

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

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## **Lecture 24: DPSPs and the Role of Central, State and Local Governments: Inter-governmental relations**

Greetings to all of you. We are in module 4, where we are discussing on the role of the legislature, the executive and the judiciary on the directive principles of the state policy. And in today's session, we shall be looking upon the responsibilities of the centre and the states and the third-tier government that is the local government, urban local bodies or panchayats towards the directive principles. So, these are the concepts which we aim to cover in this session where we shall look at the responsibility of the three vertical institutions of the state, the centre, the states and the third-tier government. When we talk about the implementation of the directive principles, how the relationship between these three institutions they get governed and briefly we shall also be touching upon the relevance of Article 282 with the directive principles of the state policy. Now when we try to look at the structuring of the government in this country after the significant amendment done - 73rd and 74th amendment, constitutionally we have got three layered governance structure - Union at the top, States and then we have got a Local government which are represented in rural areas through Panchayats and in urban areas through Municipalities. Part V the Constitution deals with the power of the Union, Part VI with the States, then Parts IX and IXA deals with Panchayats and Municipalities. Now, these three institutions are connected on the legislative aspects' administrative matters and also financial matters. When you look at the responsibility of the States or the Centre or the local government towards the fulfillment of directive principle, plain reading of Part IV suggests that it is giving guidance to all three layers of the government. And all the three layers of the government they need to pay respect and they need to work in tandem with the guidance laid down. So, it is suggested that Part IV is not justiciable they are not to be enforced in the court of law. But it is important to take note of that the implementation of the directive principle depends upon a strong political will and physical resources, financial resources and which at times it has been

experienced or witnessed does not get aligned because of the priorities of the governments and that is why it occasionally leads to some kind of inconsistencies in the approach of the governments. The relationship between the three layers of the government, they are marked with the complex balance of power, where you find that the Centre has been conferred with a wider power in comparison with the States particularly on the matter of repugnancy of the law or on the matter of residuary power that is what the reading of Article 246 along with Schedule 7 indicates. And that is why it is generally been seen that the responsibility of making the plans or policies for the fulfillment of directive principles are not structured the way it should have been or the way it is desirable. Now, primarily because of the lack of financial resources which are there with the States and where the Union pushes its agenda through plans or programs on the directive principles. So, one may look into this aspect by raising this question that how do we really see the States' autonomy as a critical aspect of realizing the directive principle in a better way.

For example, the responsibility of the State for arranging means of livelihood or the very direction of minimizing income inequality. All these guidelines require channelization of resources or efficient administrative mechanism. Now, at the state level it has been argued or suggested that there are challenges to get it implemented in its fullest sense. Now, with the constitutionalization of the third-tier government the local government after 73rd and 74th constitutional amendment, a big change has been introduced where a grass root democracy has got strengthened through panchayat and municipality system. And this local government can play a very pivotal role in effectuating the directive principles. That is what also is an indication when you read the matters which are enlisted in Schedule 11 and 12 of the Constitution.

But then the challenge remains on the front of financial augmentation required for implementing the goals. Now, when I read the language of Article 36, where the reference of the term State is suggested shall have the same meaning as it has been given under Article 12 of the Constitution. And the definition given under Article 12 is very comprehensive and encompassing in nature where it includes government and Parliament of India, it includes government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India. Now, reading this definition in the context of part four of the constitution certainly obligates all the three layers of the government to do the needful to plan to coordinate to implement for the realization of the welfare goals laid down in the Constitution. That reading further gets strengthened with the

support of Article 37 which categorically says that the directives are fundamental in the governance and duty shall lie upon the state to apply these principles while making laws and the state here needs to be understood as it has been defined under Article 12.

So, even though in 1950 there was no constitutional recognition of the third-tier government the local government, the definition very well refers to the local government or other authorities. Obviously, other authorities have been interpreted in a very broad sense by bringing in agency or instrumentality test we shall not get into that question, but local authority certainly brings in the administrative body created for is smoothing the administration at the lower level of the governance structure. Now, with the 73rd and 74th constitutional amendment certainly they have become part of the governance structure as it has been categorically indicated in the Constitution. So, when you read Article 36 and Article 12 together and try to understand the role and responsibility of the State as envisaged under Article 37. The state shall certainly include all the three layers of the government, Union government, State government and the Local government. Thus, all the three governments have got a responsibility to follow the principles laid down in Part IV of the Constitution. We also look at the very interdependency of these three tiers of the government on the matter of realizing the goal laid down in Part IV.

Now, as we know very well that the reference of grass root level democracy and grass root level democratic institution is not first time got introduced with 73rd or 74th amendment. in the 1950 Constitution there has been a reference of Article 40 which talks about the state taking necessary steps for organizing panchayats which is arguably for strengthening grass root democracy. But then the role of the panchayats need not be limited only to the strengthening of democracy to the matter of self-government, but to be look beyond that. This layer of government to be seen as a very critical player in implementing the directives given in extending the support system or in becoming a support system to the Union and the States and in fulfilling socio economic goals as it has been detailed out in Part IV of the Constitution. 73rd and 74th constitutional amendment as I said have entrusted a constitutional responsibility of promoting economic development and social justice upon third tier government. That is what the language of Article 243G o Article 243W indicates.

There is a specific task assigned and no denial that such investment of power or function on third year government can really play a phenomenal role, a very impactful role in improving the quality of life in implementing the program. This is possibly because of the reason that the third-year government is in a better situation to understand the need of the local conditions as

well as because of the element of autonomy entrusted on the matter of raising revenue. They can raise revenue for various task undertaken by the communities. Having said so, there is an important provision in the Constitution which empowers the State Legislature to vest the rural and urban local bodies with necessary powers function and responsibilities under Article 246 read with List II of 7th Schedule, Entry 5.

In a way it gives us this understanding that the real power can be exercised by the local government only when the state government entrusted them with the necessary power and function. Now, that is something to be looked at that is something to be researched that to what extent the state governments have delegated this power on the local government. If not how the entire discussion or debate or discourse on better implementation of directive principles can be achieved through the engagement of with the local government. So, 11th and 12th Schedules were added, wherein a big list of subject matters which are very closely connected with the directive principles, like sanitation, public health, land use, all the subject matters are there in these two Schedules, one for the panchayat system other for the urban local bodies.

The subject matters which are enlisted there, they certainly raise hopes that this bodies they can effectively play a role in realizing the directives. And when I say effectively effective role can be played by these bodies, certainly the implementation will be customized depending upon the priority of the locality, priority of that region. Then there is a rider there, rider is that unlike the way we understand the meaning of Article 246 read with 7th Schedule on the matter of conferring power on the Legislature, Parliament or the State Assembly on making laws on the subject matters enumerated in Lists I, II and III, that kind of reading is not there for 11th and 12th Schedule. This is because 11th and 12th Schedule are only for the matters which can be taken up by the Municipality or by Panchayat only when those matters are transferred by the State to the local government. Such transfer shall be through the law made in pursuant to Article 246 read with Entry 5, List 2.

So, one can very well argue that the effective implementation of Article 243G and Article 243W would certainly improve the indices on different welfare measures, different welfare programs of the government with the help of the local government provided the local government has been conferred with this that power through the State legislation. So, when you look at the structuring and you find the relationship between the Union and the States, and Local government, you find that all three they have been assigned with the role with the two governments the Centre and the States the assignment is directly through the constitutional

provisions. And for the third one for the local government it has been suggested by the Constitution that let the law be made by the State Legislature for entrusting such powers to the local government.

Now, as I said when you look at for example, look at Article 47 which is a very important directive principle on the responsibility of the state to raise the level of nutrition and the standard of living and to improve public health. Article 246(3) confers an exclusive jurisdiction on the state to address the issue of public health, sanitation, hospital and dispensary that is what Entry 6 List II says. So, when you read this scheme of the Constitution on the legislative power, one can argue that the very specific Entry on public health, sanitation, hospitals and dispensaries, distorts the larger responsibility of the state government to plan and implement the goal enshrined under Article 47. We are not arguing that the responsibility on the directive principles is not of the Centre, that is equally with the Centre. But with a very specific subject matter given and if such subject matters is further delegated to the local government.

It is not an exaggeration that the issue of raising level of nutrition and standard of living and to improve public health can better be addressed, better be fulfilled through the third-tier government. As I said that Article 243G categorically talks about the responsibility of the third-tier government or local government to prepare plans for economic development and social justice. And implementation of schemes for economic development and social justice as may be entrusted to them including in relation to the matters in listed in this 11th Schedule. So, if you find the language of Article 243G there is a limitation laid down. It says matters listed in 11th Schedule. It is not on the structuring of 7th Schedule and Lists I, II, and III where the subjects enumerated are fields of legislation read with the source of power Article 246. Necessary power is conferred upon the Centre and the States upon the Parliament and the State Legislature. Something similar we cannot read here, but certainly we can emphasize upon the very role which is envisaged by the framers, which is envisaged through this constitutional amendment and if it can be effectuated it can really be a game changer.

Something similar has also been there in Entry 23 of a 11th Schedule - health sanitation including hospitals primary health centres and dispensaries. So, when you read Articles 47, 246(3), and 243G, alongside Entry 6 of List II and Entry 23 of 11th Schedule, which says that there is a larger onus lies on the State and the Panchayats. Again, having said so, I am making a point very clear. The Centre also has got a responsibility to implement directive principles, which is there in Part IV. But then there are some specific subject matters, which are there with

a power to make law, with a power to come up with a planning on economic development and social justice for the local government.

There are certain legislations, where the local governments are interested with the power on this subject. For example, Section 19(c) of the West Bengal Panchayat Act 1973 envisages obligatory duties on Gram Panchayat which include curative and preventive measures in respect of malaria, smallpox, cholera and any other epidemic. And Section 24 further provides for working on the improvement of sanitation. Something similar is there with Jharkhand Panchayat Raj Act. where Section 10 provides for power and function of Gram Sabha which includes disposal of corpses, carcasses (including those unclaimed) and other obnoxious articles in such a way that the same may not be injurious to health. Further Section 10 talks about the power of Gram Sabha to constitute Health Committee. So, when you read it carefully you would find that that there is a very defined role provided. Such role is getting realize such goal is getting implemented through the necessary legislative backing from the State. Another example is the example on addressing the issue of educational and economic interest of the weaker section of the people which is there under Article 46 of the Constitution. Now, when you look at the responsibility of identifying the beneficiaries here are Scheduled Castes and Scheduled Tribes. Such responsibilities or power is given to the President. It is the President who shall be specifying cast to be included as Scheduled Castes and Scheduled Tribes. And when you read Article 243W and Article 243G, where there is a specific reference of improving the life of this weaker section. Entry 27 of 11th Schedule says welfare of the weaker sections and in particular of Scheduled Castes and Scheduled Tribes. Entry 9 of 12th Schedule also provides a safeguarding interest of weaker sections of society and including the handicapped and mentally retarded people. Now, if you read this responsibility of the President to notify the beneficiary, notify the Scheduled Castes and Scheduled Tribes and with such notification with such identification, then if the power is vested in the local government for implementing the program, for making the plan for improving the quality of life of this people it can really bring the real change at the ground level. That is why it is suggested that that reading must be done in a very coherent way. It should not be done in isolation and in a fragmented way. It should be done as a composite scheme where all the three layers of the government they are being entrusted with the responsibility to work for the welfare of the people and contribute in fulfilling the welfare goals laid down under the Constitution. Now, no denial that the challenges with the third-tier government is that that generally it is a plan which is made at the central level.

There is nothing left for the local government to really contribute to that planning the responsibility is only limited to the implementation. So, if you read Articles 243G and 243W along with Articles 46, 341(1), 342(1) you would find there is interdependence of all the three levels of the government, where President is required to consult the Governor for the purpose of preparing the list. The list needs to be amended only by the Parliament. And it is the State which has been given the power to make the law for the implementation schemes related to Scheduled Castes, Scheduled Tribes and weaker section as it has been given in Article 243. Let me also briefly talk about the relevance of Article 282 which is about discretionary grants.

Where again the responsibility is there for both the Union and the State and we have seen that that both the Centre and the States they make a plan which is for the fulfillment of the needs of poor people, marginalized people. Article 282 enables the Union and the State to make a grant for any public purpose, not standing that the purpose is not one with respect to which parliament or the legislature of the state as the case may be may make laws. If you read the scope and ambit of Article 282, one can very easily infer that regardless of the subject matter allocated to the Centre or the States. Article 282 can be invoked for poor people, for marginalized people, for vulnerable. That is why Article 282 can very well be understood as a responsibility of both the Union and the States. Public purpose here can be read with reference to the goals laid down under Part IV of the Constitution. Because Article 282 says that legislative competence is no bar to make such grants. So, it is irrelevant whether Centre is making a law on public health So, Centre is making a grant and making a plan on public health though the public health is a subject matter given in List II.

This is what has been also interpreted through the judicial process. In *Bhim Singh v. Union of India* (2010) the court has categorically said that the expression public purpose under Article 282 should be widely construed and from the point of view of the scheme, it is clear that the same has been designed to promote the purpose underlying the Directive Principles of State Policy as enshrined in Part IV of the Constitution of India. Here the court was examining the issue of the Local Area Development Scheme which is given to the Members of Parliament. Code has said that it is not in dispute that the implementation of the directive principles is a general responsibility of the Union and the States.

So, if you read the responsibility, you find that all the three layers of the government, they do have a responsibility there is an intertwined responsibility. There is shared responsibility between all these governments and the Constitution certainly gives a necessary flexibility in

the scheme and expects that all the three layers of the government they would come forward for the successful implementation and early fulfillment of the goals enshrined in the in the Part IV of the Constitution.

These are the references for this session.

Thank you very much.