

Directive Principles of State Policy and Fundamental Duties: Constitutional Imperatives

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Lecture 19: Article 31C and Inter-relationship with DPSP

Greetings to all of you. We are in Module Three, where we are discussing the salient features of the Directive Principles of State Policy under the Indian Constitution. In this module, we have been discussing the relationship between Fundamental Rights and Directive Principles and how these Directive Principles have been influencing the reading of Fundamental Rights. What is the role the Directive Principles are playing in strengthening the constitutional values? In this regard, an important constitutional law development took place with the introduction of Article 31C in the Constitution, which has given precedence to the Directive Principles over fundamental rights. So, in today's session, we shall be looking at the content of Article 31C and how this Article has been applied in the relationship between fundamental rights and directives. So, these are the concepts we plan to cover, where we shall be looking at the history of Article 31C. How does Article 31C relate to the Directive Principles? Recently, the court has answered the question on the revival doctrine and unamended Article 31C, and with that, we will also try to understand the scope and content of Article 31C.

Now, this is the text of Article 31C. We will discuss with you the very reason for bringing this Amendment into the Constitution and introducing this provision. Article 31C: If you read the text, it says "saving of laws giving effect to certain directive principles." So, this hearing itself clearly spells out the scope of Article 31C, where, through this Amendment, directives have been given precedence if such directives come into conflict with fundamental rights. I read the provision: Saving of laws giving effect to certain directive principles- Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14 or article 19; and no law containing a declaration that it is for giving effect to such policy shall be

called in question in any court on the ground that it does not give effect to such policy: Provided that where such law is made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent. So, if you read the text, the bare reading categorically suggests that through this Amendment, Parliament aims to address a complex question of preferring welfare goals over rights, and when such preference gets marred in the judicial process. And if the scheme of the government fails due to intervention from the judiciary, then it is the constitutional dicta we shall address to address that controversy and that complex situation.

Article 31C, one may say, is driven by the very fact that long-drawn litigation between the government and landowners, where the litigation was based on the conflict between the right to property guaranteed to citizens under Article 19 and the duty given to the state to do all that is needed for fulfilling welfare goals. And in that process, agrarian reform and the evolution of the zamindari system were considered important strategies for fulfilling such goals. So, the question that was raised on the matter of acquiring the property, whether the acquisition would become subject to judicial scrutiny on the grounds of taking away property and awarding adequate compensation for such acquisition. How the expression “acquisition along with compensation” should be read.

So, this very conflict between the Supreme Court and Parliament, a sort of deadlock was created between the two important institutions on the issue of fulfilling constitutional goals and valuing liberty. Article 31C is an attempt to resolve the conflict where, through a constitutional amendment or provision, a scheme was suggested that if a law is made in pursuance of the directive principles and if such law is assailed as violative of Articles 14 or 19, then it is the law which shall be given precedence even though it is violative of fundamental rights. Now we need to understand how Article 31C is to be understood. We need to analyze the scope and ambit of Article 31C. Article 31C has undergone changes over a period of time, changes either through the amending process, or through the judicial process. Let us look at how the same has been done. Article 31C appears to be a sort of result of the judicial pronouncement, particularly in the Bank Nationalisation matter, where the court has negated the idea of the court rejected the idea of the legislature to nationalise private banks on the very grounds that the compensation awarded was inadequate. In order to address such judicial intervention, the Parliament decided to amend the Constitution by invoking the power under Article 368, and Article 31C was incorporated. Article 31C is a result of the 25th Constitutional Amendment

Act, which was introduced in 1971. If you read the language of Article 31C when it was introduced, it talked about giving preference to a law which was made in pursuance to two reactive principles: Articles 31B and 31C, if such laws violate Articles 14, 19, and 31. Further, it says that such a law shall also not be questioned in the court of law, if there is a declaration that laws were being made for giving effect to the policies laid down under Articles 39(b) and 39(c). So, Article 31C dilutes the effect of Article 13 because it is Article 13, which states that “if the law is made in contravention with fundamental rights, such a law shall be declared void”. Such law shall be declared null and void, as if there were no such law. So, Article 31C negates or dilutes the effect of Article 13. And such negation is done to highlight the role of the directive principles in the scheme of the Constitution. It has been suggested that in a matter of conflict between the rights of an individual and a larger public interest, a larger public interest should be given precedence. Now, in the debate on Article 31C, when it was presented, I said that the triggering point of amending the Constitution and introducing Article 31C was the judgment given by the Supreme Court in R.C. Cooper Case, where the nationalisation drive of the government was rejected by the Supreme Court on the ground of violation of Articles 19 and 31.

Now, the Law Minister, while placing the Amendment on the floor of the House gave this justification for including Article 31C. He suggested that the very reading of compensation as money equivalent to the property acquired is deterring the government from making the necessary plans on socio-economic goals laid down. Because after all the government has limited resources and, in that government, has to go with the distributive plan. Then it was also suggested that the moment we make the compensation scheme a part judicial examination; then, it would be very difficult to implement the government’s strategy of distributive justice. And that is how it was also argued that the 4th Amendment also becomes non est here. Therefore, it has been suggested that a specific provision has to be there to give preference to the Directive Principle.

That is why some of the members categorically suggested that the provisions or the position prior to R.C. Cooper Case should be restored. Where it is suggested that the idea of resource distribution, the idea of agrarian reform, and all these are driven by the government’s policy prescriptions. All these are driven by the government’s agenda to establish a socialist system guaranteeing the bare minimum to everyone. And thus, the judges are to refrain from entering such domains. Judges are not to be allowed to replace the decision-making of the

parliamentarians with their own decisions or approaches. Thus, it was suggested that the right of an individual to own property must be subject to the supervening right of society to acquire the property.

In fact, some of the members were so strong in advocating for the acquisition of property for the cause of distributing wealth. It was argued that a provision should be included without even mentioning the right to any compensation. It was also suggested that this provision positions the directive principles over fundamental rights. There was a lot of criticism, as well. It was suggested that with this kind of rearrangement of the directive principles over fundamental rights through the language of Article 31C, violates the basic structure. But then, despite all this criticism, this provision got support from the members of Parliament and was included in the Constitution. The very question on giving primacy to the directive principles, particularly those laid down in Articles 39(b) and 39(c). And the question on justiciability is that through this Amendment, the court has been categorically asked not to examine the issue of violation of the rights, which are always made in pursuance to such policies.

All these questions, the court in this phenomenal and landmark judgment of *Kesavananda Bharati v State of Kerala*, (1973), made certain pertinent observations. The majority judges approved this scheme of giving precedence to the directive principles. They said that this scheme is fine and they suggested it on this very premise that Parliament has the power to amend the Constitution. With that soothing power to amend the Constitution it is not desirable to scrutinise such a reorientation of the scheme through the judicial process. This very premise was not approved by Justice Khanna. Justice Khanna said that reorientation of the relationship between fundamental rights and the directive principles is well within the constitutional boundary.

But then, it is not that Parliament has an unregulated power to amend the Constitution. Justice Khanna suggested that this amending power is subject to the overarching principle of basic structure. So, it was agreed that giving precedence to the directive principles over fundamental rights only to that limited extent. What is that limited extent? That is about making a law pursuant to Articles 39(b) and 39(c), and if such a law violates Articles 14, 19, and 31, then such a law would not be declared unconstitutional on the grounds of violation of those rights. On this, the majority agreed that it was fine. It is considered to be a case of disturbing the constitutional pattern, and to be declared unconstitutional. The Court has approved this scheme. However, on the question on taking away the power to review from the judiciary was not

agreed. It said that you cannot completely take away the power of the court to examine merely by giving a declaratory statement of the law made pursuant to the directive principles. Court can very well examine the issue of whether it has been done in relation to Article 39 or not. So, majority of the seven judges found that the second part of Article 31C, which dealt with the exclusion of review violating the basic structure, and therefore they invalidated that part. So, what is the finding of the Kesavananda Bharati Case?

That first half was considered to be valid, where reorientation of the relationship between the fundamental rights (that is, Articles 14, 19, and 31) with the Directive Principles (that is, Articles 39(b) and (c)) is permitted. There is nothing wrong with giving precedence to welfare goals over individual rights. The second half of Article 31C, which is about excluding judicial review, the court said that this is something which is not allowed. Because you cannot have this kind of blanket permission, and you cannot be above scrutiny. The parliamentary processes should not be above the scrutiny of the judiciary on this count. So, the effect of Kesavananda Bharati was that the second part of Article 31C was struck down. Struck down through judicial process, struck down by the means of the judgment given in Kesavananda Bharati. So, now Article 31C reads only about giving primacy to the law made in pursuance of Articles 39(b) and (c), even if such law violates fundamental rights given in Articles 14, 19, and 31. Now, Article 31C has further been amended through the 42nd Amendment.

So, the 25th Constitutional Amendment introduced Article 31C, and the 42nd Amendment further added or broadened its scope. Through what was done in the 25th Amendment, it was only the law made in pursuance of Articles 39(b) and (c) that was given precedent. Under the 42nd Amendment, the scope and ambit of Article 31C were broadened, and with that broadening, the entire set of Directive Principles of State Policy replaced Article 39(b) and (c). Meaning thereby, with the 42nd Amendment, it was suggested that if a law is made in pursuance of all or any of the principles of the directive principles, then such a law cannot be declared void on the ground of the violation of fundamental rights. So, this was the reading of Article 31C after the 42nd Amendment, where the clauses related to Articles 39(b) and (c) were omitted. And in place of that, it was suggested that all the principles laid down in the Directive Principles should be written.

Now, the 44th Amendment has also made a change in Article 31C, wherein the reference to Article 31 was removed because, through the 42nd Amendment, Article 31 was taken away, and what was there in Part III was shifted to the other provision of the Constitution. So,

therefore, the reference to Article 31 was dropped. For that matter, the 44th Amendment has just made this cosmetic change by removing the reference to Article 31. Now, the question is how we really read these amendments along with the judgment given by the Court in relation to Article 31 C. So, two challenges were brought before the Court in the cases of Minerva Mills and Waman Rao. There was a challenge in Minerva Mills with regard to expanding the ambit of Article 31C by including the entire set of principles, directive principles under Article 31C. The second one was in Waman Rao with regard to Article 31C as unamended before the 42nd Amendment suggesting something of such a sweeping nature of giving precedence to the entire set of directive principles, would not align with the balancing scheme suggested in the Constitution. Balancing scheme here means a balance between the fundamental rights and directive principles. So, what Justice Chandrachud says in Minerva Mills that: *“The startling consequence which the amendment has produced is that even if a law is in total defiance of the mandate of Article 13 read with Articles 14 and 19, its validity will not be open to question so long as its object is to secure a directive principle”*.

So, Justice YV Chandrachud read here that such a kind of disordering between the directive principles and fundamental rights is not to be welcomed. He said the total exclusion of review would be inconsistent with the constitutional scheme of the relationship between fundamental rights and directive principles. He observed that Articles 14, 19 and 21 are very significant one. He observed: *“Three Articles of our Constitution, and only three, stand between the heaven of freedom into which Tagore wanted his country to awake and the abyss of unrestrained power. They are Articles 14, 19 and 21. Article 31-C has removed two sides of that golden triangle which affords to the people of this country an assurance that the promise held forth by the preamble will be performed by ushering an egalitarian era through the discipline of fundamental rights, that is, without emasculation of the rights to liberty and equality which alone can help preserve the dignity of the individual.”* In this case, Justice Bhagwati gave a partial dissent note. Justice Bhagwati observed that *“it is not possible to fit fundamental rights and directive principles in two distinct and strictly defined categories, but it may be stated broadly that fundamental rights represent civil and political rights while directive principles embody social and economic rights”*. He observed that it is not correct to say that under our constitutional scheme, rights are superior to directive principles or that the directive principles must yield to fundamental rights; both are, in fact, equally fundamental. So, he was of the opinion that there was nothing wrong in giving such an arrangement in the Constitution because both are of equal nature. He says that: *“If this be the correct interpretation of the constitutional*

provisions, as I think it is, the amended Article 31-C does no more than codify the existing position under the constitutional scheme by providing immunity to a law enacted really and genuinely for giving effect to a directive principle, so that needlessly futile and time-consuming controversy whether such law contravenes Article 14 or Article 19 is eliminated.”

So, what he basically observes that that anyway the laws made in pursuant to principle is getting immunity may be getting immunity under Articles 31A or 31B, primarily Article 31B where there is a provision of placing such laws in 9th Schedule and with that gaining immunity from the very challenge on the ground of violation of rights. So, Justice Bhagwati argues that what Article 31C does is that Article 31C simply codifies that position, and with that codification legal processes can be avoided or legal processes can be addressed in a simpler way. He says that *“the amended Article 31-C cannot in the circumstances be regarded as violative of the basic structure of the Constitution. There can be no doubt that the intention of the Constitution-makers was that the fundamental rights should operate within the socio-economic structure or a wider continuum envisaged by the directive principles, for then only would the fundamental rights become exercisable by all and a proper balance and harmony between fundamental rights and directive principles secured.”*

So, he argues that what is been done through this Amendment is simply Parliament suggest a kind of mechanism to resolve the conflict. In a situation of controversy or non-compliance of 31 vis-à-vis the rights. Now Waman Rao is a case where again the question came that how do we really look at the provision on Article 31C as it stood prior to 42nd Amendment. In Waman Rao Case, the court made a simpler observation that because in Kesavananda Bharati the part in Article 31C related to exclusion of judicial review has been declared unconstitutional that continues to govern this sphere of law. Court said that the question on validity of Article 31C is no more a valid question or a question which is to be answered because the same has been categorically answered in Kesavananda Bharati. So, what has happened with regard to the relationship between Article 31C and the Directive Principles? In Kesavananda Bharati Case, the court has suggested that if the law is been made in pursuant to Articles 39(b) and 39(c) and if such law violates right to equality and the right to freedom then such violation would not nullify the law, would not negate the law that such law would continue to operate. In Kesavananda Bharati Case., the court has struck down the provision related to the exclusion of judicial review. In Minerva Mills Case, the court has invalidated the widening of Article 31C by including all the principles of directive principles within the scope of Article 31C.

The court said that that is something which disturbs the arrangement, disturbs the alignment, and on unamended Article 31C in Waman Rao, the court reiterated the position laid down by the court in Kesavananda Bharati. Now the question which was raised that how do we really read striking down or substitution? This question was raised because in Minerva Mills Case, the court has said that widening of the scope of directive principles is invalid. Now does it mean that such invalidation has revived the unamended Article 31C or such revival shall always be through parliamentary process. Recently, the court has clarified the law in Property Owners Association v. State of Maharashtra, (2024) where the court looked into two set of arguments. First line of argument was that substitution by 42nd Amendment wherein the scope was enlarged consists of two steps. The old provision is erased, taken away from the book and new provision was included. And after the new provision is inserted, the old text ceases to exist and cannot be given legal effect.

What is described as pain and ink theory. So, even if in Minerva Mills Case, Court has invalidated the amended text, the judgment's effect was only to stop the inserted text from being enforced and a judicial order cannot reverse the first step of erasure. Only a legislature can modify the language and bring that back to the statute book. So, in conclusion it was suggested that the result of Minerva Mills Case is that words of 42nd Amendment were erased which were erased before 42nd Amendment that cannot be restored that cannot be revived. The second line of argument is that when an amendment is set aside the entire legal effect of Amendment is not invalidated. The text preceding the Amendment gets restored. And that is why there are two distinct steps of erasure and insertion. When exercising basic structure scrutiny, the court grounds its reasoning in the relationship between the unamended provision and the amended provision and the impact the amendment provision has on the Constitution. So, if the court finds that an amendment is impermissible and invalidates the same, then the position prior to that Amendment gets restored. This is what the court has also validated and adopted in Property Owners Association Case which is known as doctrine of revival the court has borrowed this expression also from NJAC Case which was a case on striking down the scheme of Judicial Appointment Commission by the court. Court said that if the amended provision is struck down then the position prior to that Amendment gets restored. So now scope of Article 31C is very clear that it relates only to Article 31(b) and (c) and it is for the court to examine that whether the law is made in pursuant to these two directives or not. So, court will examine pith and substance, true nature and character of the law in order to examine that whether it is real and substantial connect with the directive principles or not. It is the court

which has got the authority to examine and with that it will be affirmed that the law is made in pursuant and such law is given protection. Mere declaration by the government would not be sufficient. That is what the court has approved in some of the cases post *Minerva Mills*. For example, in *Sanjeev Coke Manufacturing Co v. Bharat Coking Coal Ltd.*, (1982), the court has said that the purpose of Article 31C is to see that there has to be a real connect. It should not be a simply a remote or tenuous connection. Same is the case with *KR Lakshmanan v. State of Tamil Nadu*, (1996) where the court has said that if there is no nexus it is simply a case of mechanical reproduction of constitutional provision that would not be enough to save the law from being assailed in the court of law.

In the case of *Union of India v. Tarsem Singh*, (2019), where again the court has said that Article 31C accords protection, it gives protection to the laws, even if such laws are in violation of fundamental rights. But then that is to be closely examined that whether such law is made in furtherance of those two goals, welfare goals laid down in the directive principles or not. Same is the case, the court has said in relation to state instrumentalities, when I say state instrumentalities, it is in relation to Article 12, where it has been suggested that statutes protected by Article 31C would be amenable to challenge if such laws violate basic structure in *IR Coelho v. State of Tamil Nadu*, (2007), where the court said that statute should not get simply protected only because of the very fact that it has been stated that it has a connect with Article 31C. It has to be examined whether such a relationship is valid or not, the relationship between the law and Articles 39(b) and (c) or whether such a relationship valid any basic structure. In *Coal India Limited v. Competition Commission of India*, (2023), the court has also said that Article 31C purports to provide immunity to the laws covered in general even if such laws have got a connect with state instrumentalities because courts are asked to not to really get into the question if it has been done in pursuant to those welfare goals. So, for that matter you find that the reading of Article 12 with Article 36 influences the very applicability of the directive principles and applicability of the law in relation to Article 39(b) and (c). So, when you compare Articles 31A, 31B and 31C, you would find that Articles 31A and 31C have been held to be valid despite denial of Article 14. It may be noted that these articles have an indicia which is not there in Article 31B. What it means is that when you read Articles 31A and 31C, you would find specific references to instances on which such laws are to be given protection. For example, in Article 31C as we said, it is about Article 39(b) and (c). Article 31A refers to big list of acquisition of property, state and all other kinds of property, where such acquisition shall not be questioned if compensation is given. So, Article 31A does not exclude a catalogue

of laws from challenge. It provides for a standard by which laws shall stand exclusion from judicial review, whereas, as I said, Article 31C is in relation to Article 39(b) and (c). So, there is a sort of cataloguing given in relation to Articles 31A and 31C.

So, in conclusion, one may say that Article 31C, which is introduced through the 25th Amendment, is about seeking primacy of the directive principles. Only two principles, which are very central to the idea of welfare goals over two fundamental rights, only is Articles 14 and 19. This Article 31C has undergone legal challenges in multiple cases, and ultimately, the court has approved this design of the Parliament. The court has agreed that in certain situations, primacy can be given to the directive principles. And the court has reaffirmed the doctrine of revival. One may say that Article 31C reinforces the very idea of maintaining equilibrium between individual justice versus socio-economic entitlement and justice.

These are the references for this session.

Thank you.