

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

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**Lecture 40: DPSPs Oaths and Fundamental Duties: Constitutional Framework for
Governance**

Greetings to all of you. We are in module 8 where we are discussing on the role of the legislature, the executive and the judiciary on fundamental duties. And today we shall be discussing a very interesting interface between oath provided under the Indian constitution and how that oath relates with fundamental duties and whether such a reading of oath and fundamental duty gives a sort of constitutional guidance on good governance. These are the concepts which we aim to cover, where we shall be trying to read the relationship between fundamental duties and governance, where we understand the idea of governance is based on a dignified living for everyone where equal opportunity is guaranteed to everyone and where the governance is based on accountability. So, we shall be looking at interplay of governance and fundamental duties and will try to read oaths and see the connect between oath and fundamental duty. Now, when you look at the reading of governance try to understand that how we develop the concept of governance. It is all about the processes and institutions through which decisions are made.

So, governance has both procedural as well as substantive element. It also has a very defined role of the institutions which are entrusted with the decision-making authorities. Also, the very processes for policy choice and ultimately whether all these things are being done for ensuring the progress of the society or not. So, the concept of governance revolves around all this, it revolves around the processes and institutions where decision making becomes an important facet, where public policies implementation becomes a factor to be looked at and how these decision-making processes and the implementation of public policies are advancing the cause of everyone which are collectively symbolized as society. In that process you would find that public administration plays a very pivotal role in operationalizing governance, because they

are the one who have been entrusted with not only to suggest on the channelization of resources, but also on the policy prescription.

So, the executing policies falls under their domain and delivering public services is their responsibility. In this context we try to draw a connect between fundamental duties which is generally been seen as a moral compass for citizens which is associated with governance and shaping the responsibilities of public administrators. As we have read that fundamental duties are incorporated in the year 1976 through 42nd constitutional amendment act. As on date there are total 11 duties there in Part IVA of the Constitution, where these duties are seen as behavioural norms for citizens with a target of fostering national integrity with a commitment on environmental conservation and respect for constitutional principles. Thus, the closer reading of the duties suggest that the relevance of the fundamental duties is not limited only to individual compliance.

It goes beyond individual compliance and they significantly impact public administration guiding administrative behaviour and reinforcing the principles of governance. So, fundamental duties represent citizens obligation to the state and the society. We have in one of the sessions read about the interconnectedness between citizen, state and society in relation to fundamental duties. So, the duties which are given in Part IVA, which includes respecting the constitution, upholding the sovereignty of the nation, protecting environment and promoting harmony among diverse groups by emphasizing the moral or ethical role of citizens in governance. These duties ensure that public administration operates within a framework of shared responsibility between the government and the governed, between the state and the citizen where the responsibility is conjoint, where responsibility is a shared responsibility to work for the good governance. Now, let us look at the interplay between governance and fundamental duties, where you find that Fundamental duties and responsibilities of constitutional function is essential for effective governance.

So, when we look at public administration or when you look at constitutional function is it is important to see that on the one hand when Part IVA talks about the duties of a citizen there are certain duties also conferred upon constitutional functionaries, who are directly accountable to good governance, who are directly responsible for governance of the country. While the duties enshrined in the constitution are moral obligations, legality or legal enforcement of the duties are still contested, yet reading together the oaths taken by constitutional functionaries make the duties significant. So, though oath per say is not a codified duty, but then when you

align closely with constitutional mandate to ensure effective governance you would find that there is a very closely connect between the oath and the duties which in a way guarantees good governance. Oath aligning with the governance goal of ensuring administrative actions are based on aligned with constitutional principles where the principles relating to governance is also reflected on fundamental duties. So, we will talk about the language of the oath after a while and then we will see that how both duties and oath they are directed towards the very idea of governance

Public functionaries are also required to abide by the principles because they are not only public functionaries, they are also ordinary citizen of the country and that is why the moral obligation in the form of Part IVA, in the form of duties given in under Part IVA is also applied on them, it is also applicable upon them. So, these principles of governance are also manifested by the actual realization of the duties as it has been given in the constitution. So, how do you really look at the oaths and affirmation which is there in the constitution? Oath plays a very significant role though generally it has been said that the oath which constitutional functionaries they take they are kind of solemn place and they are bereft of legal characteristics and legal feature. But then they play a significant role in functioning of a democratic institutions symbolizing a formal commitment to constitutional values and responsibilities. And that is why you find that under the Indian Constitution constitutional functionaries are being given or assigned different kinds of oaths.

There are different kind of oaths which are there for example provisions like Articles 60, 78, 99, 124, 148, 164, 173, 188 and 219 outline the necessity and applicability of oaths where you find that this oath is generally the oath related to constitutional functions such as President, Vice President, then Members of Parliament, then Judges, Comptroller and Auditor General. That's how this oath becomes a very significant one. Third Schedule of the Constitution specifies the format of oaths and affirmation for constitutional functionaries. You would find that oath under the Indian Constitutions is at two different locations, one in the main text and other in the Third Schedule. Oath which is there in the main body is for the offices of the President and Vice President and the Governor which is given under Articles 60,69 and 159 respectively. Whereas, when you look at the oath which is there in the Third Schedule that is that oath is generally for Ministers, Judges, candidates, contesting elections for Parliament or the State Assemblies and members of Parliament and State Assemblies.

For example, when you look at the oath which is there in the main text for example the oath of the President and the Governor, they take oath to preserve protect and defend the Constitution. Oath under the Constitution for other constitutional functionaries generally take oath which is about true faith and allegiance to the Constitution of India while upholding the sovereignty and integrity of India and faithfully and consciously discharging duties Now, the continuously discharge duties which is there in the format of oath in the Third Schedule, it can very well be interpreted and understood in the context of fundamental duties given under Part IVA of the Constitution. So, the meaning of the phrase "discharge my duties" occurring in the Third Schedule can very well be deciphered from the fundamental duties enumerated under Article 51A. So, we are building an argument that how this interconnectedness is there for imposing a larger obligation on constitutional functionaries to not only to get engaged on to day-to-day functioning of the government, but then work on a larger value which is inscribed in the form of duties in Part IVA of the Constitution.

So, the duties mentioned as under Article 51A should be read into the phrase "discharge my duties" apart from other duties as required to be undertaken by constitutional functionaries. So when you look at the oath under the Constitution you find that the oath which is there for the President and the Governor is of protecting, preserving and defending the Constitution whereas other constitutional function takes oath of true faith and allegiance to the Constitution. Kerala High Court in *KC Chandy v. R Balakrishna Pillai* has highlighted the significance of oath where the court says that oath of office is not an empty formality with no constitutional significance. Breach of oath may thus be a betrayal of faith. Breach of oath requires a termination of the tenure of office. This power can be exercised by the appointing authority under the constitution and according to the procedure. So, look at the observation of the Kerala High Court where the Kerala High Court highlights that breaching of oath may amount to betrayal of the faith and there should be a consequent for such betrayal, there should be a penalty for such betrayal and which may lead to a termination of the tenure of office.

So, though it is not been categorically highlighted in the language of oath that what shall be the punishment for breaching the oath. But then at the same time the observation of the court becomes very significant that if you look at oath as a duty there is also a serious consequence for breaching that duty, breaching that obligation. Look at the connect between oath and fundamental duties. Fundamental duties as it has been suggested that they are in nature of moral obligation on the citizens unless and until there is a specific law made by the legislature for

implementing the fundamental duties. Fundamental duties by very virtue of the fact that it is an integral part of the Constitution. It certainly stands on a higher constitutional pedestal when citizen is appointed or elected to a constitutional position. As I said that once a person is appointed to that constitutional office, they are bounded not only by oath what they take under the constitution, but they are they are more committed towards the duties which are there in Part IVA of the Constitution. Though with this observation I am not trying to draw any hierarchy between the responsibility of the ordinary citizen and constitutional officials or constitutional office bearers in relation to Part IVA, but then certainly when the responsibility is there to govern the responsibility must be read in such a way so that the one who has been authorized to govern must keep the duties in mind for establishing a social order, establishing a just and equal society which is very significant for good governance.

Thus, we can say that this moral obligation element transcends and then it becomes a kind of solemn charge which is binding and weighty. That is how one can try to build an argument between these two. So, when you read oath with fundamental duties for example, when you read oath of respecting the constitutional symbol, respecting the national anthem and then try to connect it with the oath of preserve, protect and defend or true faith and allegiance to the Constitution, you find that there is a very close similarity between Article 51A (a) which binds every citizen to value the Constitution to respect the ideals of Constitution and constitutional institutions. In both instances constitutional functionaries are unequivocally obligated to uphold the Constitution and its principle which is also defined duty given under Part IVA. For example, in *Khaji Khanavar Khadir Khan Hussain Khan v. Siddavanballi Nijalingappa*, the Supreme Court says the constitutional functionaries are bound by oaths taken as per the Constitution. When we read in conjunction with Article 51A, the oath elevates the fundamental duties beyond mere moral guidance.

So, that is what is also an argument that when we are reading the fundamental duties and oath then it should not be seen only a case of moral precepts. Then it then it acquires a kind of higher obligation where there is a kind of responsibility, entrenched responsibility on the constitutional functionary. On this count one may argue that the fundamental duty is obligatory on constitutional functionaries as the constitutional functionaries are bound by oath taken. And that is why in this case of *State of Uttar Pradesh v. Manbodhan Lal Srivastava*, the court has said that the argument can be furthered by relying on the use of the phrase shall be the duty meaning thereby mandatory nature of the provision. It is a kind of mandate which is to be

adhered, respected and honored and to be followed. So, one may argue that there is a sort of clear connect between the oath and fundamental duties. A constitutional functionary when they take oath, they are also required to remember the duties which are there in Part IVA and with that they are required to commit to the cause of good governance.

The fusion of oaths with fundamental duties in a way one can argue elevates the status of fundamental duties and take it beyond only a case of moral obligation particularly for public functionaries and constitutional functionaries. And that is how when we look at the connect and nexus, a sort of synergy between governance and constitutional imperatives, you find that governance operates within the ambit of shared ethical and legal commitments and duties under Part IVA and oath in the main body of the constitution or in the Third Schedule make it a sort of both ethical and legal commitment for the constitutional functionary and legal and ethical commitment for the purpose of good governance for the purpose of establishing good governance.

These are the references for this session. Thank you.