

Directive Principles of State Policy and Fundamental Duties: Constitutional Imperatives

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Lecture 30: Fundamental Duties under Constitution: Enforcement and Justiciability

Greetings to all of you. We are in module 6 where we are discussing evolution and relevance of fundamental duties under the Indian Constitution. In today's session, we shall be talking about fundamental duties under the Indian Constitution, how the debate has taken place on the issue of enforceability of the fundamental duties and justiciability of such duties. What we aim to cover in today's session is that we shall look into the questions of enforceability that should duties be considered to be enforceable in the court of law. If at all how the judiciary shall enforce it. We will try to look at the argument on enforceability that how the court has taken up the issue of enforceability. We shall also see that how judiciary has employed duties for examining the validity of laws how the duties are being employed by the court for interpreting constitutional provision or statutory enactments.

Now as we know that the provision of fundamental duties was not there in the original Constitution the constitution what we adopted in the year 1950 and only in 1976 through 86th Constitutional Amendment Act we have incorporated the fundamental duties. So fundamental duties were largely inspired by the structuring prevalent in some of the constitutions of the world. For example, the Constitution of erstwhile Soviet Union. There are also literature suggests that Japanese Constitution also influenced the incorporation of duties under the Indian Constitution. And considering the models prevalent in other constitutions, The Swaran Singh Committee report recommended to incorporate fundamental duties primarily for addressing the growing indiscipline and apathy among citizens. And therefore, there was a thought process that when the citizens are demanding the rights, citizens shall also be informed about their duties.

So fundamental duties are framed as a very fundamental one, very essential one for the proper functioning of democratic society, the issue of enforceability is always a matter of contention

and discussion. Because the language of Article 51A does not provide for any legal remedies or penalties for their violation. It doesn't say that how the fundamental duties are to be made a subject matter of legal processes. Thus, a valid question is raised that how do we really look into the issue of justiciability and enforceability of fundamental duties. In this regard we try to look at following questions whether the fundamental duties are non-enforceable in nature; whether the fundamental duties are to be read with fundamental rights; whether the judiciary has the competency to enforce fundamental duties.

These are important questions because there is silence in the constitutional text on the enforceability aspect of fundamental duties. When I look at the structuring of Part III and Part IVA of the Constitution, I get a guidance that on Part III and Part IV, the Constitution has given a clear mandate that where in relation to Part III it has been categorically suggested that the rights enshrined in Part III are enforceable in the court of law. By virtue of Articles 32 and 226 the Supreme Court and the High Courts respectively entrusted with the responsibility to enforce the violation of the rights. In contrast we find that for directive principles it has been categorically suggested that the principles shall be non-enforceable in the court of law. So, judiciary in a way has not been given the task of enforcing directive principles.

When you look at the language of Article 51A, you would find that Article 51A, Part IVA, has got an absence of similar provisions as it has been there under Articles 13 or 37. There is neither a provision of making the involvement of the court explicit nor there is a provision to make the court a non-institutional subject matter as in the case of Part IVA. So how do we really read a very absence of involvement of the judiciary in relation to fundamental duties? It appears that this absence or silence in the Constitution has not deterred the individuals or public-spirited citizens to knock at the door of the Supreme Court possibly to see and get the feeler that how the judiciary reacts on the issue of the enforcement of fundamental duties. Prominent one which we recall is a letter written by a former Chief Justice, Justice Rangnath Mishra on the steps taken by the central government to give effect to the Justice Verma Committee report.

And the letter was converted into the public interest litigation and the Supreme Court has issued a direction to the central government to take necessary steps to implement the recommendation given in the Verma Committee report. There is a litigation now pending before the court which was filed in the year 2022 by Durga Dutt where there is a question on enforcing fundamental duties placed before the court of law. And the petition categorically asks for this prayer that the union to provide incentives to citizens who are adhering to the fundamental duties. And it

has also been suggested that let there be a constitution of independent High-Powered Committee to scrutinize and review the legal framework on fundamental duties. The petition is pending. We will have to see, wait that how the Supreme Court responds to this very prayer which has been made in this case.

The question is that can judiciary enforce fundamental rights? As I said that the language of Part IVA does not provide for any prohibition, does not refrain the judiciary on engaging with fundamental duties. Thus, one may argue that judiciary may get involved in the enforcement of fundamental duties in the absence of any explicit prohibition. These fundamental duties are imposed upon every citizen which in a way implies that there is a corresponding right and the judiciary must recognize and interpret the law accordingly. Obviously, the question can always be raised that we are referring to corresponding rights and who is the bearer of those rights. If we look at the significance of duties then one may argue that if there is a breach of fundamental duties, then such breach may warrant the initiation of legal proceedings. Because we read and understand that rights and duties, they coexist and the existence of right is not possible without bringing in duties, without coupling it with duties. So, can we read Part IVA with Part III of the Constitution? There are some indications on that. For example, when we read about fundamental right given under Article 19(1)(a) on freedom of speech and expression and the grounds to restrict such right under Article 19(2), can we really look at the scope and ambit of Article 19(1)(a) through the lens of Article 51A(c) which talks about unity and integrity of the country, valuing sovereignty of the country. So can the court define the boundary of Article 19(1)(a) in the light of Article 51A(c) which emphasizes on unity and integrity. *Kaushal Kishor v. Union of India* is a case where a statement given by the minister of a state government was questioned that whether such a statement also vicariously made the government liable. The court has said that, that the permissible content of the right to freedom of speech and expression ought to be tested on the touchstone of fraternity and fundamental duties. So, look at the way the court is integrating the language of Part III with Part IVA of the Constitution. And in such reading, can we really emphasize upon the word fundamental on a similar line of Part III where right is also having a prefix of "fundamental". In Part III, rights are prefixed with fundamental. In Part IVA, duties is prefixed with "fundamental". So, whether this term fundamental used in both Part III and Part IVA, whether fundamental it strengthens the argument of enforcing the duties and whether it emphasizes upon the very non-negotiable characteristics of duties because of the very use of the word fundamental. Can we say that the courts are empowered to read fundamental duties into fundamental rights and enforce the duties because of the very use of

the word fundamental. Instances are there where the court has looked into fundamental duties in a varied way.

For example, in *Minerva Mills Ltd. V. Union of India*, the court has said that fundamental duties are obligatory in nature, but it cannot be enforced through the judicial proceedings. The court states "There may be a rule which imposes an obligation on an individual or authority and yet it may not be enforceable in a court of law and therefore not give rise to a corresponding enforceable right in another person". But it would still be a legal rule because it prescribes a norm of conduct to be followed by such individual or authority. A rule imposing an obligation or duty would not therefore cease to be a rule of law because there is no regular judicial or quasi-judicial machinery to enforce its command. On a similar line, in a case where *Anoop Baranwal v. Union of India*, which is a case on the appointment of Election Commissioner, the court has said that the values that animated the freedom struggle have to be brought home to a new generation through the insertion of the provisions relating to fundamental duties. So, the values which we have learned from our freedom fighters, that is something which needs to be also considered while reading the essence of the provisions of the Constitution.

Fundamental duties may be regarded within that framework of obligation, but then it cannot be a subject matter of writ. One cannot go to the court of law and asking for the enforcement of the same. And that's how you find that in India, the court has highlighted that the fundamental duties are to be read in conjunction with rights and directive principles. For example, Madras High Court in *L. Cheziyan v. Commissioner of Police Trichy* states, the time has come for the court's not just to be a sentinel on the qui vive against State's attempts to invade the Constitutional rights of the citizens, but also against flirting tendencies of the citizens not to abide by their Constitutional responsibilities or duties. The latter may not be enforceable, yet they cannot be ignored. So, the court emphasizes that yes, it cannot be enforced, but then is it obligatory if such obligation has been Has been read as a part of the statutory scheme? The court said yes. Court has said that fundamental duties also cannot be enforced. In a very prominent case on *AIIMS Students' Union v. AIIMS*, which is a case related to affirmative action in higher educational institution, particularly in the matter of admission, the court says that fundamental duties as defined in Article 51A are not made enforceable by a writ of court, just as the fundamental rights are, but it cannot be lost side that duties in Part IVA. So, Article 51A, as I have said, that has got a prefix of fundamental, which is on a similar line with Part III, the court has said that duties are giving a valuable guidance and aid to the interpretation of

the constitution and legal issues. It is suggested that Article 51A can serve as a guide, not only for resolving the issue, but also constructing or moulding a newer relief through the judicial process. In this same case, we find that the court has interpreted the scope and duties in a very different way where the court has said that that duty is given in Part IVA is to be read also as a collective duty upon the state and that's how the court has given an additional support or argument to justify the affirmative action through the policies and through the necessary executive initiatives. The Court in *AIIMS Students' Union v. AIIMS* has said that a literal interpretation of Article 51A would confine its application solely to citizens and thereby it would restrict the broader scope. And that's why what is needed is that the court says, the state is all citizens placed together and hence, though Article 51A does not expressly cast any fundamental duty on the state, the fact remains that the duty of every citizen of India is the collective duty of the state. So, look at it the way the court has expanded the meaning and justified an important social justice goal of the Constitution or the very provisioning which are there in the Constitution on uplifting the marginalized class through necessary policies and programs. It seems that fundamental duties have also been employed for examining the constitutional validity of legislative proposal. For example, in this *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*, which is a case on banning slaughtering of animal, the court observed that it is thus clear that faced with the question of testing the constitutional validity, of any statutory provision or an executive act or for testing the reasonableness of any restriction cast by law on the exercise of any fundamental right by way of regulation, control or prohibition, the directive principles of state policy and fundamental duties as enshrined in Article 51A play a significant role.

So, court has looked into the constitutional validity of legislation with the support of fundamental duties as well. In this case of *Mohan Kumar Singhania v. Union of India* where is a case of limiting the attempts to appear in the civil service exam the court has looked into Article 51A(j) which is about ensuring collective interest which is about striving excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. So that's what the court reads Article 51A(j) and then looks into the limitation laid down another rule and court justifies the same. Again, this Article 51A(j) has been employed by the court for approving the writing the practice of writing confidential report where the court has said that in the case of *State of Uttar Pradesh v. Yamuna Shanker Misra* that object of writing confidential reports and making entries in the character roles by deriving support on Article 51A(j). We have also seen that fundamental duties are also

servicing a valuable aid to interpret. Provisions of the Constitution like in this judgment Property Owners Association v. State of Maharashtra, where in nine judge bench was asked to examine the question that whether private property comes within the ambit of Articles 39(b) and 39(c) of the Constitution or not. The court reads the significance of Fundamental Duties and states that *“A perusal of Article 51-A discloses the fundamental duty to cherish and follow the noble ideals which inspired our national struggle for freedom; promote harmony and spirit of common brotherhood, transcending diversities and ensuring dignity of women; developing scientific temper, humanism and spirit of inquiry and reform. The duties emphasize education of children and 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. Article 39(b) needs to be considered in this backdrop while deciphering its ambit and role.”* So on the issue of distributive justice, social justice, agrarian reform and seeing that wealth should not get concentrated, there should not be accumulation of wealth only with few, the court has very truly looked into the scope and ambit of Article 51A.

Further, we also find that the provision related to protecting natural environment has been taken into account for supporting the cause of environment. In the case of Intellectuals Forum v. State of Andhra Pradesh, where we find that Articles 48A and 51A, which where the court says are not only fundamental in the governance of the country, but also it shall be the duty of the state to apply these principles in making laws and further these two articles are to be kept in mind in understanding the scope and purport of fundamental rights guaranteed by the Constitution including Articles 14 19 and 21 of the Constitution. As we know that this Union of India v. Naveen Jindal, has played a very instrumental role in in giving expansive meaning of Article 19(1)(a) particularly freedom of speech and expression with regard to hosting national flag. The court read the relevance of Part IVA where the court has said that while deciding on the issue of flying national flag the provisions of the Constitution are interpreted either in the light of Part IV or Part IVA or both. Again the question on drawing a balance between right to religious freedom versus freedom of speech and expression and the necessary provisions with regard to singing a national anthem, the court in Bijoe Emmanuel v. State of Kerala, the court has said that while deciding the relationship between Article 25 and Article 51A A, which is about showing respect to national symbols and right to release freedom, the court has said that refusal to join in singing of the national anthem is neither a disrespect of it nor inconsistent with the fundamental duties.

So, court has drawn a balance when such conflict was made visible because of the rights on the one hand and the duties on the other hand. We have also observed that in good number of cases Fundamental duties are also been taken up, considered by the court for aiding statutory interpretation. In addition to interpretation to the Constitution, it has also added to the issue of statutory interpretation. For example, in the State of West Bengal v. Sujit Kumar Rana, which is a case with regard to forest rights, where the court has said that *“Statutes which provide for protection of forests to maintain ecological balance should receive liberal construction at the hands of the superior courts. Interpretive exercise of such power should be in consonance keeping the principles contained in Articles 48-A and 51-A(g) of the Constitution of India in mind.”* The case on the issue of the game which is played in Tamil Nadu known as Jallikattu, the court has said in Animal Welfare Board of India v. A. Nagaraja that we need to understand the very participation of individuals and involvement of animal in the light of the fundamental duty given under Article 51(g), that how that game has to be really looked into in relation to that duty which are there in Article 51(g), which reads as... as to protect and improve the natural environment including forest, lakes, river and wildlife and to have compassion for living creatures.

Reading these fundamental duties the court in this case has banned the very event of Jallikattu, obviously now it has been again allowed by prescribing certain regulations. So, in 2014 the Supreme Court has discontinued and ordered for discontinuation of Jallikattu. Again, another important case of Pradeep Krishen v. Union of India where the court has employed Article 51A(g) for the cause of environment. I read what the court says: *“Even Articles 48-A and 51-A(g) inserted in the Constitution by the 42nd Amendment oblige the State and the citizen, respectively, to protect and improve the natural environment and to safeguard the forest and wildlife of the country. The statutory as well as the constitutional message is therefore loud and clear and it is this message which we must constantly keep in focus while dealing with issues and matters concerning the environment and the forest area as well as wildlife within those forests. This objective must guide us in interpreting the laws dealing with these matters and our interpretation must, unless the expression or the context conveys otherwise, subserve and advance the aforementioned constitutional objectives. With this approach in mind we may now proceed to deal with the contentions urged by parties.”*

Fundamental duties are also required serving as a guide in different matters which are coming before the court. For example, on an issue of ensuring that how legislative and executive actions

are to be seen on elected or non-elected institutions and organization of the citizens, including municipal bodies. The court has said that fundamental duties in general can certainly guide the very processes on election and non-elected institutions. Also, on the matter of working conditions of working class, the court has said that in *Mumbai Kamgar Sangh Sabha v. Abdulbhai Faizullabhai*, that fundamental duties though are not enforceable through it but they can still serve a valuable guide for interpreting statutes and constitutional provisions that admit to possible construction. So, if one construction is closer to or aligning with fundamental duties, then it is that interpretation which has to be preferred. The court has emphasized that when legal issues are under consideration, and the duties outlined in part 4a can very well help the court, facilitate the court in giving or suggesting interpretation or construction, then that is something which has to be adopted, because such interpretation will be seen as a more comprehensive and socially responsible to understanding of the law. It has also been observed that fundamental duties have been read in the context of policy as well. For example, on the issue of this genetically modified product, this Dhara Mustard Hybrid, which has a genetically hybrid product. In the case of *Gene Campaign v. Union of India*, while hearing the challenge to decision of this Appraisal Committee, the court has said that: *"The development of scientific temper is to be read with another limb of the DPSPs and Fundamental Duties enshrined in the Constitution that is Article 48A and Article 51A(g) respectively which speaks of protection of the environment.....and all considerations of modernising agriculture or building a scientific temper would also be required to necessarily consider and abide by the duty to protect the environment..... similarly, a policy decision when taken by the competent authority enters the fray of enforcement with a presumption in its favour of being in public interest, unless otherwise shown, demonstrated and proven to be among other grounds, manifestly arbitrary. This presumption extends, subject of course to just exceptions, to the authority having considered duties as discussed above in framing policies for GMOs."*

There are some attempts made also to enforce fundamental duties. For example, in this case of *Shyam Narayan Chouksey v. Union of India* where there was a guideline issued with regard to inculcating a proper sense of paying respect to the national anthem where the court has ordered that that all cinema halls shall play the national anthem before the feature film starts and all present in the hall to oblige and stand up to show respect to the national anthem. So, this is a very different case where you find that the court has highlighted that even through the judicial order a fundamental duty can be enforced. Obviously, through a latter judgment after two years in 2018, the court has recalled the order. Court has said that there is no shadow of doubt that

one is compelled to show respect whenever and wherever the national anthem is played. However, the prescription of the place or occasion has to be made by the executive keeping in view of the concept of fundamental duties provided under the Constitution and the law. So, the court has left the matter for the executive to take a call instead of getting it enforced by a specific way of getting the national anthem played in the cinema halls. This these cases can be also highlighted for this very purpose that how the court has looked into fundamental duties and attempted to enforce such fundamental duties. So, one may argue that the word fundamental plays a significant role in valuing duties and it is this word which possibly has justified the intervention of the judiciary either for interpreting constitutional provision or for interpreting statutory provisions or for interpreting fundamental rights or directive principles. So, the court has read the significance of fundamental duties though it is not explicitly provided as non-enforceable or enforceable but then it has been seen through these judicial pronouncements that the court has through engaging with the fundamental duties in different categories of cases. The court has reiterated and again reemphasized the significance of duties as it is a part of a text, as it is a part of the constitution.

These are the references for this session.

Thank you.