

Directive Principles of State Policy and Fundamental Duties: Constitutional Imperatives

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Lecture 18: Theoretical Background of DPSP II

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 we are discussing the interplay between Fundamental Rights and Directive Principles. Last session, we started discussing the interplay between the Directive Principles and Fundamental Rights. Today, we will continue with the discussion, where we aim to cover the following points: where we shall look at the differences between fundamental rights and Directive Principles, which shall be a sort of relooking the concept, re-examining the division and differences. Then we shall also try to look at the very role of the directive principle as a source of legislative power or how the court has been reading the directive principles as an interpretive guide to interpret statutory laws or to give meaning to the text of the Constitution, and then we shall also see whether directive principles are being used for examining the validity of laws. Now, when you look at the question on directive principles and fundamental rights on the basis of the distinction as we have been discussing, enforceability becomes an important point of distinction. Because of that, a very obvious question that gets raised is: Whether the issue of enforceability changes the characteristics of the directive principles and makes it of a different nature altogether in comparison to fundamental rights? In other words, can we really say that, on account of enforceability, fundamental rights and directive principles are having a different effect altogether?

And when it is to be considered as a different effect altogether, how do we really look at the positioning of directive principles under the Constitution, particularly in the context where we see that if a provision of the Constitution is violated by the legislature, then such legislation gets declared as unconstitutional; such legislation is declared void. This is precisely what has been argued by the very distinguished jurist H.M. Seervai, who distinguishes on the basis of enforceability and says that if the fundamental rights had not been made enforceable, the result

would have been a disaster. So, the results would have been disastrous because then, in that case, it was entirely up to the government to make a law, and such a law would not have been declared unconstitutional on the grounds of violating rights. So, that is the significance which has been recognized because of the incorporation of fundamental rights into the Constitution, and that incorporation is coupled with enforceability through the judicial process. Whereas, when you look at this analogy in the context of the directive principles, then the analogy gives us this understanding that the directive principles, because they are non-enforceable, may be overlooked without consequence. Even if the Directive Principles had not been there in the Constitution, it would not have affected the value of the Constitution. It would not have really impacted the functioning of the Constitution. And this understanding is primarily because there is no provision in the Directive Principles Part or in any other part of the Constitution which makes a sort of non-negotiable obligation on the Parliament to make a law in pursuit of the directive principles. So, neither is there an obligation on the Parliament nor on the State Legislature to make laws complying with directive principles, and the Constitution does not suggest any mechanism for not complying with the directive principles, not fulfilling, or adhering to them. That is the reason why H.M. Seervai has said that, though the directive principles are a part of the Indian Constitution, it is also not to be considered a part of the Indian Constitution because of the very reason that non-conformity of the directive principles should not entail any kind of consequences. It can very well be overlooked if Part IV is avoided. If Part IV is overlooked, then such a decision or action by the government will not result in any kind of declaration on the width of the law; any kind of declaration on “pro tanto” voidness of the law. On this very basis, one may argue that if there is a conflict between fundamental rights and the directive principle, then it is the fundamental rights which prevail because the very reason that the violation of a law with regard to fundamental rights makes that law, pro tanto, void, completely nullifies that law as if it had never been enacted (in Latin: non est). Now, that is how we also try to make a distinction based on the very word “fundamental,” which is there both in Part III and Part IV, which is there under Article, which is there as the title of Part III and also in the language of Article 37, that is “fundamental”. When you look at it, it says that “fundamental” is used as a qualifying word with rights, and that makes the thing very enforceable. Whereas, in the context of Article 37 and directive principles, “fundamental” is used in governance. The principles are fundamental in the governance; thus, it is not legally enforceable. And that is why Seervai argues that the two words cannot be used to describe opposite meanings. If it is in one context, if it is making the very essence of the rights and making it a kind of core part, then something similar must also be suggested. If not, then that

is not the case, and it dilutes the significance of the Constitution. That is what these two provisions, Articles 13 and 32, are about—one is limiting the role of the legislature in making laws, which says that if the legislature makes the law contrary to, in conflict with, fundamental rights and such law shall be void; on this, talks Article 32, which address getting a remedy for the violation of rights, that anyone can approach the court of law, particularly the Supreme Court, for getting a remedy in cases of violation of the rights.

Whether “fundamental” is being used in different senses in Part III and Part IV. In Part III, as qualifying rights, does it mean that somewhere the Constitution advocates very prominently rights as a valuable essence, as a kind of non-negotiable value for sustaining and strengthening democracy? And which, in a way, limits the power of the government, which sets a kind of boundary for the exercise of legislative power. Whereas, the word “fundamental” in the context of Part IV of the Constitution is simply laying down a very generic kind of objective where it lays down a general norm of power guiding the state toward following certain goals left undone in that part. How do we really look at this expression in the context of Part III and Part IV? Possibly this one understanding, where in one case it is about limiting the legislative boundary, it is about limiting legislative power. And in another case, it is all about giving guidance to the legislature for carrying out for enacting the laws in pursuit of the goals laid down in Part IV. So, that is more of a normative sense where, over a period of time, the government has to look into the goals laid down and make a necessary plan for their fulfilment. The question is also raised with regard to the very question of whether directive principles should be seen as a source of legislative power. This question arises because of the language used in Article 37, which talks about fundamental principles in governance and when it says that there is a duty upon the legislature and the executive to consider these principles while making laws.

So, whether the directive principles is a source of legislative power, or the directive principles can be used to interpret constitutional amendments or the directive principles can be used to interpret laws. How do we really look at the relationship between the directive principles and the law-making power of the Parliament? Now, when you read the analysis of Articles 245 and 246 of the Constitution, generally, it is considered to be two provisions talking about the source of law-making power for the Parliament or the State Legislature. In the 7th Schedule, there are different entries in List I, List II and List III. They are only demarcating the legislative fields; they are simply enunciating these fields, and the power is something that is provided in Articles 245 and 246. The power does not stem from the Lists given in the 7th Schedule. The List given

in the 7th Schedule is just an enunciation of the subjects, simply enlisting the subjects on which either Parliament has the power to make laws, or the State Legislature has the power to make laws, or there is a shared responsibility between the Centre and the States to make laws. And then there is a follow-up question: Whether, in this context, directive principles should also be considered as a source of legislative power. As I said, the language of Article 37 says that there is a duty upon the state to apply these principles while making laws. When you look at the language, it certainly indicates that there is a constitutional duty upon the state, and such a duty cannot be simply overlooked.

But the question is whether it should be considered as conferring a specific power to make laws, or should it be looked at independently of Articles 245 and 246? That is something that is an important question to look at. Now, when I look at the language of Article 37, and when I try to analyze how we read “fundamental” in the governance, and how we read the “duty to apply” while making the laws. The court has been very categorical in suggesting that the only source of power is from sections 245 and 246, which are sources of power to make law. That is what the court says in one of the recent cases, *State of Uttar Pradesh v. M/S Lalta Prasad Vaish*, (2024). So the point is that when the law has been made, and if such laws are in conflict with the Directive Principles, when such laws oppose the very spirit and conscience of Part IV, should that law be declared as unconstitutional on those grounds? Now, there are instances, particularly in the initial years of the interpretation of the Constitution undertaken by the Supreme Court. The court has said that Part IV shouldn't be seen as the source of legislative power. For example, in this case, *Deep Chand v. State of Uttar Pradesh* (1959), which is the case with regard to the nationalization of public transport. There is one law made by the Uttar Pradesh government. There is another central law, which is the Motor Vehicles Act. So, these laws were made. So the question was whether these laws are in conflict and whether the principle of repugnancy would apply. And in that case, a question was raised about how the relationship between Article 19(1)(g) is to be read with the directive principles.

And in that case, the court has categorically said that directive principles have got no relevance and it does not confer any kind of legislative power on a state. It says that directive principles only act as guidance. Even if it has been overlooked, even if there is a categorical disobedience by the state, then it would not result in any kind of declaration that the very measures are unconstitutional. It cannot affect the legislative power of the state because the court says that the directive principles are only directory in scope and operation. So, that is what we have been

reading; it is in Articles 245 and 246 where the substantive power lies, which is the very source of legislative power. Thus, reading the relationship between Articles 245 and 246, and trying to look at the duty laid down under Article 37, indirectly, one may argue that Part IV becomes a source of legislative power in such a situation where the state makes a law that is not aligned with the Directive Principles. So, it may not be argued and it may not be justified as a direct source of law. Part IV may not be seen as a direct source of law in alignment with Articles 245 or 246. But then one may argue that if there is a fundamental duty to apply the principles while making laws, and if the same has not been done, when I say the same has not been done, meaning thereby that when the provisions of the law violate the directive principles or go into conflict with then it is very justifiable to declare such laws unconstitutional.

So, in that situation, the reading of Part IV becomes an indirect source of legislative power. So, when we look at the legislative mandate and try to understand how Part IV, is read in that relation. We find that Part IV certainly enables a broader legislative mandate for the legislature, wherein the content, aim, and object of the law can very well be supported by the principles. The law can very well be justified if it is made in accordance with the principles. And if it is looked at in that perspective, one may argue that this influence of the directive principles in structuring the law, in framing the law, implies this understanding that it is indirectly acting as a source of legislative power. So, List I, List II, List III identify the subject on which Parliament or State Legislature can make law. By the same token, the legislature cannot make a law where Part IV is in direct conflict with, or the principles therein are in direct conflict with, the principles laid down in Part IV.

So, this is what is important to look at. And this is how one can try to draw the analysis, that is if the law is made and if such a law is disrespecting the principles laid down in Part IV, disregarding the principles laid down in Part IV, then can one argue that Part IV is also referring though impliedly, to a case of legislative incompetence. Moving further, it has been stated that the directive principles can play a critical role in interpreting statutory laws or regulations. And if two interpretations are possible, one in conformity with the directive principles and the other in conflict with them, then the former one must be accepted. That is what we have seen in a good number of cases previously. These cases are just a sort of illustration, and we have not made any attempt to come up with an exhaustive list of cases to support this argument. For example, in this case of *Balwant Raj v. Union of India* (1968), where the question was whether it was a case of non-reporting for duty, and if such non-reporting was due to ill health, then the

termination of the employment must be seen as a decision of the employer or the management in conflict with Article 41. So that is how the directive principle has been used to address the power of management and limit its very exercise of the power conferred upon it, or, in this case of the *Uttar Pradesh State Electricity Board v. Hari Shankar Jain*, (1979), where there is a case relating to taking over the business of supplying electricity by the Electricity Board and the very applicability of service conditions on the employees. The question was raised whether the Industrial Employment (Standing Orders) Act would be applicable to the employees of the Board where the Board has taken the management and ownership of the electricity supply company from a private individual. The court has said that Industrial Employment (Standing Orders) Act is about laying down terms and conditions of employment, in the interest of employees, to prevent any kind of exploitation by the employer of the employees. And thus, the notification of this order is very much in compliance with Articles 42 and 43 of the Constitution, which are about just and humane working conditions—these two principles, as they talk about. So, this is how the court has read it. Again, in the case of the *Regional Provident Fund Commissioner v. Hooghly Mills Co. Ltd.* (2012), the court has looked into this social welfare legislation (Employees' Provident Fund). The court has said that the exemption given under the Act must be read in such a way that the interests of the workers need to be complied with, which is again the mandate given under Articles 41 and 43 of the Constitution, which talk about the right to work, the right to social security, and human working conditions, there is a reference to a living wage. This *S. Subramaniam Balaji v. State of Tamil Nadu*, (2013) is a very good case where we find that a question was raised with regard to the promises made by the political parties during elections and the fulfilment of such promises if the political party comes to power. So, the question was generally with regard to the grant-in-aid under Article 282. But then a good amount of discussion has been done on how such a large state is going which is which becomes part of the policy document of the government and conforms with the Directive Principles. For example, the court has very categorically highlighted that the concept of a “state largesse” is essentially linked to the directive principles of state policy. Whether the state should frame a scheme that directly gives benefits to improve living standards or indirectly by increasing means of livelihood is for the state to decide. Hence, the state distributed largesse in the form of the distribution of color TVs, laptops, etc. to eligible and deserving persons is directly related to the principles of the state policy. Hence, the state distributed largesse in the form of the distribution of color TVs, laptops, etc. to eligible and deserving persons is directly related to the principles of the state policy.

And here, the court has also rejected the argument that this kind of largesse limitation violates Article 14. Court says that “therefore the principle of not treating unequals as equals has no applicability as far as the largest state is concerned. This principle applies only where the law or state action imposes some burden on the citizen, either financial or otherwise. Besides, while implementing the directive principles, it is for the government concerned to take into account its financial resources and the needs of the people. There cannot be a straightjacket formula if certain benefits are restricted to a particular class which can obviously be due to the limited resources of the state.” So, in this case, if you read it, you’ll find that it has justified such poll promises in connect with the directive principles that if the political party fulfils its promises after coming to power following a successful election, then such promises are to be seen as a policy prescription by the state. This is in furtherance of the directive principles’ goal of establishing an egalitarian order, establishing a society where dignity is guaranteed through the distribution of resources. where the welfare goal is achieved by empowering the people through the state’s largesse.

So, this is an interesting observation given by the court in the context of freebies that political parties announce during the election. The same is the case when you look at *Bijay Cotton Mills Ltd. v. State of Ajmer (1955)*, where again the constitutionality of the Minimum Wages Act was questioned on the grounds of violation of the right to carry on trade. The court has categorically said that, when you read the intent of Article 43 and try to understand its language, it categorically states that securing a living wage for labourers ensures not only bare physical subsistence. But also, the maintenance of health and decency is conducive to the general interest of the public, and thus, this is very much in compliance with the mandate given under Article 43. Even if the Minimum Wages Act limits the bargaining power of both employers and employees by prescribing a statutory wage, such a statutory wage is very much constitutional because of the goals laid down under Article 43. Similar is the case with *People’s Union for Democratic Rights v. Union of India (1982)*, which is known as the *Asiad Worker Case*, where you would find that the court has said that the language of Article 43 needs to be understood also in the context of Article 23 of the Constitution.

Where any wage that is lower than the minimum wage should be considered to be forced labor, and thus it would validate the very constitutional directive given under Article 23 as well as the mandate given under Article 43 of the Constitution. So, no one shall be compelled to work for no wage, no one shall be compelled to receive a wage lesser than the minimum wage, and

such directive is equally applicable upon the state as well as the contractor. So, there are instances where the directive principles have worked on and facilitated the very interpretative processes of the provisions—be it of statutory provisions or of constitutional provisions. For example, in this important case of the Uppinangady Co-operative Agricultural Society Limited v. State of Karnataka, (2024) the court has struck down this Section 128A of the Karnataka Cooperative Societies Act primarily on the that this particular provision has made the Registrar of the cooperative society all-powerful and, in effect, taken away the autonomy of the elected members of the cooperative society.

The court looked into the significance of Article 43B, wherein the directive principles talked about the very role of cooperative societies in strengthening the country's economy. The Court said that if the idea is to promote autonomy, the idea is to ensure that cooperative societies function autonomously, and any amendment or law that conflicts with this idea should be struck down. So, that is why you find that the directive principle has not only facilitated interpretation, but also given unnecessary justification for striking down laws by the Supreme Court. So, one may argue that the entire study of the intersection between fundamental rights and directive principles started with this understanding of a hierarchy between fundamental rights and directives. By the same time, it has been seen that the significance of directive principles has been understood correctly over a period of time and it is starting to be acknowledged as an indirect source of legislative power. We have also seen how directive principles are accepted as an important aid for interpretation, not only to determine the scope of the provisions of the law, but also for striking down the laws.

So, this is a very important development in relation to the directive principles. And it also, in a way, counters that argument, which has been taken to be there in the Constitution, but is not part of the Constitution because, gradually, the court is also strengthening the jurisprudence in and around the directive principles, making it a very valuable argument element of the Constitution by examining the statutory laws in relation to director principles and going to the extent of declaring such laws unconstitutional.

These are the references for today's session.

Thank you.