CHAPTER VIII

ON PARTIAL ENFORCEMENT OF FUNDAMENTAL DUTIES.

As has been discussed in the previous chapter, there are genuine practical difficulties in providing punishment for non-observance of Fundamental Duties. As most of the Fundamental Duties can be properly observed only when the State creates conditions conducive to proper observance of duties, it would be really harsh to punish the people for their non-observance. In other words, the study of the Practical Aspects of Fundamental Duties essentially boils down to a study of measures which need to be undertaken to improve the quality of observance of the Fundamental duties by enhancing the commitment of the citizens to these duties.

Basic difference between Part III and Part IV-A of the Constitution.

As it has been pointed out, inspite of the fact that the fundamental duties are complementary to fundamental rights, one cannot gloss over the basic difference between the two. While the fundamental rights are enforceable, the fundamental duties are not. Some critics are of the view that the Parliament have hamstrung
the fundamental duties by making them non-enforceable with
the result that despite being a part of the Constitution,
Part IV-A lacks the legal teeth. The fundamental duties in
their eyes are no more than a paper tiger or a list of
moral commandments.

Fundamental Duties to be taken as seriously as Fundamental
Rights.

But this does not mean that the Fundamental Duties
cannot be enforced even partially. The Universal
Declaration of Human Rights is also non-enforceable. As
has been pointed out: "The overwhelming majority of the
members regard the Universal Declaration as creating no
legal obligations". The Universal Declaration contains
duties for the individuals in Articles 29(1) and 30.
Article 29(1) of this Declaration provides that "Everyone
has duties to the community in which alone the free and
full development of his personality is possible". Further,
Article 30 stipulates: "Nothing in this Declaration may be
interpreted as implying for any State, group or person any
right to engage in any activity or to perform any act aimed
at the destruction of any of the rights and freedoms set
forth herein.

It has been observed that the Universal
Declaration of Human Rights has been referred to in
numerous decisions of national courts which are evidence of the practice of States. The value of referring to these judicial decisions is that they are part of what is regarded as State practice, which is a source of international law. Accordingly, these decisions play a part in the development of the contemporary international law. To cap it all, the Universal Declaration, as a standard of achievement, is used sometimes as a guide to the interpretation and application of national laws. It has been relied upon as evidence of "modern law" on the protection of the basic human rights and fundamental freedoms of individuals.

Similarly fundamental duties in the Indian Constitution also have been referred in various decisions of national courts. Moreover, fundamental duties too, as a standard of achievement, can be a guide to the interpretation and application of national laws.

On the same analogy, one can also say that duties, even though not enforceable, cannot be taken less seriously than the rights, and even if there is no mechanism provided for the enforcement of duties, it is inconsequential since duties would continue to remain duties even in the absence of the mechanism for their enforcement. The rules of International Laws have no mechanism for their enforcement, yet they are recognised as rules of law and their
non-observance invites criticisms from various International fora. In Minerva Mills Limited V. Union of India, the Supreme Court elucidated this point when it observed that a rule imposing an obligation or duty would not 'cease to be a rule of law because there is no regular judicial or quasi-judicial machinery to enforce its command. Such a rule would exist despite any problem relating to its enforcement. Otherwise the conventions of the Constitution and even rules of International Law would no longer be liable to be regarded as rules of law. This view is clearly supported by the opinion of Professor A.L.Goodhart who, while commenting upon this point says: "I have always argued that if a principle is recognised as binding on the legislature, then it can be correctly described as a legal rule even if there is no court to enforce it. Thus, most of Dicey's book on the British Constitution is concerned with certain general principles which Parliament recognizes as binding on it"." 5

Another aspect which deserves attention is that Fundamental Duties which are prescribed for all the citizens of India, are to be performed not only by the common citizens but also by those citizens occupying public offices under the State. The State being committed to uphold the Constitution, has to ensure that the Fundamental Duties even though non-enforceable are scrupulously

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observed by State employees occupying public offices. The Universal Declaration of Human Rights is non-enforceable and Article 29 and 30 of this Declaration prescribing duties for individuals, therefore, are also non-enforceable. But, as has been held, the legal significance of this Declaration "derives from the fact that it is binding on the organs of the United Nations". By the same token, the legal significance of Fundamental Duties derives from the fact that these are binding on the State and those occupying public offices.

Fundamental Duties and their utility in promoting discipline in State Services.

Viewed from this angle, these duties help in promoting discipline among the employees. The employees of the State hold the nation to ransom by resorting to strike when the law does not permit such strikes by employees. As recognised in the labour law, only the workers on daily wages in Industries have a right to go on strike, and not the employees of the State getting monthly salaries. As has been held by the Bombay High Court in Ramaro V A.G. AIR 1963 Bombay 121, ".....The decision to go on strike is one thing and a legal right to go on strike is another thing. Whereas industrial workers are enabled to go on strike or at least there is no prohibition to go on strike,
non-industrial employees of the Government are denied that weapon for enforcing their right...". The striking employees, therefore, should be dealt with sternly as strike is the very antithesis of the duty to strive towards excellence. Moreover, the High Court of Allahabad has observed that Article 51 A is in a positive form with a view to striving towards excellence. People should not conduct themselves in a blameworthy manner. Excellence means surpassing merit, virtue, honest performance. Constitutional law-givers have provided that the citizens of this great nation shall perform their duties in an excellent way rather than perform them half-heartedly. It is because of this that violation of fundamental duties by the employees through their acts of commission or omission can be proceeded against departmentally notwithstanding the fact that the duties are not enforceable in a Court of Law.

Maintenance of essential services, running of institutions, offices etc. are necessary for creating conditions conducive to the development of a climate in which a citizen can strive for excellence individually or collectively, which is a fundamental duty laid down for every citizen under the Constitution. Those employees, serving under the Government, semi-government and autonomous institutions, who are paid monthly salary from the State fund, have no right to go on strike, and if they
do so, they negate the fundamental duty to strive for excellence. They should be dealt with sternly for disrupting the smooth running of public institutions and for violating their Constitutional obligation in Article 51 A(j).

The public servants are paid their salary by the government after collecting revenue from the people in the form of direct and indirect taxes. The State has to ensure that the public servants abide by the Constitution and strive for excellence individually and collectively in order to improve the quality of administration.

When one compares the achievement of Japan with those of India, one finds that Japan, although a small country, is progressing fast, while India's development has remained slow. The primary reason for this is that in Japan the citizens take their duties sincerely. Even if the employees resort to strike in Japan, they do not abandon their work. They simply put a black badge to voice their protest and continue doing their work. But the picture is quite different in India. Billions of man-hour are lost every year because of strike by the employees belonging to government, semi-government and autonomous bodies.

As strike by these employees is the very antithesis of the duty to strive for excellence and is a
violation of Art. 51 A(j), stern departmental actions against striking employees is the need of the hour. Such a step is also imperative in view of the mounting unemployment in the country. Those employees who browbeat the State by taking recourse to strike and other unlawful measures, should be sacked and unemployed and law-abiding citizens recruited in their place so that the public money is spent on law-abiding people willing to strive for excellence both individually and collectively.

**Obligation of the State to ensure observance of Fundamental Duties by employees of the State.**

Thus, even if these duties are not enforceable in a Court of Law, they can be invoked in departmental procedures for promoting discipline among the public servants. This way the quality of public services would improve which in turn would bring about improvement in the quality of life in India.

As it is the fundamental duty of every citizen to abide by the Constitution in terms of clause (a) of Article 51 A, those citizens occupying public offices also have the Constitutional obligation to abide by the Constitution. The State also cannot do anything which militates against the Fundamental duties of citizens, as the State and citizens in a democratic polity cannot act at
cross-purposes. The Constitution, which is the supreme law of the land, controls and regulates the conduct of the citizen as well as the State. Moreover, one of the important decisions of the Supreme Court is found in the case of Legal Remembrancer V. the State of Bengal, that if a Statute binds the citizen, it also binds the State: "In this case the old rule that a statute does not bind the State unless it is expressly named or brought in by necessary implication, was rejected and a new rule was formulated that a general Act applies to citizens as well as to State unless the Act expressly or by necessary implication excepts the State from its operation, subject to the condition that the said Act does not infringe the Fundamental Rights". 8

Role of the State in Partially Enforcing Fundamental Duties.

Hence State has to ensure that those citizens who occupy public offices must adhere to the charter of Fundamental Duties spelt out in Art.51 A. Any action on their part which defies either the Constitution or the law enacted under the authority of the Constitution has to be dealt with firmly in order to establish the rule of the Constitution. Here it would be appropriate to suggest that the training institutions can play a pivotal role in this
area by creating consciousness of the paramount importance of the observance of Fundamental Duties among the civil servants who can work as a catalysing agent in this field. Since the civil servants play a major role in the State administration, special emphasis on their observance of Fundamental Duties in the course of their training would go a long way in keeping them on the right path in their career, ruling out the possibility of their being non-challent to their basic obligations.

State should see that under every circumstances, the public officers 'abide by the Constitution'. 'Abiding by the Constitution' is not a vaccous statement. It has, in fact, a deeper meaning than what appears on the face of it. It encompasses strict adherence to all the Constitutional provisions and the laws made thereunder. Therefore, if a public servant indulges in nepotism or favouritism, he works against the Constitution which lays stress on equality before law, and such misconduct is a clear violation of clause 51 A(a) of fundamental duty, viz.: "to abide by the Constitution and respect its ideals and institutions, National Flag and National Anthem".

Thus, Fundamental Duties, even though non-enforceable, can be invoked by the State in dealing with indisciplined employees while taking recourse to departmental procedures against them.
NOTES

3. Statue of the International Court of Justice, Art.38, para 1d.