

Short Note On Fundamental Duties In India

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INTRODUCTION

Duty means responsibility. Everyone has duties in their life. One performs these duties necessarily. Our supreme law of land also describes duties to the people. These duties are fundamental in nature. Our constitution provides fundamental rights under part-III, from article 12 to 35. If a person has rights means he is also having some duties. If a person has duty, it is a right of another person. Every state now has a legal document that provides duties that must be followed by the citizens of that state. Likewise Indian constitution also has part-IV-A as fundamental duties which prescribe 11 duties that a Indian citizen must follow. These includes duty towards nation, duty towards nature, duty towards children etc.

CONCEPT OF FUNDAMENTAL DUTY

The fundamental duties are defined as the moral obligations of all citizens to help promote a spirit of patriotism and to uphold the unity of India. These duties set in part IV-A of the Constitution, concern individuals and the nation. They are not legally enforceable. They are held by the Supreme Court to be obligatory for all citizens. If a person is given rights by his constitution, that also provide duties which has to be followed by him. If someone is getting rights and does not have any duty then there must be a conflict with other citizen. So duty is a sanction on the enjoyment of the rights. These duties are of some formal nature that includes basic duties for example moral duties, social duties, national duties etc. If in a country citizens have only rights, no duty then it will not be good for that country. People will infringe the rights of another and there is no sanction for it. So it is must that countries provide its citizens a code of duty that will be followed by them.

NEED FOR THE FUNDAMENTAL DUTIES

India has people belonging to different creed, religion, castes, sects etc. All are living together. Everyone has fundamental rights to live his life smoothly and without any interference. India also has a huge population with different thought of people. There are chances of disputes and conflicts. So to prevent these and promote harmony and to keep peace in the society fundamental duties are necessary. So our legislation by 42nd amendment provides fundamental duties in Part-IV-A, of the constitution of India that include 11 duties. It reminds the citizens' rights cannot be enjoyed without duties.

SOURCES OF FUNDAMENTAL DUTIES

Indian constitution framers added fundamental duties to the constitution by 42nd amendment in 1976, with the recommendations of Swaran Singh Committee that was constituted by the government. Originally it has 10 duties. By amendment of 2002 it has increased to 11 duties. We have taken these duties from the constitution of Japan. It is important here that none of the constitution of western countries have fundamental duties. In Australia, Canada and Britain the fundamental duties are governed by the common law and judicial decisions. The constitution of America does not provide fundamental duties. It only has bill of rights

SCOPE OF FUNDAMENTAL DUTIES

Fundamental duties are obligatory in nature. Indian constitution does not provide for the enforcement of these duties. These duties are fundamental in nature but a citizen cannot go to courts for the enforcement of these duties. There is no punishment for violation of these duties. Following points are signifies importance of duties-

Duties can be used for interpretation of the statues.

The courts may look at the duties while interpreting the statues which has two constructions.

Duties also help in determining the constitutionality of any law.

FUNDAMENTAL DUTIES IN THE DIFFERENT CONSTITUTIONS

In the context of the very great emphasis which Mahatma Gandhi laid on the natural link between rights and duties, It is gratifying to note that the Fundamental Duties were incorporated into the Constitution under Art 51-A by the 42nd Constitution (Amendment) Act, 1976. Insertion of fundamental duties is not a innovation of Indian parliament. There are many constitutions in the world containing such duties. In fact, there are 50 countries in the world that has specific provisions regarding fundamental duties in their constitution.² On the other hand many states does not have fundamental duties in their constitution. England has neither fundamental rights nor any fundamental duties. By the glorious revolution of 1688 Englishmen were aware not only of their rights but also of their duties. Hence, they did not deem it necessary to create any document related to fundamental rights and duties. India does not fit into this situation. So at the time of making of constitution there were no fundamental duties.

DEMAND FOR INCORPORATION OF FUNDAMENTAL RIGHTS

After the internal emergency of 1975, the need of incorporation of fundamental duties was felt. The Preamble to the Constitution declares India as a "Sovereign Democratic Republic" which is committed to secure to all its citizens- "Justice, social, economic, political, liberty of thought, expression, belief, faith and worship. Equality of status and opportunity and shall promote among them all fraternity, assuring the dignity of the individual and unity

of the Nation"³. These attractive ideas could not be achieved unless there were obligations for citizens. The incorporations of duties in the constitution was necessary to protect the natural environment. The deforestation of jungles is also a main cause of incorporation of fundamental duties. A nation always require its people to help it when there is any emergency, so it was added as fundamental duties. Over and all insertion of duties in the constitution is appreciated in the light of twin concept of right and duties. Rights and duties are correlative. Since Fundamental Rights had already been included, the inclusion of Fundamental Duties within the framework of the Constitution, therefore, was also strongly supported.

Article 29(1) of the Universal Declaration of Human Rights, 1948, States

"Everyone has duties to the community in which alone the free and full development of his personality is possible." It is the basic principle of jurisprudence that where there is a right there is a remedy i.e. Ubi Jus ibi remedium. In *Chandra Bhavan Boarding v. State of Mysore*⁴ "the Supreme court made the following observation prior to the insertion of Article 51-A: "It is a fallacy to think that our Constitution, there are only rights and no duties. The provisions in Part IV enables the legislature to build a welfare society and that object may be achieved to the extent the Directive Principles are implemented by legislation."

Fundamental Duties incorporated by 42nd Amendment Act, 1976

The 42nd Amendment incorporated fundamental duties in our constitution. This part has been added by constitution committee. According to the statement of object and reasons appended to the will, the 42nd Amendment was intended to achieve "The objective of socio-economic revolution, which ends poverty and ignorance and disease and inequality of

opportunity". On October 29, 1976 the lok sabha passed the bill to incorporate a new chapter name fundamental Duties in part-IVA in the constitution of India. Shri H.R.Gokhale, the former Union Law Minister, described the Chapter as "by far the most fundamental and very important for the purpose of every generation, the present as well as the future"⁵. Finally in 1976, the fundamental duties were added in the constitution by 44th Amendment bill (which was later adopted as 42nd Amendment Act, 1976). The amendment was effected as a sequel to a resolution on the subject passed by the All India Congress Committee endorsing the recommendation of Swaran Singh Committee.

FUNDAMENTAL DUTIES:-

Article 51-A Says that it shall be the duty of every citizen of India-

1. To abide by the constitution and respect its ideal and institutions.
2. To cherish and follow the noble ideals which inspired our national struggle for freedom.
3. To uphold and protect the sovereignty, unity and integrity of India.
4. To defend the country and render national service when called upon to do so.
5. To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional diversities, to renounce practices derogatory to the dignity of women.
6. To value and preserve the rich heritage of our composite culture.
7. To protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for living creatures.
8. To develop the scientific temper, humanism and the spirit of inquiry and reform
9. To safeguard public property and to abjure violence

10. To strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavor and achievement

Further, one more Fundamental duty has been added to the Indian Constitution by 86th Amendment of the constitution in 2002-

11. Who is a parent or guardian, to provide opportunities for education to his child or as the case may be, ward between the age of six and fourteen years.

Scope of Fundamental duties (Education) for protection of Rights of Citizens

The part-III and IV-A of the Indian constitution are connected respectively that government cannot implement them without leaving one, although fundamental rights has a binding force through judicial remedies available Under article 32 and 226. The fundamental rights are available to citizens were fundamental duties impose a responsibility to the citizens. There are eleven fundamental duties under Indian constitution for citizens, one of the most important duty is added in 86th amendment 2002, which imposes duty on parent as follows – **(k) To provide opportunities for education by the parent the guardian, to his child, or a ward between the age of 6-14 years as the case may be.**

By adding above duty, state showed the relation between the fundamental rights and duties as article 21 – A states Right to free and compulsory education to the children . The duty impose on the parents shows an expectation of sincerity from the citizen as rights comes up with the responsibility.⁶ As first teacher of the children are parents , it was compulsory to imposes theses type of activities for development of Children .

ENFORCEABILITY OF FUNDAMENTAL DUTIES

Although the fundamental duties are not enforceable directly on citizens but it's very known principle that great rights comes up

with great responsibility so its applicable here also. The fundamental rights are enforceable by article 32 in supreme and article 226 in the high courts. As stated earlier also one of the example of rights comes up with responsibility is Article 51 – A (K) that is duties to provide education to their children which gives to all citizens simultaneously Right of education u/a 21-A. Therefore it's important to understand that duties are not limited till constitution, there should be sense of responsibility for each individual towards society and become more sensible and responsible citizens.

The enforceability of fundamental duties can be understood by the following Supreme Court decisions-

In *A.I.I.M.S. Student's Union V. A.I.I.M.S.*,⁷ a three Judge Bench of the Supreme Court made it clear that fundamental duties are not enforceable by a writ of the court, it provide valuable guidance and aid to interpretation and resolution of constitutional and legal issues.

In *Mohan Kumar Singhania v. Union of India*,⁸ a governmental decision to give utmost importance to the training programme of the Indian Administrative Service selectees was upheld by deriving support from Article 51-A (I) of the Constitution, holding that the governmental decision was in consonance with one of the fundamental duties.

In *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*,⁹ a complete ban and closing of mining operation carried on in Mussoorie hills was held to be sustainable by deriving support from the fundamental duty as enshrined in Article 51A (g) of the Constitution. The court held that preservation of the environment and keeping the ecological balance unaffected in a task which not only government but also every citizen must undertake. It is a social obligation of the state as well as of the individuals.

CONCLUSION

The fundamental duties in the constitution were incorporated by indian parliament to provide obligations to citizens that must be followed by them. The fundamental duties help the courts to interpret the constitutional provisions and many of the statutes. Although these are not enforceable by courts but there are moral obligations on the citizens to abide by the constitutional duties. The need is to aware people about their obligations.

(Endnotes)

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- 2 Ram Rattan, Gandhi's Concept Of Political Obligation
- 3 Pappu Shyamla p.II
- 4 1970 AIR 2042, 1970 SCR (2) 600
- 5 S.N Aggrawal,Gandhian Constitution for free India, p.73
- 6 Fundamental duties: A analysis in the Indian Context, Tanmay Sen and Navin Sinha (2011) PL September S-21
- 7 Appeal (civil) 7366 of 1996
- 8 1992 AIR (1) 1991 SCR Supl, (1) 46
- 9 1985 AIR 652, 1985 SCR (3) 169