

Directive Principles of State Policy and Fundamental Duties: Constitutional Imperatives

Dr. Uday Shankar

Rajiv Gandhi School of Intellectual Property Law

Indian Institute of Technology Kharagpur

Lecture 27: Directive Principles of State Policy and Expanding Horizons: Article 43B and Article 48A

Greetings to all of you. We are in module 5, where we are discussing the role of the legislature, the executive and the judiciary on directive principles of state policy. And we have started discussing on the expansion of the directive principles post 1950, where we are examining the nature of directives added through constitutional amendments after 1950. And in that series, today, we shall be discussing on the significance of Article 43B and Article 48A. And in today's session, we aim to cover these ideas, these concepts. We shall be talking about the historical development on cooperatives, how the very subject on cooperative has strengthen the economic development of a country, how the subject has been addressed in pre-constitutional era, what measures are being taken in post-constitutional era. and how the 97th Constitutional Amendment Act has highlighted upon the very significance of cooperative and accordingly introduced changes in the Constitution. Along with the discussion on cooperatives, we shall be also looking at the very pertinent provision added in the directives to protect environment under Article 48A. And in that we shall be looking at the involvement of the legislature and the judiciaries on the issue of protecting environment. When you look at the history of cooperatives, it seems to be of very ancient origin. Obviously, the ancient literature suggests the structuring of cooperatives and prevalent of the organization like cooperative in that time. Some of them were named as Devarai or Vanarai, Kuries in Travancore, Bhisies and Phads in Kolhapur areas. Cooperatives are generally considered to be an important enabler or contributor to bring equality in the society particularly on income side. And that is how when you look at the institutionalization of cooperative the apart from your own ancient literature, the literature suggests that modern nature of cooperative got institutionalized in the United Kingdom when the struggle of working class got acknowledged by some of the prominent public figures and they thought that one way of mitigating the challenges of the working class

is to group them together so that they can come together to address their concerns challenges on collective issues. So, let us look at the history of cooperatives in India under two broad headings pre constitutional area era and post constitutional era. The learnings from United Kingdom also got transported in India, where after the industrialization of the local industries of the cottage industries or in the farming sector a significance was realized of building cooperatives for the working class, particularly for addressing the challenges which are coming from money lenders for the farmers.

And that is how in British India, there was a decision taken to legalize the very functioning of the cooperatives, where the cooperative is engaged into giving credits to the members. So, the formal recognition of cooperative movement was made with the passage of Cooperative Credit Societies Act way back in 1904, which was enacted on the recommendation of Edward Law Committee. And there were few committees which got registered under 1904 Act was Jorhat Cooperative Town Bank (1904), Government of India, Sectt. Cooperative Thrift & Credit Society (1905), Rohika Union of Cooperative Credit Societies Ltd., Bihar (1909). Now, when you look at these very acts, you would find that the entire idea behind getting it a legal frame is to see that there shall be a proper registration process, there shall be a procedure to induct members, there shall be a clear rules on the rights of the members and liabilities of the members and then proper functioning of the cooperative that is what these laws serve the purpose. It was well accepted that cooperatives have got a very potential role to advance the cause of agrarian reform and also to minimize the distress of working class and farmers.

The 1940 Committee report was also given by Edward Maclagen, where it was suggested that there is a need to improve the functioning of the committees and that is why the committee recommended that a strong three tier structure in every province with the primaries at the base, the central cooperative banks at the middle tier and the provincial cooperative bank at the apex basically to provide short term and medium term finance should be there. So, you can very well look at it that the very purpose of having a cooperative is to see that the individuals come together form a group. And then they can, come up with a kind of credit policy where money can be lent to the needy people and the same can be, worked out in terms of getting the money back with a mutually agreed terms. So that's why sort of institutionalization also planned for making this credit structuring more proper and to support the entire, framework. Now, when you look at the subject matter of cooperative getting dealt in the federal relation, Government of India Act 1919 where this subject was there with the province. So, cooperation was there

with the province where it was ideally thought that that is the provincial government which can effectively address the issue of cooperation wherein cooperatives can be established for realizing such cooperation. So, Entry 13 of the Provincial List provided for cooperative societies. And Bombay was the first province to enact a law with the name called Bombay Cooperative Societies Act 1925. And during this phase also Reserve Bank of India Act 1934 was passed, which has given a major boost to the agricultural credit.

And, then again Government of India Act 1935 which is an important legislative development to give administrative framework or masonries in India and in fact that masonry is also been adopted in to great extent that is been adopted in the 1950 constitution. So, even in 1935 Act this cooperative societies were there it was there and it was enumerated in again in the Provincial List with Entry 33. In 1937, the Mehta Committee was appointed, which strongly recommended that cooperative credit societies should be allowed to expand their activities so that they would not be only to the business of money lending. They can also get into other welfare activities of the members. So, now that is what we have discussed in pre-constitutional era. When you look at post-constitutional era, the word cooperative got featured with regard to strengthening the rural industry or the industries which are of great significance in rural setup. So, Article 43 of the 1950 Constitution provides for cooperatives. So, when it was being debated, it was suggested that cottage industries and all this can very well get necessary support with the cooperative society structuring. That is why Article 43 of the Constitution reads as that the state shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas. Because of the very fact that this kind of industries were sort of backbone for economy in rural areas.

And with this kind of directives in the Part IV of the Constitution it was categorically suggested that even if there is no formal involvement of the financial sector for extending support to this kind of businesses. There can be an alternate process where a voluntary organization can very well be encouraged, voluntary organization can very well be set up to extend the necessary support to industries like cottage industries. So, the Draft Article 34 which got converted into Article 43. 1950 Constitution reads as: *“The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities”*. So, this was the original text which was there in Draft Article 34.

But then there was a suggestion made by Mr. AR Chettiar, where he has moved an amendment to add: “And in particular the State shall endeavour to promote cottage industries on cooperative lines in rural areas.” Now, what does this cooperative line suggests? So, discussion was limited to the setting up of cottage industries on cooperative lines to protect the working class those who are involved in production of that because generally when you look at that kind of industry you would find that is the worker only who are the owner also of that industry. Therefore, they require necessary financial support, they require a support to access the market. That is why this was suggested that these all can be better facilitated through cooperative system, through cooperative framework. Dr. Ambedkar agreed with the addition of the fridge, but then he suggested that let there be also an involvement of individual.

So, that is why suggested to add the word “individual or” after the words “cottage industries on”. So, it is read: the state shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas. So, it was truly highlighted that it could be also with the help of cooperatives or even individuals can go ahead with that kind of model which individuals can also take necessary steps for realizing that model. So, Shri Chaudhari Ranbir Singh suggested the addition of a new Article 34A where he said that what we need to look at is that state shall give material assistance to national cooperative organizations of the producers and consumers. As I said that generally the kind of industries which are involved in rural setups those kinds of industries are generally family run or run by individuals. They do not have the access to financial market or they do not have the access to the market where they can sell the product.

And that is why that is it is desirable that the state must come forward to extend necessary support to both the producers and consumer. This amendment which was suggested was not accepted by the house and therefore it could not become a part of the Constitution. But then it was suggested that what is suggested by Chaudhary Ranveer Singh in the form of a separate article that is something can very well be interpreted and can very well be understood as an inbuilt of Draft Article 34 or Article 43 of the 1950 Constitution. Now, considering the importance of cooperatives, it seems that there was a kind of discussion that there is a need to highlight cooperatives or the role of cooperatives not only for establishing egalitarian setup in this country, egalitarian society in the country. But also, it is desirable that a very defined role be given to the state to make the state obligated to create a kind of conducive ecosystem for the growth of cooperatives. And that is how you find that through the 97th Constitutional

Amendment Act, which was placed as the 111th Constitutional Amendment Bill. added a new article be included in the Chapter on directives and Part IV of the Constitution as Article 43B. It was suggested that there is a need to highlight the role of cooperatives

which is primarily based on the idea of having a democratic structuring with autonomous decision-making processes and where things need to be regulated in a professional manner. So, that it is not the whims and fancies of individuals. which would really decide the fate of the organization. If it is based on certain kind of well-established legal framework, then it is desirable that the organization performs its responsibility as per that as per the legal framework. And that is why the suggestions have come under this Constitutional Amendment Bill. There are new article to be included. Along with this, it was also suggested that a new part also to be added as Part IXB after Part IVA, which would be focusing only on cooperative societies.

And along with that, it was also suggested that there be an exclusive and desirable focus on having a fundamental right to form a cooperative society. And that is why it was also suggested that let the necessary provision in Part III of the constitution also be amended, so that a right can be added. So, that is how you see that under Article 19(1)(c), where there is a right given to form a union, or an association, it was also suggested that there shall be a right also to form a cooperative society. When you read the debates on this 111th Constitutional Amendment Bill, which was passed as the 97th Constitutional Amendment. You would find that the very statement of object reads that there is a need to bring which was due to the performance of cooperatives in qualitative terms in spite of the growth of cooperative in a large scale.

So, as I said that the very existence of cooperative societies was very much prevalent in this country even pre-independence time, post-independence time we have more than 1 lakh cooperative societies which are working. In fact, number is much more than 1 lakh which are operating this country, but there was a need field that how such voluntary organizations can really contribute in the overall growth of the nation by minimizing the inequality in income and also to ensure that the benefit of the economic growth reaches to everyone. And that is why this Bill aimed to achieve that there shall be provisions for incorporation, regulation and winding up of cooperative societies based on the principles of democratic member control, member economic participation and autonomous functioning.

Regulating the cooperative societies and ensuring transparency in cooperatives, providing for offenses relating to cooperative societies and penalties in respect of such offenses. When this

was being debated, the then Agricultural Minister Sharad Pawar, he proposed the amendment and he said that let with clause 1A, this is also to be added that fundamental right to give a boost to the cooperative movement and enthuse the people to actively participate in the cooperative movement as a matter of right. But then it was suggested that since a cooperative is a state subject in List II, the difficulties which are being faced by the states to bring a law based on Model Cooperative Societies Act. So, the bill was also brought to provide sort of smooth functioning of the cooperatives where it was suggested that there should be a kind of very healthy relationship between the government and the cooperative society.

So, that unnecessary interference may not be there only what is required is a kind of regulatory governance framework. It is also suggested that let there be prevent of the misuse of power by the cooperative societies employees. So, all these were important features of discussions which took place in the context of three changes suggested through 97th Constitutional Amendment Act in the text of the constitution. So, what are these three provisions which got affected because of this 97th Constitutional Amendment Act. One is as I said that under Article 19(1)(c) right a facet of right is included along with the right to form association and unions is to right to form cooperative societies.

Then a separate new directive principle was included as Article 43B which was all about promotion of cooperative societies. And, then a comprehensive framework was suggested for governance and regulation of cooperatives under Part IXB of the Constitution from Articles 243ZH to 243ZT. Now, apart from this what we find is that there has always been a reference of cooperatives in the Indian Constitution particularly in the Seventh Schedule. For example, List I Entry 43 deals with incorporation, regulation and winding up of trading corporations including banking, insurance and financial corporations, but not including cooperative societies. Then List I of Entry 44 said that incorporation, regulation and winding up of corporations whether trading or not with objects not confined to one state, but not including university. So, by reading the reference of a List I Entry 44, particularly the term operations, the central government enacted a law to the affairs of cooperative societies which are operational in more than one state. So, in a way corporation was given a meaning of cooperative society as well. List II Entry 32 categorically talked about cooperative societies where it said that incorporation, regulation and winding up of corporations other than those specified in list 1 and universities unincorporated trading, literary, scientific, religious and other societies and associations and then it says cooperative society. So, there is cooperative societies featured in

List II, Entry 32 whereby one can very well infer that exclusive right to make a law on cooperative society has been given to the state government to the state legislature.

Now, the 97th Constitutional Amendment Act was assailed in the court of law on the ground of the non-compliance with the procedure to amend the Constitution that is Article 368(2). In this case of *Union of India v. Rajendra N Shah*, (2021), it was suggested that because through this constitutional amendment a set of provisions were included in the Constitution which is largely dealing with the power of the state because List II talks about cooperative societies. Thus, as per the scheme of Article 368, it is desirable that it is a mandate that ratification must be obtained from more than half of the states to bring change in the Constitution with regard to that centre state relations with regard to that federal power.

Now, court has struck down this 97th constitutional amendment act as unconstitutional on the ground that that procedural requirement as laid down under Article 368(2) was not complied with. And on that premise the court has struck down the Articles which are there under Part IXB of the Constitution. But then because there is no question raised on the constitutionality of the new right included under Article 19(1)(c) or a new directive included in Part IV. Thus, those provisions are not touched upon by the court in its pronouncement and court said that there is a possibility of applying doctrine of severability. where the changes done under Article 19(1)(c) and Article 43B can very well retain a sustain. There is a there is a no need of declaring even those provisions unconstitutional.

But then yes on the procedural ground Part IXB can be declared as unconstitutional because necessary ratification has not been obtained from the states. There is another important development which has taken place in the year 2021 where we find that. Ministry of Cooperation was established as a new ministry where in the subject matters on cooperatives which was earlier handled by Ministry of Agriculture, Cooperation and Farmers Welfare. It is now carved out from that and a separate Ministry of Cooperation was created by transferring the related entries which were earlier led dealt by this Ministry of Agriculture. If you read and the mandate of this ministry which is again based on that premise of the very advantage of having a cooperative system and cooperation for the nation's economy for mitigating the kind of sufferings of the working class and to allow the working-class rural people to come together for certain collective vision and idea without intervention from the state.

So, what is that mandate of this ministry of cooperation? The mandate is to realize the vision of cooperation to prosperity, strengthening of cooperative movement in the country and deepening its reach up to the grassroots promotion of a cooperative based economic development model. So, there are seven universal principles which are adopted by this ministry to strengthen the cooperation or to strengthen the cooperative movement in this country. One is open and voluntary principles, democratic member control, members economic participation, autonomy and independence, education, training and information, cooperation among cooperatives and concern for community. So, this cooperative is a distinct one from the companies in a sense that in companies you find that the very right of the shareholder depending upon the quantum of share the shareholder possesses. Whereas, generally it has been seen that in cooperative society it generally goes with the value of one man one vote. Now, let us come to the discussion on Article 48A which is about protecting environment which has become part of the directives as one of the resolute for the country for the government to follow for making the environment clean for expressing cause to the clean environment.

And the triggering point for providing this directive principle under the Constitution is the participation of the then Prime Minister in United Nations conference on the Human Environment in Stockholm. Stockholm Convention adopted 26 principles to protect human health and the environment from persistent organic pollutants. Though the Convention mandated that state has to ensure the protection of natural resources and ecosystems, entrusting the appropriate national institutions and the task of protecting the environment. It appears that the principles laid down in the Stockholm Declaration is truly reflected in Article 48A of the Constitution which was presented in the Parliament as 44th Constitutional Amendment Bill. When this bill was passed Article 48A added a new directive under the Constitution as protection of improvement of environment and safeguarding of forests and wildlife. Article 48A reads the state shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. The reason for the inclusion of aforesaid Article was emphasized by, as I said, the Prime Minister who has attended the Stockholm Conference. During the debate the then Prime Minister categorically highlighted that the intention to bring this provision was the preservation of wildlife. She rejected the contention and criticism on the ground that the state provision would add suffering to the tribal life. It was criticized that in the grab of Article 48A may disturb tribals on the matter of preserving forest, may displace tribals. On that, the then Prime Minister, Mr. Indira Gandhi said that *“if forests are better looked after*

and wild life is preserved, there would be far greater opportunities for employment as well as a better ecological balance in the whole area which would lead the improvement of life of the tribal life". So, she said this Article 48A is largely going to address the concern of the tribal people. It is really going to allow the state to do the needful so that the interest of tribal people can also be catered. To further emphasize, she has also said that the *"responsibility towards nature was absent all over the world. It was not absent in our own ancient text books"*. So, it is just reiteration of what has been part of cultural life in this country and that is how Article 48A got adopted through 42nd Constitutional Amendment Act in 1976. Laws were being made in pursuant to the mandate of Article 48A as the directive principles scheme suggest that effectively the principles can be effectuated only through legislative and executive measures.

We find that 2 important changes were done in the Seventh Schedule particularly List III, Entry 17A was added where forest as a subject was added in the Concurrent List and Entry 17B was added where in the subject matter was protection of wild animals and birds. Now, it is generally suggested that the parliament has made a law in pursuant to Article 48A to deal with environmental issues for example, Air (Prevention and Control of Pollution) Act, 1981, Environmental Protection Act, 1986, National Green Tribunal Act, 2010 and Compensatory Afforestation Fund Act, 2016. Judiciary has been invoking its direction for strengthening environment by giving necessary directions to the state, corporations, private entities for committing to the cause of clean environment. We highlight some of the cases for example, in a phenomenal case in *MC Mehta v. Kamal Nath* (2000) the court has read the significance of Article 48A with a duty given in Article 51A(g) where it says that all this is part of one integral scheme as right to life given under Article 21. Then, in a very recent judgment of *MK Ranjitsinh v. Union of India*, (2024), court has recognized that there is a right against adverse effects of climate change and this right flows out of Article 48A. So, as we know that the entire world is now trying to come up with an effective strategy to deal with the issue of climate change. This very pronouncement certainly adds a very important litigation strategy to combat climate change.

Then *Municipal Corporation of Greater Mumbai v. Ankita Sinha*, (2021), where again the court has acknowledged the suo motu jurisdiction of the NGT and court has said that that what NGT is doing is largely to fulfil the objective related to Article 48A. So, one may argue towards the end that one may say that these two provisions Articles 43B and 48A has certainly expanded the origin of directive principles and added to that welfare goal added to the very socio-

economic rights argument by providing a duty upon the state to address the issue of environmental degradation. Both these amendments are there for achieving the welfare goals by ensuring that how income equality can be achieved on the one hand and how the life and living can be better with clean environment. So, these two important provisions and as we have seen that already efforts are being made by the legislature and the executive to give effect to these directives. Judiciary has very aptly supported these initiatives of the legislature and the executive.

These are the references for this session.

Thank you.