

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

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## **Lecture 26: Directive Principles of State Policy: Amendments and Expanding Horizons**

Greetings to all of you we are in module 5 where we are discussing the role of the legislature the executive and the judiciary towards the directive principles. We have already started discussing on the relevance of the provisions related to labour welfare rights in the directive principles and how those provisions were implemented through legislative design and how the court has read that design and gave a meaningful understanding to the welfare goals laid down in Part IV of the Constitution. In today's session, we shall be talking about the development which has taken place in last seven decades in Part IV of the Constitution. That how the Parliament while exercising its amending power has expanded the horizons of directive principles. So, the concept we aim to cover today is to understand the development of the directive principles through constitutional amendments, how the directive principles have evolved. We will read the significance of the amendments that how they are getting positioned or why they have got positioned in the chapter on directive principles. We will look into the different amendments which has been passed in relation to Part IV of the Constitution. As we do understand that the Indian Constitution is a foundational document to govern the country and the governance is mandated by providing a set of rights which limits the power of the government and in addition to that the Constitution also prescribes for welfare goals and those welfare goals are in the nature of moral and aspirational directives laid down in Part IV of the Constitution. So, Part IV of the Constitution anchors the very constitutional philosophy based on the premise of justice equity and social transformation. And that is why we have seen that this very mandate of the Constitution truly internalized by the highest law-making body while exercising the highest power to amend the Constitution and while doing so they have broadened the scope and ambit of the directive principles by incorporating newer directives, which is either strengthening the rights given in terms of providing a specific mechanism, specific goal for the state.

So, that such right can be implemented in a very effective way or it highlights the changes which are there in the Constitution. Changes which are brought into the Constitution in terms of strengthening the ideas of national economy based on collective effort of individuals or the very goal of improving environment in this country. Directive principles have got widened through constitutional amendment on a wide range of subjects. The following amendments (42<sup>nd</sup>, 44<sup>th</sup>, 86<sup>th</sup> and 97<sup>th</sup>) have played a transformative role in widening the scope of directive principle. 42<sup>nd</sup> amendment which is generally termed as a constitution within a constitution. 44<sup>th</sup> amendment which has been brought in to nullify many of the provisions of 42<sup>nd</sup> amendment, but certain provisions have added value to the 1950 Constitution, then 86<sup>th</sup> constitutional amendment and then 97<sup>th</sup> constitutional amendment. Now, each of these amendments truly reflect the socio-economic journey of the country and highlights the responsibility state have towards securing justice to the people of this country. Thus, these amendments develop a kind of connect between the ideals of Constitution and the very responsibilities of the states let down in different provisions of the Constitution particularly Part IV of the Constitution. I divide the amendments which have been made in the chapter on directive principles on a three these three broad categories-

1. Incorporation of new provisions
2. Revision of existing provisions
3. Reduction in the scope

Now, each of these legislative interventions or interventions done through constitutional amendment embodies the dynamic revolution by illustrating a balance drawn between the aspiration laid down in the Constitution and the very pragmatic aspects of governance.

### **1. Incorporation of new provisions**

These are the new provisions which are added – Article 39A – equal justice and free aid (42<sup>nd</sup> amendment); Article 43A – Participation of workers in management of industries (42<sup>nd</sup> amendment); Article 43B – Promotion of cooperative societies (97<sup>th</sup> amendment); Article 48A – Protection and improvement of environment and safeguard of forest and wildlife (42<sup>nd</sup> amendment). Article 39A which talks about equal justice and free aid amended through 42<sup>nd</sup> amendment. Article 43A which talks about participation of workers in management of industries again added through 42<sup>nd</sup> amendment. Article 43B which talks about promotion of cooperative societies added by the 97<sup>th</sup> amendment. Article 48A which is about production and

improvement of environment and safeguard of forest and wildlife which is again done through 42nd amendment. Now, Article 39A which has got introduced through the 42nd constitutional amendment. It reads as: *“The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities”*. So, Article 39A highlights the significance of creating a constitutional mandate on providing equal justice so that justicing should not be available only to the resourceful. And for the same, Article 39A emphasizes upon the significance of legal aid for the destitute and for poor people, those who cannot afford lawyer or those who cannot afford legal services. If you read Article 39A, with the very right given under Article 21 on right to life and personal liberty, it would not be an exaggeration to say that on a matter of fair trial which is an essence of Article 21, it cannot be attained or achieved fair trial cannot be achieved or attained in the absence of effective legal services available to the parties or the litigants. Article 39A is a provision which obligates the state to provide for the same. And that is why Article 39A mandates that the legal system must function in a manner that upholds justice based on equal opportunity and provides free legal aid. Because upholding justice is possible only when a litigant has been and particularly in criminal cases accused has been given all necessary support to defend oneself. So, to achieve the state has been empowered to frame laws to frame policies and any other mechanisms what the state believes. Following laws and schemes are being enacted on framed for guaranteeing free legal aid or effective legal aid. For example, Legal Services Authority Act which establishes National Legal Services Authority at the national level, State Legal Services Authority at the state level and at the lower level at the district level, District Legal Services Authority Act and one of the mandates under this act is to provide legal services to the poor people A scheme - NALSA (Legal Services to Senior Citizens) Scheme, came into effect in 2016, which is a scheme categorically curated for senior citizen. And then in 2015, the NALSA (Legal Services to the Mentally Ill and Mentally Disabled Persons) Scheme 2015 which has been curated for mentally ill and mentally disabled person. The significance of Article 39A truly gets established by some of these important and significant provisions of the law.

For example, In *Ashok v. State of U.P.*, (2025), the court categorically highlights the significance of appointing a lawyer through legal aid authority so that the accused can defend himself or herself in a lawful and effective manner. And if such appointment is not been done, then it would be a case of overlooking the right to free trial, right to fair trial. In *Priya Indoria*

v. State of Karnataka, (2024) again a landmark judgment where the court has given the legal status to transit anticipatory bail. This is again suggested considering the very harassment which may be possible from the state authorities while taking the accused from one jurisdiction to another jurisdiction. Then in such a situation the court has said that let there be a protective umbrella provided though in interim way to the accused in form of transit anticipatory bail. Anokhilal v. State of M.P., (2019) is again a very significant pronouncement where effective legal aid was considered to be a very vital one for criminal justice system. And in this case because legal aid was not provided in an adequate way and proper way. There were significant deficiencies in legal aid extended to the convict. The court has refused to confirm the sentencing done by the lower courts. The court has highlighted that “....*the enactment of the Legal Services Authorities Act, 1987 is designed to achieve the mandate of Article 39-A. It has been well accepted that right to free legal services is an essential ingredient of “reasonable, fair and just” procedure for a person accused of an offence and it must be held implicit in the right guaranteed by Article 21*”. This is what is significance let down of legal aid and Article 39A mandates the same.

Another important provision added through 42nd constitutional amendment act is Article 43A which is based on the very importance of involving the workers in the management of industries. Article 43A provides for the participation of workers in the management of industries by suitable legislation or any other way to secure the participation of workers in the management of undertakings, establishments or other organizations engaged in an industry. The idea underlying this constitutional amendment and new provision in DPSP is to minimize the differences in the industry as industry plays a significant role in the growth of nations economy. Frequent strike adversely affects that growth and dispute between the management and the employee attracts litigation which gets stressed and which gets sort of pending which adds to the pendency to the judicial cases. Chapter II of the Industrial Relations Code 2020 providing for the establishment of Works Committee, Grievance Redressal Committee. Now, if you read the role and responsibility of these committees, you would find that these committees are entrusted with the task of addressing the differences before such differences graduates to a legal dispute and the only recourse of resolving that dispute is through legal process. So, Works Committee, Grievance Redressal Committee., they have been asked to iron out the differences before such differences get institutionalized and both the parties reach to a point of no return. Chapter III of the Industrial Relations Code 2020 regulates the Trade Unions. The court reads the significance of Article 43A in National Textile Workers Union v. PR

Ramakrishnan, (1983). The court categorically says that if the matter in regard to winding up of a petition winding up of a company has been under consideration workers must have been given a right or must be given a right to appear and they should be heard before deciding on such winding up application. Another provision which was added is Article 48A which talks about protection of environment, which talks about protecting wildlife and forest. This again got amended and added through 42nd constitutional amendment act and in pursuant to this amendment or in pursuant to this directive principle one can argue that the National Green Tribunal Act was established. A new Act was enacted to give a statutory status to this tribunal, which is dedicated to the cause of environment. Another Act was enacted, Compensatory Afforestation Fund Act, 2016 Again, one may argue that this is for fulfilling the goal laid down under Article 48A.

## **2. Revision of existing provisions**

Certain provisions in the directive principles were also amended. For example, a new clause has been added to Article 38 again through 42nd constitutional amendment and Article 49 has been revised by the 17th Constitutional Amendment. So, the new clause which has been added in Article 38(2) says: *“The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations”*. If you read this clause 2, you would easily connect with the very mandate of securing social order given under Article 38. It gives a very pragmatic goal or aims before the government where it says that attempt should be made, endeavour shall be taken to minimize the inequalities in income, but then for the status it says endeavour shall be made to eliminate inequalities. So, 42nd constitutional amendment act through the amendment under Article 38 reiterates the constitutional goal of establishing egalitarian society or egalitarian order in this country. And in *Minerva Mills v. Union of India*, (1980) the court has categorically stated that Article 38 is in the form of a broad guideline and no law passed for the purpose of giving effect to the directive can damage basic structure. Article 49 which relates to protecting monuments places of national importance. Earlier it was written that such monuments or places of national importance are “declared by Parliament by law”. Now, it has been replaced with this phrase “declared by or under law made by Parliament”. In a way to protect the heritage, to protect monuments it is not necessary that they shall always be a law made by Parliament in that regard. Such provisions can be very well included by the Parliament in any law and Article

49 is to be honored through such declaration made by Parliament or such declaration made under law through parliamentary legislation.

### **3. Amendments reducing Scope**

Another change has been done. under Article 45 which is on education, right to primary education. In the year 1950, free and compulsory education for children until the age of 14 years was added as an important directive with a very defined timeline of 10 years to be fulfilled by the state as a directive. Now considering the significance of right to education and important judicial pronouncement made to read the right as a facet of Article 21, Parliament has amended the constitution and introduced a new fundamental right as Article 21A which is about right to primary education. The consequence of such incorporation of a new right is the change in the language of the directives given under Article 45 of the Constitution. So, Article 45 now imposes the state to do the needful on the matter of early childhood care and education for all children up to the age of 6 years. Earlier it was free and compulsory education for all children until the age of 14 years. Now, it has been said early childhood care and education for all children until they complete the age of 6 years. Because now this primary education has become a subject matter of Article 21A and in India as we know that necessary law has also been enacted as right to education act to effectuate the fundamental right given under Article 21A. So, that is what is the change which has been done where the care and education of children below 6 years now remains as a directive as a responsibility of the state.

So, one may conclude and say that that the very idea of incorporating aspirations or promises or ideals in the form of the directive principle did not end with drafting of the Constitution. Parliament underscoring the significance of the directive principle continued to add different dimensions or strengthen the existing provisions in Part IV of the Constitution, which in a way truly justifies the significance of DPSP as on date and a sort of constant vigil of Parliament as a constituent body on Part IV of the Constitution. As we have seen, studied, that the amendments which were brought in was not only for broadening the textual scope of Part IV of the Constitution, but also reinforcing the role of the state to establish equitable and just society for everyone. And that is why the significance of equal justice and free legal aid. So, Part IV very truly guides the conscience of governance. That is what is an important message through the constitutional amendments drawn in Part IV in last 7 decades or so.

These are the references for this session. Thank you.