



EXPANDING THE HORIZON OF FUNDAMENTAL DUTIES THROUGH JUDICIAL ACTIVISM IN INDIA

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Abstract-- Fundamental Duties enshrined in the Constitution have a special importance in the lives of citizens as it provides a guidance for human conduct and establishment of an ideal society. The Courts in India have exhibited immense inclination towards interpreting the Fundamental Duties and have relied on this Part of the Constitution while delivering judgements. The Article discusses the explanation couched to Fundamental Duties by the Courts and attempts to establish the significance of Fundamental Duties in light of diminishing values of the society.

Key words: Constitution, Fundamental Duties, Interpretation, Indian Judiciary, Dharma

INTRODUCTION

A civilized society obliges upon its people a certain code of conduct towards fellow citizens and towards the Nation. This leads to the conceptualization of the term 'duty' which has its origin in the late 13th century when it was utilized by Anglo-French as 'duete' and from old French 'due' which suggests something that's due or owed.¹ However, in general sense, the emergence of laws can be attributed to make individuals adhere to the ideals and established code of conduct determined by civilized communities.

The term 'Duty' for the individuals of India isn't novel as the whole Indian culture was steered through the idea of 'Dharma' which does not have and can never have any equivalent word in English. It is the most important commitment and contribution that India has given to the whole world. It suggests various implications in various settings as obligation, law, morality, ethics, profound quality, goodness, equity, justice, virtues and above all anything that is ideally expected from a human being to perform not only from his deeds but also from his thoughts and conscience. The values of 'Dharma' have been practised, cherished and worshipped through ages. It teaches people to be engaged in their goals towards mankind and performance towards righteousness and the presentation of such objective. Goal being; to be good to others which in turn creates an ideal institution to live up with.

The word 'Duty' in setting of 'Dharma' infers activity that adds to the substance of the world, similar to the exhibition of obligations by people. In the ancient period the attention was more on obligations towards others. Steadily, the concept of obligations begun weakening, bringing rights to the cutting edge. With the foundation of welfare State, the duty of ensuring the rights of the person moved on to the government and thus the concept of lawful rights developed which were considered principal to the existence of human personality.

OBJECTIVES OF THE STUDY

Since the adherence of 'Dharma' and its principles are core to the Indian society, it is pertinent to study the context in which it is understood and interpreted by the Courts of Law. The Constitution of India by inserting Part IVA has laid a yardstick to the fellow citizens in continuance of an ideal society and gives a constant reminder that besides enjoying Fundamental Rights, the basic norms and morality are also equally important for a democratic society. Each provision ingrained in this Part of the Constitution has to be read and re-read keeping in mind the changing contours of society. It is in this context that this



present paper aims to present the construction of Fundamental Duties by the Indian Judiciary and explains each provision of Part IVA in light of decided cases.

FUNDAMENTAL DUTIES AS 'FUNDAMENTAL' REFLECTION OF VALUES

Liberated from the colonial rule in 1947 and heading towards a building a democratic nation, the Indian Constitution was a quantum leap through which the citizens of India were to be endowed with Fundamental Rights and freedoms in context of existing socio-economic disparities. Although the original Indian Constitution accentuated Fundamental Rights which were supported with Directive Principles of State Policy, there was no mention about Fundamental Duties.

Imperatively, the Preamble of the Constitution is implicitly couched with duties in the goals mentioned therein. The Supreme Court also in case of *Chandra Bhavan Boarding and Lodging, Bangalore v. The State of Mysore*², observed that "it is a fallacy to think that in our Constitution there are only rights and no duties. The mandate of the Constitution is to build a welfare, society in which justice social, economical and political shall inform all institutions of our national life." These initial interpretations implicitly bringing Duties within the fabric of Constitution could not continue for a longer time since the inception of the Constitution. The Swaran Singh Committee in 1976 took it as an opportune moment to recommend introduction of Part IVA to the Constitution on Fundamental Duties, which was given a clear nod by the then members of ruling and opposition parties being the only non-controversial part of the 42nd Amendment to the Constitution of India.

The Duties were essentially taken from the Indian tradition, mythology, religions and practices. They presented the codification of tasks integral to the Indian way of life as perceived through years.³ Further, inclusion of Fundamental duties was a reflection of values preached by the spiritual gurus which the Supreme Court aptly observed in the case of *T.N. Godavarman Thirumulpad v. Union of India*⁴, the Court said, "Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral Part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences."

The supremacy of Fundamental Duties has been well-conceived by the Supreme Court in case of *Ashok Kumar Thakur v. Union of India*⁵, wherein the Court observed that, "Article 51A are prefixed by the same word 'fundamental' which was prefixed by the founding fathers of the Constitution to 'rights' in Part III." Further it was observed by the Court that "Fundamental duties, though not enforceable by a writ of the court, yet provide a valuable guide and aid to interpretation of constitutional and legal issues. In case of doubt or choice, people's wish as manifested through Article 51A, can serve as a guide not only for resolving the issue but also for constructing or moulding the relief to be given by the courts." It has been appropriately observed that, "The Fundamental Rights in Part III, the Directive Principles of State Policy in Part IV and the Fundamental Duties in Part IVA forms a compendium and have to be read together. It is true that there is no legal sanction provided for violation or non-performance of Fundamental Duties. There is neither specific provision for enforceability nor any specific prohibition. However, Fundamental Duties have an inherent element of compulsion regarding compliance."⁶

FUNDAMENTAL DUTIES: INFERENCES THROUGH JUDICIAL CONSTRUCTIVISM

The following part presents the role of judiciary in upholding fundamental duties. The Courts in India have seen as an example of judicial creativity and judicial activism. Part IVA of the Constitution, which is often referred to be as unenforceable requires attention with reference to the interpretations given by the Judges of Higher Courts. Comprehensively, these judgements and the construction therein acts as a torch-bearer to the people of India.



RESPECT CONSTITUTIONAL IDEALS, INSTITUTIONS AND NATIONAL SYMBOLS

Part IVA of the Constitution under Article 51A (a) imposes upon the citizens a duty to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem. This duty holds significance in milieu of the unique diversity that India has in terms of religion, caste, culture, languages and ethnicity. This diversity is brought together through our Constitution, the National Flag and the National Anthem. We, the people of India take immense pride upon our National Flag and the National Anthem as symbols of the unity and integrity which brings the plurality of population in singularity. Further the world's best Constitution, being a living document is constantly being interpreted in light of changing colours of dynamic society. Clause (a) is a splendid provision for the citizens of India to bow down and perform the duty.

The Supreme Court got an occasion to interpret this sublime clause in *Bijoe Emmanuel v. State of Kerala*⁷ where three children belonging to sect called Jehovah's Witnesses were expelled from school on not singing National Anthem. It was held that 'Proper respect is shown to the National Anthem by standing up when the National Anthem is sung. It will not be right to say that disrespect is shown by not joining in the singing.'

Another very interesting case⁸ came up before the Supreme Court when the respondent a staunch patriot was not allowed to fly the National Flag on his premises as the same is impermissible under the Flag Code of India. The Court held that no Fundamental Right especially under Article 19(1)(a) is violated in this context as the Flag Code is not a statute but provides for preservation of dignity and respect for the national flag and stated that it should be strictly observed, the slightest disrespect of which cannot be tolerated. With respect to Fundamental Duties the Court observed that "Duties are observed by individuals as a result of dictates of the social system and the environment in which one lives, under the influence of role models, or on account of punitive provisions of law."

PURSUE IDEALS OF FREEDOM STRUGGLE

Article 51A (b) provides that it shall be the duty of every citizen of India to cherish and follow the noble ideals which inspired our national struggle for freedom. India acquired freedom after a prolonged time frame and upon the martyrdom of countless of its sons and daughters. The value of freedom in all senses must be paramount in the minds of its citizens. The ideals with which the freedom fighters advanced and succeeded was a historical step towards freeing our country from the colonial rule.

The Kerala High Court in case of *K. Devki v. Union of India*⁹ reproached the respondents of exhibiting callous attitude for the petitioner who was seeking benefits under the Swatantrata Sainik Samman Pension Scheme. The Court read the facts of the case in light of Clause (b) and allowed the petition. The Court upbraided the Respondent- Central Government by stating that it cannot take the stand that the averments concern the petitioner and that the respondent would not make any comments on them. Besides such an approach is in sharp contrast to Article 51A(b) of the Constitution of India."

In another case of *West Bengal Head Masters' v. Union of India*¹⁰, the Calcutta High Court elucidated on Part IVA of the Constitution when the petitioner urged the court to include in detail the history of Indian Freedom Movement as it was briefly included in the revised textbooks of Standard VIII. The petitioner contented that this is violative of the present clause as the students would not be able to perform their Fundamental Duty enshrined under Clause (b). The Court while rejecting the averments pertinently held that, "the performance of the duty is quite personal to every citizen of India.... while a right can be claimed against another, a duty has to be performed." It further said, "A citizen cannot claim that he must be properly equipped by the State so as to enable him to perform his duties."



ENDORSE SOVEREIGNTY, UNITY AND INTEGRITY

Article 51A (c) provides that it shall be the duty of every citizen of India to uphold and protect the sovereignty, unity and integrity of India. The Constitution of India endows a system through which people's supremacy is observed. The Sovereign feature imbibed in our Constitution has led to the growth of one of largest democracy across the world. Further, as discussed earlier protecting the unity and integrity of India is within the reach of the citizens and hence it is added as a specific fundamental duty. In India several laws have been enacted which tacitly encompasses certain fundamental duties.

The Supreme Court had an occasion to impliedly send a message that though fundamental duties are not directly enforceable but the existing laws sufficiently provide for punishments of any such act wherein the duty is not observed. The case was a writ petition entitled *Pravasi Bhalai Sangathan v. UOI*¹¹ wherein the petitioner sought the petitioner prayed the Hon'ble Court to issue appropriate writ, order, decree in the nature of mandamus directing the Union of India and respective States to enforce Fundamental Duties under Article 51-A (a), (b), (c), (e), (f), (i) & (j) of the Constitution by taking proactive steps in promoting national integration and harmony amongst the citizens of India. The Court held that that "the penal law provides sufficient remedy to curb the menace of hate speeches. Thus, person aggrieved must resort to the remedy provided under a particular statute. The root of the problem is not the absence of laws but rather a lack of their effective execution. Therefore, the executive as well as civil society has to perform its role in enforcing the already existing legal regime."

Another writ petition which the Supreme Court had to reject was *Santosh Singh v. Union of India*¹² wherein the petitioner being deeply distressed with the rapidly degrading moral values in the society touching every aspect of life sought a mandamus for the inclusion of moral science as a compulsory subject in the syllabus of school education from classes I to XII in order to inculcate moral values and nurture national character in the national interest.

DEFEND NATION AND RENDER NATIONAL SERVICE

Article 51A (d) provides that it shall be the duty of every citizen of India to defend the country and render national service when called upon to do so. A predominant duty towards our Motherland India is to protect, secure, defend and provide national service in times of need. The identity and the protection that Indians are enjoying is because of the identity of the Motherland, hence any service called upon for should never be negated.

One exemplary case¹³ came up before the Madhya Pradesh High Court wherein the petitioners being Professors and Assistant Professors were given Election Duty under the Tahsildar, who enjoyed comparatively much less pay scale, status and rank. They challenged this relying on the instructions issued by the Election Commission which laid down certain principles to be followed while assigning the election duty. The Court while dismissing the petition held not to interfere in the election process observed referring to Article 51A (d) that "Participating and contributing in the effectual and unhindered conduction and completion of election process is akin to rendering national service the petitioners ought to rise above parochial thinking of heart burning arising out of their posting in election process under an officer of junior rank, status and pay scale and discharge their election duty by treating it to be national service."

PROMOTE HARMONY AND BROTHERHOOD

Article 51A (e) provides that it shall be the duty of every citizen of India 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. Clause (e)



obliges the citizens with dual duty, one is to promote harmony and spirit of common brotherhood. Again, this clause provides to maintain unity in diversity and respect and accept various sections existing in society. The second part is very cardinal as it obliges to renounce practices derogatory to the dignity of women.

Taking into context the ideals of Clause (e) and declaring as not infringing rights under Article 28, the Supreme Court in case of *Ms. Aruna Roy v. Union of India*¹⁴, upheld the National Curriculum Framework for School Education that provided for imparting of value development education relating to basics of all religions. The Court in its specific words pointed that “What is sought is to have value-based education and for 'religion' it is stated that students be given the awareness that the essence of every religion is common. ... What is sought to be imparted is incorporated in Article 51(A)(e), and to see that universal values, such as truth, righteous conduct, peace, love and non-violence be the foundation of education.”

In another case¹⁵ signifying the uphold the harmony in India wherein the petitioners sought guidelines to curb acts of discrimination against persons from the North- Eastern States the Court observed that “the involvement of the law enforcement machinery is alone not sufficient to resolve the problem. Mind-sets have to be changed including in the universities, colleges and educational institutions, places of work and in society. Sensitivity and inclusion have to be fostered. The Governments, both at the centre and the states have a non-negotiable obligation to take positive steps to give effect to India's commitment to racial equality. This commitment is embodied in constitutional rights, fundamental duties, statutory provisions and in the international obligations which have been assumed by India.”

The Supreme Court has time and again been countered on to deliver on to upholding the Religious tenets of the people of India. In *Om Prakash v. State of UP*¹⁶, the Supreme Court while upholding the order of the High Court on the ban of all kinds of non-vegetarian food including eggs in Haridwar, Rishikesh and Muni ke Reti referred to the Fundamental Duties. The court said, “In the three towns people mostly assemble for spiritual attainment and religious practices. All citizens are enjoined by Fundamental Duties prescribed in Article 51-A to respect faith of each other and thereby 'promote harmony and spirit of common brotherhood' in a pluralistic society as India. The Fundamental Duties enjoined on citizens under Article 51-A should also guide the legislative and executive actions of elected or non-elected institutions and organisations of the citizens including the municipal bodies.”

In *Bal Patil v. Union of India*¹⁷, the Court dismissed the Writ Petition of an organisation representing Jain which sought minority status observed, “We have to develop such enlightened citizenship where each citizen of whatever religion or language is more concerned about his duties and responsibilities to protect rights of the other group than asserting his own rights. The constitutional goal is to develop citizenship in which everyone enjoys full fundamental freedoms of religion, faith and worship and no one is apprehensive of encroachment of his rights by others in minority or majority.”

The discriminatory and degrading position of women in India has a deep-rooted history. The reflections of the same are seen even in the 21st Century. The Supreme Court got an opportunity in the case of *Avinash Nagra v. Navodaya Vidyalaya Samiti*¹⁸ to uphold the dismissal order of a teacher against whom there were charges of sexual harassment of a girl student. The Court reminded the teachers of their fundamental duties and specified teachers owe dual fundamental duties to himself and society. It further observed that, “. the teacher either individually or collectively as a community of teachers, should regenerate this dedication with a bent of spiritualism in broader perspective of the Constitutionalism with secular ideologies enshrined in the Constitution as an arm of the State to establish egalitarian social order under the rule of law.”



PRESERVATION OF COMPOSITE CULTURE

Article 51A(f) provides that it shall be duty of every citizen of India to value and preserve the rich heritage of our composite culture. Indian civilization is one of the oldest civilizations of the world. The diversity found in the Indian culture in different parts of the country is above comparison with any country. The variability of customs and culture imbibed in every different part of the country is unique. India once known for its richness throughout the world has left us with unparalleled rich heritage. It becomes the duty of every citizen to value, preserve and take pride in such richness of diverse culture and rich heritage.

The Courts have often been called upon to preserve the rich culture and heritage of our Country in different forms. In *Rajeev Mankotia v/s Secretary To The President of India*¹⁹ the petitioner sought a stay on turning of the Viceregal Lodge at Shimla, a historical place and monument into a Five Star Hotel. The Court while giving specific directions to GOI appreciated the efforts of the petitioner and pointed that in absence of this petition the ancient historical heritage would have been lost.

In another attempt to protect the natural heritage, the Court in the case of *Vishnu Kumar Singhal v. State of Rajasthan*²⁰, dismissed the petition and upheld the order of the State Government restraining mining operations in protected forest areas. The Court observed that “the rights of the petitioners to carry on mining operations are subjected to the directives under Article 48A and fundamental duties enshrined under Article 51A(f) and 51A(g) which are also supreme and cannot be violated under the guise of rights under Article 19(1)(g).

PROTECT ENVIRONMENT

Article 51A (g) provides that it shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures. The entire ecosystem including the survival of human kind is dependent on environment. The development of environmental jurisprudence by the Courts in India has been outstanding, unforgettable and exceptional. The concept of sustainable development and protection to environment is the gift that the Courts in India have given to us. There have been a number of public interest litigations upheld by the Courts to serve the Mother Nature. The Supreme Court in case of *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*²¹, observed that, “Preservation of the environment and keeping the ecological balance unaffected is a task which not only governments but also every citizen must undertake. It is a social obligation and let us remind every Indian citizen that it is his fundamental duty as enshrined in Article 51A (g) of the Constitution.”

*State of Gujarat v. Mirzapur Moti Kureshi Kasab Jamat*²² ban on cow slaughter of cow progeny was upheld on the basis of Article 51A(g). The Court held that by enacting Article 51A(g) and giving it the status of a fundamental duty, one of the objects sought to be achieved by Parliament is to ensure that the spirit and message of Articles 48 and 48-A are honoured as a fundamental duty of every citizen.

In case of *Animal Welfare Board of India v. A. Nagaraja*²³, the Supreme Court of India decided that Bulls cannot be used as performing animals, either for the Jallikattu events or Bullock- cart Races in the State of Tamil Nadu, Maharashtra or elsewhere in the country. It held that the provisions of Prevention of Cruelty to Animals Act, 1960 have to be understood and read along with Article 51A(g) of the Constitution which cast fundamental duties on every citizen to have compassion for living creatures. Parliament, by incorporating Article 51A(g), has again reiterated and re-emphasised the fundamental duties on human beings towards every living creature, which evidently takes in bulls as well.

In *M.C. Mehta v. Union of India*²⁴, directions were given to Central Government for reminding and reinforcing the implementation of fundamental duties to the citizens. It was directed that all educational



institutions throughout India should teach at least for one hour in a week, lessons on the protection of environment and create awareness of the problems faced due to deterioration of environment.

In *Association for Environment Protection v. State of Kerala*²⁵, the Supreme Court while allowing the petition referred to 51A(g) ordered the demolition of a restaurant as part of renovation and beautification of Manalpuram Park at Aluva. Also, in case of *Bhanvar Singh v. Union of India*²⁶, the Court directed that no mining activities and blasting shall take place within 10 kms from the Chhittorgarh fort wall.

DEVELOP SCIENTIFIC TEMPER, HUMANISM AND SPIRIT OF INQUIRY

Article 51A (h) provides to develop scientific temper, humanism and spirit of inquiry and reform. The concept of scientific temper was developed by Pandit Jawaharlal Nehru in his book entitled *Discovery of India*. He quoted "The scientific approach and temper are, or should be, a way of life, a process of thinking, a method of acting and associating with life, a process of thinking, a method of acting and associating with our fellowmen."²⁷

The Supreme Court in case of *Ashok Arora v. Union of India*²⁸, pointed out that "The real cause of miseries to the millions of fellow human beings is the lack of training of mind & soul, not developing the spirit of enquiry as mandated by the Constitution of India. We have no time to develop that spirit of enquiry and scientific temper as envisaged in the constitution of India."

The Supreme Court took opportunity to refer to clause (h) while striking down institutional reservation in AIIMS and observed that "Every citizen of India is fundamentally obligated to develop the scientific temper and humanism. He is fundamentally duty bound to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievements."²⁹

In another case, *Dravidar Kazhagam v. The Secretary*³⁰, the Madras High Court interpreted Article 51A (h) and permitted the petitioner to conduct a programme on the 125th Birth Anniversary of Dr. Ambedkar on Self-respect Marriages and voluntary removal of Thali (a symbol of matrimonial slavery). The decision was given taking into consideration of the petitioner's work on propagation of the principles of rationalism, self-respect, women's right, eradication of caste system and abolition of untouchability.

SAFEGUARD PUBLIC PROPERTY AND RENOUNCE VIOLENCE

Article 51A (i) provides to safeguard public property and to abjure violence. India achieved its independence through the route of non-violent being preached by Mahatma Gandhiji. The "Mantra" of non-violence has been integrated in our lives and it is believed that peace in the nation is a pre-requisite for a thriving society. Facilities and amenities along with infrastructure in every sphere of life created by the country are for the welfare of the residents. Therefore, safeguarding the same must be considered as a duty of every citizen.

The Madhya Pradesh High Court interpreted Clause (i) in case of *Ku. Rashmibala Saxena v. Jiwaji University*³¹ and delivered interim order against the petitioners who sought to cancel their LL.B. examination and wanted the University to allow them to appear in Supplementary Examination. The Court observed that "it is not only the case of Clause (g) of Article 51A of the Constitution with which have to reckon, but we must also give due effect to the mandate inscribed in Clause (i) which requires citizens to "abjure violence" in behaving as dutiful citizens of this country."

In *Re: Ramlila Maidan Incident Dt.4/5.06.2011 V. Home Secretary, Union of India*³² the Court held the police liable for misuse of Section 144 of Cr.P.C., upheld right to sleep as a fundamental right and awarded compensation to the victims of police action. The Court while deciding pointed that when the



courts are called upon to examine the reasonableness of a legislative restriction on exercise of a freedom, the fundamental duties enunciated under Article 51A are of relevant consideration."

ENDEAVOUR EXCELLENCE IN LIFE

Article 51A (j) provides 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. India has an excellent past wherein the residents of that era were second to none in every sphere of life. Due to the external aggressors ruling India for a considerable period of time, the people of India had taken a back step as compared to the gorgeous past. It is now time to regain that level of excellence and richness which we had lost during the period of slavery. Our culture has taught us to be leaders as well as team members therefore the endeavour has to be towards excellence in all spheres whether individually or in collective activities. The main thrust has to be towards a constant rise to bring the country back to its original rich past.

The Supreme Court in *State of Uttar Pradesh v. Yamuna Shanker Misra*³³, observed that the object of writing the Confidential Reports and making entries in the character roles were read in the light of Article 51A (g) as giving an opportunity to a public servant to improve excellence. Similarly, in *Government of India V. George Philip*³⁴ the Court upheld compulsory retirement of an employee who did not turn up after the leave period and recalled the goals of Article 51A(j) and stated that "the same cannot be achieved unless the employees maintain discipline and devotion to duty."

*Chameli Singh v. State of U.P.*³⁵, the Apex Court while upholding right to shelter as a fundamental right built a nexus between fundamental rights and duties and observed that "In a democratic society as a member of the organised civic community one should have permanent shelter so as to physically, mentally and intellectually equip to improve his excellence as a useful citizen as enjoined in the Fundamental Duties and to be useful citizen and equal participant in democracy."

In *Re: Balaji Raghavan*³⁶; the Supreme Court while deciding that awarding of National Awards is not violating the principles of equality enshrined in the Constitution relied on Clause (j). The Court referred to the various clauses of Article 51A and specifically clause (j) and pointed that it is necessary that there should be a system of awards and decorations to recognise excellence in the performance of these duties. In *Mohan Kumar Singhania v. Union of India*³⁷ Officers in All-India Services (Administrative, Forest, Police, etc.) were not taking the training seriously resulting in deterioration of the services. Service Rules were amended so as to give weightage to the training and penalize the failure. The Court while upholding the validity of the amendment and drew strength from Article 51A (j).

EDUCATE CHILDREN

Article 51A (k) provides a duty to 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. This clause was inserted in 2002 with the 86th Amendment of the Constitution which inserted Article 21A securing right to free and compulsory education to all children between the age of 6 to 14 years. In pursuance of Article 21A, Rights of Children to Free and Compulsory Education Act, 2009 was introduced to ensure fulfilment of right to education to the children. Having known the fact that this right can never be fulfilled in absence of a corresponding duty to the parents/guardians, clause (k) was inserted.

In case of *Ashoka Kumar Thakur v. Union of India*³⁸ it was observed that from Article 51A (k), it becomes clear that parents would be responsible for sending their children to school. It was further observed that it is parents, not the State, who are responsible for making sure children wake up on time and reach school. Thus, Article 21A read with Article 51A(k) distributes an obligation amongst the State and parents: The State is concerned with free education, parents with compulsory.³⁹



CONCLUSION

Democratic set up of any Nation rests on perseverance of its people being the ultimate custodians of the Constitution. The Constitution empowers the citizen, but the citizen too empowers the Constitution – by following it, by adhering to it, by protecting it, and by persevering to make it more meaningful with words and deeds. The Constitution is nobody's preserve – and it is everybody's preserve.⁴⁰

It is been usually said and debated that Part IVA of the Constitution consisting Fundamental Duties are unenforceable and hence is nothing more than a dead letter of the Constitution. However, in context of discussions held herewith, it is a justified proposition that Part IVA is been given equal importance while interpreting Part III and IV of the Constitution. A person being bestowed by the law with fundamental rights also implies that another person has a corresponding duty. Rights and duties go hand in hand and if applied together, it builds a profound legal system. The Indian culture and customs also show the values of life being more attached with duties compared to rights.

At the same time, there are a number of laws imposing a specified behaviour (which makes a person duty bound to follow) on individuals. So, what is the importance of a specific mention of such duties? The answer is: when people are made to follow duties because of penalties or to avoid breach of law, they start finding loopholes in the said law and try to evade the laws. Whereas if the same is taken as a duty to be obeyed by the citizens, then it will take a form of 'Dharma' and to be followed blindly without finding any loopholes into it. Sanctions behind non-observance of a law is nonetheless a forceful factor is complying the legal framework, however, it is tampered when people could locate ambiguities either in the legislations or in its implementation.

Further, the present society is experiencing glitches in adherence to the moral and ethical conducts which deviates from nurturing democracy in its real sense as envisioned by the Constitution and its makers. More often the newspapers are loaded with incidents exhibiting shameful exposition of human conduct. Erosion of culture, collapse of ethical principles and moral values have intensified raising challenges to compliance to the sacrosanct part of the Constitution. Violence against women and children, environment degradation, regionalism, provincialism, hate crimes, communal disharmony, mob violence and other anti-national activities are deteriorating the established rubric of society.

Realistically, what acts as hindrance in making a desired society is deep rooted in the Indian setting. The prolonged problems attributed due to population explosion in the country has led to increase poverty, illiteracy and unemployment which are all intricately linked up. The overall effect has hampered the smooth flow of culture refinement and has reinforced the attitudes of self-centeredness, egotism and insensitiveness amongst people. A society driven by negative forces of separatism, extremism and intolerance has somehow led to dilution of the principle of Dharma. It is still a wishful thinking that the day when people would understand, cherish and follow the eleven duties, the laws would become a dead letter and would lead to a formation of ideal state.

A possible suggestion to bring out the Country from these enormous difficulties is by educating the youth. The foundational changes can be brought from the school level. Ensuring continuance of education up to higher education level and then guaranteed employments can lead to a satiated society. Further, widescale sensitization for adherence to cultural values can definitely go a long way in bringing back the lost ethos of the country.

¹ <https://www.lexico.com/en/definition/duty>

² 1970 AIR 2042



³ Constitution Day and Fundamental Duties; Department of Justice, Government of India, available on <https://doj.gov.in/sites/default/files/Constitution%20Day.pdf>

⁴ (2012) 4 SCC 362

⁵ (2008) INSC 614; Also see A.I.I.M.S. Students Union v. A.I.I.M.S. [2001] INSC 418 (24 August 2001); S.R. Bommai v. Union of India, AIR 1994 SC 1918; Javed v. State of Haryana, (2003) INSC 324; State of Maharashtra v. Sarabgdharsingh Shivdassing Chavan [2010] INSC 1086 (14 December 2010);

⁶ National Commission to Review the Working of the Constitution, A Consultation Paper on Effectuation of Fundamental Duties of Citizens

⁷ [1986] INSC 167; AIR 1987SC 748

⁸ Union of India V. Naveen Jindal, (2004) INSC 43

⁹ WP(C).No. 25066 of 2009(C)

¹⁰ AIR 1983 Cal 448

¹¹ [2014] INSC 180

¹² [2016] INSC 524 (22 July 2016)

¹³ Dr. Dilip Kumar v. State of MP, WP No.348.2015

¹⁴ (2002) 7 SCC 368

¹⁵ Karma Dey v. U.O.I, [2016] INSC 879; Also see Binay Kumar Mishra v. State of Bihar and others, October 2000 decided by Patna High Court and ordered to include Maithili as a language in Bihar Public Service Commission referring to Fundamental Duties

¹⁶ [2004] INSC 140

¹⁷ (2005) INSC 399

¹⁸ [1996] INSC 1226, Also see Chandra Rajakumari v. Commr of Police, 1998 (1) ALD 810, wherein the Court laid down conditions to be adhered by the Police Authority to maintain dignity of women participating in beauty contests.

¹⁹ AIR 1997 SC 2766; Also See Satinder Kumar vs Union of India, AIR 2007 HP 77; Subhas Datta v. Union of India [2015] INSC 88

²⁰ Civil Writ Petition No.224/2010

²¹ 1986 (Supp) SCC 517. Also see Shri Sachidanand Pandey and v. State of West Bengal, (1987) 2 SCC 295; Vellore Citizens' Welfare Forum v. Union of India, (1996) 5 SCC 647; Indian Handicrafts Emporium & Ors V. Union of India & Ors [2003] INSC 419; M.C. Mehta V. Union of India & Ors Air 1988 Sc 1115; M.C. Mehta V. Union of India & Ors AIR 1992 SC 382

²² (2005) 8 SCC 534; Also see Akhil Bharat Goseva Sangh v. State of A.P. [2006] INSC 162 (29 March 2006) wherein Article 51A (g) was referred while deciding slaughter of milch animals; Fomento Resorts & Hotels & Anr. V. Minguel Martins & Ors. [2009] INSC 100; Essar Oil Ltd. V. Halar Utkarsh Samiti & Ors [2004] INSC 31; Indian Council for Enviro- Legal Action V. Union of India & Ors, AIR 1996 SC 1446; Pradeep Krishen V. Union of India & Ors [1996] INSC 718; Shaikh Zahid Mukhtar v. The State of Maharashtra and Ors.; Claridges Corbett Hideaway, Zero Garjia & Anr. v. State of U.P., (09.03.1999 – ALLHC); Abhilesh Textiles v. Rajkot Municipal Corporation, AIR 1988 Guj 57

²³ [2014] INSC 401 (7 May 2014)

²⁴ (1988) 1 SCC 471; Also see Rural Litigation & Entitlement Kendra v. State of U.P., AIR 1989 SC 594; Avinash Nagra v. Navodaya Vidyalaya Samiti [1996] INSC 1226 where the Court has emphasized on imparting the ideals of Article 51A in the receptive minds of the Children

²⁵ 2013 (INSC) 615; Also see Intellectuals Forum, Tirupathi v. State of A.P. [2006] INSC 86

²⁶ Civil Writ Petition (PIL) No.6591/2011; Also see Sachidananda Pandey v. State of West Bengal, AIR 1987 SC 1109; Sushanta Tagore v. UOI, [2005] INSC 149; See Air India Statutory Corporation. v. United Labour Union [1996] INSC 1400 (6 November 1996)

²⁷ Jawaharlal Nehru (1946) The Discovery of India p. 512

²⁸ Civil Writ 314/2016

²⁹ A.I.I.M.S. Students Union V. A.I.I.M.S. [2001] INSC 418 (24 August 2001)

³⁰ W.P.No.10585 Of 2015 of Madras High Court; Also See Madhu Kishwar v. State of Bihar [1996] INSC 561; AIR 1996 SC 1864; Kumari Madhuri Patil v. Addl. Commissioner [1994] INSC 445; AIR 1995 SC 94

³¹ AIR 1989 MP 181

³² Suo Motu Writ Petition (CRL.) No. 122 Of 2011; Also see The Anti-Corruption Federation of India vs. State of Haryana CWP No.16669 of 2010

³³ (1997) 4 SCC 7

³⁴ [2006] INSC 816; Also see Ashok Kumar Thakur v. Union of India; Also see A.I.I.M.S. Students' Union v. A.I.I.M.S & Ors. [2002 (1) SCC 428]; Bimlesh Tanwar v. State of Haryana [2003] INSC 154



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³⁵ AIR 1996 SC 1051, Also quoted by the Court in case of Ahmedabad Municipal Corporation v. Nawab Khan, [1996] INSC 1300

³⁶ AIR 1996 SC 770, Also see L.K. Koolwal v.State of Rajasthan, AIR 1988 Raj 2

³⁷ (1992) Supp.1 SCC 594; Also see State of Punjab v. G.S. Gill (1997) 6 SCC 129

³⁸ [2008] INSC 614 (10 April 2008); Also see Society for Un-Aided P. School of Raj. v. U.O.I [2012] INSC 248 (12 April 2012)

³⁹ Also see Avinash Mehrotra v. Union of India 2009(INSC) 719 where the Court while referring to Article 21A pointed that “It is a reciprocal agreement between the State and the family, and it places an affirmative burden on all participants in our civil society.

⁴⁰ Constitution Day and Fundamental Duties; Department of Justice, Government of India, available on <https://doj.gov.in/sites/default/files/Constitution%20Day.pdf>