

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

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## **Lecture 02: Theoretical Background of DPSP II**

Greetings to all of you. We are in Module 1, where we are discussing evolution and the concept of directive principles and we started discussing different theories on directive principles and how they are accommodating different divergent views, becoming and having become an important and integral part of the constitution and that is why we have observed that directive principles feature in different constitutions of the world.

Today, we will be looking into what the different features, including the silent ones, of Directive Principles are. How are Directive Principles different from Constitutional Conventions, and how do we really look at the formulation of directive principles in a constitution: What factors make it an integral part of the constitution? What factors need to be considered for including it under the constitution as a part of it.

When you look at the nature of directive principles, we need to understand that the nature of directive principles involves these four different approaches. One is imposing duties, second, two senses of directives, third, discretion in implementation, and the fourth concerns the target audience of the directives. This is how we try to understand the nature of Directive Principles and how this is different from fundamental rights. This discussion justifies that Directive Principles are a very valuable component of the Constitution, particularly for the Indian Constitution.

Directive principles are designed with the very purpose of imposing specific responsibilities on political institutions of the state. It is designed with the purpose to guide those institutions in their decision-making processes. And what are those institutions which are primarily the target of the directive principles? These are the legislative and executive wings of the state.

And that is why what. We believe, and how do we really look at the nature of DPSP? We find that it is more based on political constitutionalism, where the reading, understanding, implementation, and interpretation of directive principles are not to be derived through a judicial process but more from political processes, ensuring accountability through those processes.

Two senses of directives. How do we really look at it is the direction to the legislature, where directives convey a clear instruction to the legislative bodies on important socioeconomic factors. For example, the directive with regard to a living wage, for example, the directive with regard to ensuring that everyone gets a good level of good health conditions are necessary to lead a quality life; social security must be ensured. So, directives are in the form of instructions or imperatives to the executive and the legislature. And then, the directive also serves a purpose of broader guidelines, where it serves as a broader vision or a framework for future state policies. Where what is to be seen is that policies of a state need to evolve over a period of time with an idea of fulfilling the goals enshrined in the constitution, with an idea to see how the overall goals of governance are being addressed, for example, the implementation of the uniform civil code.

So, that principle also talks about discussion and implementation. It gives discretion to the responsible institutions of the state in implementing the various provisions, and that has its own advantages. Advantages are that if you read the directive principles, you find that a high level of abstraction is present in the drafting of the provisions, and because of that broadness in the drafting, because of the abstraction in the drafting, makes it easier for the legislature or the executive to build a strategic plan accordingly. So, that's how in a given resource the same shall be implemented. For example, when you look at the Indian constitution, it talks about a living wage, but then you must have seen that the legislature has enacted a law on the minimum wage. And that is how we try to understand the distinction between minimum wage, fair wage, and living wage.

So, abstraction gives a sort of discretion to the executive, and such discretion. Such discretion dilutes that rigid framework on the obligations and facilitates the entire implementation process, which a state needs to consider when implementing this directive principle. Directive principles are also very broad directives because in that process, it gives necessary space for manoeuvring, interpretation, and implementation. It allows policymakers desirable flexibility on how to attain that and how to achieve the stated goals, which is how it has been done. It is also more of a specific

directive, which sets a limiting direction with discretion by providing clear guidance on how to implement policies. For example, when you read the language of different provisions of Part 4 of the Constitution, you would find that a good number of provisions are there with the wordings – “shall endeavour”. Shall endeavour, however, implies that there is a space to manoeuvre; there is a space given to the legislature and the executive to determine how to implement those policies. But then, when you look at the language of Article 50, you find that there is a clear instruction that the executive must be separate and the judiciary must be separate from the executive. So, there is no use of the word “endeavour” under Article 50 of the Constitution. So, this is what is a sort of discussion connected with the implementation of the directive principles.

When you look at directive principles, they have a targeted audience. What is the target audience for directives? Basically, directive principles are aimed at the two branches of the state—executive and legislative. These two branches are into law making and policy making, and it is suggested that the directive principle shall guide these two branches in making laws, ensuring that the law-making exercise must adhere to and embrace the values of this principle. And that is something to be seen when you look at it, as it reflects an intentional design choice which shows that the purpose of these guidelines is to give discretion to the state and not to make implementation through a legal process or legal action. So, that is the reason why directive principles are more of a guiding principle than enforceable rights.

When we try to understand what the features of directive principles are, we observe that they are known with different expressions. It is known as directive principles of state policy, as directive principles of social policy, or as fundamental principles of state policy or national objectives. Regardless of the nomenclature used, there is a sort of universal training. That these principles are featured in major constitutions around the world, especially in countries which have gained independence after World War II. There is a common thread running through the directive principles, and what is that common thread is not to read them as justiciable rights or see their enforcement of the rights take place through judicial process, but it is more to be seen as a constitutional aspiration or a moral obligation, where there is a kind of non-enforceable obligation on the legislature and the executive to implement the directive principles. So, these are the features of the Directive Principles. Constitutional, directive, pragmatic, transformative, and expressive functions. Let us look at what. Individually, it conveys what this feature means.

Constitutional directives need to be understood that there are certain aspects which can currently be covered or addressed through a statutory framework, but making them part of the constitutional design gives it more power, more force, and more value. Otherwise can be addressed through a statute or ordinary law, but providing it as part of the constitution gives it more importance. So, directory principles in that process become an integral part of the constitution by making them constitutional and distinguishing them merely from a moral or political norm. The very presence of the active principle in the foundational document gives them a very defined status and an extremely advantageous position as social facts, which play a significant role in the design and shaping of the law. Particularly, in those jurisdictions where directive principles are acknowledged as a very significant constitutional identity, it is recognized as something that is very fundamental to the entire constitutional design.

Directive principles, when you look at them, serve more as kind of guidelines for the political institutions of the state. It is like imposing obligations on the political institutions of the state. They are to be understood in two ways. One, it provides explicit instructions or imperatives directed at the legislature, which the legislature needs to follow; or, it saves the policy direction of the state for future generations. So, you can very well find that the feature here is about the degree of discretion given to lawmakers and policymakers, and how we really read that degree. It is all about the structuring and articulation of the directives. If it is done in a very abstract form, then of discretion is higher if it is done in a concrete form as I said in Article 50, then it is more of an obligation though not one that must be done through the legal process, but there is some kind of immediate obligation, some kind of compulsion, some kind of redesigning required for giving effect to such directives.

We look at Directive Principles also as a program and as an aspiration, where it is not to be seen as something with regard to having a kind of parameter on how they have performed in getting it implemented. So, it is not to be seen purely in the context of performative; because a performative act is seen as something where there is There is a declaration of law on fulfilling these principles. When you look at it as a program, it is like one can see how meticulously the government is making the laws and strategies to implement them. And there, where you find the use of the words "strive," "direct," and "endeavour," which emphasize that step-by-step the principles need to be realized. There is no need to realize the principle in one go because we understand that there are several

socio-economic constraints that require addressing for implementation. And that is why it is considered to be a programmatically derived directive.

Directives are also transformative in nature. Transformative in nature, for example, it does not only talk about what is exactly intended in the present generation; it also caters to the interests of the coming generations, makes the constitution dynamic, and makes the idea of justice amenable to every generation. Principles are transformative in nature because of their dynamic nature, as they are closely connected with socioeconomic justice, the ongoing progressive nature of society, and how that progressive nature of society is evolving and influencing the guidelines laid down, how it is making the guidelines, you know, workable which is given there in the constitution. We will be talking about all this in detail in future slides and lectures where we will try to explain how individual provisions are fulfilling the characteristics of transformative directives. DPSP in a way encourages the state to guarantee fundamental needs, such as the right to work, education, and social security. When you look at it, you find that it is something where there is an expectation that the state will always stand by the expectation of reality and the expectations of the people, and accordingly make the plan and strategy wherein no one should be left out. So, Directive Principles address both equality and equity, where this understanding of transformative directive plays a significant role.

It is also an expressive function directive. When you say it is an expressive function directive, what it means is that these directives are an expressive function by giving some symbolic constitutional legitimacy to the agendas they endorse. Because the constitution is basically an expressive document where it categorically lays down the agenda of the government, the ideals of the government, and the nature of the state—sort of a precursor to what we see in the preamble. Now, directive principles plays a significant role in ensuring that the agenda which the constitution has adopted and the goals that the constitution has embraced. That's how that goal can be achieved, on the one hand, valuing freedom, which is given in enforceable rights, and on the other hand, how socio-economic entitlements can be fulfilled by progressive planning by the government.

DPSP also to be read in contradistinction to a constitutional convention. Because a constitutional convention can argue that the directive principle has become part of the constitution, whereas a constitutional convention, not being part of it, is considered to be integral to the reading of the

constitution. One reason that can very well make the inclusion of DPSP a very substantive argument for this is that the constitutional convention is more seen from a procedural aspect. For example, to whom to invite to form the government after an election is based on constitutional convention that the leader of the largest party needs to be invited; this is not about the goal, which is identified in the constitution. So, the constitutional convention does not deal with how not to act, but how to act. When you look at DPSP, DPSPs are goal-oriented, where we have a defined goal that addresses the issue of socio-economic entitlement, which addresses the issue of reducing inequality, and which refers to the protection of the environment, which talks about free education; which talks about work; which are talks about social security schemes. Whereas, convention is about political tradition and maintaining it, directive principles is about social transformation and development. And that is the reason why directives are more proactive and visionary, whereas convention is more about continuity and relates to order in governance. When you look at the inclusion of DPSP in the constitutional scheme, there are diverse arguments.

One set of arguments is that bringing that principle into the constitution dilutes the value of the constitution, because they are not enforceable in the court of law. It simply becomes a kind of moral precept, as Professor Bakshi put it, "it is like a footnote to the entire document." A liberal constitution, it was said, should only include moral norms that would be acceptable to all rational men and reasonable citizens. In the last session, we have read that how DPSP tries to accommodate divergent views. And that principle when it says to accommodate divergent views, divergent views bring an element of pluralism which Tarunabh Khaitan argues. He says that when you are talking about something to be acceptable to all, that insight of all must be visible in the constitution. And Directive Principles is one such part in the constitution which makes that inclusion very visible and very tangible which goes against the very idea of a theoretical approach, where it says that what something cannot be enforced should not become part of the constitution, which is argued by scholars like Rawls and all.

DPSPs are known to be structured as non-justiciable ones and thus it is generally argued that they are not enforceable. But then, there is no denial that it plays a significant role in guiding the two branches of the state. In fact, in India, we do have an instance of guiding the judiciary, which we shall discuss in a later discussion. It guides the two branches on an important area of socio-economic justice. It guides two branches on equality in sustainable development, and thus what is

seen is that in India, directive principles are pragmatic and transformative in nature, which ensures that directive principles serve as a moral compass, continuously shaping the country's policy decisions. Their inclusion in the constitution sets the agenda for a welfare state. There is a higher commitment to justice and to public welfare for the government to achieve and attain. It has been argued that constitutional directives So, the possibility of combining both substantive moral commitments and political enforcement, as I said, is not about enforcement through legal action. It is more about political constitutionalism, where we are expecting enforcement through a political process—this is what Dr. Ambedkar has said—that though directive principles are not enforceable in the court of law, but I see that they get enforced in the people's court. So, the inclusion of directive directives highlights the potential for a morally committed form of political constitutionalism. It is more focused on ensuring the fulfillment and ensuring accountability through political processes, legislative processes, through election rather than through judicial review. So, it is something that is also very important and needs to be seen in contradiction with what we generally find as judicial review, an important or very significant constitutional value.

To conclude, one may say that DPSPs serve as guidelines for the state to achieve socioeconomic justice. It is all about ensuring that the government gradually reaches that goal. Instead of asking the government to do it all at once, which is not possible because the very reason for resource constraints, long-term planning is needed to make such a goal realizable. So, the integration of directive principles into the constitution demonstrates a unique form of political constitutionalism that blends moral objectives with political enforcement. Though it is not enforceable, it is certainly affirming the institutionalization, internalization, and acceptance of constitutional values and aspirations, which act as a moral compass for the state and upon which citizens evaluates the performance of the government; thank you very much. These are the references for the lecture: thank you.