

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

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## **Lecture 04: Functions, Duties and Characteristics of DPSPs**

Greetings to all of you. We have started discussing the conceptual understanding of the Directive Principles of State Policy. In Module 1, we have started discussing the definitional content, the structuring of the Directive Principles, and in that regard, we are now discussing the functions, duties, and characteristics of DPSP. These are the concepts we shall be covering today, where we will be talking about the scope, characteristics, and nature of directive principles. We will be discussing the duties of directive principles, their use as a deferral tool, and will also try to look at the distinction between directive principles and the preamble. Directive principle is generally considered to be set of moral commitments inscribed in the constitution for the government to follow to fulfill and adhere to. It is to be seen in contradistinction to legal obligation. Directive principles are seen as promise where there is a strong desire to undertake all necessary steps to fulfill such promise. And that is why we say that these principles are thick, substantive, and moral commitments in the constitution. This is a commitment not to be seen, not to be viewed from a very legalistic perspective, but from a moralistic perspective, where there is an onus on the government to undertake necessary measures for fulfillment. And that is why they are very appropriately characterized as constitutional mission statements. The statement which gives a broader guideline on how the state ought to be governed, broader guidelines on how the state shall make necessary plans and strategies for improving the quality of life of the people. The insertion of this kind of mission statement is not a new phenomenon and nothing peculiar or distinctive with the Indian Constitution. Many constitutions that have come into existence after the collapse of colonial rule in this world have adopted these constitutional commitments. The narrative on the making did not confine itself only to the features that are enforceable through the court of law. So, when you look at the duties of the active principle, you find that they are of

broadly two kinds: one is a duty to endeavor to realize the goal immediately; another is a duty to fully realize the goal by some future date.

Here, you can very well make. A point of observation that both needs to be fulfilled, but considering its nature and content, it warrants immediate attention: where the state needs to generalize the resources and proactively work towards fulfilling the agreed-upon goal. And other than that, a gradual plan can be made so that the goal can be fulfilled at a later date. So, that is what we need to look at. On the discussion of duty, it is to be understood that directive principles are not mere aspirations, they are not just wishful aims; there is an active duty upon the state to pursue the goal of implementing the directives laid down in the constitution. So, the duty is immediate. And it requires the state to actively work towards attaining that objective which has been incorporated in the constitution. And that is why we need to make a very clear distinction between directives, which are a promise coupled with tangible action on the part of the state and a mere aspiration. Directive is not a mere aspiration; they are more than that, and should be seen as an obligation upon the state. Where there is a strong desire, it must necessarily translate into action from the state side. And thus, it is suggested that concrete actions and policies must be made in order to fulfill the identified goals; that is what is very relevant. So, there is a clear positive commitment; it is not only a matter of symbolic intake; it is not a case of mere identifying some imaginary goal and then celebrating the same. It is a matter of active duty, which can be very truly verified by looking at the policies made by the government, the kind of budgetary allocation the government is making, the laws the government is enacting in pursuit of that goal, and the administrative measures undertaken by the government. So, that is why it is an active duty; it is something to be seen as a positive commitment. So, these initiatives shall be certifying the intent of the state. For example, when you look at the directive related to healthcare, there is a specific duty to initiate necessary healthcare policies to improve infrastructure and expand services. Though such policies for expansion may not be immediately addressing the issue of universal health care, but at least it should clearly satisfy the requirement of a beginning—beginning in the right direction—and beginning with concrete planning. Directive principles are also seen as a deferral tool; deferral tool, in a sense that it may not be realistic, possible or plausible to achieve certain goals immediately. The government is required to augment resources and make the necessary planning. Directive principles provide that

necessary spaces to the government to do the maneuvering. That is why it can be aptly said to be a case of a deferral tool where the directive principle acknowledges the temporary dimension of constitutional ideals. In the absence of directive principles, you can very well visualize that every action would start getting examined through the legal process. Challenges for fulfilling the goal may not be appropriately weighted or understood. If you see this as a deferral tool, you would find that it acknowledges this very aspect: certain tasks are complex in nature which necessitate an extended time frame for fulfillment for multiple reasons, such as financial, logistical, social, economic, or structural reasons. There could be multiple factors preventing the effective implementation of the directive immediately, and those factors can very well justify the state's approach. Where the state needs to simply establish that there is an honest attempt being made toward that goal, and it would take some time—that is the reason why a constitutional directive has not been included, realized immediately, and it can be done on a future date. Directive principles as a deferral tool are also backed by this understanding that fulfilling certain duties may require long-term strategic planning. It may require some sort of consensus among the political parties of divergent political views; it may require a necessary allocation of resources. It is desirable to have a kind of set benchmarking, a defined timeline, and to see how gradually we are progressing towards that goal. And that is possible only when you visualize the directive as a deferral tool. So, the deferral tool does not mean a laid-back approach on the part of the state. The state remains accountable, and there is an obligation on the part of the state to make a consistent effort toward the full realization. So, whether the efforts are being made or not can very well be examined, for example, what kind of percentage of GDP is allotted for social security, healthcare, education, and nutrition—all these become kinds of parameters for evaluating the state's commitment. There could also be a case of partial deferral where we see constitutional making in terms of a transactional approach, where something has been achieved, and purposefully a segment of it has been reserved for attainment on a future date, because of the very nature of the directive and its purpose that directive brings in considering the nature and scope, a state may decide to defer immediate action. Now, one example which we can always give in relation to this is the formulation of the Uniform Civil Code, where, after independence, there were other pressing issues before the State before the government to address it, and that is why, immediately the goal was laid down under Article 44 was not taken up.

How do you really evaluate the issue of deferral? Is it a case of deferral, or is it a case of overlooking? How do you really verify that? Following questions can be kept in mind while examining the same. Whether to act on the issue, whether the directive is of such a nature that immediate action is required, or it can be deferred and taken up on a future date. What action should be sought to achieve that? Defining the ultimate goal or the purpose for which it has been done, for example, when you talk about the uniform civil code, is it for equality, is it for diversity, is it for plurality—what is it for? So, what actions should be taken to achieve the goal, and what methods and processes should be used for achieving it. How are we taking up the challenges, and when should we act? What is the appropriate time for the directive to be taken up for implementation? So, these are the factors that may be considered and taken into account for evaluating the state action. Directives are also seen as directional obligation, where the state has been given a guideline, and if the state has been suggested a kind of roadmap to follow toward achieving the specific goal. And in that regard, these questions become very relevant. When to act? Generally deferred, allowing the state to choose an appropriate time. How to act? Often left to future decisions, giving the state discretion over the methods. For example, post-pandemic, we have experienced the use of technology in the educational sector in a big way. Where we are aware of the fact that the government is encouraging the involvement of technology to widen the reach of education. An important aspect to look at is the directive principle when you try to analyze it. Direct principle provides necessary leeway to the state in deciding about the method and the formulation of the policy. In a directional obligation, one is a deferred question, and the other is a settled question. Settled question is that the goal has to be pursued and certain things are to be achieved. For example, when you look at the language of Article 43, which talks about a living wage, it says that the state must plan to ensure a living wage for every worker. So, the target is fixed; should it be gradually achieved with a minimum wage, fair wage, and living wage? But obligations are set under the constitution where it talks about a living wage. Let us look at the characteristics of the directive principle, which we will also try to expand in our later modules.

Characteristics of directive principles are to be seen under three broad headings. Telic nature, specificity, and the active principle influencing adjudication. Telic nature symbolizes the identification of the goal in a very defined way. It clearly spells out what the state is required to

do. And in that process, it leaves it for the state to make necessary strategies. Example is Article 44, which says that the state shall endeavor to secure a uniform civil code. There is a goal identified, but then the goal is of such a nature that it is expected that the state will work on a necessary ecosystem. So, that goal can be achieved, and through this process, it acknowledges that creating that ecosystem is a time-taking process and an achievable goal accordingly, it is to be understood. Another characteristic of directive principles is specificity, where the directive is very specific in nature, but then the nature of the directive is such that it is made conditional, and that is why it is featuring under the heading of directive principles. Directive principles are well-structured, which is determinative and resists expansionist pressure. Article 41 is a good example of the same, where it says that the right to work, education, and social security need to be addressed but subject to economic capacity and development of the state.

So, a specificity is there in terms of the directive, which talks about the right to work, the right to education, and the right to social security, but then it says that for full realization, there is a resource requirement, and that is why it says "within the limits of economic capacity." So, there are qualified words with Article 41, and what are those qualified words - "within the limits of its economic capacity". Directive principles also facilitate adjudication and provide a necessary tool to the judiciary for justifying the approach adopted on a particular subject matter. So, though it is non-justiciable and non-enforceable through the judiciary, the directive principle can certainly play a significant role in enabling the judiciary to seek justification for its decisions with the help of the directive principle. For example, in a recent case of this Property Owners Association v. State of Maharashtra, the Court has decided on the scope of Article 39, which is on ownership over material resources and distribution of such material resources.

So, directive principles need not be directly enforced by the court, but they certainly give a support system to the judiciary for laying down an important constitutional perspective on the rights, limitations of the state, or the power of the state. To conclude, one may argue, or one may say, that the directory principle is there as a deferral mechanism which allows the state to go for the necessary policy and necessary planning, depending upon factors conducive for the adoption of the same, and make a strategy for the realization of the directive principles based on several factors, which are within the control of the state, and that is the reason why you find that DPSP promotes a flexible governance approach. Directive principles outline specific determinate

policies that emphasize upon what is doable and what is workable objective within the economic constraints. So, it can be very well said that the Directive Principles are non-justiciable, but it certainly lends necessary guidance to the judiciary while interpreting important constitutional provisions. It influences the interpretation of the rights and steps in the public policy.

These are the references for today's session. Thank you.