Directive Principles of State Policy and Fundamental Duties: Constitutional Imperatives

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Lecture 12: Nature and Significance of DPSPs in the Indian Constitution

Greetings to all of you. We are in Module 3, where we are discussing the salient features of the Directive Principles under the Indian Constitution. And in today's session, we will be studying the nature and significance of Directive Principles in the Indian Constitution. These are the concepts we aim to cover in today's session in this lecture. Where we will be looking at the directive principles, the general criticism of these directive principles, how the entire process of adopting the directive principles has checks in place, and then how we really characterize the directive principles. How do we really see the relationship between director principles and when the judiciary gets involved in matters related to director principles, which we have tried to explain through the lens of declaratory judgments? And then we shall also look at the language used in different provisions of the directive principles in order to understand the nature of the principles. Now, when you look at the directive principles, you find that when there was a discussion going on about the structuring of directive principles. It was suggested that the directive principle shall serve as guidance to the legislature and executive. It is for the legislature and executive to keep note of the principles which are left out in Part IV. And primarily, it shall be the responsibility of these two organs; these two branches of the state to address the principles, make necessary steps for their fulfillment. But then it was not a very easy one because of the very fact that when it was debated, it was suggested that the directive principles, when they are not going to be enforced through the court of law, then possibly they will lose their sanctity and their value.

And also, it has been suggested that when you look at the overall structuring of directive principles and their non-enforcement, it would also make a case saying, trying something again and again without really affording the accountability of any institution or fixing any accountability of any institution. But then it has been suggested that the directive principle is

seen as an instrument of instruction which is all about advising the government on what goal it needs to attain or achieve in the coming times. So, DPSPs are seen as instruments of instruction for that matter, and which is very aptly described by Dr. Ambedkar, who is considered an architect of the Indian Constitution, where he says the directive principles are to be seen as giving a sort of direction to the future legislature and executive. They are in the form of directions to the government and legislature regarding welfare goals and the larger, agreed-upon design by the Constitution's framers for guaranteeing quality of life. These are the criticisms of the director principle, which is generally based on the very premise of non-enforceability, or based on the premise that overlooking directive principles would not entail any kind of consequences if they are being overlooked.

There would not be any kind of fallout if the legislature or the executive shall not be made accountable for non-observance or non-adherence to the directive principles. So, the criticism which is well-known is that the directive principles are generally suggested to be just a pious obligation. There is no enforceability attached to it; it is something which the legislature and the executive may consider sacrosanct, but in the scenario of non-implementation or non-realization, there can be no action against the legislature or the executive. So, it simply becomes a sort of ceremonial aspect of the constitutional goal. It is also suggested that it is very vague because it lacks specificity, it lacks precision, and thus it is seen as a case of a blank check—where you have got a check but there is no value written in it. Meaning thereby, expressions are there for making life better for every individual. When you look at the language of Part IV of the Constitution, but then such language would not bring any concrete benefit to the individuals unless and until the legislature and executive come forward to realize the same and make a necessary strategy for the same. The directive principle is also criticized on the very ground that it more appears like an election manifesto; it is something similar to an election manifesto, where the contesting parties try to allure the voter.

And once the party gets elected, there is no obligation on the elected party to the successful party. To really commit to that manifesto. So, that is what is kind of similarity between an election manifesto and a directive principle. And because of the absence of enforcement, and because of any defined timeline for the realization of directive principles, it is also suggested that directors' principles are of such a nature that they are not going to be realized in their lifetime. Because of progressive realization and understanding, because of the very fact that directive principles are to be realized and fulfilled only, when necessary, resources are there

with the states. If there are no resources obviously, the entire obligation would remain pending. Directive principles: When we try to understand the characteristics of directive principles, we will try to look at how the entire structure of directive principles has taken place. And there we find that Directive Principles certainly is an integral part of the Constitution; that is why we say it is the embodiment of the Constitution, it is very much engraved in the Constitution, and therefore, it cannot be overlooked. So, because it is an integral part of the Constitution, it certainly clarifies one aspect: that amendments cannot be done according to the directive principles unless and until there is a due process to amend the Constitution is followed. The very nature of the directive principle suggests that the legislature can very well make laws pursuant to directive principles, which can effectively restrict the operation of Part III and effectively regulate the rights conferred in Part III of the Constitution.

Now, when you look at the reading of the Directive Principles under the Indian Constitution, generally, we try to draw a comparison with the Irish Constitution. Generally, the literature suggests that the very structuring of the Irish and Indian Constitutions is similar. The division is based on non-justiciability is inspired by the Irish Constitution. But then there is a very distinct and very visible difference between the language used in the Irish Constitution and that used in the Indian Constitution. For example, Article 45 of the Irish Constitution, which talks about the non-enforceability of the directive principles. And the relevant part reads: *"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 case of the Oireachtas exclusively, and shall not be cognisable in any Court under any of the provisions of this Constitution."* So, two terms are used in the language of Article 45: one where it categorically talks about exclusivity, and the other where it refers to the courts also taking cognizance of the principles of social policy. And this is something one can very well argue that the language of Article 45 of the Irish Constitution very categorically excludes the role of the judiciary. It clearly conveys the message to the judiciary to stay away from any discussion on the principles laid down in the Irish Constitution. Now, when you look at the Indian Constitution, you find a visible distinction. What is that visible distinction if I read Article 37: It says that *"The provisions contained in this Part shall not be enforceable by any Court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws."* So, the language is very clear, and when one looks at it, one can very well argue that the Indian Constitution provides for non-enforceability, but does not refrain the court from taking cognizance of the

principles which are laid down in Part IV. In a way, we can argue that we can very well substantiate this point: if the judiciary takes reference to Part IV of the Constitution, it is very much as per the scheme of Part IV, and it is very much in alignment with the mandate of Article 37, where enforceability is prohibited, but taking cognizance is not banned or prohibited.

So, when you look at the structure of Directive Principles under the Indian Constitution and compare it with the Irish Constitution, you find that in the Irish Constitution, it is just one article where different provisions are clubbed together. Under the Indian Constitution, the structuring is very elaborate, where directives are spread across different provisions, from Article 37 to Article 51. There are provisions talking about rights which require realization based on resources. There are duties which are more of a collective obligation for both individuals and states. It also talks about noble values, Gandhian values, Ambedkarite perspective. So, you find that the elaborate provisions there in Part IV of the Indian Constitution convey scope and content in a different way compared to the Irish Constitution. The elaborate provisions provide necessary flexibility to the directives and certainly present a pragmatic formulation for their implementation. It is necessary to give the legislature and the executive sufficient space to articulate planning, coordination, and build a necessary strategy for the implementation of the directives. In India, when you look at the structuring of directive principles, as I said, are divided into different parts. Where you look at the debates and read them very closely, you find that principles over which the Constitution framers were divided; there was a sort of disagreement on what rights are to be placed in Part III, and what rights are not to be placed in Part III. Somewhere, Part IV has given them the formula to reconcile competing views, where, when they have agreed to not make it a part of Part III of the Constitution, the rights have become part of Part IV of the Constitution. So, when you look at the different provisions, you find that there is no such thing as a common thread running through all the provisions of Part IV of the Constitution. There is no such coherent principle that explains why a particular provision is there in the Constitution and why that provision is connected with the following provision. So, in that way, one can very well say that coherence is not there. It also talks about socio-democratic prescription, wherein there has to be equitable sharing of natural resources. It certainly talks about ensuring that material resources must be distributed in such a way. So, it is also for the common good. It talks about equal pay for equal work, which is in the form of directives to the state. Then there is an advisory given to the state that the state must undertake necessary steps for the formulation of a uniform civil code. Then, it has also been suggested that there should be a prohibition of cow slaughter. So, when you look at this provision, these

are just some of the provisions which I have picked up just to establish this viewpoint, just to make you understand that how the provisions in Part IV convey a diverse aspect, but at the same time, they are very well the constitutional goal very well clarifies that we are aiming for more than just political and social justice; we are also aiming for economic justice. So, that is how it looks when you look at it. You find that Part IV is as I have explained in earlier slides; that Part IV has truly accommodated the divergent views and given a nice platform to the framers of the Constitution to incorporate the provisions where there was a lack of anonymity about those provisions in placing them into Part III of the Constitution. As I have highlighted, the language of Article 45 of the Irish Constitution and Article 37 of the Indian Constitution brings a very clear distinction on the role of the courts. One for the Irish Constitution, the very use of the term "cognizance" clearly conveys a message to the judiciary that it shall stay away. Whereas, the use of the word “non-enforceability” in Article 45 of the Indian Constitution indicates that this Part IV is not enforceable under the court of law. It certainly enables or allows the Indian courts to take cognizance of the directive principles. Moreover, the use of the term “exclusively” in the Irish Constitution stresses this very point, that its implementation is entirely with the legislature. Whereas, in India, it is not only the duty of the state to apply these fundamental principles in making laws, but also the responsibility of the judiciary to ensure their proper implementation and see that how the law has been made in compliance with the directive principles. There are instances where the court has taken help of directive principles to interpret laws to declare the constitutionality or validity of laws. So, in India, such references of directive principles by the judiciary are well accepted. It is very much within the constitutional scheme; it is very much in pursuit of the role of the judiciary with regard to the directive principles. Directive Principles can also be seen from a declaratory-judgment aspect of the judicial process, where declaratory judgments suggest that a provision may not be enforceable through the court of law, but then there is a possibility of making a declaratory judgment through the judicial process. So, this is about declaring certain things without getting into the question of enforcement, where the court may not direct the state to enforce the principle, but the court can certainly highlight that a sudden measure taken by the legislature or the executive goes against the principles laid down in Part IV. Thus, suggest that it is unconstitutional part. Though that unconstitutionality cannot be enforced. Though that unconstitutionality simply amounts to advising the legislature to undertake the course correction, but then it cannot automatically be considered to be taken away from the statute book.

Now, in constructing the DPSP, when you look at it, you can find that the way DPSP has been structured can be viewed from two different perspectives. One has no discretion where the state has not been given discretion, and another is that there is limited discretion given to the state. Now, when I say “no discretion” and “limited discretion”, I emphasize the language which the Constitution framers have used while drafting Part IV of the Constitution. The language truly reflects what they intended by including the directives, what is the scope and direction, and what kind of discretion is vested upon the legislature and the executive regarding such directives?

If you look at the language, if you analyze the language of different provisions of Part IV, you would find that either the language talks about an action which is desirable, with reference to the word “shall”, or it says that there should be a necessary effort made by the legislature or the executive, and that gets further certified when we analyze the use of the word “endeavor” in Part IV of the Constitution. So, when you look at this, you find that the directives, which are there, give necessary space for maneuvering to the legislature and the executive on certain subject matters. Whereas, on certain subject matters, there is a direct expectation that the necessary steps be taken by the legislature and the executive pursuant to the principles. So, no denial that this phrase is there any constitutional obligations placed on the state, but obviously, that constitutional obligation is not to be tested through a judicial process. If the constitutional obligation is not fulfilled, the judiciary cannot make the legislature or the executive accountable, as we witness it with reference to Part III of the Constitution. Let us look at how this use of the word “shall” or “endeavour”. Our understanding is influenced by the Part IV of the Constitution. I read that where there is a kind, there is a clear use of the term “shall”, there no discretion given to the state where there is a specific mandate provided, and the state must act in accordance with that mandate. If the state does not act in accordance with that mandate, it may not attract any legal action. However, certainly it becomes a matter to examine, discuss, and deliberate on how the legislature and executive are overlooking such a mandate.

For example, when you look at Article 39, where there is a set of goals that are laid down, where it says that the state shall talk about livelihood; the state shall talk about equal pay for equal work; and the state shall talk about the use of material resources for community good. So, if you look at it, you'll find that "shall" is used to mean thereby that necessary steps must be taken by the state for fulfilling the goals laid down under Article 39. For example, when Article 40 talks about the organization of village panchayat, it says, “shall take steps”. That is

why you would find, in India, even before the constitutional incorporation of the panchayati system or the third-tier system or urban local bodies in India, there was a panchayat system well-prevalent post-independence in different states. So, this certainly is. Connected with the mandate of Article 40, or for example, when Article 42 talks about mere human working conditions or maternity relief, it uses the phrase "shall make provision". And thus, you find that different welfare schemes are being launched by the government right after independence or the Maternity Benefit Act enacted by the government for giving necessary maternity relief to working women in India.

So, the word "shall" certainly gives a direction to the state. The only difference here, when you compare it with the fundamental rights, is that here the obligation of the state cannot be examined against the touchstone of judicial process. No legal action is warranted for making the state accountable for non-enforcement of Part IV. But certainly, when it comes to understanding the role of the state in perspective in relation to Part IV, it says that the state simply cannot overlook it or ignore the mandate of Part IV of the Constitution. So, one can say that the use of the word "shall" certainly highlights the mandatory obligation, minus legal action or without enforcement through legal action. However, the "shall" word certainly imposes a strong moral obligation upon the state to undertake necessary steps for implementing these directives. There are provisions which highlight that discretion has not been allowed on certain subject matters given in Part IV. As I give the example of Article 39 or Article 40 or Article 46, which talks about uplifting the marginalized class and weaker sections of society in matters of education; or when you look at Article 49, which uses again the expression "shall be the obligation of the state". So, these provisions certainly set up a very strong obligation, kind of clear direction to the state to take necessary measures and effective steps for the implementation of these principles.

The other word which again highlights the obligation of the state, but then it gives a certain kind of space to the state for making necessary planning, which is "shall endeavour". You would find that certain provisions in the Constitution, particularly in Part IV of the Constitution talks about the responsibility of the state to be taken in a progressive way, where it says that the state shall make a necessary endeavour and shall make every necessary endeavour for the fulfillment of such directives. So, in these phrases where "shall endeavour" is used, one can say that a constitutional obligation is clearly spelled out, but in terms of the direction of efforts, that is what it says. So, the framers have taken note of the conditionality is required for the

fulfillment of directive principles. Conditionality could be a case of economic capacity, social conditions, which should be seen as a sort of prerequisite for implementing the directives. There are provisions, for example, Article 41, which talks about the right to work, the right to education, or social security or public assistance in times of distress. The language is very clear that this is subject to the economic capacity of the state, meaning thereby that for the realization of these rights, resources are required, and thus the state must channelize all the resources that are available in such a way.

So, that Article 41 must become implementable in a gradual process. Same is the case with Article 44, which talks about the codification of a uniform civil code, where the expression used is that the state has a responsibility to make all necessary endeavors to secure a uniform civil code for everyone in this country. Or the same is the case with Article 51, which talks about international peace, where the state has a responsibility to take necessary endeavors to promote international peace. Now, when you look at these languages, these languages certainly talk about the state undertaking necessary efforts for realizing this, but then the language of the Articles itself gives necessary leeway to the legislature and the executive. It certainly allows the legislature to undertake necessary steps only when the conducive environment is there, and only when that the situation is such where these provisions can be made applicable.

Now, the nature of DPSP, when you look at it, is beyond rights. The nature of DPSP is not to be seen in a very compartmentalized way, whether it is a right, a duty, or an obligation. It is generally understood in a sense of common parlance where the constitutional goal is laid down for the welfare of the people. It is also not to be closely connected with it is not to be closely associated with the issue of individuals' capacity, where these principles are rights which the individual enjoys in his collective capacity. So, there is where one can draw a distinction between Part III and Part IV. That Part IV addresses individuals and how it gives prominence to the collective capacity of individuals. They are also to be seen as something where the rights are not inherently possessed by individuals; it is something which is conferred by the state. For example, the right to work or the right to social security—where it is in the nature of a right because that becomes very fundamental to lead a quality life. It becomes very fundamental for a dignified life, but at the same time, they are state-conferred rights, and that is why economic capacity becomes a condition for their realization. Same is the case when you look at nature in relation to duty, where it says that there is a general duty which is devolved upon the state to establish a social order where justice, social, economic, and political aspects are honored. And

where the larger responsibility lies on the state to see that there is an attempt made to establish an egalitarian society, where justice in all aspects becomes an achievable goal and a reality. In this regard, you will find that the nature of DPSP sometimes aligns closely with moral duties, where we have said that if it is not being followed, no legal action can be invoked. It is also seen as an obligation on the state because it is a moral obligation, where it says that it is an obligation, but certainly it is not an obligation that demands accountability. So, it is to be distinguished from that aspect. If at all it is to be seen from the accountability perspective; it has to be seen in the sense that it is the electorate who shall ensure and enforce accountability through the electoral process. So, when you look at the nature of DPSP, it is largely based on the premise given under Article 38, which connects with the Preamble, which is about justice, social, economic, and political aspects. This very expression gives significance and prominence to Part IV of the Constitution, wherein it laid down the ideology and fundamental goal of the government. How can democracy be strengthened, how can civility very well become a part of everyday life in this country. Thus, Part IV provides necessary flexibility and also infuses dynamic content, which is required for building a progressive society and also very important to prevent the society from becoming stagnant or static.

So, that is what the benefit of directive principles. When you look at the overall understanding of this lecture, it is when you draw the comparison between the Irish Constitution and the Indian Constitution that you find a visible difference in the use of the term, and on that basis, there is justification for the court to interfere in India. There is a very good articulation on the terms of the drafting of directive principles, where discretion has been given on certain aspects and not given on certain aspects of the goals laid down in Part IV. The interplay between the judiciary and legislature on the issue of the interpretation of the directive principles reinforces how significant the directive principles are within the overall constitutional framework in India.

These are the references for today’s session.

Thank you very much.