CHAPTER VII

FUNDAMENTAL DUTIES ARE NON-ENFORCEABLE.

The citizens in a Democratic Republic enjoy a unique position. While collectively they are the sovereign who control the State through the constitution made by them; individually they are controlled by their own State. These two roles, however, are complementary rather than contradictory.

The collective sovereignty of the people of India cannot be strengthened unless individually the citizens of India perform their duties earnestly. In fact a State is very much like a family. A family consists of a few members. Collectively these members are the masters but individually they are controlled by the family. A family flourishes when its members perform their duties properly. When they do not do so, imbalance and distortions creep in, affecting harmony among the members and retarding the development of the family. By the same token, a Democratic Republic cannot flourish unless the citizens of the State discharge their Constitutional and legal obligations sincerely. The citizens have to realise that it is in their own interest to perform their duties and discharge their
legal and Constitutional obligations whole-heartedly because only by doing so individually they can help the growth of the Democratic Republic collectively. The expression in the Preamble: "We, the people of India..." is significant in this regard. It acknowledges the ground reality that the prosperity of India is dependent on no one else than "We, the people".

Citizenship in a democracy.

Thus, citizenship, in a democracy involves not only freedom but also responsibility. When the British ruled here, we were not responsible for what happened here. It was the Secretary of the State in England and the British Viceroy in India who were held responsible. We were mere wards. But when we became free and we established in our country a free democratic State, a "ganatantra raj", the responsibility for the happiness and welfare of our people in general and the success or failure of the democratic experiment in particular, also descended upon each of us. ¹

It is indeed a pity that our society today is like a cauldron of confusion and turmoil. Every section of the society clamours only for its rights, forgetting that right flows from the performance of duty. It is primarily because of the abdication of responsibility on
the part of citizens, that India has become what Prof. Galbraith called "a functioning anarchy". At this crucial juncture, therefore, it would be highly pertinent to recall the fundamental duties and emphasise upon their observance.

Demand for a New Constitution and some counter-points.

One comes across numerous people who blame the Constitution for not being able to solve the problems which the country is facing today. In fact some of them behave like cynics and demand the framing of an altogether new Constitution for India. "A cynic", says Oscar Wilde, "is one who knows the price of everything and the value of nothing". This demand for a new Constitution is made by those who do not understand the value of the existing Constitution. As a matter of fact, the demand for the new Constitution appears to stem from the failure on the part of the people to realise the value of citizenship in a society. Commenting on the draft Constitution, Dr. B.R. Ambedkar made a profound observation in the Constituent Assembly on 25th November, 1949, when he declared, "..... however good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to be a bad lot. However bad a Constitution may be, it may turn
out to be good if those who are called to work it happen to be good lot".  

A similar sentiment was expressed by Raj Bahadur in the Constituent Assembly, when he observed: "I would simply add at the end that whatever be the merits and demerits of this Constitution, everything depends upon the working of it. As Bryce has said, "it is easy to transplant a Constitution but it is not easy to transplant the temperament that is needed for the working of it".

"Republics", says Joseph Story in Commentaries on the Constitution of United States, "are created by the virtue, public spirit and intelligence of the citizens". It is, therefore, imperative that the citizens instead of blaming each other, should address themselves to the noble tasks of defending their legal rights and discharging their legal duties. In other words, the people of India should stop blaming the Constitution. If any one is to be blamed for the poor working of the Constitution, it is the people of India themselves.

**Fundamental duties - a palladium of liberty.**

If one looks at the aims and objectives which the Indian Constitution seeks to achieve by laying down
the Fundamental Duties, he would find that these duties can serve as a panacea of the problems besetting the nation. A great Oxford teacher, Walter Raleigh, used to say to his students, 'Don't look at me; look where I am looking'. The fundamental duties look at the crises in the Indian society and provide a tool for tiding over the crises. It will be no exaggeration to say that Fundamental Duties serve as the palladium of the liberty of the people.

**Criticisms against the non-enforceability of Fundamental Duties**

Unlike Art. 37 of the Constitution which makes the Directive Principles of State Policy non-enforceable, and, therefore, non-justiciable, there is no specific provision in the Constitution making the Fundamental Duties non-enforceable, and therefore, non-justiciable. However, the fact remains that they are non-justiciable. There is no specific provision in the Constitution as to the sanctions to be applied for the enforcement of these duties and, therefore, their breach cannot be visited with punishment unless there exists on the Statute book a specific penal provision on the subject. Article 20(1) of the Constitution postulates that before a person can be convicted of an
offence, there must exist a law and that law must be violated. But there is no law providing for punishment for non-observance of Fundamental duty. 7

Criticism come from some well meaning people that the insertion of ten point duties in the Constitution is only an expression of a pious wish like the ten Commandments without any authority to enforce them. Critics argue that in the absence of provision for the enforcement of Fundamental Duties, their inclusion is only an adornment or an expression of a pious wish like the Ten Commandments. 8

It is also argued that in a society like India where for want of legal and Constitutional morality, even enforceable laws are being violated by vested interests without any qualms of conscience, to expect that non-enforceable laws will be respectfuuly observed, is nothing more than a pipe dream. Bhagwati J. has observed that if Fundamental Rights are not enforced, these would prove to be a paper parchment or a teasing illusion. As observed by him: "...it is only the availability of judicial remedy for enforcement which invests law with meaning and purpose or else the law would remain merely a paper parchment, a teasing illusion and a promise of unreality". 9 By the same token, non-enforceable Fundamental Duties can also prove
to be nothing more than a paper parchment or a teasing illusion.

Dr. G E Moore in his book entitled "Principia Ethica" lists the following interesting characteristics of duties: "(i) Duties are right actions which many people are tempted to avoid doing; (ii) the most prominent good effects of duties are on people other than the doer of the action, hence the temptation to avoid doing them". Therefore, it becomes necessary to provide teeth to these duties by making their breach punishable under the law. Another reason for making the duties enforceable is that these duties are very important, being fundamental in the governance of the country. The meaning of the word "Fundamental" according to Chambers 20th Century Dictionary is, "basal; serving as foundation; essential; primary; important". Since the "Fundamental Duties" are the duties essentially to be performed for facilitating proper governance of a democratic society, they cannot be incorporated into the Constitution as a mere suggestion bereft of legal sanction and their observance left at the sweet will of the citizens. It is indeed disheartening to note that inspite of these duties being called "Fundamental", half of the country's population is not even aware of their incorporation, much less
their importance in the scheme of the Constitution.

Non-acceptance of Swaran Singh Committee's proposal in this regard.

Swaran Singh Committee had no doubt stressed the need for enforcement of these duties. In the original draft of the Committee, it was provided: "Parliament may by law provide for the imposition of such penalty or punishment as may be considered appropriate for any non-compliance with or refusal to observe any of these duties". More than this, the Committee had boldly made an important recommendation that "no law imposing such penalty or punishment shall be called in question in any court on the ground of infringement of any of the Fundamental Rights or on ground of repugnancy to any other provision in the Constitution."

The Swaran Singh Committee's proposal for the enforcement of fundamental duties, however, was not accepted, and Sardar Swaran Singh reconciled himself to this when he said that at least "the people should accept the concept of Fundamental Duties". Late Mrs. Indira Gandhi, the then Prime Minister of India, and her colleagues held the view that the Chapter on Fundamental Duties was intended to create psychological consciousness among the citizens, and was of merely
Reasons for making Fundamental Duties non-enforceable.

From practical point of view, it was a wise decision not to make Fundamental Duties enforceable, especially when the Directive Principle of State Policy have not been made enforceable by the framers of the Constitution. In fact, there are genuine reasons for not making these duties enforceable.

Firstly, in a country like India with majority of the people being illiterate and, therefore, unaware of their Constitutional obligations, enforceability of Fundamental duties would have only resulted in unavoidable harassment to the innocent people.

Secondly, it would not be easy to enforce a fundamental duty, because fundamental duties stipulated in Art. 51 A lack precise definition and are therefore liable to be interpreted in different ways by different people. To cite an example, clause (j) of Art 51 A lays down the duty "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". It will be difficult to enforce such a duty because there cannot be any quantitative measurement of excellence.
Moreover, observance of fundamental duty is wholly dependent upon the performance of the State in general and the observance of the Directive Principles of State Policy in particular. If the State is unable to create a proper climate conducive to the proper observance of fundamental duties, it would not be possible for the citizens to observe the duties listed in Art. 51 A of the Constitution.

However, a perusal of the judicial decisions reveals that the Indian Courts are not unanimous on the issue of the Status of Fundamental Duties. For example, the observation of the Calcutta high Court is that: "While a right can be claimed against another a duty has to be performed. A citizen cannot claim that he must be equipped properly by the State so as to enable him to perform his duties under Art. 51-A". On the other hand, the Rajasthan High Court has held that "We can call Art.51-A ordinarily as the duty of the citizens, but in fact it is the right of the citizens as it creates the right in favour of the citizen to move to the Court to see that the State perform its duties faithfully and the obligatory and primary duties are performed in accordance with the law of the land. Omissions or commissions are brought to the notice of the Court by the citizen to move the Court for the enforcement of the
duty cast on the State instrumentalities, agencies, departments, local bodies and statutory authorities created under the particular law of the State. It provides particularly under clause (g) that the State and its instrumentalities and agencies should strive to protect and improve the natural environment. Under clause (j) it has been further provided that the State should (strive towards) collective activity so that the nation constantly rises to higher levels of endeavour and achievement".

Judicial Decisions holding Part IV—A complementary to Part IV.

The verdict of the Rajasthan High Court on Fundamental Duties is indeed significant as it takes note of the fact that the observance of Fundamental Duties by the citizens is heavily dependent upon the performance of the State, as envisaged in Part IV of the Constitution. If State does not perform its duties, and fails to create an environment for proper observance of duties by the citizens, Part IV—A dealing with Fundamental Duties would remain at best a utopian dream. As a matter of fact, the fundamental duties have a symbiotic relationship with the Directive Principles of State Policy. As right creates duty and duty creates
right, fundamental duties of citizens certainly create rights against the State.

As the State and the citizen cannot act at cross-purposes, it should be State's duty to see that proper conditions are created so that the citizens are able to perform these duties. On the issue of environment, the Supreme Court highlighted this point in one of its judgements, when it observed: "Whenever a problem of ecology is brought before the Court, the Court is bound to bear in mind Art 48 A of the Constitution - Directive Principle - which enjoins that "the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country", and Art 51-A(g) which proclaims it to be the fundamental duty of every citizen of India "to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures".

The complementary role of the State and the citizen through observance of Directive Principles and Fundamental Duties, respectively, was unequivocally spelt out by the Himachal Pradesh High Court when it observed: "It would be pertinent to mention at this stage that Part IV of the Constitution which incorporates the Directive Principles of State Policy contains Art. 48 A
which prescribes that the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. Part IV-A which enshrines the Fundamental Duties, provides similarly in Art.51-A, clause(g), that it shall be the duty of every citizen of India "to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures". Thus, there is both a Constitutional pointer to the State and a Constitutional duty of the citizens not only to protect but also to improve the environment and to preserve and safeguard the forests, the flora and fauna, the rivers and lakes and all the other water resources of the country. The neglect or failure to abide by the pointer or to perform the duty is nothing short of a betrayal of the fundamental law which the State and, indeed, every Indian, high or low, is bound to uphold and maintain". 16

Similarly the High Court of Kerala has maintained that "the fundamental duties" as in the case of the "directives" are, I would say, fundamental in the governance of the country and hence all the components of the State including the judiciary are bound to enforce them. Following the dictum of the Supreme Court in Chandra Bhawan's case, I would state
Symbiotic relationship between Fundamental Duties and Directive Principles of State Policy.

The fact that observance of Fundamental Duties by the citizens is heavily dependent upon the performance of the State, is evident from the following illustration which deals with the symbiotic relationship of Fundamental Duties with Directive Principles. For example, one of the duties listed in clause (e) of Art 51-A lays down the duty of a citizen "to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities". It is for the State to create a climate for the observance of this duty. This is evident from Art. 39 A, which is a Directive Principle of State Policy. According to this article, "The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities".
The responsibility of the State in this regard is also recognised by the Universal Declaration of Human Rights. For example, Art. (1) of Universal Declaration of Human Rights proclaims "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". To translate this provision into action, Art. (3) of International Covenant on Economic, Social and Cultural Rights stipulates that "the State parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic social and cultural rights set forth in the present Covenant".

Similarly, clause (h) of Art. 51-A enjoins upon the citizens the duty to "develop the scientific temper, humanism and the spirit of enquiry and reform". It is not possible for the citizens to observe these duties unless the State takes due measure to promote education in the society. Here it would be pertinent to mention that Art. 41 of the Directive Principles of State Policy provides: "The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in
other cases of undeserved want". That it is the duty of the State to adopt measures for promoting education is not only recognized in Art. 41 of the Indian Court but also in the Universal Declaration of Human Rights which enjoins upon the State through Art. 26 of the Declaration to undertake such measures. In clause (1) of Art. 26, it is laid down that "Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit."

In clause (2) it says: "Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace".

Similarly one of the duties listed in clause (i) of the Art. 51 A is: "to abjure violence". This can only be possible if the State is able to establish the rule of law in society. If the State fails to
establish the rule of law in society, it would not be possible for the citizens to get justice, and if there is injustice, the citizens would be prone to resort to acts of violence. Here it would be pertinent to mention that the Universal Declaration of Human Rights which was adopted and proclaimed by U.N. General Assembly resolution 217 A(iii) of 10th December, 1948 mentions in the Preamble, whereas it is essential, if a man is not to be compelled to have recourse, as a last resort, to rebellion against the tyranny and oppression, that human rights should be protected by the rule of law.'

The duty provided in clause (j) of Art 51 A viz: "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", also depends to a large extent upon the performance of the State because neither in the sphere of individual nor in the sphere of collective activity, a citizen can hope for any success in his endeavour for excellence unless public services function smoothly and in a disciplined manner. In the context of the present scenario one finds that there is a total lack of discipline in public services like schools, hospitals, financial institutions, etc. Precious national time is wasted because of numerous hassels which a citizen has
to get over every day to perform his duties. A citizen not only faces hassels in the performance of his duties but also in getting supplies and services from the State-owned public service institutions. Unless the state takes effective steps to improve the quality of service rendered by various agencies and institutions, it would not be possible for the citizens to succeed in their endeavour to achieve excellence in any field either collectively or individually.

A vital argument which can seldom be glossed over is that a State is not an end in itself; it is only a means to an end - the end being the development of the individual. History shows that in the conflict between the State and the individual, it is invariably the individual who has suffered. In the past, the engine of the great Leviathan has very often been used in suppressing human rights and aspirations. The movement for the protection of basic rights of human beings, launched in the 18th and 19th centuries, was a sharp reaction against the repressive measures of the State against the individual, and in the democratic nations Constitutions were enacted to guarantee freedom and dignity to the individual. The State power was thus fettered to protect the rights of the individuals in relation to the State. There is no need to fetter
the freedom of the individual for protecting the State because, firstly, there is "no imperative necessity to safeguard the State against the individual"; and, secondly, in every society there are national and local laws to take care of the deviant behaviour of the individual.

As the State is not an end in itself but merely a means to an end, it would not be pragmatic to make Fundamental Duties enforceable because the individual would thereby become a means to an end; and, in the process, the State would become an end in itself.

**Fundamental Duties are non-enforceable.**

A careful analysis of the ground realities discussed above should convince the critics that it is just not possible in the present situation to make Fundamental Duties enforceable, and it appears to have been a wise decision on the part of the Indian Parliament not to accept the recommendation of the Swaran Singh Committee to "make the violation of these duties legally punishable". In other words, just as Directive Principles of State Policy are not enforceable against the State, the Parliament rightly deemed it prudent not to make Fundamental Duties enforceable against the citizens of India.
NOTES

2. Remark made by Prof. Galbraith, Former US Ambassador to India.
5. Ibid, p.970.
7. Justice E.S. Venkataramiah, Judge, Supreme Court of India, Published by Miss B.V.Nagarathana, Proprietrix, B.V.Naga Publishers, No.27, Serpentine Road, Kumara Park Extension, Bangalore, First ed. 1988, p.52.
9. Bhagwati J. (as he then was); S.P.Gupta V. Union of India, A.I.R. 1982 SC 149(189).
10. William Lilly, An Introduction to Ethics; Allied Publishers Private Limited, New Delhi


15. A.I.R. 1987 Supreme Court 1109, 0 Chinnaiapa Reddy and V Khalid, JJ (In Shri Sachidanand Pandey and another V. The State of Bengal (Civil Appeal No. 378 of 1987).

