CHAPTER IV

A CRITICAL EXAMINATION OF THE PART IV A.

The Constitution is not a code of morals but a code of laws. A Constitution in fact is the code of fundamental laws of the country - a fountainehead from which all other laws flow. A Constitution should, therefore, be made up of law and law alone. Every part of the Constitution must satisfy the test of being a good law. One of the basic tests is that law should be certain, must not suffer from the vice of vagueness and should not be capable of more than one interpretation. Unless it is so, it would be fraught with the possibility of misinterpretation and misuse, which in the long run, will lead to the very subversion of the Constitution and a negation of the rule of law.

The list of duties, provided in Part IV-A of the Constitution, falls more in the category of moral commandments than in that of the precepts of law. Moreover, one finds that some of the fundamental duties are vague, as they have not been defined clearly and precisely.

Vagueness in some of the Fundamental Duties in the Constitution - an identification.

The term 'vague', according to the Oxford
dictionary means, 'not clearly expressed or perceived; uncertain; ill-defined, inexact; indefinite'. A close scrutiny of the fundamental duties reveals that some of these duties do suffer from vagueness.

**Art. 51 A (b).**

Art. 51 A(b) states: It is the duty of every citizen of India "to cherish and follow the noble ideals which inspired our national struggle for freedom". The "noble ideals" which had inspired the national struggle for freedom have not been indicated, and therefore, the expression is vague. Nowhere else in the Constitution does the expression "the noble ideals" figure, nor can the import of this expression be discerned from the various provisions in the Constitution. It is a stupendous task to go through the history of the Indian National Congress or to study the autobiographies and biographies of various leaders within and without the Congress, who had spearheaded the national freedom struggle, to understand these ideals. Still more difficult is the task to know the ideals of the people of India in general who had bravely faced the bullets and served sentences in British jails, or for that matter, the ideals of the patriots who had formed their liberation armies to emancipate the Indian nation.
Moreover, the freedom movement was a protracted one. Every one knows that during India's freedom struggle different means and methods were adopted by different patriotic groups and every section of the society which participated in this struggle had its own ideals, though the ultimate goal of every one was to secure the emancipation of the motherland. Thus, the perception of noble ideals which inspired the national independence movement would vary from individual to individual and from group to group, depending upon his own predilections. Moreover, since the expression 'noble ideals' has not been defined in the Constitution, it is liable to be misconstrued. Even if it is presumed that Art. 51 A(b) wants that a citizen should cherish and follow the noble ideals propounded by Mahatma Gandhi during the freedom struggle, it is somewhat difficult for common citizens, most of whom still remain illiterate, to understand Gandhi and his philosophy. It would have been prudent to explain it in part IV A, or to make a provision in the clause "noble ideals" as defined by Parliament through law. In that case the Parliament would have been in a position to define the expression through law subsequently.

As this was not done, retention of this vague
provision in Article 51 A(b) can hardly serve any purpose and, therefore, deserves to be considered for deletion.

Apart from Art. 51 A(b), there are some other provisions which can be viewed as redundant.

Art. 51 A(c), Art. 51 A(d) and Art. 51 A(a).

Art 51 A(c) states that it is the duty of every citizen "to uphold and protect the sovereignty, unity and integrity of India", and Art 51 A(d) states that it is the duty "to defend the country and render national service when called upon to do so".

Art 51 A(a) which states that "it is the duty of every citizen to abide by the Constitution and respect its ideals and institutions, the National Flag and National Anthem", takes care of these two duties, viz. 51 A(c) and 51 A(d). It may be pertinent to mention that the expression "to abide by the Constitution", itself means that one should uphold the sovereignty, integrity and unity of India, because our Constitution declares India as a Sovereign Socialist Democratic Republic, as also "to respect its ideals and institutions, the National Flag and National Anthem", means that one has not only to show respect towards it but also to defend it whenever the situation so demands
and defending the ideals and institutions of the country unmistakably implies defending the country and rendering national service when called upon to do so. As regards defending the country and rendering national service, it is pertinent to mention that Art. 23 provides: "(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law; (2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them". Since a citizen's duty is to abide by the Constitution, it becomes his duty to obey the provision in Art. 23(2). Thus, Art. 51 (c) and (d) becomes redundant.

**Art. 51 A(e)**

Coming to Art. 51 A(e), one finds that it prescribes the duty of every citizen "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".

Regarding this duty, it has been rightly
commented that this Fundamental Duty contains two unconnected duties clubbed together. It would be proper to have the clause "to renounce practices derogatory to the dignity of women" made an independent duty with a greater positivity.  

The former clause of Art. 51 A(e).

The former clause of Art. 51 A(e) which states the duty "to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities", is important for promoting unity and integrity of the Indian nation. If we look into our past history, we would find that it was our internecine conflicts which paved the way for repeated foreign invasions. The Encyclopaedia of Britannica records the following in this regard: "The subjection of a whole sub-continent containing a unique civilisation has long been a source of historical wonderment". This subjection was made possible "by the innate divisiveness of Hindu society, rent by class and caste divisions, which rendered it unusually to call in unwelcome outsiders to defeat the still more unwelcome neighbour".

Thus, in the present scenario, the importance of this clause can hardly be overlooked.
The latter clause of Art. 51 A(e).

It would be pragmatic to make the latter clause of Art. 51 A(e), viz. "to renounce practices derogatory to the dignity of women", more broad-based by providing that one should uphold the dignity of all human beings, since men and children are also subjected to social and economic exploitation, such as bonded employment, child-labour, etc. Therefore, they should not be excluded, particularly when the Preamble to the Constitution lays stress on "assuring the dignity of the individual....."

Modification of Art. 51 A(e)

Thus, the two clauses of Art 51 A(e) should not only be split into two separate duties, but also redefined for approximating to the ideals set out in the Preamble. In other words, the original provision should be modified to read as 51 A(e)(1) and 51 A(e)(2), as indicated below:

51 A(e)(1): It is the duty of every citizen "to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities".

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51 A(e)(2): It is the duty of every citizen "to renounce practices derogatory to the dignity of human beings".

It would be pertinent to mention here that these two duties are very much in tune with the Universal Declaration of Human Rights. In Art.1 of the Universal Declaration of Human Rights, it is stated that "all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood". Thus, the Universal Declaration of Human Rights also makes a provision to underscore the duties of promoting common brotherhood and dignity of human beings in an indirect way while stating the rights of an individual.

Art. 51 A(f).

Coming to Art. 51 A(f), one finds that it is the duty of every citizen of India "to value and preserve the rich heritage of our
composite culture". This duty is, indeed, vague. Speaking at the socialist India Convention or Constitutional Assembly, Congress President Shri Dev Kant Barooah had said, "the products of our composite culture are the temples, the mausoleums, the gardens, the statues and paintings". Is it not our duty to cherish them? He reminded the audience that Nadir Shah came, he took away the Peacock throne, Sir Arthur Wellesley took away the ancient paintings and manuscripts of Quran Sharif from Tipu Sultan's library, and the same now is exhibited in Britain "as though they were the great patrons of Islamic culture". He emphasized that it was this consideration in mind that clause (f) was included. When Lord Curzon was asked, 'What is the great achievement in your life?' He replied, "The protection of the monuments of the ancient Indian civilisation".

The clarification given above hardly helps a citizen in understanding the duty laid down for him in this clause."Composite culture" is a vague expression. According to the Oxford dictionary, "culture" not only includes temples, mausoleums etc., but it also means
"refined understanding of the arts and other intellectual achievements, customs and civilization of a particular time or people".

Art. 51 A(f), therefore, can be deemed to be vague because one finds it extremely difficult to comprehend the connotation of the term 'composite culture'. Even if one ignores the word 'composite', one cannot easily understand the connotation of the term 'culture'. If it points to modern culture, then one has to take note of the fact that India today is passing through a period where a mixed culture having foreign and Indian inputs is ascendent. Because of the blind aping of the West, the purity of Indian culture is fast disappearing. On the other hand, if culture in this clause stands for our ancient culture, then too this duty is vague. Our ancient culture had always laid emphasis on caste-system. If we preserve this heritage of our ancient culture, then Art. 51 A(f) will contradict 51 A(e) which states that the duty of a citizen is to promote brotherhood.

Clause (f) of Art. 51 A, thus, is ambiguous, and unless it is clearly expressed, it does not deserve a place in Art. 51 A.

Art 51 A(g).

Coming to Art. 51 A(g), one finds that the
duty prescribed by it is "to protect and improve the natural environment, including forests, lakes, rivers, wild life and to have compassion for living creatures". 

Although there is no vagueness in this clause, there is no denying the fact that a citizen can hardly protect and improve rivers or, wild life, on in other words, the natural environment. "To protect", according to Chambers 20th Century Dictionary means, "to raise in value; to make progress, etc". A citizen who has to earn his daily bread, cannot waste his time and energy in protecting and improving the natural environment including forests, lakes, rivers, wild life, etc. The clause 51 A(g), therefore, deserves to be recast in a manner that it becomes the duty of a citizen "not to damage the natural environment including forests, lakes, rivers, wild life, rather than to protect and improve the natural environment". If damage is prevented, the natural environment will automatically be protected and improved. It is rather a tall order that a citizen can protect and improve river or wild life. What is expected of him is to desist from damaging rivers, wild life, etc.

Dr. V.K.R.V. Rao, while commenting on the need for the alteration in the list of duties proposed by the Swaran Singh Committee, had suggested that the human
beings should do service to nature "by avoiding spoliation, pollution, and ecological imbalance". By modifying this duty in the aforesaid manner, the Constitution can succeed in lending a helping hand in solving environmental problems which it cannot achieve to do merely by issuing a tall order which the provision in Art. 51 A(g) spells out in the present form.

**ART. 51 A(h).**

When one looks at Art 51 A(h), one finds that it is the duty of every citizen of India, "to develop scientific temper, humanism and the spirit of enquiry and reform".

About this duty, it is sometimes argued that a citizen cannot discharge his duty to develop "scientific temper, humanism and the spirit of enquiry and reform" because of the vagueness inherent in these expressions. Replying to queries in the Lok Sabha, the then Union Law Minister, Shri H.R. Gokhale, had observed: "It is to have a rational approach, not to be dogmatic, not to be bound by heritage, which leads to an unscientific determination of any question which covers up for consideration. That is really the scientific temper. Humanism is well understood....The spirit of inquiry should be there and it should lead us to a consideration
of reform we need in our society".

A perusal of the above statement clearly reveals how Mr. Gokhale himself highlighted the contradiction inherent in the two duties mentioned in our Constitution, viz. Art 51 A(f) and Art. 51 A(h). According to Art. 51 A(f), it is our duty to value and preserve our rich heritage of composite culture; while according to Art. 51 A(h), we should develop scientific temper and the spirit of inquiry and reform in order that we are not dogmatic and bound by heritage. The moment we develop a rational approach, the preservation of our cultural heritage which is replete with superstitions and dogmas would become increasingly difficult.

Moreover, to expect every citizen to develop a scientific temper appears to be a tall order even in countries having universal literacy, let alone India where the majority of the population is uneducated and illiterate. Without education neither scientific temper nor reform can be possible. Therefore, these objectives are not attainable in the present Indian society. Duties should be such which can be observed and should be so worded as to catch the imagination of the common man. But this duty is vague and unattainable today for want of adequate education. Therefore, it should be
modified to read as a duty "to educate oneself so that one can develop scientific temper and the spirit of inquiry and reform". This has been discussed in the next chapter, while advocating its inclusion as an additional duty in the list of fundamental duties.

As far as the duty to develop humanism is concerned, it is already included in the proposed modification of Art. 51 A(e)(2) which is to read as the duty "to renounce practices derogatory to the dignity of human beings"; as also in Art. 51 A(e)(1) which states that it is the duty" to promote brotherhood". Even Art. 51 A(g) is helpful in the promotion of humanism as it prescribes the duty "not to damage the environment, and it is only when environment is not damaged that humanism can be developed. Thus, there is no necessity of including development of humanism as a separate duty in this Article.

Art.51 A(i).

The duty prescribed in Art. 51A(i) is "to safeguard public property and to abjure violence". This clause was criticised by Dr. V.K.R.V.Rao. About the expression ".....to abjure violence", he remarked, "..... I do not see how it can be interpreted in practice as it can embrace all aspects of life, both
personal and social, nor how it can be identified and implemented in its present form". He, however, suggested that if at all it was to be retained, its scope must be narrowed down. In other words, it should only relate to all associations of individuals whether for political purpose or otherwise, and it should forbid them to recognize violence as an instrument for the attainment of their objectives.

Notwithstanding this objection, one would hold this duty of great relevance to the social well-being.

**Art. 51 A(j).**

Art. 51 A(j) states that it is the duty of every citizen "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". This provision is not free from ambiguity.

The term "excellence" is quite vague. One does not understand the degree of excellence being demanded by this provision. Since this forms a part of the Constitution and will be interpreted by the judiciary, it is very essential that it should have a specific connotation. Secondly, one fails to understand how this duty can be performed in concrete
terms. Excellence is a term signifying value, and therefore relative. If a doubt arises as to whether a citizen has or has not striven towards excellence in any sphere of individual or collective activity, on what scale of value should this be judged, is again a question of interpretation, and therefore it may leave people self-searching.

But since "to strive towards excellence" is a necessary corollary of the development and progress of any society, it would be better if it is regarded as a fundamental duty by modifying its form, i.e. "to strive towards excellence individually or collectively in one's field." This can be judged by the concerned authorities in the respective fields.

**Additional Arguments for recasting the list of Duties.**

The above analysis is suggestive of the fact that Part IV A of the Constitution which deals with Fundamental duties has some inherent weaknesses. Even Mr. Swaran Singh had admitted this when he said, "I will keep in mind the warning given by Prof. V.K.R.V. Rao that we should economize on the use of words". Many of the duties enumerated are so vague that it is usually difficult to have their universally acceptable definitions, and, thus, these can be interpreted in a
subjective manner, giving rise to numerous problems.

In fact, one of the cardinal qualities of the law is that it should be such that it can be measured by objective standards and not by subjective concepts. It is for this reason that law always lays emphasis on objective acts and omissions as its basis rather than on subjective beliefs.

Again, the law must not only have a factual content but must also be relatable to some aspect of human behaviour. When we talk of citizen's duties, we naturally refer to citizen's behaviour in the context of national values. The Constitution cannot lay down commandments for a citizen which do not relate to his societal or national behaviour, which do not specify the do's and don't's of his conduct, and which do not have correlation to his socio-economic or socio-political behavioural patterns. Many of the fundamental duties do not satisfy these tests.

The basic purpose of including citizen's fundamental duties in the Constitution is to make him a better component of the community so that he might make a more purposeful contribution to the building of New India. The duties must make him more conscious of his place in the mechanism of socio-economic construction and make him less self-centred or concerned about his
individual gains. Hence, the need for recasting duties in order to give practical shape to the aims and objectives enshrined in the Preamble to the Constitution.

**Duties proposed to be deleted or modified.**

In the light of the examination of the duties in the preceding paragraphs of this Chapter, it is imperative that some of the duties be deleted while some others be modified on the lines indicated below:

(a) **Duties proposed to be deleted.**

(I). The following duties need to be deleted from the Constitution:

51 A(b): "To cherish and follow the noble ideals which inspired our national struggle for freedom".

51 A(c): "To uphold and protect the sovereignty, unity and integrity of India".

51 A(d): "To defend the country and render national service when called upon to do so".

51 A(f): "To value and preserve the rich heritage of our composite culture".

(b). **Duties proposed to be modified.**

II). Duties which deserve to be retained after minor modifications are: 51 A(e), 51 A(g), 51 A(h) and 51 A(j).

*Art 51 A(e)*: The existing duty stipulated in Art 51 A(e)
is: "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."

The modified versions of this duty are:

Art. 51 A(e)(1): "to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities".

Art. 51 A(e)(2): "to renounce practices derogatory to the dignity of human beings".

Art 51A(g): The existing duty stipulated in Art. 51 A (g) is: "to protect and improve the natural environment including forests, lakes, rivers, wildlife and to have compassion for living creatures".

And The modified version of this duty proposed is: "to not to damage the natural environment including forests, lakes rivers, wildlife and to have compassion for living creatures".

Art. 51 A(h): The existing duty stipulated in Art. 51 A(h) is: "to develop scientific temper, humanism and the spirit of enquiry and reform".

This duty has been proposed to be modified as: "to educate oneself so that one can develop scientific
temper and the spirit of inquiry and reform".

Art 51A(j): The existing duty stipulated in Art. 51 A(j) is "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".

This duty is proposed to be modified as :" to strive towards excellence individually and collectively in one's field".

Duties to be retained in Original Form.

III). Duties which do not suffer from any vagueness, and, therefore, do not require any modification are the following:

Art 51 A(a): "to abide by the Constitution and respect its ideals and institutions, the National Flag and National Anthem".

Art. 51 A(i): "to safeguard public property and to abjure violence".

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