

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

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## **Lecture 21: Impact of Indian Directive Principles on Other Constitutions**

Greetings to all of you. We are in Module 3, where we are discussing the salient features of the Directive Principles under the Indian Constitution, and in today's session, we shall be talking about the impact of the Directive Principles in different constitutions. This idea of discussing this is to just highlight how the directive principles, as they were drafted under the Indian Constitution, impacted the making of other constitutions as well. Through this, I also wish to convey the significance of directive principles which is not limited only to India, but the significance has been very appropriately recognized in other jurisdictions, and thus the constitutions of other jurisdictions have also incorporated, in one form or another, the directive principles. So, we shall cover today these concepts, where we will look into the very argument on directive principles: whether they should be seen as a moral approach or as a narrow approach. Then, through the discussion, we will try to understand how popular these directives are, and then how the Indian Constitution has influenced the formulation of the directive principles in other constitutions.

And we shall also look at whether the drafting of the directives under the Indian Constitution has made an impact on the directives in other constitutions. Primarily, when you start discussing the directive principles, a very pertinent question comes to our mind: How do we really look at the non-justiciability aspect, and generally, as we have been discussing in earlier slides, non-justiciability generally brings some kind of criticism to the very framework of the directive principles, where it is generally being branded as a moral appeal, or it is suggested that it has no practical implication, and it is also suggested that there is some kind of flaw in the design of the directive principles. This understanding is primarily driven or triggered by this very fact that our understanding of a constitution is based on the very enforcement of the

constitution through judicial process, or to visualize a constitution as a judicially enforced supreme law.

Now, when you look at this framework and try to read or address the Directive Principles, you find that the Directive Principles do not really are non-justiciable, the directive principles do not align with this idea of having an integral part of the constitution. But then, no doubt, the active principle serves a very valuable purpose: the valuable purpose of guiding the government, valuable purpose of laying down the welfare goals. And that is why there is a very clear observation that, despite the directive principles even with so-called deficiencies and despite the so-called criticism, it has been found in a good number of constitutions in other jurisdictions and in many constitutions in the world. This is, sort of kind of not very comprehensive, but at the same time, it is numerical presentation of the popularity of directives, where you find that directives are finding a place in the constitutions of different countries. For example, you find that it is there in Qatar, in Bangladesh, Tanzania, Sri Lanka, Nigeria, and then Nepal. Namibia, Sierra Leone, Zambia, Papua New Guinea, Tibet, Ghana, then Lesotho, Uganda, Ethiopia, Gambia, Eritrea, Thailand, Sudan, Nigeria, Somaliland, Swaziland, Thailand, Bhutan, South Sudan, and Nepal. Thus, this list indicates how popular is the presence of directives in different constitutions, and thus, through this we wish to highlight that directive principles are not an ordinary provision in any constitution. It's not a kind of rare provision in one or two constitutions but the very nature of the provision establishes that it is very significant, and that's why you find directives in a good number of constitutions in the world. Now, when you look at the distinction between directive principles as it has been suggested in developing countries or in the Third World vis-à-vis how they have been implemented in European countries. We find that there is a distinction: where you find in European countries the directives are known as State Tasks, and whereas in other jurisdictions they have been termed Directive Principles. So, that is what one might draw as a kind of comparison where directives are also present in other developed Constitutions like Germany and Austria, but then it is to be compared in the form that it is not in the nature of directives, where very defined welfare goals are left to the government to follow. Now, when you look at the incorporation of directive principles in different constitutions, it takes us to this very question: how the Indian Constitution has influenced the making of other constitutions and to what extent the framing has been done as per the design given under the Indian Constitution, as per the design adopted by the makers under the Indian Constitution. Now, generally, when we read the directive principles under the Indian Constitution, our reference goes to the Irish Constitution. And the

literature suggests that the division between fundamental rights and directive principles is based on the formula, or is based on the design and laid down in the Irish Constitution. But then there is a very visible distinction between the Indian model and the Irish model, where you find that under the Indian model, it is categorically written that the directives are fundamental for the governance of the country, and it is a duty laid upon the state, which is a duty imposed upon the state to apply the directives while making laws. Whereas when you compare it with the Irish Constitution, it is suggested that the directives are primarily serving as general guidance for the Oireachtas, and the Oireachtas are the legislative body in Ireland. So you find that there is a distinction between the structuring in the Indian Constitution and the Irish Constitution, and it appears that it is the Indian structure and framework which have influenced the making of the directives in other constitutions. So, we generally have undertaken this study under two broad headings. One is where we have seen that the countries which were colonized and gained independence after World War II particularly, African countries that, when they drafted the constitutions for independent nations, how those countries looked into the directives and incorporated them in their constitutions, and other countries, such as Asian countries, that have also incorporated the directives. The idea of making this study just to see whether the shared history of systemic injustices and subjugation under imperial powers have played a role in drafting the directive principles so that the role of the constitution is not limited only to providing rights and limiting the power of the government through the clear inscription of rights, but also to lay down a specific responsibility of the state to commit to the welfare of the people. So, that is the idea behind this discussion—what is the idea behind giving you this information or providing this kind of understanding on the framing and structuring of the constitutions of different countries. Now, when you look at the influence of the Indian Constitution, particularly the influence of the Directive Principles as they have been laid down under the Indian Constitution, you find that the influence has been under two broad headings.

One is the adoption of the drafting formula similar to the Indian Constitution, and the other is where the countries have been influenced by the content and the scope of the Directive Principles. So, this is the broad kind of division on directive principles in India where you find that, under the Indian Constitution, directive principles are broadly delineated into headings such as those being non-justiciable and suggested to be given separate space under the constitution, guiding both lawmakers and presenting a broad scope for their considerations. As we have been studying, Directive Principles under the Indian Constitution have been categorically suggested to be not enforceable in the court of law. So, it is non-justiciable. There

is a separate chapter on Directive Principles, where Part IV of the Indian Constitution houses the Directive Principles, incorporating different ideas and goals. Then, the language in Article 37 makes it very clear that the Directive Principles serve as guidance to the lawmakers, the executive, and there is a specific duty imposed upon the lawmakers and the executive to keep these guidelines and directives in mind while making laws.

Also, you will find that the directive principles are very broad in nature. They cover a wide range of subject matter. They cover the subjects of the right to work, the right to education, and the right to social security. Along with that, it also talks about socio-economic and socio-cultural objectives, where you find guidelines with regard to the distribution of resources, minimization of wealth concentration, a clear provision on access to legal aid, early childhood care, and a provision for the preservation of cultural resources. Now, when you look at this structure under the Indian Constitution and try to compare it with other constitutions, particularly those of the African and Asian continents, you find that they have adopted a similar drafting formula, and in some places, the language is very similar to the Indian Constitution. So, what are these, you know, structuring that has been followed? For example, a separate chapter has been dedicated to the directive principles, or there are provisions similar to the Indian Constitution, primarily referring to non-justiciability or incorporating socio-economic rights, which is based on the realization of such rights being dependent on resources, or the content of the provision is similar to the Indian Constitution.

This list gives you, sort of, an indication, kind of, simply a narration of how different countries have followed the Indian Constitution.

- a. Chapter XX Constitution of Gambia 1996
- b. Chapter 6 Constitution of Ghana 1992
- c. Chapter II Constitution of Nigeria 1999
- d. Section 1-5 Constitution of Papua New Guinea 1975
- e. Part II Constitution of the United Republic of Tanzania 1977
- f. Chapter VI Constitution of Sri Lanka 1978
- g. Chapter V Constitution of Swaziland 2005
- h. Part IX Constitution of Zambia 1991

These are the countries which have followed the Indian formula. And then the Burmese Constitution; here we are not referring to the constitution which is enforced now in Myanmar.

We are talking about the first Constitution, which was adopted by the Burmese people in Burma, where you can find that there is a direct influence of the Directive Principles, as they were adopted under the Indian Constitution. We have brought this reference just to highlight how the making of the Indian Constitution has influenced neighboring countries.

It is also to be highlighted that it is also to be noted that the making of the Burmese constitution was done with the help of Sri B.N. Rau, who was also a constitutional advisor to the Indian Constitution. So, this is the purpose for highlighting this, though the Myanmar Constitution still has the provisions on the directives, but obviously, they have changed the Constitution, which is not the same as the one they adopted while gaining independence. So, when you look at the Burmese Constitution, it has a similar provision to India, where there is a separate chapter on Directive Principles of State Policy. And as I said, the government—specifically the then government of Burma—took help from Sri B.N. Rau in drafting the Constitution. And as we know, B.N. Rau has made a very visible influence on the making of the Indian Constitution and, particularly, the demarcation between the fundamental rights and directive principles on the lines of justiciability, that is also visible in the Burmese Constitution. Article 32 to Article 44 under Chapter 4 provided for the directive principles, and the phraseology used in the Burmese Constitution is similar to the constitutional precedents prepared by Sri B.N. Rau under the Indian Constitution. So, that is the feature which you find under the Burmese Constitution. As I said, they now have a new Constitution, but they still retain the directives. There is also an influence on Thailand's Constitution, where you find that Sections 64 to 75 of Chapter 6 talk about the directives, which are non-justiciable, as they have been given under Article 37 of the Indian Constitution. But then the word "the expression fundamental" is missing from the Thai Constitution. Section 64 of the Thai Constitution says that it contains directive principles for state legislation and determination of policy for the administration of state affairs. So, a fundamental word is missing as we see in the Indian Constitution. So, the other similar provisions in Thailand's Constitution are like ours Article 51. Thailand's Constitution also talks about respecting international law or the protection of the environment and natural resources, which is there in Section 72 or Section 73, which talks about promoting agriculture and animal husbandry.

Then again, in the Nepalese Constitution, you would find a separate provision on Directive Principles, Policies and Responsibilities of the State, where you find that the Constitution includes an obligation which indicates both moral obligation as well as quasi-legal

responsibility on the part of the state to do the needful for the fulfillment of the directives. By making this obligation explicit, one can argue that the Nepalese Constitution presents a kind of stronger commitment; it is not merely seen as ordinary guidance for lawmakers but clearly spells out specific duties to be adhered to and actionable goals are also laid down under the Nepalese Constitution. As I said, that some of the countries have made a sort of deviation; they have gone and incorporated directive principles, but then they have come up with their own remodelling on it, such as the Sri Lanka, Eritrea and Uganda. You might justify this deviation on the very ground that it has been done for the purpose of customizing the specific requirements for the countries and their societies. And that is why you find that in the Sri Lankan Constitution, fundamental rights and directive principles are clubbed together in Chapter VI.

And that is how you find that these countries have made a sort of distinction regarding the enforceability of the directive principles. For example, if you look at the Sri Lankan Constitution, it says that the directive principles shall guide Parliament, the President, and the Cabinet of Ministers in the enactment of laws and the governance of Sri Lanka. And whereas the provision also talks about laying down a socialist goal for the government. But then Sri Lankan Constitution does not provide for the enforceability of Chapter 6, which is not categorically written as enforceable in the court of law. Same is the case with the Constitution of Eritrea, where you find that there is a separate chapter on National Objectives and Directive Principles, which deals with democratic principles, socio-economic developmental goals, and protecting the national culture of the country.

But again, there is no clear provision, no specific provision on non-justiciability or non-enforceability under the Constitution of Eritrea. Something with the Constitution of Uganda, you find that Articles 1 to 4 provide for National Objectives and Directive Principles of State Policy, which primarily deal with political objectives and socio-economic goals. It also addresses the issue of the country's cultural ethos. And it primarily states that the Constitution provides for the implementation of national objectives and direct principles, and where the principles are a mandate to guide all organs and agencies of the state, all citizens, organizations, and other bodies and persons in applying or interpreting the constitution. So, a very distinct feature here is where citizens are also interested in the task of looking at these principles and trying to imbibe those principles in their day-to-day functioning and activities. They also need to honor and respect these principles. Then, as I said, Article 1 categorically talks about it, and

where there is an obligation on the President to report to the Parliament that is what steps have been taken for realizing the directives, and reporting has to be done at least once a year. I read Article 1 of the Constitution, where it says that: “(i) The following objectives and principles shall guide all organs and agencies of the State, all citizens, organisations and other bodies and persons in applying or interpreting the Constitution or any other law and in taking and implementing any policy decisions for the establishment and promotion of a just, free and democratic society. (ii) The President shall report to Parliament and the nation at least once a year, all steps taken to ensure the realisation of these policy objectives and principles.” Here, you can find that Uganda's Constitution comes up with a distinct formula and separate formula where there has to be some accountability of the executive, towards the elected bodies and representatives regarding the steps the government has taken to implement these policies.

So, this is also a very commendable approach for making the government accountable to the principles. So, to conclude, one may say that the directive principles of the Indian Constitution, as it is enshrined, certainly represent a visionary framework. It has guided a good number of countries, particularly those that gained independence post-World War II, which were made colonies by Western countries, particularly Great Britain. But then we have also seen that the countries have conducted their experiments based on a specific requirement where non-justiciability has been included. But at the same time, it has also been suggested that how the implementation mechanism is to be done, other than the judicial process.

So, these principles certainly guided the constitutions of different countries. It has inspired the formulation of different countries' particularly, the countries as I said, which have gained independence, particularly those which have suffered injustices from the colonial power, where there has been a clear enunciation made on the government's very responsibility to commit to welfare goals and the well-being of the people—that is how one can see the significance of the directive principles, as laid down in the Indian Constitution, in reference to other constitutions of the world that have been enacted after 1950.

These are references for this session.

Thank you.