

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

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## **Lecture 06: Constituent Assembly Debates: DPSPs and its Structuring I**

Greetings to all of you, as we have already discussed the theoretical underpinnings of the Directive Principles, the reasons for bringing them and incorporating them under the Constitution. Now, in this module, we shall be studying the debates that have taken place while incorporating these principles under the Indian Constitution. This module will help us in unravelling the minds of the framers of the Constitution as to why they have decided to make it non-justiciable, what was the idea behind making it a separate chapter, and why it is a separate part in the Constitution. So, this module will give you an overview on this aspect, so the concepts what we are going to cover in this module is: we will try to understand how the Directive Principles connect with civil and political rights. Primarily, we will try to understand how justiciability and non-justiciability are getting debated in the context of the rights landscape. While discussing the same, we shall try to see that how did the members of the constituted assembly debate on an important area of DPSP?

What is the historical brief of the Directive Principles? How did the important committees respond to the requirement for incorporation? And the important one is the Sapru Committee. And then, while drafting the Constitution, how did the Sub-Committee on Fundamental Rights proceed gave its reflection on the significance of DPSP. Now, we do understand that the very debate on the incorporation of rights in a constitution revolves around first- and second-generation rights. Under the first-generation rights, we consider civil and political rights, and under the second-generation rights, we refer to social and economic rights. Now, the point of distinction generally talked about is justiciability, but it is important to take note that there is an intertwined and closely connected relationship between civil and political rights and social and economic rights.

Now, why I am highlighting social and economic rights because a good number of social and economic rights are incorporated under the part on directive principles. And that is why it is important to understand how the relationship between civil and political rights and directive principles, or socio-economic rights, in particular, is working. There is no denial that the civil and political rights are incomplete in the absence of social and economic rights, because there is a fact that social and economic rights connect with the means of leading a dignified life, whereas civil and political rights are connected with the freedom to lead that quality life. Literature suggests that there is a close connection between civil and political rights, social justice, and the French Revolution, when slavery was considered to be a curse on human civilization, and a defined role of the state was accepted against the backdrop of

liberty, equality, and dignity. And in this context, we would find that most constitutions provide for the declaration of socio-economic rights, and the Indian Constitution is no exception. Now, the question which relates to social and economic rights is how far they are suitable for enforcement through legal action. Can they be made justiciability, and can the state be made accountable for its actions for the non-implementation of the rights? Now, when you look at an important declaration, such as the Declaration of the Rights of Man, which was connected with the French Revolution and adopted in the 18th century.

I read the relevant portion of the declaration, where you would observe a clear connection between socio-economic justice and civil and political rights. I read: *“In order that this declaration, being ever present to all the members of the social body, may unceasingly remind them of their rights and duties, in order that the acts of the legislative power and those of the executive power may be each moment compared .....that the demands of citizens ...may always take the direction of maintaining the constitution and welfare of all”*. Now, if you look at it, it categorically highlights the significance of socio-economic welfare of individuals. Now referring to Indian positioning of the directive principles, and how the entire discussion on socio-economic rights took place in India. We need to look back at the deliberations undertaken by the Indian National Congress and other related bodies were involved in the freedom movement. The leaders of India's freedom movement were aware of the fact that a new dispensation need not be confined only to political freedom.

But it must be coupled with the advancement of socio-economic space. Because political freedom would be meaningless without socio-economic entitlements. And thus, there was a clear understanding that the state must come forward to make suitable provisions. Such entitlements were highlighted at the All-Party's Conference in 1928, which categorized the responsibilities of the state towards elementary education, healthcare, wages, old age, and infirmity in the charter of the Constitution of Independent India. This was suggested by them in addition to the rights which were agreed upon to be part of the Constitution. The 1931 Declaration of Fundamental Rights adopted in the annual convention of the Indian National Congress also highlighted the relevance of socio-economic rights. Thus, it was suggested that socio-economic rights should become an integral part of the rights document under the new Constitution. Now, though there was some kind of agreement and acceptance of the fact that socio-economic rights need to be part of the foundational document.

The fact that socio-economic rights need to be part of the foundational document. There is no controversy and disagreement on this aspect. The question then was whether that aspect should be included *pari passu* with civil and political rights or whether a distinction should be drawn depending upon the factor of justiciability. Now, if you look at the 1931 declaration, it categorically says that in order to end the exploitation of the masses, the political freedom must include real economic freedom for the starving millions. So, the leaders of the freedom movement were aware that political freedom alone would not be enough for guaranteeing a quality life. It would not be good enough for empowering the people unless and until economic freedom also becomes a reality in India. That is why, you would find that in the initial years, the very idea of segregating directive principles with fundamental rights was not well received. Though at the international level, we were having examples of treating them separately—for example, the Constitution of Ireland treats fundamental rights and directive principles separately or the International Bill of Rights, which was adopted in 1948, also acknowledges the distinction between civil and political rights and social and economic rights in terms of enforcement. Sapru Committee for the first time recognized the distinction between justiciability and non-justiciability. However, they admitted that on this very point that it is very difficult to come up with a very scientific division between justiciability and non-justiciability, but then the Committee was of the view that is something which we must accept. And therefore, I quote what the Committee said: “*It will be for the Constitution-making Body first*

*to settle the list of fundamental rights and then to undertake the division of fundamental rights into justiciable and non-justiciable and then to provide suitable machinery for the enforcement of both.”*

Now, when you look at the debate on segregation. It is primarily centered around the idea of enforceability of the rights, namely whether the nature of the right is such that it is possible to get it enforced through the judicial process or if it requires some other suitable mechanism for enforcement. So, the Sapru Committee suggested that let justiciability be a factor for segregation, where the rights that have the characteristics of enforceability through judicial process must be included in justiciable part, and the rights that require resources for their implementation should become non-justiciable. Rights which require policy prioritization by the government should also become non-justiciable. So, this was the report that was there before the actual drafting of the Constitution started taking place.

So, though there is no visible record which says that or direct report which says that the Committee's report was considered by the makers of the Constitution, but there is no denial that what was discussed in the Committee and what was recommended by the Committee, directly or indirectly, played its role in influencing the thought process of the members of the Constitution Assembly. Now, when you look at the argument on dividing the directive principles with fundamental rights. We find that the reference to Shri B.N. Rau's work has also played a prominent role. Shri B.N. Rau, who was the constitutional advisor to the Constituent Assembly, made a specific reference to the Irish Constitution and International Bill of Rights for justifying the distinction. It is this idea which was circulated among the members of the Constituted Assembly. Mr. Rau gave a kind of clarion call on classifying this into two parts.

One Fundamental Principles of a State Policy is which are to be made non-justiciable, and the second, Fundamental Rights, which are to be made justiciable. These were the significant interventions made by the constitutional advisor. Shri B.N. Rau categorically suggested that there are certain rights which require positive action by the state and which can be guaranteed only so far as such action is practicable. So, if you look at the points of distinction and making them into different categories, as per Shri B.N. Rau, it was based on practicalities and the very ground realities for making the rights available to the people. So, it was more based on the idea of

administrative convenience that how far it is a convenience for the government to channelize the resources for the implementation of the rights, and that is why he highlighted on the responsibility of the state which should be in the nature of positive action. Positive action here means that where the state's intervention is required for the realization, unlike fundamental rights which require non-intervention for its fulfillment. For example, freedom of speech and expression. It does not require a categorical intervention by the state for the fulfillment; the mere fact that the state stays away ensures the realization of the right. Whereas, when we talk about the right to health and right to education, it often requires some form of state intervention. You would find that there is something where State's positive action is desirable. In the absence of such positive action, such rights cannot be made implementable, and that is what Shri B.N. Rau highlighted upon. Though Shri B.N. Rau highlighted this aspect of justiciability and non-justiciability, the proposal did not find favour with some of the members of the Sub-Committee on Fundamental Rights. As we are aware, the Constituent Assembly divided the work among different Committees, and specific subject matters were allocated to such Committees. One such committee was the Sub-Committee on Fundamental Rights to give a framework for fundamental rights to be included in the Constitution.

If you look at the Sub-Committee's reluctance, some of its prominent members were not willing to accept this distinction. They are not willing to highlight that this distinction is so significant that it must be accepted in the Constitution. Mr. Alladi Krishnaswamy Iyer vehemently oppose the idea of laying down any precepts in the constitution that remain unenforceable or ineffective because the moment you say that it is not justiciable, you are making it conditioned upon the will of the government, and that may not be contestable. The government can always justify that under certain circumstances; they are not in a position to give effect to such provisions of the constitution. And that is why Shri Iyer was of the view that such provisions have no place in a constitution. Similar views were expressed by Shri K.M. Munshi, Dr. Ambedkar, and Shir M.R. Masani. Shri Munshi argued that the non-justiciable rights fail to check the growing power of the modern state and create an unwarranted impression of progress and freedom. Because, if the states are not going to be made accountable for those positive rights, then how are we really going to measure development and ensure the accountability of the state? And thus, the drafts submitted by Shri K.M. Munshi and Dr. Ambedkar had their precepts of policy listed under the title of Fundamental Rights. That is a very important development when you look at the history of the making of the Indian Constitution.

Dr. Ambedkar, in his draft, provided an elaborative design to establish state socialism connected with the economic life of an individual, and how the same shall be ensured through state action, as per the constitutional mandate, not as per the wishes of the government of the day. That was his idea, and that is why he highlighted the implementation of such a plan should not be left on the government or the legislature. In his explanatory note, Dr. Ambedkar categorically highlighted that such a plan is an integral part of the constitutional scheme and thus the whims and fancies of the government would not alter or diminish its value. And that is how you find that the grounds of objecting the distinction were supported by other distinguished members of the Constituent Assembly. It was categorically highlighted that if you try to make it non-justiciable, and it would merely serve as a guide. Then, it was gradually observed that, due to the inherent characteristics of socio-economic policies, and because it requires resources and policy prescription is not practically possible to make them justiciable.

And that is how you find that the Committee finally agreed to such a distinction as it was suggested by Mr. B.N. Rau. And in order to give strength to the directive principles, provisions related to work and living were also included in the Directive Principles. So, Directive Principles in its first avatar, which was prepared by a Sub-Committee, it categorically identified the role of the government in the form of the Preamble. The Preamble reads: *“The principles of social policy set forth in this Part are intended for the general guidance of the appropriate Legislatures and Governments in India. The application of these principles in legislation and administration shall be the care of the State and shall not be recognized by any court.”*

So, if you read the Preamble, you can very well make out that a line was drawn on the matter of the principles for the judiciary. It was suggested that the judiciary not get involved and let it be a subject matter of the legislature and the government. And thus, the preamble acknowledges the distinction between non-enforceability and enforceability of the rights and directive principles. It also highlights the very factors of negative obligation in cases of civil and political rights and positive obligation in cases of social and economic rights. And that is how you find that Directive Principles began becoming broader in their scope and ambit. The Committee suggested for provisions with regard to international peace, internal peace social, economic, political well-being of the individuals and the attendant responsibilities of the state. It also talked about the uniform civil code, special care for weaker sections. Now when you analyze it closely, you would find that

ultimately the members of the Sub-Committee on Fundamental Rights agreed and consented to divide the nature of fundamental rights and directive principles based on enforceability through legal action. They were of the view that the enforceability of the rights through legal action is a doable goal, whereas directive principles can be effectively imposed through political action. Thus, it should not be made justiciable, as it was done in the case of fundamental rights. Though the Committee agreed on this kind of distinction and categorization, there were still voices in the Assembly which flagged the concern on non-justiciability.

For example, prominent female members of the Constituent Assembly, Rajkumari Amrit Kaur and Hansa Mehta, objected to the distinction. They said that, though it is not enforceable, they must be considered to be a fundamental in its character. And there must be a provision that should make the state accountable to these principles as soon as the situation becomes favourable. In the absence of this, Shri K.T. Shah has very appropriately said that non-justiciability would make the principles only pious wishes. Thus, he suggested that the principle should not be merely of general guidance but also considered as an objective of national activity. And based on these significant suggestions, the Preamble to the directive principle was redrafted. It was highlighted that the directive principle is fundamental as rights are fundamental in Part III of the Constitution. So, if you read the redrafted Preamble, it reads: *“The principle set forth in this Part are intended for the guidance of the State. While these principles shall not be cognizable by any court, they are nevertheless fundamental in the governance of the country and their application in the making of the laws shall be the duty of the State.”* I underline these two important expressions in the Preamble – “fundamental in the governance of the country”. So, “fundamental” here signifies that there should not be any casual approach on the part of the state because these principles are very core to the development of the country and the empowerment of the people, and the second one is the duty of the state. So, the provisions which are there in the directive principle may not be expressed as rights in the language of rights, but they are certainly duties of the state, and every effort is to be made so that the duty becomes a reality. And that is how you would find that the members accepted this change, though there were apprehensions in the minds of the members. They said that if you make it only directives, it may become a kind of needless, just another set of provisions which can be overtly ignored by the government. Some of the members suggested that certain provisions which are included in the directive principles should be considered justiciable. For example, provisions with

regard to a uniform civil code, which, as it was argued, were closely connected with equality and liberty of an individual. So, modifications were made by the Advisory Committee, which considered the reports of the Sub-Committee. The Advisory Committee suggested that clauses relating to freedom of marriage and promotion of internal peace and security were to be deleted. Clauses relating to free and compulsory primary education, which was among the justiciable rights, were to be included in the directive principles because of the very fact that resources were required for making primary education a reality, and thus the list of fundamental principles was submitted to the Constituent Assembly on August 25, 1947. It seems that the division was based on the very documents available at that point in time: the Irish Constitution and Bill of Rights. And that principle was supposed to give a holistic framework on the rights under the Indian Constitution, and that is why it served as a bridge between civil, political, social, and economic rights. The Constituent Assembly deliberated in detail and, guided by the Sapru Committee's recommendation, though there were oppositions on categorizing. But ultimately, it seems that they valued the practical difficulties; they gave considerable thought to the practical difficulties and decided on such categorization under the Indian Constitution.

These are the references for the slides.

Thank you.