time, the interests of diverse groups are also considered and well-acknowledged and getting documented, a commitment flows out of the constitution that it shall be considered while making laws and policies. So, directive principles resolve the tension by advocating for progressive policies that aim for an ideal society without any rigid legal enforcement. And that is why we need to understand that a good society, what we envisage or envision, may not always be

achieved through the legal process. Legal process is just one of the tools available for making a good society.

So, DPSP resolves tension. It promotes inclusivity, which helps gain broader acceptance among the social groups. And that inclusivity certainly reduces social tensions; it promotes social cohesion by addressing the needs of disadvantaged groups and ensuring that everyone is represented in the process, everyone's concern has been well-documented, and it is going to be protected by the state. For example, when you look at Article 46 of the Indian Constitution, which promotes the educational and economic interests of the weaker sections, here if you look at it, the emphasis is on the weaker sections. Or, for example, Article 47, which talks about raising the level of nutrition and standard of living, focuses on uplifting marginalized communities. If you look at it, here we are referring to those who are left out, and the Constitution very aptly addresses the concern of the left-out in these two provisions.

DPSP also fosters a sense of belongingness and fairness. Why, because it contributes to sociological stability, it advances normative principles and also commits to the goal of achieving equality and promoting justice. In that process, it commands both the government and the state to make some kind of reorientation and rechannelization of the policy. For example, when you look at Articles 39(b) and (c) of the Constitution, it calls for equitable distribution of material resources, an ideal reflecting normative legitimacy that material resources must be available to everyone. It says "equitable" rather than "equal." So, everyone must have enough to lead a dignified life. The makers were well aware that this can be done only through a policy prescription, only through a legislative approach, and that is why they have decided to make it non-justiciable. They are not to be enforced through legal process. DPSP gives necessary flexibility to the government for implementing the policies to see that sociological stability is there at the same time to ensure that economic upheaval is not there, by the accumulation of wealth with a few—that is how it resolves the tension.

These are important key points when you look at the overall structuring of the directive principles. We will be discussing some of these in detail in later courses and future discussions. What is the purpose of the non-justiciable nature of DPSP? It commits to social justice, aims to achieve economic goals, and promotes educational and health well-being for everyone. It also talks about

cultural and educational rights; it talks about environmental protection; it also says that law-making must be done considering these directive principles. So, just look at the non-justiciable nature. We will discuss in detail in later slides where it says that this should not be enforced through the court of law or judicial process. However, it says that they must act as a guiding principle for the state when framing laws and policies. Promotion of social and economic welfare: it says that the directives promote the well-being of citizens by ensuring economic equality and access to basic needs. It says that it emphasizes reducing inequalities, providing adequate means of livelihood, and protecting the rights of workers and vulnerable sections of society. It is a supplement to fundamental rights, where you find that what DPSP aims to achieve is to provide a socio-economic framework for the welfare of society as a whole. So, in a way, it balances between individual freedom and socio-economic justice.

So, to conclude, we can say that directive principles are the result of constitutional bargaining to accommodate different divergent viewpoints, and it is an important aspect of the constitution where consensus is there in the making of the constitution. This is the process through which consensus has been arrived, and that is why it can be termed as a constitutional adjustment to resolve the tension between normative and sociological constraints, where accommodation and consensus are the driving factors, because of which sustainability and longevity are provided to the constitution.

These are the references for this session. Thank you very much.