

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

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## **Lecture 07: Constituent Assembly Debates: DPSPs and its Structuring II**

Greetings to all of you. So, we have started our session on the second module, where we are learning about the incorporation of the Directive Principles in the Constitution and the discussions and debates on the incorporation of these principles in the Constituent Assembly. In the last module, in the last session, you saw the debate surrounding the incorporation. What were the factors considered for making it part of the Indian Constitution? How the leaders of the independence movement perceived the idea of Directive Principles as one of the constitutional values? In today's session, we'll read and understand the discussions that took place in the Constituent Assembly on the Directive Principles. That will be today's discussion. It is a well-known fact that there was a kind of agreement and consensus that Directive Principles must become part of the Indian Constitution.

The question was how the entire structuring should be done. How the Directive Principles should be incorporated, particularly in relation to other parts of the Constitution, especially the Fundamental Rights. So, in today's session, we shall discuss the incorporation of the Directive Principles in the Constituent Assembly. What were the views of the members of the Constituent Assembly, particularly the critical aspects of the incorporation of the Directives, how the criticism was addressed, and finally, how the document was adopted as part of the Constitution? We will also look at the historical timeline to understand that how long it was debated and what was the major discussion on the director principles so this is what we will look at it when I take you through the Constituent Assembly on the constitutionalization of the directive principle. I wish to draw your attention on the intense debate which took place on the very nature of the directive principles. When I emphasize on the nature, I am highlighting the very element of enforcement of the directives. It appears that the members of the Constituent Assembly, they

broadly focused on the enforcement aspect of the directives. That should it be enforced on a similar lines of the fundamental rights or should it be enforced not through the legal action?

Because apprehensions were being drawn that if directives are not enforced by legal action, then the utility and the effectiveness of the directives will be under contest. It will dilute the very sanctity of the Constitution. Thus, non-enforcement of the directives became the major point of criticism. It was suggested that in the absence of the obligation the very strength of the Constitution will be compromised. Thus, the incorporation of the same could hardly serve any purpose or give any purposeful meaning or it will have no satisfaction to the people. As history says, the idea of the directive principle though discussed by the leaders of the independent movement, it got its reference also from the Irish Constitution and other Constitutions, particularly, the Constitution of the Soviet Union.

Thus, the Committee Looked at the structuring of the principles as it was laid down in the Irish Constitution and other Constitutions. And thought that possibly, a similar structure would be useful also in the Indian context. As I said, the major criticism of the directive principle was making it non-justiciable by not ensuring its enforcement through legal action. I highlight some of the observations made by the members of the Constituent Assembly. Mr. Bishwanath Das highlighted that the inclusion of directive principles does not give hope and ensure freedom from hunger or secure social justice or a minimum standard of living. So he was critical of this very fact that the goal of social justice may not be achieved unless we impose a clear obligation upon the state. Mr. Naziruddin Ahmad even referred to the words or works of Dr. Ambedkar, who categorically said that pious expressions were not proper to be embodied in a constitution, as a constitution was a mere mechanism in which political principles or policies had no place. So if you look at these observations, you would find that the Constitution was largely seen as a document to be enforced and to ensure that the state is made accountable toward the goals laid down therein. Discussion in the assembly took place based on the draft made by the constitutional advisor Mr. BN Rau, who suggested the incorporation of justiciable rights and non-justiciable directive principles. He divided the structuring into three parts: the first part included a general expression on the ideals of the rights and directives; the second chapter contained fundamental rights; and the third chapter contained the directive principles of state policy. The discussion in the assembly largely took place on the based on the scheme suggested by Mr. BN Rau. Mr. BN Rau made the suggestion that there be a paragraph added in reference to the directive principle where he says: *“No law which may be made by the State in the*

*discharge of its duty under first paragraph of this section and no law which may be made by the State in pursuance of the principles of policy now set forth in Chapter III of this Part shall be void merely on the grounds that it contravenes the provisions of section 9 or is inconsistent with the provisions of Chapter II of this Part.”*

So if you read this observation of Mr. Rau, a clear understanding comes to our notice that though it was made non-justiciable, the principles were made very relevant and with a clear enunciation for the government. He said that in case of conflict between the rights and directives, it is the directive which refers to general welfare ideals that should prevail. It is the rights which should yield to the welfare goals. So that was the kind of design thought of in relation to directive principles and fundamental rights. In the Constituent Assembly, we also observed that there was a discussion on using the right or apt expression for these guidelines, for these principles. For a discussion which took place around a week in the month of November 1948, the member suggested replacing the word 'directive' with 'fundamental' in order to highlight the prominence of this part and a defined responsibility of the state. Thus, it was suggested that instead of 'Directive Principle,' the term 'Fundamental Principle of Governance' be used. That suggestion came from Mr. HV Kamath. But then, as it was clear to the members of the Constituent Assembly, Directive Principles were not going to become justiciable. The strength of the directive principle stems from public opinion, and it is not the legality or legal enforcement that gives the necessary significance or strength to the principles.

Dr. Ambedkar clarified that the principles are more in a they are more to be seen and in nature of guiding the future government it is more like direction to future government and thus directive may be an appropriate expression to be used for the clauses. Given under this part. I quote. Dr. Ambedkar, who says that *“it is the directions to the future legislature and the future executive to show in what manner they are to exercise the legislative and the executive power. If the word “directive” is omitted I am afraid the intention of the Constituent Assembly in enacting this part will fail in its purpose”*. With this observation, you can clearly understand that the relevance of the directive principle was to clearly identify the goalpost, guaranteeing the welfare of the people and leaving it for the lawmakers and law enforcers to work on to arrive at that goalpost.

That was the broader design of making it non-justiciable, at the same time using the expression 'directive.' And in order to ensure that the goalpost is always there in the minds of the lawmakers and law enforcers, Mr. KT Shah suggested this amendment. I read: "The provisions

contained in this Part shall be treated as the obligations of the State towards the citizens, shall be enforceable in such manner and by such authority as may be deemed appropriate in or under the respective law relating to each such obligation. It shall be the duty of the State to apply these principles in making the necessary and appropriate laws’.” It shall be the duty of the state to apply these principles in making the necessary and appropriate laws. I underline. It shall be the duty of the state to apply these principles so the overall design was not to make it enforceable but the framers are very clear in their intent that these principles are not to be overlooked. They must guide the lawmakers; it must be given due consideration while making the laws.

In fact, some of the members have also suggested that there should be a defined timeline for the enforcement of the directives. And in fact, we are aware that a timeline was agreed upon for a directive which was related to the right to education. Article 45 of the 1950 Constitution. So it was suggested that there should be a timeline of 10 years during which the government shall make necessary efforts to implement these principles. And if it has not been done, then these principles shall become fundamental rights and can be enforced through the judicial process. Now, if you look at these discussions and debates, you would agree that the major point of the discussion on the directive principle was legal action. Should it be allowed to be enforced through legal action, or should it be a subject matter beyond legal action? Much discussion has taken place on this aspect, and a detailed discussion on the content of the principle was not there. As far as the content is concerned, the recommendation of the committee was broadly accepted.

Though the survey of the Constituent Assembly suggests that amendments were moved by the members to highlight some of the important goals. For example, Mr. DS Seth moved an amendment with regard to establishing and maintaining a social order and directing policies accordingly. Mr. KT Shah saw an insertion of a clause that ownership, control, and management of all natural resources of the country shall be vested in the government. Dr. Ambedkar said steering the Drafting Committee from the front, objected to the amendments placed before the Assembly. The reason for him to object to such amendments was related to flexibility for the government. He was of the opinion that through these principles, we are laying down the ideas, the goals to be attained by the government, and we must leave the strategy-making task, the very responsibility to arrive at those goals for the government of the day. He categorically said that these principles are laying down the goals of establishing economic democracy. But then

the framers should not prescribe any particular or rigid method for Attaining that democracy. The broader goal is let down. Let the focus be on achieving that goal how it should be done because it involves resources because it demands planning. Let it be a call of the government of the day and on this point, you would find that there is a kind of agreement. Some of the provisions, some of the clauses in Directive Principles attracted controversy, particularly the Uniform Civil Code, which you would be discussing in detail in the coming slides, where some of the members were apprehensive about including this as a principle as apparently the goal came into conflict with the right of the community to follow their personal laws. It was countered by Mr. KM Munshi who said that we must unify and consolidate the nation by every means without interfering with religious practices. So, the idea underlying the code was to accept the concept of identity without addressing the question of religious preferences. Thus, 16 directives were included in the 1950 constitution. These are numbered from Article 36 to Article 51.

If you look at the Constituent Assembly Debate as I said, the debate broadly focused on the issue of enforceability. It prominently addressed what should be the appropriate expression for these principles. Also, considering the government's revenue limitations, the idea of a timeline was rejected. There was one clear point: the directive principles are in the constitution to guide future legislatures and executives. It is up to future legislatures and executives to make plans and design strategies for fulfilling these principles.

These are the references for this slide and this module.

Thank you very much.