

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

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## **Lecture 03: DPSPs: Definition and Approaches**

Greetings to all of you. We are in Module One, where we are discussing evolution and the concept of Directive Principles today. In Lecture 3, we shall be discussing the definition and approaches related to Directive Principles. The concepts we plan to cover: In today's session, are definition of directive principles, approaches to directive principles, their aspirational nature, vis-à-vis the argument on binding imperatives of directive principles, and how we should really look at the place and positioning of directive principles in the constitutional law scheme. And we shall also try to read the finer distinctions between the preamble and the directive principles.

When we try to understand the definitional content of the directive principle, we observe that directive principle is. portrays a unique position for itself. The goals set for the government to fulfill are targeted toward the political institutions. The active principles are present in a good number of constitutions. In the world, commonality has been experienced in the structuring of directive principles, where they suggested that the directives need to be fulfilled through political institutions, as we have discussed in the last lecture on political constitutionalism. A cautionary note was added that allowed the directive principle not to be subjected to judicial process or legal action. So, there is an embargo, and there is a bar on the judiciary to enforce directive principles.

Nevertheless, the content of Directive Principles and the very significance of the principles justifies its inclusion within the constitutional scheme. And on these grounds, it attracts the attention of policy makers, constitutional law scholars, and think tanks. That the active principles play a pivotal role in making the government accountable for the welfare agenda of the constitution.

Let us look at the scheme of directive principles that explains how directive principles justify their place within a constitutional scheme. For making directive principles a part of the constitutional scheme, our focus goes on the functional approach of the principles. When we try to look at the functional approach to directive principles, what we find is that they are distinctly placed and contribute to the growth and development of the constitution. How do we really understand the functional approach? On two parameters, we try to understand why a constitution explicitly identifies a component as the directive principle, why it explicitly levels a certain set of provisions as the directive principle, and what are the structural characteristics of the provisions included. Which makes a distinct element. Which makes it a value standing on its own identity. Functional approach portrays the understanding that directive principles are meant to achieve welfare goals. It is a kind of accommodating and constitutional agenda where it guides state policy for achieving social, political, and economic goals. Where the focus is not on how the directive principles are implemented on day one. Where the focus is on how directive principles keep a vigilant eye on the functioning of the government and constantly guide it to achieve the goal. And thus, it is suggested that the directive principles be based on the aspirational and guiding functions. When you look at this functional approach, you try to make a distinction between the principles that are there, those that are in the principles, and those that are in the form of guidelines placed under different provisions of the constitution. For example, there is a provision in the Constitution that talks about encouraging education at the primary level in the mother tongue. Now, this also appears to be a guideline that but then it doesn't feature in Part 4 of the Constitution. It gives the impression that there is a clear understanding of positioning the directive principles vis-à-vis other parts of the Constitution. Functional approach focuses on structure and intent whereby one may argue that the very rationale for including a set of welfare goals in the directive principle has a very defined design. It has got a very significant mandate. And because of that particular goal is incorporated in Part 4 as the directive principles. This leads us to this understanding that the goals which are inscribed under the directive principles demand and warrant a distinct approach and should not be given a casual understanding. Though one may very well argue that the progressive nature of the obligation of the state dilutes the significance of the directive principles or challenges the conventional classification of rights. But then it is the very non-conventional classification that gives the required flexibility in implementing the constitutional goals. Because of directive principles are they to be seen as obligatory not through

a judicial process. But through the political process. Where there is an obligation, i.e. binding constitutional obligation to address those socio-economic goals agreed upon at the time of the Constitution's making. To lay stress on this point, I present here a finer distinction between a general constitutional statement and a directive principle. General constitutional statement is laying down an overall characteristic of the constitution and the pattern of governance. They are not bringing any decisive pathway, nor are they suggesting any decisive solution for the government to follow the guidelines. So constitutional statements of value generally, they are found in Preambles which serves as a foundational value which, as I said presents the characteristics of the constitution. But then. They are more of a highlighting; they are more of a seen as introductory comment. But when you examine it in contradistinction with the directive principle, you find that the directive principle creates enforceable duties for the state. Enforceable duties here need not be understood only through a judicial process, as I said. So, the constitutional statement is merely declaratory in nature, whereas directive principles are obligations on the state, though to be realized in a progressive manner. Directive principles are generally seen of aspirational nature where the country and the government aspire to achieve, depending upon several factors - resources, strategy, priority. Now, this aspirational nature of directive principles is also seen from binding imperatives. So, one may argue that both, when it comes to content, may be conveying a similar idea, but then when it comes to intent, they differ. For example, when you read the opening words of the preamble. We, the people of India, having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic republic. It is declarative in nature. It declares what are the characteristics of this country. Whereas, when you look at the language of Article 39(b), which is the Directive Principle, it says the state shall in particular, direct its policy toward securing that the ownership and control of the community's material resources are so distributed as best to serve the common good. Look at it. Here it says "shall." So, there is a very visible difference. Constitutional statements are declarative, whereas Directives are imperative in nature. There has to be a constant endeavor in the realization of these directives. The state must actively pursue and realize the goals laid down in the directives. And that's why one may argue that though it is a constitutional statement. But then it is not to be seen purely as declarative in nature. It binds the legislature and the executive. That's the significance of the language of Article 37 of the Constitution.

Directory principles are also characterized as. Contradictory in nature. Which means that. That judiciary should not be brought into the enforcement mechanism of the directive principles. This feature, this characteristic of the directive principles categorizes the principles differently from the rights or other parts of the Indian Constitution. Why other parts of the Indian Constitution? If the government overlooks or violates any of the other parts, it may have to be answerable under the court of law. Whereas the government, if it overlooks the directive principles, may not be answerable under the court of law. So, the judiciary is prohibited from defining the scope and content of the values which are ingrained in the directive principles which, in a way, brings in limitations on the legal processes. That limitation on the legal process is that the judiciary cannot compel the state to adopt a particular policy prescription for fulfilling the directive principles. That is something which is not permitted. That is something which is prohibited under the constitutional scheme. Possibly the prohibition is because of the reason that the principles are of such a nature where it lacks the measurable standards, which play a significant role in judicial enforcement. We know very well that for a judicial process, it is essential that the subject matter must have measurable standards against which the court examines the legal issues. Possibly because of this inherent characteristic of the directive principle, implementation of the directive principle is suggested through legislative or executive processes. Having said that, we must acknowledge and accept that, by no means or imagination, the implementation through legislative or executive process is of lesser significance or inferior in its approach. On the contrary, I would say that the characteristics and nature of the directive principles demand that it acts only through legislative and executive processes. Because the precise obligation is possible, precise obligation of the state is possible only when the obligation has been delineated very particular terms in a very well-laid-down criteria, for example, we do have a provision on legal aid and that gets realized through the Legal Services Authorities Act, a law passed by the Parliament in the year 1987, or for that matter, the provision on Maternity Benefit Act which was passed in 1961 which connects with Article 42 of the Constitution. Now, when you look at these two Acts. You would agree with me that these two Acts now give a very detailed piece of content for the realization of the principles. It makes the obligatory regime of the government well-defined. Now, once the law is enacted, it would be very difficult for the executive to overlook it. If the executive overlooks the law, accountability would be fixed.

So, this is what the benefit of getting the directives implemented through a legislative process. And that's the reason why we must celebrate the language of Article 37 and not see that provision as inferior or of lesser value in comparison to Article 32, which talks about the enforcement of rights before the Supreme Court. Legislative process provides the content, which certainly brings a better implementation of the directive principles, particularly because of the fact that the complexities involved in implementing the principles. Why, as I said, resources are involved, a particular planning is involved; you need to really channelize the different kinds of resources, and that's why the legislative process is a better channel for getting them implemented. No doubt, the legislative process also guarantees transparency and accountability because laws are very clearly laid down regarding the obligations of the machineries of the State. And before passing the law, there is a debate on what purpose it is going to serve, how that purpose is going to be achieved, who will be made accountable, and who will be made responsible. There is a clear establishment of guidelines in the law. For example, Maternity Benefit Act. It makes the Directive Principle enforceable in a better sense. It is not the case that all constitutions, for that matter, bar the involvement of the judiciary. So, there is also a change in the approach regarding the Directive Principles. It is not that there is anything very conclusive. With regard to the involvement of the judiciary in matters concerning directive principles. For example, when you look at the South African Constitution. You find that there is a provision in the Constitution, Article 24(b), which refers to the directive principle on the matter of environmental and socio-economic values. It is included in the same scheme as the Bill of Rights. But then we are aware that when the subjects matter goes before the Supreme Court of South Africa, the South African Supreme Court adopts a different yardstick for measuring the accountability of the state. That is a reasonable approach for the state to determine whether it has acted reasonably in furtherance of that socio-economic goal, unlike what the court examines in matters of rights. Directive principles are to be viewed differently from the values which are enforced through judicial process. There is a general understanding that justice, freedom, and equality are enforced through the judicial process. Generally, there is an understanding that it is a court which defines and interprets the constitutional provisions. Court that defines the boundary of the constitutional text. Court does have a power of reviewing laws, striking down unconstitutional legislation. And thus. Directive principles in that scheme do not follow that standard understanding of Constitution or standard understanding of constitutional legal system.

But then we need to understand that it is not true that the idea of equality and the idea of justice can be enforced exclusively through judicial processes. Directive principles, when you look at it as an integral part of the constitutional scheme, one may conveniently argue that they also serve the purpose of what the enforceable part of the constitution aims to achieve. They are also into identifying the content of equality, for example, equal pay for equal work. They are also involved in justice, for example, the scheme on social security. So, when you look at it very closely, you find that this non-conventional approach is also serving the same purpose as the conventional approach.

Directive principles address the complexities that are there. What is its complexity? That it is not possible to ensure accountability, guarantee the enforcement of socio-economic entitlements through the judicial process. We need to understand that socio-economic entitlement is a matter of progressive realization. And that is the reason Directive Principles needs to be understood as a valuable component. Though in contradistinction with that standard or conventional approach toward the rights. Directive Principles creates a kind of obligation on the Legislature to come up with enforceable criteria. And which facilitates the enforcement. So, one may argue. That judicial enforceability is closely linked with legitimacy and the legality of the provision. The scholars have argued that non-enforceability dilutes the scheme of the Directive Principles within the constitutional framework. Scholars have questioned the enforceability standard to understand and fit the directive principles within that framework. But then, when you look at the approaches, you find that this is not the case. Though it challenges that notion because the moment you say that directive principles are being enforced through the legislative process, then that realization through the legislative process is in a hierarchical setup, standing below the constitutional norm, this is happening because implementation through the legislative process is challenging the norm-hierarchy, where though it is part of the Constitution, but because it is getting implemented through the legislative process, it is somewhere getting placed below the constitutional text that is something one can very well argue. But then it is important that, through that process, the goals are being realized, goals that are content which beneficiaries are well aware of, and once the goals are articulated in the form of a statute. It can very well become a subject matter of judicial scrutiny. So it challenges the hierarchy of constitutional law over ordinary law. No denial. But then it has its own advantage. Same is the case when you look at the Preamble and

the directive principles As I said, preamble serves as a value statement, Directive principle possesses a totally goal-oriented character, outlining a kind of moral commitments of the state. So, the Preamble appears at the start of the constitution. It is an introductory comment about the constitution. That's the reason why Preamble to a constitution is not considered as part of the constitution. However, under the Indian constitution, the court has very categorically said that the Preamble is a part of the Indian Constitution based on the very process adopted by the framers for making it an integral part of constitutional drafting. The way the Preamble was adopted by the framers of the Constitution.

In conclusion, I would say that Directive Principles extend the Preamble's idea. It is advancing the Preamble's idea by promoting socio-economic values, though it is non-enforceable, but you cannot say it is non-binding; it binds the legislature and the executive. It imposes an obligation on the legislature to enact laws in furtherance of the Directive Principles; though one may say that such obligation on the legislature is not to be made a subject matter of judicial scrutiny. That is for the legislature when it takes it up. Directive principles aptly highlight the norm of hierarchical issues, where one may argue that it questions the issue of supremacy and the superior status of constitutional law over legislative enactments. But then, when you look at hierarchical norms more closely, you find that they significantly and adequately give an understanding of strategy for planning to implement the goals given in the Directive Principles.

These are the references for this lecture. Thank you very much.