



FACULTY OF JURIDICAL SCIENCES

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Lecture-18



Features of Fundamental Duties

Fundamental duties part 2 from Diganth Raj Sehgal

The features of Fundamental duties are as follows:

Both moral and civic duties have been laid down under the fundamental duties, like, “the Indian citizens should not only cherish the noble ideas that lead to the freedom struggle but they should also respect the Constitution, the National Flag and National Anthem”.

Fundamental rights can be applied to foreigners also but the fundamental duties are only restricted to the Indians citizens.

The fundamental duties are not enforceable in nature. No legal sanction can be enforced by the government in case of their violation.

These duties are also related to Hindu traditions or mythology like paying respect to the country or promoting the spirit of brotherhood.

Fundamental duties and Indian constitution

The Constitution was adopted in the year 1949, but it did not contain the provisions for fundamental duties. The Parliament of India not only realised the need to insert fundamental duties in the Indian Constitution but it also felt that everyone should perform such duties. A new part, that is Part IVA, was inserted by the 42nd Amendment Act, 1976 which provides for several fundamental duties that needs to be followed by the citizens of India.

These duties are considered as “directory” as these duties cannot be enforced through the writ of mandamus because they don’t cast any public duties. Fundamental duties are the basic reminder of our national goals and basic norms of political order. They inspire an individual to inculcate in himself/herself a sense of social responsibility. The Supreme Court said that the fundamental duties can be used to interpret any statue which is uncertain. These duties provide educational and psychological value to the citizens of India. These duties uphold the spirit of Democracy and patriotism.

In the case of Ramlila Maidan Incident[1], the court held that the word “fundamental” is used in two separate senses in our Indian Constitution. When this word is used for rights then it means that these rights are very essential and any law which will violate the fundamental rights will be declared as void. But when this word is used for the duties then it is used in a normative sense as it set certain goals before the state which the state should try to achieve.

42nd amendment 1976

The 42nd Amendment Act, 1976 was approved during the Emergency period. The Indian National Congress which was at that time headed by Indira Gandhi approved this amendment. This amendment was regarded as the most controversial amendment. The provisions that were provided by this amendment act came into force on different dates. Most of the provision came into force on 3 January while others came into force from 1 April 1977.

This amendment is also known as “Mini-Constitution” or “Constitution of Indira” because wide changes were brought to the constitution. 11 Fundamental Duties were laid down by the 42nd Amendment.

86th amendment 2002

Only a few constitutions in the world provide the guidelines stating the obligations and duties of the citizens. To govern the rights and the duties of its citizens, Canada and Britain lay significance on the Common Law and its judicial decision. It is said that one should be taught to follow fundamental duties at a younger stage because if this will happen then it will not be important to list the duties in the Constitution as it will not affect its implementation.

The Unnikrishnan Judgement[2] provided that all the citizens who are below the age of 14 years have a right to free and compulsory education. Due to an increasing public demand for education, the government worked towards making education a fundamental right. In 2002, an amendment was inserted in Article 51A. Article 51(k) was added after Article 51(j) which stated that it is a fundamental duty of every citizen who is a parent or a guardian to provide opportunities for free and compulsory education to a child who is between 6 years to 14 years of age.

Lecture-19

In M.C Mehta (2) vs. Union of India[3] the Supreme Court held the following:

It is compulsory for all the educational institutions to organise a teaching lesson of at least one hour a week on the protection and improvement of the natural environment.

It is the duty of the Central Government under Article 51-A (g) to introduce this lesson in all the educational institutions.

The Central Government should also distribute books free of cost on the same subject in all the institutes.

To give rise to the consciousness among the people towards a clean environment, the government should organise ‘keep the city clean’ week at least once in a year.

Fundamental duties committees

Swaran Singh Committee

The Chairperson of this committee was Sardar Swaran Singh who was given the responsibility to study the Indian Constitution during the National emergency. After declaring the emergency Indira Gandhi put the responsibility on this committee to study the Constitution and amend it keeping in mind the past experiences. Several changes were incorporated into the Constitution by the government based on the recommendations of the committee.

The need and necessity of fundamental duties was felt during the emergency period. So in 1976, a committee was set up who made the recommendation for the same. The recommendation was made for including a separate chapter in the Indian Constitution under the heading Fundamental Duties. Citizens will be aware of their duties while enjoying their fundamental rights. This suggestion was accepted by the government and a new article that is Article 51A was included in the Indian Constitution which had 10 fundamental duties in it earlier. The government also said that it was a mistake that was made by the original framers of the India Constitution to not to include the fundamental duties at that time. The committee suggested for 8 fundamental duties but the 42nd amendment had 10 duties. Out of all the recommendations, not every recommendation was accepted.

Some of the recommendations that were not accepted are:

In case of non-compliance with the fundamental duties, the Parliament can impose penalty or punishment.

In a court of law, such punishment or law won't be questioned.

Fundamental duties also include the duty to pay taxes which was rejected.

Justice Verma committee

In order to plan a strategy and methodology for working out a programme that was started worldwide for making the fundamental duties enforceable in every type of educational institution and to teach these duties in every school, Justice Verma Committee was established in 1998. The committee took this step because it was aware of the non-operationalization of the Fundamental duties. The committee found that the reason for non-operationalization was due to lack of strategy for its implementation rather than lack of concern.

The committee provided with the provisions like:

No person can disrespect the National flag, Constitution of India and the National Anthem under the Prevention of Insults to National Honour Act, 1971.

Various criminal laws have been enacted which provide punishment to the people who encourage enmity between people on the grounds of race, religion, language etc.

The Protection of Civil Rights Act (1955) provided for punishments in case of any offence related to caste and religion.

The imputations and assertions that are prejudicial to the nation's integrity and unity are considered as punishable offences under various sections of the Indian Penal Code, 1860.

In order to prevent a communal organisation to be declared as an unlawful association, the Unlawful Activities (Prevention) Act, 1967 was established.

If the members of the Parliament or the state legislature indulge in any corrupt practices like asking votes in the name of religion then they will be held liable under the Representation of the People Act, 1951.

The Wildlife (Protection) Act, 1972 protect and prohibit the trade in the case of rare and endangered animals.

The Forest (Conservation) Act, 1980 was implemented to make sure that Article 51A(g) was properly implemented.