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Fundamental duties case laws

In the case of *Bijoe Emmanuel vs. State of Kerala*[4] which is popularly known as the National Anthem Case, on refusing to sing the National Anthem in the school, three children of the Jehovah's Witnesses were expelled from the school. There was a circular that was issued by the Director of Instructions, Kerala which made it compulsory for the school students to sing the National Anthem. These three children did not join the singing of the National Anthem but they stood up out of respect. They didn't sing the National Anthem because their religious faith didn't permit it and it was against their religious faith. They were expelled on the ground that they violated their fundamental duties and committed an offence under the Prevention of Insult to National Honours Act, 1971. The court reversed this decision of the High Court because they did not commit any offence and also they committed no crime under the Prevention of Insult to National Honours Act, 1971 as though they did not sing the National Anthem but they stood out of respect.

In *M.C.Mehta (2) vs. Union of India*[5], the Supreme Court held that it is compulsory for all the educational institute to organise a teaching lesson of at least one hour a week on the protection and improvement of the natural environment and it is the duty of the Central Government under Article 51A (g) to introduce this in all the educational institute. The Central Government should also distribute books free of cost on the same subject in all the institutes and also raise consciousness amongst people towards clean environment. The government should organise 'keep the city clean' week at least once in a year.

In the case of *AIIMS Students Union vs, AIIMS*[6] the Supreme Court held that the fundamental duties are equally important like the fundamental rights so the Court strike down the institutional reservation of 33% in AIIMS which is also coupled with 50% reservation discipline-wise which was violative of Article 14 of the Indian Constitution. The court also said that just because they are duties they cannot be overlooked. They have the same importance which the fundamental rights hold.

In *Aruna Roy vs. Union of India*[7], the court upheld the validity of the National Curriculum Framework for School Education which was challenged on the ground that it violated the Article 28 of the Indian Constitution and it was anti-secular because it provided for value development education relating to the basics of all religions. The court said that the NCFSF does not mention anything related to imparting religious instruction which is prohibited under Article 28 and education neither violate Article 28 nor the concept of secularism.

In order to make a right balance between Fundamental Rights and Duties the petitioner in the case of *Hon'ble Shri Ranganath Mishra vs. Union of India*[8] wrote a letter to the President so that he can give directions to the State in order to educate citizens in the matter related to fundamental duties. This letter was treated as a writ petition by the Court. But by the time this matter would be heard a report was submitted to the Government of India by the National Commission who was reviewing the Constitution at that time. Following suggestions were provided by the commission in the court:

In order to sensitise the people and to create general awareness regarding the fundamental duties, the State and the Union Government should take proper steps on the lines that were recommended by the Justice Verma Committee.

For generating awareness and consciousness of citizens related to fundamental duties, modes and manners needs to be adopted.

The court took into account the recommendations made by the National Commission and also directed the government to take necessary steps. The writ was disposed of.

In *Government of India vs. George Philip*[9], the compulsory retirement was challenged by the respondent from the service. Two years of leave was granted to him by the department to pursue advanced research training. After the repeated reminders he overstayed in foreign, so, an inquiry was instituted against him and the charge was proved. The High Court provided him with a remedy to join the service again on one clause that no back wages would be provided but the Supreme Court had set aside this order. The Supreme Court said that according to Article 51A(j) one should always strive towards excellence in all spheres of life of an individual and also for the collective activity so that the nation constantly rises to a higher level of endeavour, achievements and excellence could not be achieved unless discipline is maintained by the employees. The court also said that no order should be passed by the courts which destroy the essence of Article 51A and the order passed by the High Court, in this case, was destroying the essence of the Article.

The court in the case of *Dr. Dasarathi vs. State of Andhra Pradesh*[10], held that under Article 51(j) every citizen must abide by its duty to always strive towards excellence in all spheres of life and also for the collective activity so that the nation constantly rises to a higher level of endeavour and achievements. For this, the State can provide ways to achieve excellence according to the methods which are permitted by our Indian Constitution.

In the case of *Charu Khurana vs. Union of India*[11] the Supreme Court held that the State should provide for opportunities rather than curtailing it. The court also said that the duty of the citizen have also been extended to the collective duty of the state.

Enforcement of Fundamental Duties

The fundamental duties not only guide the citizen but also guides the legislative and executive actions of elected or non-elected institutions, organisations and municipal bodies. Duties are only observed by the citizens when either it is made compulsory by the law or under the influence of role models etc. So this makes it necessary to make suitable legislation whenever it is important for the citizens to observe the duties. These duties should be made operational only when the directions have been provided by the legislature and judiciary and still there is a violation of fundamental duties. But if the existing laws are inadequate and they cannot enforce the required discipline then the legislative vacuum needs to be filled.

The legal utility of fundamental duties and directive principles is the same. Fundamental duties are addressed to the citizens whereas directive principles address to the state and there is no legal sanction in case of their violation. If a person does not care about his/her

fundamental duties then he/she does not deserve the fundamental rights. These duties are not legally enforceable but if any act is done by a citizen that is in violation of the fundamental duties then it would be considered as a reasonable restriction on the relevant fundamental rights.

The 42nd Amendment, incorporated duties in the Constitution and these are statutory duties and shall be enforceable by law. If there will be a failure to fulfil those duties and obligations then the Parliament, by law can impose penalties. The success of this provision will solely depend upon the manner and the person against whom these duties would be enforced. If the duties are not known to all, then there would not be proper enforcement of these duties. Due to the illiteracy of the people, they are not politically conscious of what they owe to the society and country. Homes, universities, or any other place can be made the centres for imparting in the performance of their obligations.

Fundamental duties complement fundamental rights

The Constitution of India not only provide with the fundamental rights but also with the fundamental duties. Although the fundamental rights were introduced in the Constitution much before the fundamental duties and are also enforceable by the court. 42nd Amendment, 1976 introduced the fundamental duties. But these duties are not enforceable. These are the moral duties of a responsible citizen. The fundamental duties must be complementary to the fundamental rights.

Article 21 of the Indian Constitution provides for Right to education and Article 51A(k) provides that all parents and guardians must provide their children with free and compulsory education at the age of 6-14 years. This shows that fundamental rights and duties are complementary to each other.

But in today's time people only want their rights and don't want to perform their duties. There are many examples which shows that people while using their fundamental rights avoid their fundamental duties.

The recent example can be taken of what happened in JawaharLal Nehru University. People while exercising their fundamental right of Freedom of Speech and Expression raised anti India slogans in the campus of the university. While exercising this right they violated their fundamental duty that is laid down in Article 51A(c), that is the "power, unity, integrity of the country must be protected by its citizens".

Many political leaders often attract votes in the name of religion. While doing this they violate their fundamental duty that is provided in Article 51A(c) that is "the power, unity, integrity of the country" must be protected by its citizens. They divide the society into different religion and caste.

Democracy cannot establish its deep roots in the society until and unless the citizens don't compliment their fundamental rights with their fundamental duties. While enforcing their fundamental rights they should fulfill their fundamental duties.

Relationship between the fundamental rights, directive principles and fundamental duties

The relationship between the fundamental rights, directive principles and fundamental duties are as follows:

In cases where there was a conflict between the constitutional validity of the legislation with the fundamental rights, then the Directive Principle of State Policy have been used to uphold the constitutional validity of such legislation. The 25th amendment in 1971 added Article 31C which states that any law enforced which was to give effect to the directive principles that were provided in Article 39(b)-(c) would not be held invalid on the grounds that they derogated from the fundamental rights that are present in the Articles 14, 19 and 31 of the Indian Constitution. The 42nd amendment proposes that Article 31C should be made applicable to all the Directive Principles. But the Supreme Court struck down this suggestion as it violates the basic structure of the Indian Constitution. For forming the basis of the legislation related to social welfare the fundamental rights and the directive principles have been used together.

The Supreme Court of India after the Kesavananda Bharati Case[12], adopted a view that fundamental rights and directive principles are not only complementary to each other but they both supplement each other by providing some goals to establish a welfare state by the means of social revolution.

The Supreme Court has also upheld the constitutional validity of various statutes which promote the objects that were laid down in the fundamental duties. These duties are not only obligatory for all the citizens but the Court can enforce them by making various laws. For this the Supreme Court has already given direction to the state in order to ensure effective implementation of these duties.

Fundamental duties are not enforceable through courts but fundamental rights are enforceable through the Supreme Court under Article 32 of the Constitution and the High Court has the power to issue writs for the enforcement of the fundamental rights under Article 226. The fundamental duties and the directive principles of the state policy that are provided in Part IV of the Indian Constitution are taken into account by the Courts while interpreting the fundamental rights or any restrictions that are imposed on such rights.

The court in the case of Javed vs. State of Haryana[13] held that the fundamental rights have to be read with fundamental duties which are provided in Article 51A of the Indian Constitution and with the directive principles of the state policy that are provided in Part IV of the Constitution. They cannot be read in isolation.

In the State of Gujarat vs. Mirzapur[14] the Supreme Court held while considering the provisions regarding Article 48, 48-A and Article 51(g) that the directive principles of state policy and fundamental duties that are provided in Article 51-A of the Indian Constitution plays a significant role while testing the constitutional validity of any statutory provision or of any executive act. The Court also said that the reasonableness of any restriction that is cast by the law on the fundamental rights in the form of regulation, control or prohibition can be

tested by taking the fundamental duties and the directive principle of state policy into account.

The court in Ramlila Maidan Incident[15] held that a balance has to be maintained between the fundamental rights and restrictions on one hand and fundamental rights and fundamental duties on the other hand. There would be an imbalance if importance is given to only fundamental rights or to the fundamental duties. Duty is considered as a true source of right. The courts consider the fundamental duties that are present in Article 51A while examining the reasonableness of the legislative restriction on exercise of various freedoms. The court also said that duties like protecting the sovereignty, unity and integrity of the country, provide safeguard to public property etc. are not insignificant.

It was observed in N.K. Bajpai vs. Union of India[16] that there is a common thread which runs between Part III, IV and Part IV-A of the Indian Constitution. First part provides us with the fundamental rights while the second part provides us with the basic principle of governance of the state and the third part provides the fundamental duties of the citizens of India. The court should consider all the constitutional aspect of fundamental rights, fundamental duties and the directive principle of state policy while interpreting any provision.

Conclusion

The non-enforceability of the fundamental duties won't affect its importance. Fundamental duties are an important aspect of a democratic state because it not only allows people to enjoy their rights but also reminds them to perform their duties which they have towards the nation. The word 'fundamental' which is attached to the duties makes them utmost important and thus it is required that they are to be followed by everyone. Many duties have also been set up as a separate law and are made enforceable by the law but this does not reduces the value of other duties that are provided in Article 51A. It is not only the duty of the government to provide everything in the Constitution, it is the people who should also be conscious about their role in the society. Even duties like paying taxes, right to vote must be performed by each and every citizen of the nation. These duties inculcates a sense of social responsibility in everyone. While interpreting the fundamental rights these fundamental duties are always taken into account.