

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

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## **Lecture 15: Exploring Article 37: Principles and Judicial Minimalism**

Greetings to all of you. We are in Module 3, where we are discussing salient features of the Directive Principles under the Indian Constitution, and in today's session, we shall be talking about the structuring of Article 37. We will try to understand what Article 37 conveys in the context of directive principles, and how it governs the relationship between directive principles and the judiciary. That is why, in this slide, we will try to read that. The concepts which we aim to cover in today's session are: we will look at the language of Article 37, try to understand the significance of different terminologies used under Article 37, and how Articles 37 and 38 together give a very purposeful understanding of the overall dietary principles in terms of giving a specific obligation to the legislature and the executive. In that context, we will try to understand the scope of Article 37.

Now, let us look at the language of Article 37, which is almost a sort of beginning of the directive principles. Obviously, it starts with Article 36, but Article 36 simply says that the definition of a state shall be the same as what is there under Article 12 of the Constitution. But then, Article 37, in a way, gives a narrative on the very plan of Directive Principles. It gives a very clear message that what is the aim, what is the plan of the constitution makers on the implementation of Directive Principles? How are the institutions and organs of the state entrusted with the task of giving effect to the Directive Principles? If I read Article 37, it reads: *"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."* Now, if you look at the terminologies which are underlined in Article 37. First aspect is that the provisions of directive principles, Part IV is not enforceable in any court of law. Then, it says that the provisions are of fundamental nature, and thirdly, it says that it is a duty imposed upon the state to apply these

principles in making laws. When you look at these three underlying terminologies, you will find that all three terminologies convey a very important message about the very nature of the directive principles they convey a very defined meaning on the nature of the directive principles. For example, when you analyze the expression that these provisions are not enforceable by any court certainly means that the framers of the Constitution were very clear about the applicability and the very implementation of these provisions must be in the hand of the other two branches of the state legislature and the executive. Thus, accountability is to be ensured through a political process and not through legal action. That's why it is a true manifestation of political constitutionalism, which we have highlighted in our earlier sessions as well. Dr. Ambedkar highlighted on the very use of the term "fundamental" in Article 37. And he has also drawn a parallel with Part III of the Constitution which is also a fundamental right. So, on "fundamental" Dr. Ambedkar was of a clear view that it may not be the case. Getting it implemented through the judicial process by the same time, it certainly gives a necessary direction to the state, to the legislature and the executives, on how they should plan the governance; what shall be the priority of the governance; and what priority is to be really respected and regarded. What priorities should really be considered to be in alignment with the constitutional goal or welfare goals of the Constitution.

So that's why it says that "fundamental" certainly signifies that it may not be the case of making the government binding to implement the directive in one go. The absence of the very approach of the government on implementing the directives may not be a subject of judicial scrutiny. But at the same time the government must respect directive principles. So, it is not about looking at the bindingness of the directive principles only through a legal process or judicial process. But looking at the bindingness of the provisions through other channels and through another means. That is what Dr. Ambedkar aimed at. When you look at the views of other members, the other members have also signified the same. For example, Sri A.K. Ayyar highlighted that the directives were merely intended as a guide and directed objectives to state policy. Where it was a clear enunciation with a clear emphasis on this very point: that the duty of the state categorically enforces and makes the obligatory approach towards these principles. It is not just that they are merely ceremonial; the state cannot evade its responsibilities or simply overlook them. So, there is a specific constitutional obligation when you read these two expressions, "fundamental" and "duty of the state." Reading these two provisions makes the point very clear that there is a constitutional obligation, but this constitutional obligation need not be seen through the legal process. It can be very well seen through the institutional process

of making the other two branches of the state—legislative—accountable to the entire process and accountable to the Constitution. That's what signifies political constitutionalism, where we need not see the implementation of the Constitution is always through the legal process and typically achieved through a writ passed by the judiciary.

In this regard, certain questions certainly arise about how we really look at the scope and ambit of Article 37. Whether the language of Article 37 clearly keeps the judiciary away from the matter of directive principles. That whether the directive principles cannot be a subject matter of discourse and discussion in the court of law. Whether the non-enforceability given under Article 37 debar the judiciary also into even parts look into the question of the scope of fundamental rights. Whether the directive principles can play a significant role in designing the scope of determining the scope of fundamental rights and the related or attached powers of the state Or, non-enforceability prevents the judiciary from even looking at these directive principles when interpreting different laws or adjudicating upon the laws made by the state and whether such laws are in alignment with these principles or not. So, what does this non-enforceability mean in the context of Article 37? Whether non-enforceability simply mandates that, in relation to any question concerning a directive principle, the judiciary shall stay away. Judiciary shall not connect the directive principles with any other parts of the Constitution, particularly fundamental rights. Judiciary should not look at the active principles, even in relation to ordinary laws made by the legislature. What does this non-enforceability convey or mean?

Now, when you look at non-enforceability, it appears that the non-enforceability simply says that if there is a violation, the court of law is not the necessary forum to address the violation. Court of law is not a necessary forum for seeking accountability. Now, on this premise, the celebrated author H.M. Seervai made a very critical observation on the very sanctity of the directive principles. He was of the opinion that because the directive principles can very well be overlooked, such overlooking would not make the state accountable in this backdrop, the directives must not be considered to be part of the Constitution at all. He was of the view that directive principles are not fulfilling the characteristics of a law because they can be violated with impunity. No sanction is prescribed for the violation of directive principles because Article 37 says that matter shall not go to the court of law. Thus, it was argued that Article 37 provides that neither is there a legal obligation on the legislature to enact a law complying with the principles nor has the judiciary been given the necessary power to enforce them. So, a violation

is possible; if a violation happens, then in such a situation Court cannot be brought in for remedying that violation. And that is why Seervai was of the view that which lacks sanction is not a law. Seervai heavily argued on the writings of this German philosopher Fredrick Pollock where he said that it is the sanction that becomes a kind of core element of a law and legal principles. Now, even if we try to look at the language of Article 37, in relation to Article 13, and there too, we get this understanding: Reading Articles 13 and 37 conveys a kind of message that the framers have come up with very clear plans regarding the involvement of the judiciary. They have a very clear message about what subject matter.

Judiciary will have a very defined say on what subject matter the judiciary shall stay away from. That is what, when you look at Article 13(2), which says that any law made in contravention of fundamental rights shall be pro tanto void. It categorically means that it is to be presumed that as if the law has never been made. It is the power that has been entrusted to the Supreme Court and the high courts to go for such a declaration. In this way, Part III and Part IV of the Constitution are differentiated. Thus, it is suggested that Part IV is in our Constitution but not a part of our Constitution.

When I say “but not a part of our Constitution” means that the violation is not taken into account and no remedial measure is suggested for such a violation. Article 37 is also seen as a deference to the legislature. Deference to the legislature, in a sense, that the judgment of elected representatives on how to implement these principles and how to give effect to these principles is solely interested in the institution and solely within the legislature. It is purely the wisdom of the legislature upon which the implementation of the directive principle has been based. If Parliament decides to prioritize certain principles, or if Parliament decides to make a law in relation to certain principles, such prioritization cannot be questioned.

In the court of law, it might be a valid question to be asked in a political setting. But then, courts must not be brought in; courts must not be approached for seeking an answer to such a question as why Parliament has prioritized certain principles. Why, if Parliament has done something, has it not gone beyond what has been suggested or exactly followed what has been suggested in the principles? For example, when you look at the Minimum Wages Act, the reference in the Directive Principles, is to a living wage. And, as the court has interpreted, that living wage is always an ideal one.

But then, the Parliament has enacted a law only on the minimum wage, not on a living wage. Now, this kind of question cannot be asked why parliament has not made laws on a living wage and on a minimum wage. So, this is the kind of difference to the legislature. In fact, even the absence of an express provision for judicial review, particularly when you try to read it in the context of Part III, it is said that there is a possibility of keeping the judiciary completely away and, in a way, asking the judiciary to simply try to align with the policy-making done by the executive or adhere to the legislation made by the legislature.

So, because judicial review is prohibited and the court has been kept away, the directive principles may be giving a kind of platform for giving new meaning to the Constitution. Now, when you read Articles 37 and 38 together it categorically lays down a goal for the legislature and the executive. That is the goal of the welfare system. That is the goal of establishing an egalitarian society. That is the goal of guaranteeing distributive justice. That's why, when you look at language Article 37, wherein it has been categorically said that the principles are to be honored and considered as fundamental in governance, and a duty is there upon the state to consider these principles while making laws. Reading it with Article 38, we say that states shall strive to promote the welfare of the people and the philosophy of justice, social, economic, and political welfare.

If you read this Articles 37 and 38 together, you find that Article 37 on the one hand makes these principles very fundamental and imposes a duty upon the state. On the other hand, Article 38 categorically says that the state is committed to the welfare of the people and that the principles are guiding the state on how such welfare goal is to be attained. These principles are making it very clear that it is for the legislature to make a plan. It is for the legislature to make a program to come up with a scheme that is desirable and suggested for fulfilling the principles or ideals as laid down in Part IVA of the Constitution. So, it is purely a prerogative of the legislature where the judiciary has been restrained, where the judiciary has been categorically given no mandate.

In terms of directing the legislature on what kind of policy or program should be made, why certain directive principles are not being enforced, in all of this, the role of the judiciary has been suggested to be a clear no interference. And that's why the emphasis on Article 37, which says that principles are "nevertheless fundamental in governance". So, the first part of Article 37 says that the principles are "non-enforceable in the court of law", which means that citizens cannot approach the judiciary for seeking any remedy for the violation of directive principles.

And citizens cannot oppose the judiciary with a kind of plea or with a kind of prayer that parliament may be directed to make a law in furtherance of directive principles. This kind of plea Intervention is not allowed when we read Article 37.

The second part of Article 37 says it is nevertheless fundamental. Nevertheless, fundamental in governance because, after all, when you look at the role of the state, the role of the state is to ensure that all necessary public amenities and services are in place to guarantee a dignified life, quality of life, and to see that institutions work for the betterment of individuals. So, fundamentally, it indicates that though it is non-enforceable, but then there is an element of obligation. There is an obligation of commitment. That's why the third part of the Article 37 states the duty of the state. Duty of the State says that there are a defined role of the legislature and the executive "while making laws." Laws here need to be understood in a very broad sense. It doesn't mean only the laws which are passed by the legislature. It has to be seen also in terms of policy prescription which the executive brings in from time to time. Which, in a way, gives a broader guideline to the different ministries, different departments. That is what they should try to achieve and how they should make a plan and then the policy should guide such planning for the ministries and different departments.

So, to conclude, one may say that non-enforceability does not dilute the significance of directive principles. Because the language of Article 37, read with Article 38, makes it very clear that it is very fundamental. It is something where the very clear role has been designed for the government and the legislature. Obviously necessary space is given to the legislature for making the laws because the making the laws in accordance with directive principles may require several considerations, as well as resource allocation and necessary planning. It is the legislature that can only take a call on resource allocation, time of implementation of certain policies. Thus, one can say that Article 37, in a way, makes a very balanced approach on the matter of giving supremacy to the legislature on this matter. And while it allows the judiciary to act as a constitutional sentinel, one may say that DPSP remains a guiding force for better governance, ensuring good governance without disturbing any kind of democratic equilibrium. That's what one should read for the significance in relation to Article 37. That's what the message Article 37 conveys in very clear terms.

These are the references.

Thank you very much for today's session.