

Directive Principles of State Policy and Fundamental Duties: Constitutional Imperatives

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Lecture 17: Interplay of DPSPs with Fundamental Rights I

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 discussing the interplay between Fundamental Rights and Directive Principles, in which we aim to cover these concepts, where we will look into the relationship between Fundamental Rights and the Directive Principles in a very brief way. We will try to understand how these relationships have evolved over a period of time. And in that evolution process, we have looked into the three prominent approaches followed by the judiciary in reading the relationship between fundamental rights and directive principles. That is what we will look into. Now, when we try to analyze the relationship between Part III and Part IV. It appears to be a case of a very distinct experiment undertaken by the framers of the Indian Constitution, where it is about justice, which can be enforced through the court of law, as well as aspirations to be realized through legislative processes or executive decision-making. And that is why the Indian Constitution is considered to be a very important document, an eloquent testament to the interplay of justice and aspirations. Because these two important provisions of the constitution commit to the welfare of the people, they talk about libertarian values, they talk about accountability, and they talk about the redressal mechanism of ensuring that accountability through varied and known approaches. When I say varied approaches, obviously, one appears to be through the judicial process, and another appears to be through the electoral process. So, fundamental rights and directive principles they form the twin pillars of this architecture, resonating with the soul of welfare democracy, where democratic values are not only for, but also protect the welfare of all valuing liberty not only for valuing equality but also for guiding the state to maintain equity in its policy prescription. One argues that fundamental rights generally embody the sacrosanct liberties of individuals, whereas directive principles are more of an ethical compass guiding the state's craft. That's how we try to look at the relationship

between fundamental rights and directive principles, where one is about guaranteeing equality and one is about guaranteeing freedom and dignity. Other is about aspirational tenets where the idea is to establish an egalitarian order and create an equitable society.

And these differences have played an instrumental role in drawing the relationship between fundamental rights and directive principles. Fundamental rights are generally seen to be lifeblood of democracy, where it has been stated that it is fundamental rights that ensure every individual has a value, and it is the state which has a very defined limitation: not to violate the rights of individuals. If that happens, the state has to be made accountable for the same. And that accountability process is laid down under Article 13, which states that “states shall not make a law violative of fundamental rights conferred in Part III of the Constitution.” When you read this in contradistinction with the scheme of the Directive Principles, you find that they are more of aspirations, pious aspirations, which we have discussed in earlier slides as well. It is all about mischievous generalizations. And it is all about the positive roles of the state, where there has been an expectation of the state to generalize resources and expectations from the state to make a plan for fulfilling the goals laid down in Part IV. Directive principles, for that matter, are considered to be the collaborative role of non-judicial political institutions in the realization of constitutional norms, and that is how we have connected directive principles with political constitutionalism in the earlier slides. So, they differ in terms of enforceability.

One more relates to direct enforcement through the judicial process, whereas the other is about gradual implementation through the legislative process or the executive decision-making—how it has been planned and how it has been done. But at the same time, we have observed that the director principles have influenced the interpretation of the fundamental rights; it has guided the executive orders, or it has determined the limits of administrative regulations. There, we try to look at the interplay between fundamental rights and directive principles where they are generally seen as a charter of collective welfare, where the purpose is to ensure that liberty, equality, and dignity are honored. At the same time, it is also to be seen that distributive justice is also planned and undertaken by the government to empower those in the marginalized segment and the imperialist.

Let us look at the interplay from three different approaches. First approach, where the court has read a hierarchical relationship between fundamental rights and directive principles. Second is where they have read it as a coordinate plane. They have agreed that this is of equal status. And the third one is where they have read Directive Principles as superior to

fundamental rights. Now, when it comes to the first view, generally what we look at starts from the Champakam Dorairajan v. State of Madras, (1951), which is a case related to affirmative action in favour of certain classes in the absence of Article 15(4) of the Constitution. So, when the question came before the Supreme Court that the state had planned affirmative action for certain classes in pursuance of Article 46. It was argued before the court that Article 46 is in conflict with Article 14 and Article 15. And then it is Article 14 and Article 15 which shall prevail, and the measures taken by the state in the name of improving the educational status of weaker sections should not be given precedence over fundamental rights. Court agreed with this on the premise that fundamental rights are enforceable, whereas directive principles are not enforceable, and thus directive principles could not override fundamental rights. Supreme Court, in fact, expressed its apprehension that if you allow these Directive Principles to be overridden over fundamental rights, then fundamental rights would be reduced to a mere rope of sand. So that was a kind of hierarchical understanding, which the court developed in the initial years. I read what the court has said. The court states that: *“The Directive Principles of the State Policy, which by Art. 37 are expressly made unenforceable by a Court cannot override the provisions found in Part III (Fundamental Rights) which, notwithstanding other provisions, are expressly made enforceable The Directive Principles of State Policy have to conform to and run as subsidiary to the Chapter on Fundamental Rights.”*

So, this is a very important observation given by the court, where the court is acknowledging a clear hierarchical relationship between the fundamental rights and directive principles, which possibly we also see in some of the cases where the Court has in a way, this observation has been highlighted. The court has also said how we really look at the issues between fundamental rights and directive principles. So, here are these two cases we bring to your notice, where we have seen that in the Bombay High Court, Jaswant Kaur v. State of Bombay, (1952) where the court has observed that any Article conferring fundamental rights cannot be whittled down or disqualified by anything contained in Part IV of the Constitution. So, the High Court followed the guidelines suggested by the Supreme Court or the laws laid down by the Supreme Court on the relationship. Similar is the case in the State of West Bengal v. Subodh Gopal Bose, (1953) where, again, if I read the relevant para, which says that: *“I am also of the view that the Courts may not ignore the directive principles, as having no bearing on the interpretation of constitutional problems, since Article 37 categorically states that “it shall be the duty of the State (including the legislature by virtue of the definition of ‘State’ in Part III made applicable by Article 36) to apply these principles in making laws”*. Now, in the judgment in Champakam

Dorairajan Case, a hierarchy was drawn between Article 46 and Articles 14 and 15 on the matter of affirmative action.

Apart from that, a good number of legislative initiatives for agrarian reforms or for land reforms or for the acquisition of property in the name of distributive justice were also getting judicial interventions on what I would say was the wrong side. Where it suggested for again, there is a relationship between the active principles and fundamental rights. If they are getting into conflict with Article 19, Article 19 shall prevail. Considering this fact, the provisional Parliament undertook the very task of amending the Constitution to address these issues. So, it is the same body which framed, drafted, and adopted the Constitution sat as a provisional Parliament, and in 1951, before the first general election, they amended the Constitution. And it includes these two important provisions, Articles 31A and 31B, which draw a balance between fundamental rights and directive principles, particularly on the matter of acquisition of property by the state for agrarian reform or for abolishing the zamindari system. Article 31A is more related to the abolition of the zamindari system, where it is about acquisition of estates that were not to be declared void on the ground that they are inconsistent with or take away fundamental rights. Article 31B provided for the validation of certain acts and regulations, and it also provided for the acts specified in Schedule 9, which gives immunity to these laws, ensuring they are not to be declared void on the aforesaid grounds that they are inconsistent with or take away the fundamental rights.

So that is what the kind of important constitutional amendment was done in order to give prominence or significance to directive principles, where the court was applying this very mathematical approach of reading the relationship between fundamental rights and directive principles. Now this is something which made the court look at the relationship, and the court has acknowledged that we must also adopt a harmonious interpretation. In *Mohd. Hanif Qureshi v. State of Bihar*, (1958), which is a case on banning the slaughter of certain animals, which the court has looked at as an issue between Article 19, which is on right to carry on trade vis-a-vis Articles 47, 48 and 48A, where it's all about banning the slaughtering. This case, which is about the conflict between Article 19(1)(g) about carrying on trade and it is about religious relief under Article 25 as well as it is a case relating to Articles 47 and 48, which is about animal husbandry (which is about banning the cow slaughter in this country). The court has made a very significant observation where the court said that there is a need to go for “.....*a harmonious interpretation has to be placed upon the Constitution and so interpreted it means*

that the State should certainly implement the directive principles but it must do so in such a way that its laws do not take away or abridge the fundamental rights.”

So, the court highlighted in Mohd. Hanif Qureshi Case the very relevance of harmonious interpretation, though the court was, I would say, skeptical or cautious in its enunciation. The court has said that “we need to see that no direct conflict” exists. If such conflict occurs, then obviously it is the fundamental right we shall give precedence, but otherwise, the attempt should be made with regard to harmonious interpretation. In this case, that is how the court has drawn its interpretation and allowed the slaughtering of certain set of animals if they are crossing an age when they become unproductive or for agricultural purposes, or for the purpose of giving milk and all. So, the court observes: *“These laws having thus been made in discharge of that fundamental obligation imposed on the State, the fundamental rights conferred on the citizens and others by chapter III of the Constitution must be regarded as subordinate to these laws. The directive principles, says learned counsel, are equally, if not more, fundamental and must prevail. We are unable to accept this argument as sound.”*

So, the court certainly did not agree that they are together, but then the court certainly made a point that there has to be a harmonious interpretation and a relationship to be read between Part III and Part IV of the Constitution. This is something where the court relied upon the reading of Article 13(2), and drew this reasoning that there is a clear distinction laid down in terms of declaring a law void, but then that is something which cannot be understood as overriding Part IV of the Constitution. So that is what it says: *“the Directive Principles of State Policy have to conform and run as subsidiary to the chapter on Fundamental Rights.”* So, you can very well find that in this case there is some kind of change in the approach. In important case on the In Re Kerala Education Bill, 1958, which is a case wherein a law was made by the Government of Kerala to regulate educational institutions, including aided and recognized educational institutions, including minority educational institutions, on the matter of fees and admission. An advisory opinion was being sought by the President from the Supreme Court. The court highlights that we need to give emphasis on harmonious construction. If I read what the court says: *“The directive principles of State policy have to conform to and run as subsidiary to the Chapter on Fundamental Rights... nevertheless, in determining the scope and ambit of the fundamental rights relied on by or on behalf of any person or body the court may not entirely ignore these directive principles of State policy laid down in Part IV of the Constitution but*

should adopt the principle of harmonious construction and should attempt to give effect to both as much as possible.”

So, in this case, the issue was again between Article 30, Article 14, and Article 45 of the Constitution (unamended Article 45), which was talking about free and compulsory primary education. So, the court has suggested that there is a need to draw a harmonious construction. So, if you look at the impact of these two judgments, they have very well highlighted that we need to look at this relationship in a very conducive and harmonious way. It is not that there is a hierarchy; one is not always preferred over another. So, this is what these two cases have made an impact, which is also connected to the directive principles, where an important amendment was brought in under Article 31C as an outcome of the decision of bank nationalization case, which is *R.C. Cooper v. Union of India* (1970). And then, privy purse case, which is *Maharajadhiraja Madhav Rao Jiwaji Rao Scindia v. Union of India* (1970). This case, the decisions in this case led to the Parliament amending the Constitution where important Article was included again to draw a relationship between fundamental rights and directive principles that is Article 31C, where it has been categorically suggested that if the law has been made in pursuance of Article 39B and Article 39C, and if such law violates fundamental rights, particularly Articles 14, 19, and 31, then such violation would not make the law invalid. This is again for balancing the objective between fundamental rights and directive principles, which is respecting individual liberty but at the same time valuing the very significance of distributive justice. Article 31C we will be discussing this separately because it has played a prominent role in establishing the relationship between fundamental rights and directive principles. So, we will have a separate lecture on Article 31C.

Let us look at the second view, where the court has started reading directive principles and fundamental rights as supplementary. In this view the Supreme Court has said that directive principles can very well be looked into for understanding the scope and ambit of the rights given in Part III of the Constitution. For example, in this case of the *Chandra Bhavan Boarding & Lodging, Bangalore v. State of Mysore*, (1969), which is a case examining the constitutionality of minimum wages under the Minimum Wages Act. The court was to determine whether this Act violates Article 19 of the Constitution because it in a way restricts the right of both the employer and the employee—employers cannot pay less than the minimum wage, and employees cannot accept less than the minimum wage. But then the court looked into the significance of Article 43 of the Constitution and court by bringing in a very creative

interpretation, someone said that Article 43 can very well be read as “guaranteeing necessary means for leading a dignified life/leading a quality life.” So, the minimum wage is something which is the bare minimum required for leading a quality life, and below that. Any wage below that is to be considered as a case of slavery, so you can very well find that how the court has brought in Article 43, brought in Part IV for giving justification to limiting the right given in Part III of the Constitution. So, that is what was a very significant development and a pivotal role played by the Supreme Court in drawing the relationship between directive principles and fundamental rights in this case. So, this is the approach which started with the Re Kerala Education Bill, or, for that matter, in Chandra Bhavan. These approaches are clearly moving in the direction of reading both parts of the Constitution as significant ones, and not drawing a kind of hierarchy, not giving preference to one over another, and that is how they negated the law or the understanding made in Champakam Dorairajan in 1951. And that is what the court has also highlighted in these two important cases, Golaknath and Kesavananda Bharati. Wherein, in Golaknath, the court made a kind of subtle observation saying that directive principles can be reasonably enforced without abridging fundamental rights, and in Kesavananda Bharati, the court says that fundamental rights and active principles are both of equal importance. In fact, the court borrows it from the reading of Granville Austin and says that both interpretations are like two wheels of a chariot, and both wheels need to move for the nation’s progress. So, this second view, when you look at it, try to bring in this approach of balancing the relationship between fundamental rights. It is suggested for a harmonized relationship, and it is also suggested that these two parts be read as supplementary to each other and not in conflict with each other. And that is why the Court has read into Kesavananda Bharati that the Directive Principles prescribe the goals to be attained. And the fundamental rights let down the means by which that goal was to be achieved. So, in a way, Part III was suggested to be the means, and Part IV was suggested to be the goal. And in that Justices JM Shelat and KS Hegde made it very clear that Part III and Part IV have to be balanced and harmonized.

And again, I said that this 42nd Amendment Act, which became very important, where we found that Article 31C was included. We will discuss it in detail in upcoming sessions, where the court has also approved this amendment, giving specific precedence to the active principles over fundamental rights. We will talk about it in detail regarding the reasoning of the court for drawing this relationship or approving this relationship between the active principles and fundamental rights. The court has stated that DPSP is not inferior; code has made it very clear that it is wrong to read that there is any kind of hierarchy set, there is an order set between

fundamental rights, and in case of conflict, one has to always give precedence. Court said that, as far as possible, we need to look at the harmonious way of resolving the issue: simply by negating one because one is justiciable and the other is not, as this is not what the scheme of the Constitution, as suggested by the framers of the Constitution. So, on that premise, one may argue that they are to be considered as a subject matter of equal strength and not of hierarchical relationships. Not of building an order between one and another. So, the court has read this scheme very categorically and has said that there is no reason why one should be given precedence over another. The court has said, as I highlighted, that one is considered to be for welfare goals, one is for establishing an egalitarian society, and the other is about the means to how to establish it.

And that is why the court emphasized upon the language used in Article 38 regarding fundamental aspects of the governance of the country, which we have already explained in earlier sessions.

The third view is the view where fundamental rights are considered inferior to the directive principles in certain situations. In this view the court has read the conflict between fundamental rights and directive principles, and in that the court has made it very clear that if a conflict arises and one aims at a larger welfare goal while the other is for liberty, then we have to see what kind of libertarian idea the particular legislative design is promoting. For example, in the case *State of Bombay v. FN Balsara*, (1951), which is a case on gambling, the court has said that just because there is an element of commerce, one cannot approve it, as it goes against the very premise of the directive principles. That is how the court has said that when you talk about reading reasonable restrictions for freedom guaranteed under Article 19 the directive principle also plays an important role in identifying the reasonableness of the restrictions. Court also says the same thing in the *Laxmi Khandasari v. State of Uttar Pradesh*, (1981), where again, the relationship between the rights given under Article 19, where related to carrying on trade is in conflict with Part IV of the Constitution. Court has again said that the reasonableness of restrictions can very well be guided also by the language of Part IV of the Constitution. So, when we look at this third approach, we find that the court has tacitly given approval of this understanding—that if a conflict arises where a larger public interest is being served. Then it is that public interest we should give space to the fundamental rights, and that is how the court has read it—as a relationship of directive principles enjoying higher weightage in comparison to fundamental rights. But then we have to keep in mind that it is the situation that involves

individual interest versus larger public interest. That is what we need to be very clear about. That is what the court has said in all important cases. In fact, even in *Maharao Sahib Sri Bhim Singhji v. Union of India*, (1980), the court has again said that when law has been made for regulating the ownership or in an urban area over the land that should not be seen simply as a case of classification under Article 14; how the court has done the reasonable classification. The court has to look into from a larger welfare policy laid down under Article 39(b) and Article 39(c) about material resources to be distributed for the common good or, for that matter, how the livelihood issue is going to be addressed through such legislative measures. So, these are important things that the court has said.

So, courts have in a way, if you look at the journey from *Champakam Dorairajan Case* to these judgments, you will find that courts have moved away from the very narrow and myopic approach to reading the hierarchy. Court has said that the constitutional scheme is more aligned with the harmonious understanding which the court strengthened and concretized in these two important cases, *Kesavananda Bharati* and *Minerva Mills Case*. And one can argue that Fundamental Rights, DPSP and Fundamental Duties collectively shape justice and equality for the larger benefit of everyone.

These are the references for this session.