

Directive Principles of State Policy and Fundamental Duties: Constitutional Imperatives

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Lecture 08: DPSPs under Indian Constitution: Comparative Understanding

Greetings to all of you. So, we are discussing Directive Principles, and we have discussed how it has been debated in the Constituent Assembly. Today, we plan to discuss the reference of Directive Principles as they have been incorporated in India with the Irish Constitution, and we shall also look at their positioning in the constitution of Pakistan, as India and Pakistan framed the Constitution at the same time. So, in today's discussion, we shall look into these concepts. That's how the directive principles have been incorporated, how they have been taken up under the Indian Constitution, what was the approximate positioning of the directive principles under the Irish Constitution, how it has been done in the Pakistani Constitution, and there if we shall try to draw a comparison between India, Ireland, and Pakistan. And what is the common thread between three constitutions and the distinctiveness, the differences which are there between these constitutions with regard to directive principles. When we look at the directive principles as a kind of important segments of the constitution, we find that the directive principles are generally part of the constitution around the world. It is not that it has been only in a few countries. The literature survey says that the incorporation, which was started in Ireland, has inspired many countries around the world, and as good as 140 countries provide for directive principles in their current, non-justiciable form.

There has always been a debate whether it should be made justiciability or non-justiciability as an element of this Directive Principle under the Constitution. It appears that the major jurisdictions of the world have agreed to make it non-justiciable, and that is what the case is even with India. So, when you look at the role of the Indian Constitution in guiding other constitutions, as far as the directive principles are concerned. Indian Constitution is more of a socio-economic and socio-cultural arena, which has influenced other constitutions instead of a geopolitical aspect. So, it has provided a sort of diversity in relation to the different flavors of

the elements of the Constitution. And such diversity has influenced a good number of countries, particularly those that have gained independence post-World War II on the African continent. There appear to be a case where this applies to these two countries, except Uganda and Eritrea.

The African continents have accepted directive principles as an important and integral part of constitutional provisions as a constitutional value. And in that, you would find that environmental protection has prominently featured as one of the guidelines under the directive principles. When you look at the Indian Constitution and try to understand its very nature, you would find that the Indian Constitution has generally been characterized as a transformative constitution because the idea of providing different provisions under the Indian Constitution is not to give a kind of rigid framework but to make it more dynamic and address real-time problems or the way they evolve in society. So, the text of the Constitution is not to be considered as static; it is not something which is a lifeless word. We do not always have to go by very original ideas with regard to the language of the text but also must read the intent placed behind that text and the intent that has gone behind the incorporation of certain clauses. So, the Indian Constitution addresses the changing needs and values of the society, and that is what makes the constitution sustainable, and that is what contributes to strengthening the provisions and values of the constitution, and that is what very truly befits the Indian Constitution. So, each word and phrase in the Indian Constitution is imbued with meaning reflecting the complexities of governance and human rights.

So, the evolving idea of human rights and the evolving aspects of governance must be meaningfully interpreted within the given text—that is the overall idea of reading the constitution's dynamic character. Thus, one may say that it serves as both a historical artifact and a guiding vision, embodying the aspirations of a diverse populace. So, it should not be seen only with regard to the author who wrote the text, but it has to be seen as well that How the authors have made it a good document for serving the people, in future, serving the people who would adopt, accept, and agree to the norms which were agreed upon at the time of the making of the Constitution. So, as society progresses, the constitution remains a relevant and vital part of national identity and certainly influences the ever-growing legal landscape. So, when you look at the Indian Constitution and particularly its Directive Principles, you would find that it very truly testifies to the transformative character of the Indian Constitution.

Now, when you look at the directive principles, you will find that they guide the state, as we have studied in the last session/lecture, where Dr. Ambedkar was very clear about the very idea

of the directive principles: that they would be guiding the future legislature and future executive. When we say that it guides future executives and legislatures, obviously what it means is that the legislature and the executive get inspiration from the directives in order to serve the welfare goal of the people, serve the very aspiration of the people at the end of the time. So, that is how we need to understand Directive Principles. So, the Constitution should not be seen only as a set of rules but it should be seen also as a resilient foundation for democracy, which embodies the ongoing journey of a nation in pursuit of liberty and justice. So, what is the goal of justice is not to be seen only anchored in one idea or value, which was accepted and agreed upon way back, but it has to be seen as ever-evolving, but certainly with a kind of alignment and an anchoring of that basic structure that has been agreed upon. Non-justiciability must be seen also from a very different perspective.

Non-justiciable directive principles can certainly promote social and economic justice by guiding policy decisions and legal interpretation; because, the moment you look at these directive principles, they offer a framework for policymakers and judges to consider. As a kind of open framework, it certainly gives a very contextual understanding to the justice system; it becomes an important tool for satisfying the socioeconomic aspirations of the people. And thus, we find that the directive principle can influence the interpretation and prioritize justice and equality, which otherwise might be absent, when you look at the very process through a legal action. Thus, one may argue that non-enforceability prevents the imposition of policies. That might cause resistance or instability, and which maintains, thus maintaining social harmony.

So, this is something which is the benefit of non-justiciability: it overall enhances stability and, in a way, gives leeway to the institutions to keep evolving the governance process, evolving the entire justice process. So, that it fulfills the need of the people, it addresses the need of the hour without, you know, really getting into a confrontational approach—that is the benefit of the directive principle. Now, let us look at how the directive principles feature in the Irish Constitution. The very idea is to have a discussion on the Irish Constitution in order to achieve some clarity on how it has influenced the directive principles under the Indian Constitution. As we know very well, the concept of non-justiciability is influenced by the Irish Constitution, although the framers did not solely rely upon it for formulating directive principles, as we have seen, the 1930 resolution or All Parties' Conference resolution has clearly indicated that the freedom fighters and independent movement leaders were very conscious of the fact that the new nation should not be built solely upon civil and political rights are not only based on the

commitment to these rights, but also on their very fulfillment as socio-economic entitlements. So, the idea of looking at the Irish Constitution is just to understand how things were arranged under the Irish Constitution and to what extent it has influenced the Indian Constitution. The Irish Constitution supposedly is the first constitution to have constitutionalized directive principles, incorporating them into a constitutional text. The framers of the Irish Constitution sought to promote socio-economic equality while avoiding any kind of political controversy over potentially justiciable economic, social, and cultural rights in the draft Constitution. So, it was an idea to make it a sort-of flexible and fluid structure so that things need not get you know stuck in the midst of a legal process.

So, the Constitution of Ireland included non-justiciable Directive Principles of State Policy in Article 45, and when you read Article 45, it reads that the State shall “to strive to promote the welfare of the whole people’, provide an ‘adequate means of livelihood, divide land fairly, and prevent exploitation of people in the promotion of private enterprise’”. Now, these principles aim to guide the state policy. It offers, in a way, an alternative "third way" between relying on justiciable or non-constitutional politics. This is something where a kind of strategy was designed, where things must become part of the constitution at the same time, it need not always be invoked through a judicial process, and the government of the day must be bound to take all necessary steps to fulfill the aspirations and ideals, but at the same time, the court should not be brought in to enforce it through legal processes—that's why it says an alternative third way.

So, what it aims is to foster a form of constitutional politics driven by inspiration—that is why it has become non-justiciable. So, non-justiciability need not be looked at as an aspect or a feature of diluting the importance of directive principles; but it is something to be seen as how the constitution-making has been done in a very holistic way by incorporating these directive principles into the constitution. Article 45 under the Iris Constitution reads:

- *promote the welfare of the whole people by securing and protecting the social order*

The State shall frame its policies:

- *all citizens have adequate means of livelihood*
- *ownership of community resources should be distributed to serve the common good*
- *free competition must not lead to concentrated ownership of essential commodities.*

Further, it says that states shall frame their policies, ensuring all citizens have adequate means of livelihood. Ownership of community resources should be distributed to serve the common good. Free competition must not lead to concentrated ownership of essential commodities. The State shall ensure protection of workers' health and safety and prevents economic coercion into unsuitable jobs. The State prioritizes safeguarding the economic interests of vulnerable community members. So, if you look at the Irish Constitution, you can very well find that there is a reflection of the provisions under the Indian Constitution.

It further states that these principles are generally intended for general guidance of the Oireachtas, which is referred to as the Irish Parliament; this is how the Irish Parliament is addressed. And the application of these principles is there in the making of laws, which shall be the care of Oireachtas exclusively. This is what you would find in another similar provision of another Indian Constitution. And it categorically says that the directives shall not be cognizable by any court under any of the provisions of Irish Constitution. So, the framers of the Irish Constitution have made it very clear that the application of the Directive Principles by courts are completely excluded, separating them from the justiciable rights, which precedes from Article 38 to Article 45 of the Irish Constitution.

So, when you look at the features of the directive principles, you can very well find that the responsibility for honoring this socio-economic entitlement and socio-economic interest would fall to the institutions of political constitutionalism instead of the judiciary. So, very rightly and very aptly elected bodies are being made responsible for responding to fulfilling the socio-economic aspirations of the people. Because it involves resources, it involves planning, it involves different kinds of coordination, and thus, political constitutionalism is the right way to get it implemented. The Article 45 thus commits the state to safeguard the predominantly civil and political rights outlined in the constitution. And also to promote and implement specific social policies, thereby fostering a vision of social justice and a robust commitment to social equality.

So, you can observe here that Article 45 is reading the interrelationship between the two generations of rights—that is, civil and political rights and social and economic rights. How Article 45 clearly elucidates that the realization of civil and political rights squarely depends upon how well the realization of social and economic rights is, because freedom from hunger is equally important for exercising liberty or freedom in general, and that is what Article 45 truly provides for. It truly testifies to such integration in Ireland, where it has been seen that the

judiciary has been staying away from the affairs of the directive principles. Generally, it has been seen that the judiciary is not getting involved in the implementation or planning of DPSP. One such instance, which has been seen in the judicial process is in this case of *Murtagh Properties v. Cleary*, wherein the Irish Court has simply acknowledged the implied right to pursue employment. Otherwise, it has been observed that the judiciary is staying away from invoking its jurisdictions on the matter of directive principles. It is generally not giving a consideration to the directive principles following the true scheme of the Irish Constitution or the design of Article 45 of the Irish Constitution. When you look at India and try to compare with Ireland, you would find that both under the Irish Constitution as well as under the Indian Constitution, directive principles are largely the provisioning of citizen welfare. That is what is at the fulcrum, that is what is at the core, and that is why. I mean, if you look at Article 45 and compare it with Article 39 of the Indian Constitution, you will find clear references to a right to adequate means of livelihood and equal distribution of material resources. We know very well that recently the Supreme Court has given a landmark judgment on Article 39, particularly on this aspect of equitable distribution of material resources, which we would be discussing in some other context in later discussions. So, the principles underlying the idea of Irish Constitution are economic in nature, and when you compare it with the Indian Constitution, you would find that it is more connected with a kind of overarching idea involving social, economic, political, and cultural norms. So, that is what is a kind of distinct division and distinct difference between the Irish and the Indian position in relation to directive principles.

Article 45 of the Irish Constitution reads as a general guidance of the Oireachtas, while when you read Article 37 of the Indian Constitution, it says that directive principles are fundamental for the governance of the state. The word "fundamental" becomes very significant here because it, in a way, clearly spells out the obligation on the part of the state, and the state must not willfully ignore the value of directive principles. Though it is not considered to be at par with rights in terms of justiciability, but at the same time it is considered as at par for governance. When you look at another judgment of the Supreme Court of Ireland in *Buckley v Attorney General*, you would find the court has specifically mentioned that directive principles of social policy are inserted for the guidance of Oireachtas and are explicitly removed from the cognizance of the court. So, it is categorically indicated that the court must refrain, and the court must stay away. It is for Parliament to take cognizance of these principles or this social policy. Whereas, when you look at the Indian position, you find this important judgment of

Minerva Mills Ltd. v. Union Of India. The court has said that directive principles are fundamental in the governance of the country, and it is the duty of the state to apply those principles in making laws. So, in both cases, the constitutional court has been kept away and has not been given the power to enforce the directive principles. However, in India, it has been seen that the court has utilized directive principles for different purposes, which I will discuss later.

We also need to look at the directive principles under the Pakistan Constitution just briefly for the purpose of just highlighting how these two nations, which have emerged at the same time and have come into existence at the same time, treated directive principles. So, similar to the lines in the Indian Constitution, even in the Pakistani Constitution, it has a dedicated chapter on Principles of Policy, which spans Articles 29 to 40 and generally serves as a manifesto outlining the policies of the government and programs. And it is more of a kind of guidance to the decision makers. In Pakistan, these principles have also been made very categorically non-justiciable and these are non-binding guidelines, which is primarily to give guidance to the legislature in Pakistan. Article 39 of the Pakistani Constitution categorically states that states shall act in accordance with those principles mentioned in Part II. It says that principles of policy do not confer legal rights or create legal remedies and have only general guidelines or general suggestions to all authority. That is what the Pakistani Supreme Court has said in the *Ghulam Mustafa v. Province of Sindh*. So, there again the court has highlighted the very non-intervention by the judiciary on the matter of policy. When you look at the common thread between India, Ireland, and Pakistan, you would find that non-justiciability, focus on welfare, historical inspiration, and role in governance is the common thread, where in all three constitutions it has been made categorically non-justiciable. Citizen-centric is the idea behind the directive principles in all three constitutions. All three constitutions have been inspired by the fact that such social policies plays a very important role in making a constitution a complete document and at the same time, it also guides the government, the legislature, and the executive. Which shall be kept in mind while making laws; that is what, when you read the provisions of these constitution, you would find. There is a common thread, as I said, in all three countries, it is non-justiciable meaning, therefore, it cannot be enforced in the court. Their purpose is to guide government policies rather than provide a basis for legal action. It should not be taken as a kind of legal principle for enforcing the values vis-a-vis making the government accountable through the judicial process. In all three countries, you would find directive principles, which focus on promoting socioeconomic welfare. For example, it secures

adequate livelihoods, equitable resource distribution, and social justice. As I said, it has a historical inspiration where Ireland has inspired the making of the Indian Constitution as well as the Pakistani Constitution. The same is the case with the role in governance, where guiding principles are there for the lawmakers for framing government policies and for ensuring that the government is committed to the welfare of the people.

When you look at the common thread, let us also look at the distinctiveness: what are the distinct features between India, Ireland, and Pakistan on the matter of directive principles. When it comes to judicial reference, it has been observed that in India, directive principles are seen as fundamental to the governance of the state. Though it has been made non-enforceable, at the same time in India the court has taken frequent references of the directive principles either with fundamental rights or has used them for interpreting the laws, which is in contrast with Irish position where judiciary has refused to invoke these principles and the judiciary has remained outside the entire domain or discussion on the policy. So, this is an important distinction between the Indian position and the Irish position. When you look at the content, you find that India's Directive Principles cover a broader range of social, economic, political, and cultural aspects, whereas the Irish Constitution only addresses the economic aspects of the Directive Principles. So, that is an important distinction between the Irish and the Indian position, and with this, you can very well conclude you can, very well, you know, come to this kind of observation that the directive principles under the Indian Constitution is certainly an improvised version and it certainly caters to the requirements of the Indian people; and thus, it is very much indigenous, and it is not simply a case of borrowing provisions from the Irish Constitution. References are drawn, but it would be wrong to say that it has been borrowed from the Irish Constitution. The way in India, the framework presents a comprehensive structuring with regard to directive principles. When you look at the Pakistani Constitution, which is again similar to the Indian one, but it has not been integrated the way it has been done in India within a proper legal system. Unlike India's dynamic use of Directive Principles, in Pakistan, it has largely remained non-justiciable without a strong advocacy such as the way it has been done in the Kesavananda Bharati case, where the court has read into the integral nature and interrelationship between fundamental rights and directive principles. On institutional responsibility, it has been seen that in Ireland, the responsibility for implementing the principles lies exclusively with the Parliament, which is known as Oireachtas, separating them from judicial review, whereas, in India, instances are there where directive principles are considered crucial in state governance but are also linked to fundamental rights either for regulating

fundamental rights or expanding the ambit of fundamental rights. We certainly will discuss in detail in later sessions how courts are given power to interpret the directive principles in the context of fundamental rights. To conclude, it says that there is a common thread running through these constitutions, which is largely based on the idea of public welfare, but then in terms of scope and implementation, there is a difference between them. Indian DPSP is broad-based, it is actively linked to governance, and it certainly gives the judiciary a space to bring in its judicial interpretation for strengthening the overall framework of the Constitution. And then, when you compare the DPSP of India, Ireland, and Pakistan, you will find that, with a common thread of citizens' welfare, there is a distinct approach influenced by the historical and constitutional contexts of these countries.

These are the references for this session.

Thank you very much.