PREFACE

In a conversation towards the end of his life, Goethe had observed: "When eras are on the decline, all tendencies are subjective; but on the other hand, when matters are ripening for a new epoch, all tendencies are objective." At a time when the citizens of the great Indian nation are in the grip of subjectivity and most of the people seem to be concerned about their own selfish interest, unmindful of its impact upon the society, an appreciation of the fundamental duties becomes highly relevant, as proper observance of duties alone can succeed in arresting the process of decline by replacing the sense of subjectivity with a sense of objectivity.

Generally speaking, 'duty' is a term loosely applied to any action or course of action which is regarded as morally or legally incumbent. Although duty is important in every type of society, it has a special importance in a society having a democratic polity. Democratic polity guarantees freedom to an individual, but, as has been rightly pointed out by an eminent jurist, the freedom is worth little to an individual if he can be preyed...
upon by murderer or thief or such other lawless elements. In other words, freedom loses its value in the absence of duty. The "International Federation of Labour" in its Statutes which were drawn up by Marx and which were adopted by the Conference of the Federation in London in 1871, highlights this point through the statement that "The Federation recognizes that there shall be no rights without duties and no duties without rights". Not only Socialists but also Democrats lay emphasis on the performance of duty. In its use in the jurisprudence of the United States of America, the term 'duty' is held to be correlative of the word 'right'. Thus, wherever there exists a right for any person, there also rests a corresponding duty upon some other person or upon all persons generally.

Black's Law Dictionary defines the term 'duty' as "A human action which is exactly conformable to the laws which require us to obey them".

The significance of duty in the context of freedom can be appreciated properly by referring to the Universal Declaration of Human Rights, which is the most significant universal statement of fundamental human rights and freedoms, and which has
been proclaimed by the United Nations as "a common standard of achievement for all peoples and all nations". While laying due stress on the protection of Human Rights, it takes cognizance of the importance of duty by stipulating in Art.29(1) that "Everyone has duties to the community in which alone the free and full development of his personality is possible".

The Universal Declaration of Human Rights aims at achieving a proper balance between individual freedom and the freedom of other individuals and those of the society. The message of the Universal Declaration, thus, is obvious that rights and duties are inextricably intertwined and enjoyment of rights in the long run depends upon the performance of duties.

The present thesis is a Philosophical Survey/Study of "The Theoretical and Practical Aspect of Duties". 'Survey', according to the Chambers Dictionary, inter-alia, means "a general view; a statement of its results". The Philosophical Survey/Study of Fundamental Duties undertaken by me in this thesis can hardly be complete without reference to the oriental concept of 'Dharma' and the occidental concept of 'Rights'. There is no
gainsaying the fact that "while rights exalt individual liberty, duties express the dignity of that liberty." 6

Despite the intimate relationship between Rights and Duties and their equal importance in a democratic polity the fact remains that rights appear far more attractive to an individual than his duties. The Human Rights series, published by the United Nations, very well underscores this point in Volume 3 wherein it has been observed that rights have a more exalted position than duties. 7 The less exalted position of duties vis-a-vis rights appears to be one of the convincing reasons why more studies and researches have been undertaken by scholars in all parts of the world in regard to rights of the individual than in regard to his duties.

As in other parts of the world, so also in India, duties are given a much less exalted position than rights. This perhaps explains why the Indian Scholars have undertaken researches more in the area of rights than in the area of duties. One comes across a plethora of Studies on different aspects of Fundamental Rights, but one seldom comes across any serious research work in the area of duties. Lack of adequate research in this area despite existence of a
good deal of ancient literature laying emphasis on the observance of duties, is somewhat intriguing. Our ancient Indian thinkers laid emphasis on duty as they believed that right flows from duty rather than duty from rights. As a matter of fact, the concept of right is a gift of the modern age and its origin is Occidental rather than Oriental. As we have transplanted Western concept of democracy in India, the Western concept of rights has also been transplanted therewith, and, in consequence, rights have gained a more exalted position in India. This partly explains why the framers of the Indian Constitution incorporated into the Constitution a list of Fundamental Rights without a list of Fundamental Duties, thereby disregarding the Gandhian philosophy that rights should flow from duties and not vice-versa.

The mistake of the Constitution makers was detected, though somewhat belatedly, as undue emphasis on rights without corresponding emphasis on duties, led to the growth of indiscipline in various quarters, reducing the Indian Democratic Republic to the level of what was then called "a nation at war with itself" or a land of "million mutinies".

Thus, unbridled freedom in India was
becoming a threat to the very freedom itself. As a sequel to it, the fundamental duties were incorporated into the Constitution in the Seventies, a move which was a clear vindication of the principle enunciated in Art.29(1) of the Universal Declaration of Human Rights that "Everyone has duties to the community in which alone the free and full development of his personality is possible".

This thesis makes a modest attempt to analyse the genesis of Part IV-A of the Constitution which incorporates the fundamental duties of the citizens, with the object of appreciating their importance both from the theoretical and practical points of view. The present study reveals that these two aspects are inter-dependent and one cannot exist without the other. It is primarily from the theoretical aspect that the practical aspect draws sustenance. In other words, the theory forms the base on which the super-structure of practice is to be built.

Keeping in view the intimate relationship between the theory and the practice, this thesis makes an attempt to combine the study of both these aspects. This thesis comprises Nine chapters, followed by summation, Appendices and an exhaustive
The study of the theoretical aspect of Fundamental Duties reveals that Fundamental Duties enumerated in the Indian Constitution are not an innovation. Even before these duties were incorporated into the Indian Constitution, duties similar in nature were already existing in many other Constitutions of the world. Notwithstanding this, however, the list of Fundamental Duties in the Indian Constitution is very much indigenous as some of the finest principles of the ancient Indian tradition find expression in it.

This research reveals that some of the Fundamental Duties enshrined in Art. 51-A are either vague or impractical. Keeping these deficiencies in view, a renovated list of Fundamental Duties has been proposed in Chapter VI of this thesis for adoption in replacement of the existing one. The renovated list of Fundamental Duties in Chapter VI has been proposed after critically analysing Part IV-A of the Constitution in Chapter IV of this thesis and also by proposing some additional list of duties in Chapter V of this thesis. The aim behind proposing a list is to give a more clear and comprehensive list of duties so that they are more useful from the point of view
of practical adherence in the day to day life.

As Fundamental Duties are non-enforceable in a Court of Law, this thesis critically examines arguments for and against their enforceability. A careful study reveals that there are practical difficulties in making these duties enforceable. In India where majority of the people are illiterate and unaware of their Constitutional obligations, enforceability of Fundamental Duties will only result in undue harassment to the innocent people. Moreover, the observance of Fundamental Duties is wholly dependent upon the performance of the State. If the State does not create a proper climate conducive to the observance of Fundamental Duties, it would be a tall order to expect that the citizens would be able to observe the duties listed in Art. 51-A of the Constitution.

Notwithstanding their non-enforceable nature, the Fundamental Duties cannot be dismissed as a mere paper tiger. The Chapters VIII & IX deal with the practical aspect of Fundamental duties. The practical aspect literally means that it can be brought into actual practice. Despite the fact that these duties listed in Part IV-A are non-enforceable, if they are taken as seriously as
Fundamental Rights, they can go a long way in rejuvenating the Indian democratic society.

In Chapter VIII, an attempt has been made to compare the list of duties prescribed in the Constitution with the duties listed in Art. 29(1) and Art. 30 of the Universal Declaration of Human Rights. The duties in the Universal Declaration are equally non-enforceable. But they are accepted to be binding on the organs of the United Nations. The same way the Fundamental Duties, though non-enforceable, should be viewed as binding on the State machinery.

In order to bring the duties listed in the Constitution into actual practice, the State has to play a major role in keeping a vigilant eye on the State administration. If the State is able to secure observance of Fundamental Duties by State employees as also by the employees serving in institutions wholly or partly funded by the State, the quality of administration in India can improve within no time. Therefore, it has been pointed out that the 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.

Moreover the practical aspect of
fundamental duties in Chapter IX lays stress on the need for improving the citizens' commitment to duties by developing their moral self. Morality has to be developed from within and not from without. This Chapter lays emphasis on the fact that the character of a citizen should be moulded by proper training and education right from childhood. The importance of the role of home, family and school has been discussed to buttress the proposition adumbrated by Russell that "If the job of character development is properly handled in the early years, it will demand too little attention thereafter".

Further, while appreciating the role of education in the development of a citizen's commitment to duties, this chapter underlines the urgent need to revamp the present system of education, which has failed to stem the erosion of values in the Indian society. The need for imparting religious education in educational institutions has also been suggested as it helps in the building of character. Moreover, since India is a secular country, it is in the interest of the Indians to be religiously literate, rather than remaining religiously illiterate. Apart from this, in this Chapter an attempt has been made to throw light on
the role of media in imparting value-oriented education to the public, in the hope that our educationists will pay serious attention to these recommendations.

It is quite surprising that despite the fact that this topic is so relevant to the present day India, very few scholars have made any serious study in this field. The present study is a humble attempt to focus attention on its importance in the hope that it would stimulate thinking in this area, leading to more and serious studies on the relevance of Fundamental Duties.

It was my privilege to have Prof. J.A. Yajnik, former Head of the Department in Philosophy and ex-Director, School of Psychology, Philosophy and Education, Gujarat University, Ahmedabad, as my research guide. I am deeply indebted to him for suggesting this topic of research. Taking keen interest in the research project, he spared his valuable time and gave me the benefit of his experience in this area. But for his sympathetic and untiring desire to bring out my best efforts, the present work would not have found the form in which it is presented. I am indeed grateful to him for supervising this research work.
For the sake of collection of relevant source material pertaining to the topic of research, I visited a number of libraries. In this connection, I would like to acknowledge my deep debt to the librarians and the staff of the following libraries for their valuable co-operation and kind help: Nehru Memorial Museum and Library (NMML), New Delhi; Internal Security Academy, Library, Mount Abu (Rajasthan). I also consulted several prominent libraries at Ahmedabad including Gujarat University Library, B.J. Institute of Learning and Research, Gujarat Vidyapith and L.D. Institute of Indology, and I sincerely acknowledge the co-operation extended by the Librarians of these Libraries.

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