

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

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**Lecture 28: Socio-Economic Rights, Model of Adoption and Enforcement: Interaction
with Constitution**

Greetings to all of you. We are in module 5, where we are discussing the role of the legislature, the judiciary and the executive on the directives principles of a state policy. In today's session, we shall be looking into an important element of the directive principles and how the same has been given emphasis in the entire scheme of the Constitution that is socio economic rights. As we understand that the Indian Constitution has also followed the categorization of rights by providing a set of rights as a fundamental rights making it enforceable and another set in socio economic another set in directive principles and making it non enforceable. So, today's session we will cover these concepts where we will try to read that how socio economic rights features under the Indian Constitution, what are the different incorporation model we generally follow in terms of socio economic rights in general. How do we really look at the issue of constitutional entrenchment of socioeconomic rights and how the judiciary has approach the issue of justiciability of the socio economic rights. This discussion will be in the background of a specific provision in the Constitution where the directive principles have been made non enforceable in the court of law. As we have discussed in earlier sessions that the directive principles provides for the rights, aspirations, goals, Gandhian values. In today's session, we shall be focusing on the aspect of the directive principles which are focus which are on the rights and such rights are generally described as socio economic rights or the second generation rights. They are also called as welfare rights or positive rights for a reason that this rights the involvement of resources for their realization. So, socio economic rights is very significant one for protecting dignity, freedom and well being of individuals through guarantees of state supported entitlements to education, public health care, housing, living wage, decent working and living conditions.

It has generally been advocated that dignity cannot be guaranteed unless and until socio-economic rights are getting fulfilled necessary arrangements are being done for the realization of the socio economic rights like the right to education, the right to social security, right to health. Socio economic rights historically features in the Universal Declaration of Human Rights and it also features in the international covenant which was adopted on socio-economic rights that is Article 23 to Article 26 of UDHR provides for socio-economic rights. Article 13 to Article 19 talks about socio-economic rights in the International Covenant on Economic, Social and Cultural Rights (ICESCR),

On a similar line one may say that Part IV of the Indian Constitution also provides for socio economic rights. Now, when you analyze the very incorporation model of socio economic rights in Constitution in general, the literature suggests that the incorporation can be read under three different approaches. First approach is the approach where there is no mention of socio economic rights in the constitution. There is no explicit mention of the same in the Constitution. The second is where the rights are incorporated as aspirations, as promise, as moral value. And the third one where socio economic rights are incorporated as justiciable one with a legal guarantee to enforce the same in the court of law.

Let us look at the incorporation of socio economic rights under the Indian Constitution. The incorporation of socio economic rights under the Indian Constitution is not a result of the development taking place at the global level after World War 2. Socio-economic rights or the significance of socio-economic rights were discussed at length in the Congress sessions conducted for deliberating the shape of independent India. And in such deliberation when it was discussed that how an independent India shall get governed what shall be the feature of the foundational document of independent India. So, the framers of the Constitution were aware of the fact that the socio-economic rights having given significance also while discussing the importance of providing rights in the Constitution. And that is why when you look at the debate taking place in the Constituent Assembly you would find the members presenting their viewpoints on that line. For example, Krishna Chandra Sharma during the debate suggested that including a provision to the directive to the effect that any law made in contravention of this presence principles shall to that extent be void. Another member R K Sindhwa also presented a similar view point where he said that unless the directive principles are not made justiciable they would not give any satisfaction to the common man. KM Munshi in his initial Draft Articles VII and VIII suggested that the let there be a specific provision on right to food

on sale child living wages and he also suggested that let the word fundamental be used in place of directive. There are other members who suggested that why to make them non-justiciable let these directives be also justiciable in the court of law.

But then looking at the nature of these rights, as I said where the policy prescription is a sort of precondition for giving effect to the rights, resources are precondition for giving effect to these rights, the very arguments to make it justiciable or enforceable in the court of law was not accepted by the Assembly and Assembly made it as a part of non-enforceable facets under the Constitution. And thus, the Constitution adopted it as an aspirational model. It was suggested that socio economic rights have made the constitutional inspirational imperative and fundamental for the state and that is how we justify the very language of Article 37 where it says that this part is very fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. As we have discussed and we shall be also looking at it in coming sessions that how the language of Article 37 has been used by the court for giving a meaningful interpretation to the directive principles in varied circumstances. When you closely analyze the structuring of the rights given in Part IV of the Constitution or without naming it as a right and using the word of duty in the directive principles, you find that the framers have agreed to give a very determined direction to the legislature and the executives to work in the direction of the fulfillment of these rights in particular and directives in general. The reading of the directive principles brings in the uses of these expressions for example, the word endeavour, primary duty, secure, direct, shall take steps and obligation reflects the dutiful purpose of the directives. And there where you find that there is a visible overlapping between sale and political rights which is generally provided in the Part III of the Constitution and socio-economic rights which is there in Part IV of the Constitution. Part IV confers positive rights where rights connected with the tangible benefits whereas, fundamental rights guaranteed is negative in nature which is there in Part III which is about rights not to be harmed that is what a kind of distinction we try to make. The question comes in that if socioeconomic rights become part of the constitution, how the very legal flavor of the Constitution is to be read? How do we really determine the legal characteristics of the constitution as the Constitution itself provides for non-justiciability?

Now, the very significance of making it a part of Constitution is that, that it becomes difficult to undermine the significance of the directive principles or socio-economic rights once it is entrenched and it is part of the written text. That is what is the significance of constitutional

entrenchment, which makes the provision isolated from the temporary and changing political processes. And in India as we have discussed that Part IV has made it constitutionally entrenched. There are arguments for entrenchment and how entrenchment obligates the state and strengthens the entire framework of the constitution, which is based on the premise of assuring dignity to every individual. It says that socio economic rights are as essential to human well-being and deserve equal status as civil and political rights. Constitutional entrenchment reflects the states strong commitment to improving socio economic conditions. Embedding these provisions within the Constitution enhances its responsiveness to public needs and strengthens its legitimacy.

Further it has been also advocated that with the constitutional entrenchment which is often preferred in many constitutions which has got a oppressive histories like India, South Africa or some of the African countries in African continents. This entrenchment plays a significant role in reshaping the social landscape where a direction is been given where a clear guideline is given that how that historical injustices how that oppressive regime can be the effect of oppressive regime can be nullified by taking up necessary reforms, necessary legislative initiatives for the welfare of the people. Constitutional entrenchment also in a way prevents regressive judicial activism where the court need not unnecessarily emphasize upon the significance of fundamental rights and negate all initiatives of distributive justice. Entrenchment also offers to vulnerable groups alternative avenues beyond politics to secure social and economic rights recognizing their greater reliance on state support and limited access to political influence. Because in a way it lays down an obligation upon the state to address the goals laid down. There are arguments also against constitutional infringement. The argument is that with the limited resources and with capacity. It would be very difficult for the state to fulfill the goal and thus the constitutional commitment done through this entrenchment would only remain a case of pious hope. Such entrenchment could also create a culture where such promises exist only in theory and may not be given a kind of practical implementation considering constants available with the state, which in a way would erode the trust of the people on a constitutional system. Keeping them outside the constitutional framework allows policies to evolve based on the demand of the people based on public needs which in a way ensures greater flexibility in their implementation. Along with the arguments to make it non-justiciable and not to make a part of Constitution, it has also been seen that some of the Constitution has made it non-justiciable, but provided it as an integral part of the Constitution. So, constitutionally entrenched provisions are there in relation to socio economic rights.

In India, we have also adopted this model where we find that socio economic rights are featuring in Part IV of the Constitution. And those provisions which are there are in Part IV, they are also been recognized or acknowledged by the judiciary in one or the other formats. Literature suggests that the reading of the judicial approach can be under two broad headings. One could be the case of systemic social rights adjudication, another could be the case of conditional social rights adjudication. Systemic model where we read that since socio-economic rights are fundamental and do not depend on a state action for their existence. They exist independently, but their enforcement and realization often depend on state actions. So, once we read socio-economic rights as constitutionally recognized entitlement, an important question comes in that how do we really determine that the rights are violated by the state and if the state action has violated the rights, what remedy the court can provide for. Under this systemic model, it has been seen that the court adopts the reasonableness approach to adjudicate whether the measures taken by the state are reasonable in fulfilling socio-economic rights or not. For example, when you look at the case of Deepak Rana v. State of Uttarakhand, where a question was raised on an issue of resource allocation between providing basic amenities in the schools, vis-a-vis getting luxurious cars. The court directed the government to give priority to provide basic amenities in the schools before allocating the resources for buying luxury cars.

So, in this case one may argue that the court has adopted the reasonableness approach where the court has examine that to what extent the government has been prioritizing on the issue of resource allocation particularly in relation to socio economic rights. Other is the conditional model, conditional model is a model where the focus is on the implementation rather than focusing on inherent measures undertaken by the state. This makes the right conditional upon a state action, which is more about reading very keenly the private law model in public law adjudication. This model offers a selective and policy dependent protections, where one argues that whether for the denial of rights due process was followed by the state or not. For example, in a case of Olga Tellis, where the question was of eviction of pavement dwellers, it was seen that the law which asked for notice to be issued for evicting the dwellers and rehabilitation plan that law was not followed properly and that is why it was suggested that the very eviction drive is unconstitutional where the court has read right to livelihood as a part of Article 21. But then in Olga Tellis it has also been seen the slum dwellers who had been part of the census and given identity cards they are the only one who are entitled for alternate accommodation before being evicted. So, the distinct remedy granted to this particular set of slum dwellers illustrates that the difference between systemic and conditional social rights. Because here the court looked

into that who has got the identity card and necessary benefits are to be given of the rights or legal entitlements of that right shall be only in favor of those slum dwellers. So, generally it has been seen that the court has been reading socio-economic rights as an interdependent set of rights with civil and political rights.

That is what is even in case in India where it has been suggested that fundamental rights are not an end in themselves, but are means to an end. The end is specified in Part IV and on this reading the court has been reading Part IV and Part III as an integrated scheme. So, important cases where you find that the court has looked into the directive principles particularly socio-economic rights and where the court has referred or relied upon those provisions. For example, in *Sukanya Shantha v. Union of India*, (2024), where the court was dealing with the state prison manual, where the court has highlighted the significance of Article 46 on the issue of right to overcome caste barriers as a part of right to life of individuals from marginalized communities.

In this case of *In re Manoj Tibrewal Akash*, (2024), again, the court has issued a set of guidelines against the demolition of homes without following proper legal procedure. And, in this case of *ER Kumar v. Union of India*, (2017) again the court has gone for monitoring the implementation of this scheme of shelters for urban homeless which concerned with right to shelter for homeless persons in urban areas. So, you can very well see that judiciary has been examining the steps taken by the government for implementing the socio economic rights. There are also arguments to not to involve the judiciary on the matter of socio economic rights primarily on the very ground of the very legitimacy of the intervention by the judiciary that how do we really legitimize the involvement of judiciary when it is all about policy prescription which generally been taken by considering a varied set of circumstances by the government. Connected with that is also a case of competence in relation to the legislature, because it is the matter on which legislature knows very well that what is what subject matters are to be taken up and how far that subject matter can be really implemented at the ground level. So, this is a larger question of political process and which has to be seen by looking into the very question on that whether the very intervention by the judiciary is encroaching upon the democratic decision making which as it has been argued is exclusively a prerogative of the legislature. The competence issue as I said also is raised on this very premise that when it comes to resource allocation, when it comes to policy making, generally it has been said that it should be the task of the other two branches, the legislature and the executive and should be judiciary should not be involved in that because of the very lack of information. Judiciary needs to get involved

only when policy is made and if such policies have been found in violation of the fundamental rights.

We analyze the incorporation of the socio-economic rights under the Indian Constitution and we observe that it is aspirational model which is adopted in our Constitution, wherein socio-economic rights are made fundamental for the governance of the country, but they are not been made enforceable in the court of law. No denial that constitutional entrenchment of the rights reinforces the commitment of the state towards these rights. But then also it flags the concern on feasibility and flexibility of the very design to implement these rights. We have also seen that how the judiciary has adopted both systemic and conditional models in this country for the realization of socio-economic rights and how judiciary has progressively integrated socio-economic rights with fundamental rights through its judicial pronouncements. But then the debate continues on the very effectiveness of the judgment with the court passes in relation to socio economic rights that whether such judgments really getting into the issue of competence of the court in enforcing socio economic rights or not.

These are the references.

Thank you very much.