

# **Directive Principles of State Policy and Fundamental Duties: Constitutional Imperatives**

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## **Lecture 14: Distinction between Part III and Part IV**

Greetings to all of you. We are in Module 3, where we are discussing salient features of the Directive Principles of State Policy. And today, in today's lecture, we shall be discussing the distinction between Part III and Part IV. Primarily, the discussion shall lie in determining the argument that has been placed for distinguishing between fundamental rights and directive principles. These are the concepts we aim to cover, where we will be discussing how the directive principles have been historically treated, how their interpretation has brought in a challenge, and then how we really look at theoretical underpinnings of fundamental rights and directive principles. And finally, we will try to look at this question: whether fundamental rights and directive principles are really different, are they really distinct, or they are just interconnected with each other. Now, when you look at the historical treatment, generally we have highlighted here the question of historical treatment from the very point that how the Constitution ensures enforcement through legal action. And thus, it has been suggested that directive principles somewhere compromise on this premise that it is not an integral part of the constitutional scheme, because the very fact that they are not enforceable and thus do not fit into the constitutional interaction, which gets done through the judicial or litigation process.

Where we have seen that the judiciary generally plays a significant role in giving a meaningful interpretation to the different provisions of the Constitution. And considering the very fact that directive principles are being suggested not to be enforced through the judiciary through the judicial process, then, in that regard, directive principles somehow miss the benefit of getting a meaningful interpretation through the judiciary. But then, this understanding of the relationship or interaction between the judiciary and directive principles has the court looking into the provisions of the directive principles for different purposes, which we shall discuss later in our discussion. So, it has been seen that through the judicial process, there are instances

where statutory laws are being justified through the use of directive principles. We have seen that the judiciary has taken help of and taken support from directive principles to limit the power of the government, or indeed, to limit the rights given in Part III of the Constitution. So, when you look at this aspect of growing recognition of the directive principles or at least The very acknowledgment by the judiciary of the directive principles is still a question: to what extent does the directive principles really drive the court in arriving at a decision, and to what extent do directive principles play an instrumental role in arriving at a decision through a judicial process.

So, these are the certain perspectives on understanding the distinction between fundamental rights and directive principles. Though, as I have said, there are instances where the judiciary has taken cognizance of the directive principles for various purposes. For example, the purpose giving an interpretation to a law, for example, for limiting rights, for example, for justifying state action. But with all this, the question is always there: to what extent can the directive principles really the judicial process and how far the judiciary can go with regard to that issue. So, this is what we highlight when we look at the historical treatment of the directive principles here; we are just focusing on one element of how they are being treated in the judicial realm. It is not about us making a distinction between the directive principles and fundamental rights from the rights perspective; we will be doing that in later lectures. Now, when you talk about the very task of interpreting the directive principles, there is always a challenge in how we should perceive them. The very structuring of Directive Principle, how shall we really understand its characteristics?

Should it be looked at as a cohesive set of principles, where there is a very kind of integrated scheme suggested for the government, and that integrated scheme shall guide the judiciary on matters concerning directive principles, or the legislature or the executive? Or should it be discussed or understood as a collection of diverse and conflicting objectives, as we have read in other sessions and earlier sessions, that directive principles have accommodated divergent views. So, when it has accommodated divergent views, how do you see the Directive Principles truly as one integrated aspect of the Constitution? At the same time, we have also observed that the directive principle is also a collection of socioeconomic and cultural directives. For example, it talks about the prohibition of cow slaughter and animal husbandry.

So, when you look at all these provisions, it is very clear that there are very diverse aims which the directive principles sought to achieve. Though, at the end of the day, it is for the greater

welfare of the people. But then, when you look at it individually, you would find that there is some kind of disconnect between the goals and the directives included in Part IV of the Constitution. So, when it comes to an issue of looking at DPSP as a tool to interpret. Other laws, or you know, other provisions of the constitution, or how DPSP itself should be interpreted. There are challenges there because the moment we look at it as a cohesive set of principles, we find that there is a good number of provisions which challenges this understanding of cohesive principle, somewhere brings that though there is a very clear goal of ensuring socio-economic well-being of the individual; at the same time, it also talks about certain specified values and principles. For example, issues on cow slaughter, animal husbandry, or organization of the panchayat system. So, all of these are very specific. So, how do we really come up with an approach where directive principles are interpreted in a very compact and cohesive way, which is always a question? And this is something which also connects with the very way the directed principle has been incorporated into the Constitution, as I have discussed in the earlier slides. That the very structuring of the directed principle is also, somewhere, historically connected with

the very idea of accommodating divergent views, and the very idea of ensuring that whatever is important for nation-building or socio-economic welfare—should they not get a place in fundamental rights—somehow, it has to be seen how they can be provided in Part IV. How it can really Part IV can really give a broader guideline for the legislature and the executive to attain the goal enshrined in Part IV, and to also fulfil the preamble's ideology, which is there in the preamble to the Indian Constitution. So, these principles suggest that they encapsulate a spectrum of ideological positions rather than a singular guiding philosophy, and this brings in a challenge: how do we really look at DPSP when we have to analyze and try to delineate the understanding of different provisions of DPSP? Now, on the issue of theorizing Part III and Part IV. There is a distinction in reading Part III as a right, wherein it is about limiting the power of the government; wherein there is a very defined role for Part III of obligating the state to work in such a way.

So, those rights are to be honored, whereas Part IV refers to goals or programs or the policy prescription for the government to follow. Now, the question is why we are really discussing this distinction and how we are trying to engage in a debate between fundamental rights and directive principles. Now, when you look at this question, you would find that the directive principles are primarily employed, primarily considered for expanding the scope of Part III of

the Constitution. That is what we have seen in the case of Article 14's equality clause, which has been given the meaning of "equal pay for equal work," in reference to the Directive Principle, or, for that matter, Article 41, which has facilitated the judicial process in expanding the meaning of life, with work, education, and social security. So, it is well-known that though directive principles are non-justiciable, they are not to be enforced through the court of law. However, through the interpretative tool, some of the directive principles have gained the status of fundamental rights. And some of them have got the status of fundamental rights through the constitutional amendment process. For example, the 86 Constitutional Amendment has introduced a new article in the chapter on fundamental rights in Part III, where Article 21A has been categorically included for guaranteeing the right to education, including the right to primary education. So, this 86th constitutional amendment has made tweaks in three parts of the Constitution. A new provision in Part III, where Article 21A have been introduced. It has changed the language of Articles 45 and the language in Article 51A, which refers to fundamental duties, where parents have been obligated to ensure the education of their children before the age of 6. Now, whether the distinction is also based on this understanding of rights or goals, this understanding comes from a very scholarly writing by Ronald Dworkin, where he has come up with a very philosophical perspective. When you look at rights and when you try to distinguish between these two aspects, there is a very defined line that is dividing these two concepts. When it comes to rights, it is all about guaranteeing libertarian aspects of an individual; the goal is something which is to be fulfilled in terms of political engagement and in terms of political processes. Dworkin suggests in his scholarly work on taking rights seriously that if rights and goals come into conflict, the right which shall be given precedence over goals. Because goals are more of communitarian welfare—where the goal is all about looking at the common good for the larger public—and in that process, there is always a possibility of violating the rights of the individual. And if such a right gets violated, then it is the right of the individual which must be given precedence over the common good or the collective good of individuals.

So, in that process, he has made a distinction that goals are more of a program and more of a policy prescription, which is to be clearly distinguished from rights. And there, where he has made an argument that directive principles such as those found in Part IV are closer to the understanding of goals, whereas provisions in Part III are more closely related to rights arguments. So, that is how he has made a distinction through his study, his philosophical enunciation being more in relation to rights versus goal perspective. But then when we try to

connect it with the distinction between Part III and Part I of the Indian Constitution, he has advocated for rights should be given priority over the goal. For example, when you look at the language of Article 47 and make a comparison with Article 27 of the South African Constitution, where, when you look at it as a goal, then you find that the obligation of the state is in a different structure altogether. I read that Article 47 talks about the state's responsibility to raise the level of nutrition and the standard of living of its people. And the improvement of public health is among its primary duties, but the moment you look at it in the language of rights, where precedence has to be given to where DPSP has to yield, then in such a situation, the language is different, where Article 27 talks about the right to health under the Bill of Rights.

So, that is how the distinction is there, and that is how we try to understand it in the language of Ronald Dworkin, which is all about principle versus policy, where we try to understand how the principle has to be given precedence and how it has to be seen as a matter of trump. Ronald Dworkin has argued that right should be seen as a trump because it is a matter of principle, whereas, when it comes to goals, it is more of a policy that all depends on political engagement, which in turn depends on the prioritization done by the government according to socio-economic needs of the people. In this regard, an important distinction also arises on the basis of the very role of the state concerning rights, which is historically known as the distinction between the negative nature of rights and the positive nature of rights. Now, the negative nature of the right, which is generally seen as. The only response of the state is to stay away from non-intervention in the realization of rights that are closely connected with civil and political rights, known as first-generation rights. And intervention of the state, where the state needs to categorically get involved, is connected with the realization of second-generation rights, which are socioeconomic rights and are described as positive rights. This is how the categorization of rights has happened when you look at it as I said; negative rights are more to be understood as freedom from interference. Whereas, positive right is all about soliciting the involvement of the state, particularly in the form of getting resources and services, for the realization of rights. Positive rights require a sort of financial decision, it requires channelization of resources, which is purely within the domain of the government.

Of the government, and it is the government that has got competence over the same. And that is why it is argued that socio-economic rights or second-generation rights are not to be made enforceable through the court of law because the competence lies with the legislature or the

executive, and court cannot give a very decisive direction on the matter of socio-economic rights—particularly because resources are involved in their realization. So, this also brings a sort of distinction. Though there has been considerable scholarly work done to negate this idea of division, it is not part of the brief of this course, so I am not getting into the details of it. But let me very briefly tell you that this negation is done on the basis of analyzing the obligation of the state under three defined duties or obligations. One is right to respect; other is right to protect and the third one is right to fulfil.

And all the set of rights they demand, they expect that these three sets of obligations are to be fulfilled and honored by the state, whether it is a socioeconomic right or a civil and political right; these three obligations must be complied with and adhered to by the state. So, when you look at the distinction between negative and positive rights, you find that positive rights are largely based on the very idea of practical considerations of governance and societal welfare, because of the very fact that, possibly depending upon the resources, the state may take up one welfare goal at a time. Once that welfare goal is achieved, the state can move to another one or may divide the resources in such a way. So, that gradually the goal can be achieved and thus it distinguishes from rights because there is no such structuring or incremental realization advisable in the context of rights enforcement. And that is what is a big challenge when you look at it, where you find that

the distinction between negative and positive rights is largely argued on the basis of a non-neutral, but then when you look at it ideologically, it is a coloured notion of freedom as non-interference. So, that is what is basically the kind of conundrum that is there when you try to analyze the nature of the distinction between negative and positive rights. For example, there is involvement of government action even in the enjoyment of negative rights. For example, when you talk about the right to health, which, if you look at it, is a part of Article 21 then, the state needs to come up with resources in terms of constructing hospitals, arranging affordable medicines, or ensuring facilities are available. When you look at the example of negative rights, such as the right to a fair trial, you find that the state again needs to construct facilities for this purpose

courtrooms need to be constructed, and they need to have a complete infrastructure arrangement for the judicial system. So, that is what is important to understand: that when you examine it very closely, you find that the very nature of rights demands both non-interference and interference from the state. And this is what in fact has been addressed by this, as GA

Cohen, where he has explained that these two rides should be read as a kind of interconnected one. If I read "it says I wish to travel from place A to place B," but cannot afford a train ticket, despite this, I board the train, and eventually, when the ticket collector discovers I lack a ticket. The state's coercive power will be used to remove me and prevent me from reaching my destination. So, it is not only about the freedom to move from one place to another; it is also about whether the necessary support system is there for exercising that freedom or not. So, in this case, necessary support system means having enough resources so that one can buy a ticket for traveling from one place to another place. merely providing a means to travel from one place to another may not be enough. It is also important to see that individuals have got enough means to move from one place to another, and that is how you connect poverty as an infringement on negative liberty.

That is how we see that it is not only freedom from fear that is important, but also freedom from want. And that is how you find the distinction between Part III and Part IV between fundamental rights and directive principles. There are arguments for making this distinction a very clear and very defined one. There are historical contexts for reading that distinction, but at the same time, we also need to understand that this distinction is not very rigid, this distinction does not create a kind of compartmentalization between Part III and Part IV, which is truly testified by the incorporation of Article 21A. In the chapter on fundamental rights, compartmentalization is a characteristic of Part IV then there was no possibility of incorporating a separate article as Article 21A in the chapter on fundamental rights, carving it out from Article 45 of the Constitution. So, that is what reflects the inherent flexibility and fluid nature of the distinction between Part III and Part IV of the Constitution. And that is why, when you look at the distinction, it appears that, though, there are issues with regard to enforcement. There are issues regarding to what extent the judiciary can really give a judgment which will make the enforcement of socioeconomic rights is realizable on the ground level because, as I said, it involves resources. But having said so, it is also very clear that the judiciary plays a crucial role in this process. The right, though it may not be enforcing the right, but it certainly recognizes the right, and in that process, you find that DPSP nurtures fundamental rights, facilitates their growth, and such growth is very much in harmony with, and aims towards, strengthening the constitutional fabric as we understand.

So, to conclude, one may say that historically, it may appear that the directive principle has not been a part of the judicial process. Initially, the judiciary might have read the distinction in a

very mathematical way, but then as jurisprudence developed, the understanding led the judiciary to start reading the relationship between Part III and Part IV, which we will discuss in detail in the coming sessions as well. So, there you find that the central theme revolves around the challenges in categorizing DPSP as both goals and fundamental rights. It is not very rigid; it is something which is very flexible, where one enriches the other, and that is why this debate between negative and positive rights exists. Which is started with the understanding of the obligation of the state and the enforcement of such an obligation, as I have explained to you, that over a period of time this understanding has gotten diluted. This compartmentalization between the rights has been negated; it has been said that rights are inversely interdependent and interconnected, and thus for a very dignified life; both sets of rights are equally important—negative rights and positive rights. So, this is something we need to understand in the context of the relationship between Part III and Part IV.

These are the references for this lecture.

Thank you very much.