

Directive Principles of State Policy and Fundamental Duties: Constitutional Imperatives

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Lecture 05: Debate on the Justiciability or Non-Justiciability of DPSPs

Greetings to all of you. We are in Module 1, where we are discussing concepts and evolution of directive principles. We are in Module 1, where we are discussing concepts and evolution of ah, directive principles. In today's module, we shall be discussing justiciability and non-justiciability of directive principles, what are the debates surrounding this important subject. These concepts we shall be covering. issues related to the non-justiciability of the directive principle. issues related to the non-justiciability of the active principle.

The directive principle whether it undermines the constitution; whether non-justiciability is going in favor of stabilizing the constitution; whether it is improving the dialogue between different stakeholders. Whether non-justiciability is also facilitating in resolving tensions among different stakeholders. So, these are the concepts which we shall understand today, which we will discuss today. Generally, it is argued that, as a supreme law, a constitution must be made enforceable through the judicial process. And because it is a supreme law of the land every text of the constitution must be brought into play through legal action, accordingly, the constitutional courts, in reference to India, the Supreme Court and High Courts have been tasked with the responsibility of enforcing constitutional provisions and interpreting the text of the constitution. So, that the applicability of the constitution and constitutional principles is uniformed. So, that the applicability of the constitution and constitutional principles is informed. The enforcement through the judiciary provides larger legitimacy to the text. It also grants stability at the same time, ensuring a check and balance; because if judicial enforcement ensures that other branches remain well within the limits prescribed under the Constitution.

Needless to emphasize that the enforceability of constitutional provisions plays a significant role in according to legitimacy to the governmental action. plays a significant role in according to legitimacy to the governmental action. It is judicial review that approves and stamps a sort

of approval on the actions taken by the government to ensure they are in accordance with the constitution. And in that process, it allows the people, including citizens, to confront the state and to ensure that whatever the state is doing is in accordance with the constitution. So, if you look at the entire framework, you'll know that understanding the enforcement brings in a larger acceptability of the constitutional text.

Now, when I look at the directive principle and try to understand how it fits into a constitutional design. The directive principle, generally seen as a non-enforceable element of the constitution, is generally seen as a part which cannot be enforced through the court of law. The directive principle, generally seen as a non-enforceable element of the constitution, is generally seen as a part which cannot be enforced through the court of law. And that non-enforceability raises the concern about the nature of the DPSP and the very validation of the DPSP, because if it cannot be enforced, there is a possibility that ordinary law might not adequately protect it and may overlook the directive principle and reduce the significance of principles which are considered to be a part of the constitution. So, the criticism of the directive principle is that the non-enforceability part dilutes the very idea of rights and responsibility ingrained in the constitutional framework, because the constitutional framework very strongly advocates for the accountability through the rights structuring. As we consider the directive principle as a non-justiciable part, we get tempted to look at it as a distinctive feature of the constitution.

We look at it as something which is inferior in its structuring compared with other parts of the constitution. And when we try to understand it, we raise a question: whether the directive principle should be considered as part of constitutional law at all, because if it can be ignored or goes with the political agenda. Then one may argue that it blurs the line between constitutional law and political norm, because the moment you talk about political norm, there is a possibility of going with the electoral mandate instead of the constitutional mandate. And in that process, it also undermines the supremacy of the constitution. So, when you look at the directive principles from that perspective, a question is raised as to whether they undermine the constitutional structuring—or whether they are compatible with it. Making it a part of promise, a commitment is more to be seen through the electoral process and political norms, or should it continue to be seen as a constitutional norm that obligates the state? Where that the principles are made non-enforceable.

It becomes a subject matter of the electoral and political process—a pressure that has it become part of the electoral process, and whether political parties have committed to these directives.

If they are not committed to directives, can they currently ignore them, and obviously, can this be easily ignored or repealed through ordinary legislation? As the directive principles define a wide range of objectives and goals, one may argue that through their institutionalization, there is a constitutionalization of political norms taking place. For example, improving the quality of life and the standard of living. If we look at the Constitution as the highest law, as a supreme law, then there is a corollary attached to it that it must bind the state, and every action of the state must be in alignment with the constitutional scheme. Now, the moment you try to bring in this understanding in the context of directive principles, you find that they are non-enforceable and thus there is a possibility of overlooking them. Where this obligation is not an obligation, but only an aspiration where the state can conveniently ignore such an aspiration, which in a way weakens the constitutional positioning which dilutes the constitution's authority. Now, for example, Article 44 has been pending for 7 decades or more. Can we say that the absence of initiative to realize Article 44 reduces the significance of the directive principles and reduces their overall standing in the constitutional framework. Can we say that it is the political narrative which is overriding the constitutional directive?

Non-justiciability is generally understood also from the perspective of deconstitutionalization, where the protection is not coming from the constitution; where the understanding of entrenched-based constitutional protection is not coming from the text, but from political processes. And there the ordinary law becomes a very important one, where ordinary law realizes the directive principle and such an ordinary law can be repealed, and accordingly, directive principles can again be reduced to non-significant position. So, non-justiciability when you look at it, you find that there is an argument on this. The argument is that there is somewhere shaking the status of the constitution because through a formal legal process is next to impossible to dilute the constitutional norm we have, as seen in India in the form of the Basic Structure Doctrine. So, constitutional rule or norm gets institutionalized through the legal process and it obligates every stakeholder to follow the same. Whereas, directive principles are more into conferring responsibilities upon the political branches which is susceptible to changes in political atmosphere. And that is where the loosening of the entrenched nature of the constitution is taking place or happening. Non-justiciability also flags an important issue regarding the failure of the state. If the state is not implementing the directive principle, how do we really evaluate its action of the state? Should we consider that the state has failed? When you draw this analogy with the fundamental rights, if the state fails in any such regard, there is

a remedy given under Article 32, but there is no such remedy given for the purposes of the directive principle. So, what will happen if the state fails to implement.

If the political branches purposely decide not to pursue the constitutional directive, then what will happen? Practically, constitutional provisions are nullified. That is why this argument that the directive principles are deconstitutionalized because they require the legislature and executive to come forward in the form of legal framework or in the form of policy prescription, but then the same can be overridden on a future date. A legislative process can very well be repealed and such a repeal can be seen also from the perspective of neglecting the directives, which let down the goals set forth in the directive principles. So, one may argue that such repeal may amount to repealing the constitutional provision through political action. The repeal of the constitutional provision does not have any legal recourse here. And that is an important issue with non-justiciability, which is one of the criticisms of non-justiciability.

Now, look at the advantages of non-justiciability. Its foundation's non-justiciability anchors on the idea of dialogue, where divergent views come together and facilitate the making of policy, where there is a possibility of different branches entering into a dialogue to give a workable solution. This dialogue could be between the judiciary and the other two branches, the dialogue could be between the legislature and the executive, and in that process, the ultimate beneficiary shall always be the citizen. If you look at it as an important element of enhancing dialogue, the court can very well utilize them in analyzing or interpreting the rights, or any other laws, there are instances where the court has done it. We will take specific instances in later modules. They can influence the interpretation of the rights; they can give a meaningful understanding to the executive orders as I said, or they can limit the power of the state as well. Non-justice stability arguably also enhances stability. Where in the entire idea of socio-economic justice can be planned and shaped up with the help of the guidance laid down in the Directive Principle, where the Directive Principle can very well prioritize justice and equality in the context of the principles laid down. For example, the set of principles laid down under Article 39 very well guides the state on how to really understand the idea of equality, such as "equal pay for equal work," and it says that the material resources of the community are to be distributed for the common good. So, it in a way guides how you really make the preambular idea is a concrete one; a realizable one. And in that process, you would find that non-enforceability prevents the imposition of policies that might cause sort of resistance or instability; which, that resistance or instability, may be bringing damage to the larger interest in peace and tranquillity. It

enhances the stability, also in the sense that, being part of the constitution, it mandates the state to continuously work in that direction—for achieving justice, welfare, and equality.

This, in a way, strengthens the normative value of the constitution. In that process, it reflects on an important question of conflict between two divergent points and conflict between two ideas. And in that reflection, it comes up with the solution that how these conflicting ideas can be resolved through a meaningful dialogue through a peaceful process; how to see that stakeholders are agreeing to the norms which are acceptable to everyone. Non-justiciability is also to be seen as an important factor for resolving moral tension. Because directive principles, which we are reading, are about both parts of the constitution and thus become a larger understanding of normative legitimacy as well as accommodating divergent views and thus, talking about sociological stability. So, they guide the state toward that, toward good governance and justice and equality, while maintaining a necessary flexibility—flexibility in terms of giving necessary space to the state to plan and coordinate within a constantly changing environment.

This gives us kind of hope to the people that goals are certainly going to get realized. It may take some time. The directive principle convinces the people that the state is taking steps in that direction. Therefore, let us not confront the state; let us cooperate with the state so that the goal can be realized as early as possible. This process facilitates achieving the goal of justice and equality with broad-based support and stability in our diverse society. So, there is no doubt that directive principles can create political expectations in members of society, and which, in a way voters will be moved in the direction of social and economic justice and will, in turn, encourage their representatives to move toward the fulfillment of directive principles. Because that political process in that way guides the government on how to prioritize policies and what factors should be taken into account for realizing the directive principles.

So, Directive Principles is a non-justiciable. Technically, poses a challenge in the larger constitutional framework. The challenge, where it says that by making it non-justiciable, the very status of the constitution has got undermined; it has become an ordinary political norm that can be very well overlooked by the government. But then, if you look at non-justiciability from a broader perspective, you find that it allows a flexible and aspirational approach. It inculcates the value of dialogue between the courts, between the political branches, and the citizens. It very forcefully balances between normative ideals and practical governance, making the constitution a very tenable and sustainable document.

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