

Directive Principles of State Policy and Fundamental Duties: Constitutional Imperatives

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Lecture 13: The Trinity: Preamble, Fundamental Rights and DPSP

Greetings to all of you. We are in Module 3, where we are discussing the salient features of directive principles of state policy under the Indian Constitution. And in today's session, we shall be talking about the relationship between the Preamble, Fundamental Rights, and Directive Principles. We are looking at this relationship regarding these 3 important provisions, values of the Indian Constitution how they interact with each other and how they influence each other in order to achieve the larger goal, laid down under the Indian Constitution. These are the concepts we aim to cover, where we will try to see what this trio of the Constitution is. How do we really look at this trinity from a very philosophical understanding or perspective that it is to be seen as the soul of the Constitution?

Obviously, here when we say "soul of the constitution," we are trying to make a distinction from the statement made by Dr. Ambedkar in relation to Article 32. Here we are simply trying to emphasize that directive principles have become very important and very integral to the overall scheme as prescribed by the framers of the Constitution. And there we also try to see how there is an interconnectedness between the Preamble, Fundamental Rights and Directive Principles. Indian Constitution, as we understand, is not only a political document where it guarantees "one man, one vote," where it guarantees regular elections, and where it talks about accountable government, is more than that. And the voluminous document this certainly gives a very valuable promise of healthy democracy; along with that, it also encapsulates the idea that captures the values and ethos that are significant for making a nation great and become very pertinent for the enforcement of rights as well as the well-being of everyone. Now, when you look at the very purpose of the Constitution, you find that the Preamble and the fundamental rights, along with directive principles, play a significant role in fulfilling this objective of the Constitution, where it is about guaranteeing justice, where it is all about

promising liberty, where it is all about achieving equality, and where it is all about fostering fraternity while committing to all this, there is a general guideline or mandate that the government must work for the welfare of everyone. So, how do we look at this three-trinity-Preamble, Fundamental Rights, and Directive Principles?

When you look at the Preamble, you find that the Preamble which generally the overall framework of the Constitution; it help you understand the intent of the framers of the Constitution, as popularly described, that it is key to open the mind of framers of the Constitution. The Preamble to the Indian Constitution clearly states that it is a sovereign, socialist, secular, and democratic republic system of governance. And then, for every citizen, it pledges justice social, economic, and political justice where the focus is not only “one man, one vote,” but also to establish an egalitarian society, on distributive justice, and ensuring that no one remains hungry; the state must come forward to make a redistribution of wealth. It also emphasizes the importance of a very valuable concept of equality, which includes both equality of status and equality of opportunity. Along with that, it signifies how fraternity can play a very pivotal role in guaranteeing dignity to every individual, and at the same time, the value of fraternity is very significant for strengthening the unity and integrity of the country. So, the Preamble for that matter reflects The very essence of the people, where it provides a philosophical framework and suggests a kind of jurisprudential anchoring of the values on which the different provisions of the Constitution are flourishing or strengthening or thriving. We can very well say that over the last 7 decades, we have been experiencing how this Preamble is in a way, nurturing the different provisions of the Constitution. So, this is the main text of the Preamble. Now, when you look at the Preamble, you would find that the Preamble has been considered to be a very fundamental and very core to the entire constitutional scheme.

And that is how the Chairman of the Constituent Assembly, Dr. Rajendra Prasad, made a very pertinent observation where he said, “I think we should get the Preamble also passed today. The Constitution as a whole has to be passed in its Second Reading and the Preamble forms part of the Constitution”. So, unlike in different jurisdictions where it is not considered to be an integral part of the law-making or constitutional-making process. In India, it has been categorically stated that the Preamble is very much part of the Indian Constitution. Obviously, this has been said in *Kesavananda Bharati v. State of Kerala* (1973) after correcting the wrong reading done by the Supreme Court in *Golaknath Case*, where the court has wrongly read and suggested that the Preamble may not be considered an integral part of the Constitution. It is

something that is an external aid to interpretation and external component to the Constitution. In *Kesavananda Bharati v. State of Kerala*, (1973), the court emphasized that the Preamble is part of the Constitution, and the court has said so on the basis of the very fact that the Preamble got adopted by the Constituent Assembly and the way the Preamble has influenced several provisions of the 1950 Constitution. In *Kesavananda Bharati v. State of Kerala*, (1973), the court says, that the “The Constitution should be understood by diving deeper into the words of the Preamble”. So, if you have to understand the contours, you have to understand the connotations of the Constitution; one has to look at the meanings of the word given in the Preamble, very carefully.

And that is how you find that, in a good number of cases, the court has looked into the Preamble, where it has, with the help of the language of the Preamble, explained the meaning of fundamental rights. For example, reading “life” in connection with “dignity,” reading the significance of equality, where the court reads equal pay for equal work as a fundamental right under Article 14. So, the Supreme Court has given necessary significance and has attached necessary importance to the Preamble. In the words of the Supreme Court, it says that the “edifice of our Constitution has been built upon the basic fundamental elements as described in the Preamble. If any element out of these is removed the entire edifice will crumble and the Constitution will not remain the same or it will lose its personality and its identity”. This is the significance of the Preamble, where the identity of the Constitution is based on the same. And that is what we ask: What are these elements as described in the Preamble, and how do we really look at them? For example, when you look at the Preamble and try to look at the significance of the Preamble in terms of what kind of governance pattern: What kind of values have we committed to internalizing in the governance of this country, and how do we see the entire drive for justice taking place in this country?

Preamble becomes very significant as it categorically highlights the prominence and significance of these 6 terms, where it talks about justice, where justice, we understand, is what is due to an individual and that must be there in a fair and reasonable way. It talks about liberty, which is based on the very idea of liberty and individual freedom. We also talk about equality, which is very important for giving legitimacy to the government, where equality as a value plays a significant role in an conferring an obligation upon the state that it has to treat everyone equally. In that process, the state gains legitimacy to govern—this is the significance of equality. Then dignity, which talks about guaranteeing a minimal and decent life for everyone,

guarantees the very value which is very fundamental for self-development. So, dignity is highlighted there in the Preamble and, at the same time, along with the values which are important for individual values connected with nation-building, is also highlighted, where it talks about unity and integrity of the country. So, when you look at the Preamble, you find that the elements of the Preamble certainly highlight what is needed to fulfill the aspiration of the people, and in turn, the very aspiration of a nation. So, the Preamble to the Indian Constitution certainly is a foundational principle which is laid down on a very broad canvas where diversity of the society is accommodated, and such diversity is seen as a matter of blessing on which different values are becoming a part of a larger goal of nation-building; they are becoming a sort of important aspect of designing the plan of the government based on the basis of consensus, based on the basis of accommodation, and based on the basis of a collective aspiration. Now, when you look at the relationship, you find that the Directive Principles, Fundamental Rights, and Preamble mutually constitute the soul of the Constitution. Reading them together, they become the soul of the Constitution. Again, I highlight that here is the soul of the Constitution, distinguishing it from what Dr. Ambedkar describes in relation to Article 32. They are inseparable and interrelated. They enrich and nourish each other, giving a meaningful understanding to the expressions used in all three parts of the Constitution. Preamble is to be seen as a valuable expression where that describes how a nation shall truly flourish. Fundamental rights attach a meaning to that expression, where it talks about something where the state has a direct obligation to fulfill. That fundamental rights limit the power of the government in this way it gives prominence to the rights of individuals. And directive principles signify the intent of guaranteeing the well-being and ensuring the welfare of every individual. Now, moving ahead, when you look at the second element of the trinity, which is fundamental rights, which certainly constitute the cornerstone of Indian democracy. Because here, what you find is that through fundamental rights, the government is limited. Through fundamental rights, the government is obligated to undertake necessary steps for honoring the rights given; any decision of the government which violates the rights becomes unconstitutional by virtue of Article 13 of the Constitution. So, it guarantees the right to citizens, as well as to non-citizens, as you can see in the framework of Part III, where rights are given to both citizens and non-citizens.

And a closer reading of it certainly says that fundamental rights, in a nutshell, carry forward the elements of the Preamble—the very aspirations which are incorporated in the language of the Preamble. The third trinity is the Directive Principles, Part IV of the Constitution, which,

in general, a kind of framework for socio-economic goals to be achieved by the state, which are those well-being and welfare objectives that the state must commit to. That is what the Directive Principle highlights, aiming at what it intends to achieve. So, it holds a very significant political and moral weight as it is both a moral commitment and a political commitment, and that is why Dr. Ambedkar has highlighted that, though the directive principles are not to be enforced in the court of law by the same time, it is such a value which can very well be enforced through the electoral process where the government has to give an answer to the people on what refrains them from implementing the directive principles, which are largely related to the welfare of the people. Directive Principles give guidelines to the policy makers for the executive; it is a mandate given under the language of Article 37, where it says that the legislature must consider the Directive Principles while making laws.

And therefore, when you read the Directive Principles, you find that it is based on the idea of socio-economic justice, the idea of welfare goals, and the idea of protecting weaker sections. It is based on the idea of collective rights in terms of environmental and production. It is based on the idea of important socio-economic rights, for example, education and health. It is based on the idea of a collective goal of uniform civil code, which is about identity, which is about a nation's identity, which is about accommodating individual identity with the nation's identity. There is an interconnection between these three important aspects of the Constitution, which is about ideological unity and practical divergence, and the complementary nature between all these. It certainly talks about the conflict between the rights and directive principles, and at the same time, it also talks about a pragmatic approach needed for realizing the constitutional goal.

Let us look at how these three values are working together in these three important aspects. As we read the Preamble as a sort of ideological foundation of the Constitution, as we see that the very value of liberty, equality and fraternity; overall, this makes the state obligated towards general welfare of the individual. It makes the state obligated towards the rights of the individual and its socio-economic entitlements. So, when you look at this, you find that the fundamental rights largely make these goals a reality by affirming the ideological values which are there in the Preamble as a translational objective. It is something that gives a kind of concrete structuring to those ideological foundations, where it makes those goals enforceable entitlements for individuals, ensuring protection from arbitrary state action. Whereas, the Directive Principles focus more on collective welfare and long-term goals of the state, which is also about commanding the state that what is expected of you.

So, a fundamental right is basically when you look at it, protecting an individual from arbitrary actions. The Directive Principle, on the other hand, is about commanding the state to ensure that what you shall do is not just to stay away from the entire governance thing in the name of respecting rights, you have a larger obligation to get involved and make necessary plans or policies for socio-economic entitlements to realize certain identified goals. And that is why you can say that this ideological unity is sometimes accompanied by practical divergence. For example, “right to equality” talks about equal treatment under the law; by the same token, Directive Principle, for example, Article 46 talks about affirmative action to uplift marginalized communities. So, you can very well see that equality and equity go together in this scheme of fundamental rights and directive principles. They have complementarity in governance, where you find that fundamental rights are there to value freedoms, whereas the active principle is about fulfilling socio-economic conditions.

In the absence of the fulfillment of socio-economic conditions, the freedom would be meaningless. That is why speech and expression become significant; they can be realized only when the right to education or the significance of livelihood, which is valued under Article 41 and Article 39 of the Directive Principles, respectively. So, they are complementary in the absence of one, the other would not become a kind of complete code. So, that is what is very important to look at. That’s how you see the incorporation of Article 21A, which has now become a part of Article 21, which has now become a part of fundamental right; otherwise, before becoming a part of the fundamental right, it was solely there in Article 45 of the Constitution. Obviously, when I say so, Article 45 is still there in the Constitution with different obligations of the state.

So, a part of it has been shifted from the directive principles to the fundamental rights. So, Article 45 still plays a significant role in matters of primary education or in the education of children. Principles and rights also come into conflict with each other where important reconciliations are done through a judicial process, instances are there. For example, when you look at the language of Article 31C, where it says that if measures are taken in pursuance of Part IV of the Constitution, then such measures are not to be challenged on the ground of violation of certain fundamental rights (Articles 14 and 19). Now, that certainly gives a kind of formula for resolving the conflict if it is present. And one may see that this formula is to be seen as a formula where reconciliation is suggested when the conflict is between individual rights and welfare goals for the general public. And, in that case, it is the welfare goal for the

general public that must be yielded, and fundamental rights must give way to that larger goal, which is given in Part IV of the Constitution, which is what is very important.

So, fundamental rights ensure that state actions do not trample individual liberties, whereas directive principles certainly advise the government that distributive justice is an important mandate to follow in Part IV of the Constitution. Directive Principles also talk about realizing constitutional goals which is all about reading the interrelationship between the Preamble and Fundamental Rights and the Directive Principles. Directive Principles give a sort of leeway, as I said, it gives a sort of space to the government to plan in a progressive way, depending upon the resources and the necessary strategy on the part of the government for how to channelize the resources available with the government. So, fundamental rights are to be enforced on an immediate basis, whereas directory principles are to be realized on a progressive basis. So, when you say progressive basis, there has to be a necessary effort done in order to see that States are taking and playing an important role in realizing such goals. It is not that the state is simply sitting idle and making that goal simply a matter of academic discourse and discussion.

For example, when you look at the language of Article 38, which talks about economic justice—certainly a kind of achievable or workable strategy—I would say that if you look at the language of Article 38, it talks about the reduction of income inequalities and the elimination of equality of status. So, look at it that way in a very practical sense, the drafting has been done. When it says that income inequality elimination is not possible, that is why it says reduction. But when it comes to status, it says “elimination”, where the State’s very categorical task of eliminating any kind of inequality when it comes to status. And how this economic justice is to be fulfilled, where it says that there is a need to see that equitable resource distribution shall take place, particularly in such a way so that everyone should have the necessary means for leading a dignified life. That’s how you find the government coming up with laws like the Mahatma Gandhi National Rural Employment Guarantee Act, which talks about livelihood, or making policies for the distribution of food grains or all other kinds of social welfare policies.

So, to conclude, one may say that this trinity comprising the Preamble, fundamental rights, and directive principles is a remarkable testament to the vision and foresight of the framers of the Constitution, where the framers were very clear that, along with individual liberty, we also need to stress upon the value of socio-economic justice. Because, in the absence of socio-economic entitlements, libertarian values may not serve any purpose, and that is why trinity is a living

embodiment of the core values which it tries to transform the aspirations we, the people of India, into tangible realities at the ground level. This is about shaping Indian society into a just, equitable, and inclusive democracy.

These are the references for this session.

Thank you very much.