

**'FUNDAMENTAL DUTIES' – NEED TO
EFFECTIVELY PROPAGATE THEM**

By Justice A.V.Chandrashekar

Fundamental rights are enshrined in Part III of the Constitution of India. Articles 11 to 35 (both inclusive) are the fundamental rights guaranteed to us in the Constitution. Violation of any one of these rights gives the aggrieved party to challenge the same in Constitutional Courts.

Not only the really aggrieved can approach the Constitutional Courts, but also any person acting *bona fide* and having sufficient interest in maintaining an action for judicial redress for public injury can also approach the Constitutional Courts by way of a 'public interest litigation' (PIL). The only caveat added is that a person invoking such a jurisdiction must have a concrete and credible basis for maintaining a cause before the court. But the principle of '*locus standi*' is given a new dimension by the Hon'ble Apex Court in the case of **S.P.GUPTA .v. UNION OF INDIA (AIR 1982 SC p.149)**. Of course a mere busy body who has no interest cannot invoke the jurisdiction of the court.

Article 32(1) of our Constitution provides for a right to move the Apex Court for the enforcement of the rights conferred to a citizen in Chapter III of the Constitution, since the Supreme Court has a constitutional duty to protect the fundamental rights of Indian citizens. If a comparison amongst the fundamental rights enumerated in our Constitution is not considered as bad, then Article 21 of the Constitution is the most vital Article. Article 21 reads as follows:

Article 21: No person shall be deprived of his life or personal liberty except according to procedure established by law.

Before a person is deprived of his life or personal liberty, the procedure established by law must be strictly followed.

In the case of '**MANEKA GANDHI .v. UNION OF INDIA (AIR 1978 SC p. 597)**', Hon'ble Apex Court has opened up a new dimension by imposing a limitation on the law-making. While prescribing the procedure for depriving a person of his/her life or personal liberty, the prescribed procedure must be reasonably fair and just. The Hon'ble Apex Court has gone to the extent of holding that the enjoyment of a quality life by the people is the essence of

the right guaranteed under Article 21. This protection is not only available to all Indian citizens who are lodged in jail, but even a foreign national lodged in Indian jail is entitled for the protection. Article 21 will be interpreted in conformity with the international law as India is a signatory to the International Covenant on Civil and Political Rights, 1966.

When the Constitution was drafted and the same was accepted on 26.11.1949, all the fundamental rights had been incorporated. Right to property was also a fundamental right. The said right is deleted from Chapter III. Now right to property is only a constitutional right under Article 300A. In the background of the above, it is useful to refer to the 'Fundamental Duties' in the Constitution vide Article 51A, i.e. Part IVA.

Following are the fundamental duties:

51A. It shall be the duty of every citizen of India—

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(b) to cherish and follow the noble ideals which inspired our national struggle for freedom;

(c) to uphold and protect the sovereignty, unity and integrity of India;

(d) to defend the country and render national service when called upon to do so

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities to renounce practices derogatory to the dignity of women

(f) to value and preserve the rich heritage of our composite culture

(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform

(i) to safeguard public property and to abjure violence

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement

(k) 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.

Article 1A(k) was inserted into the Constitution vide th Constitutional Amendment which received the assent of the President on 12.12.2017. All other Articles in Chapter I A were inserted vide 2nd Amendment, 1951 based on the recommendations of SWA AN SIN H Committee. Directive principles of the State

policy as enshrined in Part IV of the Constitution are not enforceable by any court, but the principles therein are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

In the case of **KESHAVANANDA BHARATI .v. STATE OF KERALA** ([1973] 4 SCC page 225), a Constitutional Bench consisting of 13 Judges of the Hon'ble Apex Court has, almost unanimously, held that the courts which are a part of the 'State' under Article 12 read with Article 36 of the Constitution, have a responsibility in interpreting the Constitution so as to ensure implementation of the directives of the state policy and harmonize the social objective underlying the directives with the individual rights. On going through several decisions of the Hon'ble Apex Court, it is clear that though Directive Principles of the state policy are not justiciable in courts, still the fundamental rights are tested on the touchstone of the directives enumerated in Part IV of the Constitution, of course, harmonizing the both wherever a conflict arises between the Articles found in Part III vis-à-vis Part IV.

One common prefix found in the Articles enumerated in Part III and Part IVA is “Fundamental.” Directive principles of the state policy are addressed to the State; whereas fundamental duties are addressed to the citizens without any legal sanction for their violation. While exercising or enforcing a fundamental right, a citizen is expected to remember that he owes duties as enumerated in Article 51 –A to the State. If a citizen does not care to the duties, the necessary corollary is that he does not deserve the rights. If the State has enacted any law prohibiting any act or conduct in violation of any of the fundamental duties, the courts would uphold such law considering restrictions found in such laws as reasonable restriction on fundamental right. Whether the ‘Fundamental Duties’ as enshrined in Part IVA have any prior legal background will have to be looked into.

Way back in 1970, in the case of **CHANDRA BHAVAN BOARDING AND LODGING .v. STATE OF MYSORE (AIR 1970 SC page 2042)**, Hon’ble Supreme Court emphasized the need of various duties of a citizen in building a welfare society. Late Justice

.S.Hegde (of Justice .Santosh Hegde) in the above case, has observed as follows:

'It is fallacy to think that under our Constitution, there are only rights and no duties. The provisions of Part IV enable the Legislature to impose various duties on the citizens. The mandate of our Constitution is to build a welfare society and that object may be to the extent the Directive Principles are implemented by legislation.'

In the case of **MOHAN KUMAR SINGHANIA .v. UNION OF INDIA (AIR 1992 SC p.1)**, Hon'ble Supreme Court has held that courts can uphold the constitutionality of a statute, the object of which is in consonance with a provision in Article 51A of the Constitution. In the case of **MUMBAI KAMGAR SANGH SABHA .v. ABDULBHAI FAIZULLABHAI (AIR 1976 SC p.1455)**, Hon'ble apex court has held that courts may also look at the duties while interpreting re uired statutes which admit of two constructions. hough not enforceable by a writ of the court, the fundamental duties do provide a valuable guide and aid to the interpretation of constitutional and legal issues.

Article 51A (g) speaks about the duties of a citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The founding fathers of the Constitution were men of great values and vision and they could never visualize that a stage would come when forests would be denuded, lakes and tanks would be encroached, environment would be polluted and flora and fauna would be destroyed in the greed of having more physical comforts. They could not visualize that public property would be destroyed on a large scale and that they would pave the path for violence. They had a vision that there would be perfect harmony amongst the people and tolerance would be the order of the day. India is a country having rich heritage and our culture is composite. Some people talk of 'intolerance' becoming more and more viral. **Whether our country has had been really intolerant?** Hence it is useful to refer to the words of Shri Justice . . . Venkatchaliaiah, former Chief Justice of India and who was the Chairman of National Commission to review the working of the Constitution-2001. They are as follows:

' Here is then the noble Indian exhortation of the whole world as one family "VASUDAIVA KUTUMBAKAM" which is unique to Indian ethics. India was the most

hospitable country to which great human caravans from other parts of the world arrived, congregated and merged. India was the mother of several great religions of the world.'

It is ironic that such a country which opened its home and heart to everyone from everywhere should be painted as 'intolerant nation.' Political opportunities should not denigrate this 'idea of India' and cherished tradition of tolerance. The nation is big; but sometimes man becomes small and too sharp to sustain legally.'

The Wildlife Act, 1972, is a Central legislation aimed at protecting all types of wild life including flora and fauna. Different states have enacted legislations to protect forest. The Environmental Pollution Act aims at preventing all types of pollution. Pollution Control Boards have been established at the state level. Management of bio-medical wastes and e-waste requires lot of attention, lest they would have greater consequences on the environment. Sand is being illegally excavated from tanks and rivers and thus it has a disastrous effect on the water bodies. Constructions are going on in the lake and tank beds. National Green Tribunal has come down heavily on putting up any construction near the lakes and tanks without leaving requisite buffer

zone. It is said that but for the timely intervention of Hon'ble Supreme Court in the case of **T.N.GODAVARMAN TIRUMALPAD .v. UNION OF INDIA (AIR 1997 SC 1228)** by virtue of the directions on 12.12.1996 and subsequent continuous mandamus, forests would have been virtually depleted by this time. Hence all laws enacted in this regard will have to strictly be implemented.

Government of India had appointed a Committee with Mr.Justice (Late) J.S.Verma in the year 1998 to operationalize the suggestions to teach fundamental duties to the citizens of India. A detailed report was submitted by Late Justice J.S.Verma in 1999 and the recommendations of the said Committee are reiterated with all fours by the National Commission to Review the Working of the Constitution, in its final report.

Usefulness of the fundamental duties enshrined in Article 51A of the Constitution have been succinctly emphasized by the above Commission in its final report. The relevant portion of the report is found in recommendation nos.3.38.1 and 3.38.2 and they are extracted below:

3.38 Usefulness of Duties:

3.38.1 Fundamental duties of citizens serve a useful purpose. In particular, no democratic policy can ever succeed where the citizens are not willing to be active participants in the process of governance by assuming responsibilities and discharging citizenship duties and coming forward to give their best to the country. Some of the fundamental duties enshrined in Article 51A have been incorporated in separate laws. For instance, the first duty includes respect for the National Flag and the National Anthem. Disrespect is punishable by law. To value and preserve the rich heritage of the mosaic that is India should help to weld out people into one nation but much more than Article 51A will be needed to treat all human beings equally, to respect each religion and to confine it to the private sphere and not make it a bone of contention between different communities of this land. In sum, the Commission believes that Article 51A has traveled a great distance since it was introduced in the Forty-second Amendment and further consideration should be given to ways and means to popularize the knowledge and content of the Fundamental Duties and effectuate them.

3.38.2 The most important task before us is to reconcile the claims of the individual citizen and those of the civic society. To achieve this, it is

important to orient the individual citizen to be conscious of his social and citizenship responsibilities and so shape the society that we all become solicitous and considerate of the inalienable rights of our fellow citizens. Therefore, awareness of our citizenship duties is as important as awareness of our rights. Every right implies a corresponding duty but every duty does not imply a corresponding right. Man does not live for himself alone. He lives for the good of others as well as of himself. It is this knowledge of what is right and wrong that makes a man responsible to himself and to the society and this knowledge is inculcated by imbibing and clearly understanding one's citizenship duties. The fundamental duties are the foundations of human dignity and national character. If every citizen performs his duties irrespective of considerations of caste, creed, colour and language, most of the malaise of the present day polity could be contained, if not eradicated, and the society as a whole uplifted. Rich or poor, in power or out of power, obedience to citizenship duty at all costs and risks, is the essence of civilized life.

Since the Central Government had accepted the recommendations made by the National Commission to Review the Working of the Constitution, the Hon'ble Apex Court in the case of

HON'BLE SHRI RANGANATH MISHRA .v. UNION OF INDIA & OTHERS ([2003] 7 SCC p.133- relevant paragraphs 3 to 6) has emphasized about the mode to be adopted to generate awareness and consciousness of citizens towards the Fundamental Duties. The Apex Court has directed the Central Government to consider the report with all earnestness and to take appropriate steps for its expeditious implementation.

In the case of **M.C.MEHTA .v. UNION OF INDIA & OTHERS (AIR 1988 SC p.1115)**, the Hon'ble Apex Court has given the following directions and they are as follows:

- (a) to direct all educational institutions throughout India to give weekly lessons in the first ten classes, relating to protection and improvement of the national environment including forests, lakes, rivers and wildlife,
- (b) To get text books printed for the said purpose and distribute them free of cost,
- (c) To introduce short term courses for training up teachers who teach these subjects, and

- (d) Not only the Central Government, but also the State Governments and local authorities to introduce cleanliness weeks when all citizens, including members of the Executive, the Legislature and the Judiciary, should render free personal service to keep their local areas free from pollution of land, water and air.

SWACH BHARATH Mission recently launched by the Central Government is virtually in compliance with the above directions given by the Hon'ble Apex Court.

In the case of **STATE OF MADHYA PRADESH .v. SURESH KUMAR (AIR 1997 SC p.1017)** and in the case of **M.C.MEHTA .v. UNION OF INDIA ([1997] 3 SCC p.715)**, the Hon'ble Hon'ble Apex Court has given specific directions to take urgent steps to prevent destruction or damage to the environment, flora and fauna, wildlife in and around the sanctuaries. Article 48A states that the State should endeavour to protect and improve the environment and safeguard the forests and wildlife of the country.

If the natural resources like air, water, soil and minerals are excessively utilized, it results in severe damage to the environment. Accelerated degradation of the environment is because of the lack of effective enforcement of environmental laws and lack of proper awareness amongst the public. The directions so given to the Central Government, State Governments and various local bodies are nothing but binding precedent in terms of Article 141 of the Constitution. It is in this regard there is a dire need to propagate the Fundamental Duties enumerated in Article 51A of the Constitution effectively. Taking effective steps would be a step in aid towards improving the quality life of the people.

Achieving excellence in all spheres of individual and collective activity will enable the nation to rise to higher levels of endeavour and achievement. In the era of globalization, the nation as a whole, is expected to compete with other nations for survival. Hence achieving excellence is a sine-qua-non for the same and therefore, it cannot be compromised in any

manner. It is expected that all the concerned will take appropriate steps to make the 'Fundamental Duties' a reality.

Legal Services Committees and Legal Services Authorities established under the Legal Services Authorities Act, 1987, which are creating legal awareness and law colleges could be catalytic agents in propagating the 'Fundamental Duties' and thereby inculcate the noble intention of inserting 'Fundamental Duties' in the Constitution.

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