
Jurisprudential Aspects of Fundamental Duties and their Enforceability: A Study

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Abstract *Fundamental duties numbering ten have been incorporated in the Constitution by virtue of constitution (Eighty-sixth Amendment) Act, 2002 on the recommendation of Swarn Singh committee . By 86th Amendment in year 2002, 11th duty was added. But there seems least guiding factors for the remedy of breach except for few such duties. Among the various constitutions in Indian Sub-Continent some duties on citizens are inbuilt in the constitution while in others they are by law, custom and/or precedent. The Constitution of China also bears testimony of fundamental duties in various Articles under the chapter titles as 'Fundamental Rights and Duties'. Law is interplay of rights and duties. From the operative lines of Article 51-A, it clear that the person burdened with corresponding duty is a citizen(s) of India. The subject matter of the right is Article 51-A(a) to (k) of the constitution of India .The act or forbearance is the conduct of citizen while the beneficiary in whom right vests is debatable . For some of the duties and their breach remedy is prescribed in laws like Indian Penal Code, the Environmental Protection Act, 1986 Emblem and Names(prevention of improper use) Act,1950 read with the Prevention of Insult to National Honour Act ,1971 etc . There seems no remedy for the breach under Article 51-A(b),(d),(f),(h) & (j) , so need for adopting curative measures for inculcating duties arises . Breach of duty as an act or omission ought to be taken as an actionable wrong of a 'civil misconduct' at initial instance ,rather to be cured by punishment for an offence except in its aggravated form and / or for persistent wrong . Accordingly, the topic has been dealt and deliberated on the strength of doctrinal methodology whereby both primary and secondary source data has been used.*

Key Words Jurisprudence, Fundamental duties, Right, Duties, Constitution, Civil Misconduct, Remedy for Breach

Introduction:

Constitution being supreme in itself creates the fundamental right with remedy to enforce them under Article 32 or 226 of the constitution of India. The right may be that of citizens and/or aliens. The corresponding duty is with the state. The right is enforceable against the state and/or against the instrumentalities of state as the case may be. Likewise Directive principles though were said to be non-justiciable but their justiciability in some situations has not been ruled out. Likewise the constitution creates some aspect of democratic process and

also provides mechanism for compliance. The said mechanism may be by a constitutional process itself or through statute (s). The fundamental Duties are the latest addition to the constitution, making such duties explicit. In the Constitution of China the duties on citizens are dealt among others in a distinct chapter deliberated herein after ¹. Among the various constitutions in Indian Sub-Continent some

1. Chapter titled as 'Fundamental Rights and Duties' under the Constitution of the Peoples Republic of China

duties on citizens are inbuilt in the constitution while in others they are by law, custom and/or precedent.² However, it is perceived that duties are imposed on citizens under the Indian Constitution but there seems least guiding factors for the remedy of breach. As such the study assumes importance from various angles especially from jurisprudential point of view.

Jurisprudence as per dictionary³ means ‘ . . . Knowledge of law ; the science or philosophy of law ; a body or branch of law . . . ’ It has its origin in Latin word ‘*jurisprudentia*’ meaning the knowledge of law . Different writers have dealt it differently keeping in view the school of thought to which they belong. To quote few, Salmond⁴ defines jurisprudence as ‘*the science of law*’. Under this definition Jurisprudence can be dealt in generic and specific sense. The generic composes of entire body of legal doctrines while the specific deals with particular aspects of such doctrines. Professor Allen⁵ defines jurisprudence as ‘*the scientific synthesis of the essential principles of law*’. There is no dearth of writers in defining the term jurisprudence.

Eastern jurisprudence encompasses all the aspects of human behavior within ‘*Dharma*’ for which it is said ‘*Dharmo Rakshati Rakshata*’ (*respect dharma dharma will respect you*) Dharma in its core involves duties as its subject matter. Even the King is said to have duties falling under Raj dharma. Duties have

prevalence and predominance in Eastern Jurisprudence while the right is subservient, collateral and relative in contrast to western jurisprudence. In Bhagwat Geeta⁶ following verses among others have relevance which say :

‘ Your right is to work only, but never to the fruit thereof. Let not the fruit of action be your object, nor let your attachment be to inaction.

Though the message apparently says about the right but here the right is itself in the form of duty to work. In subsequent verse it unequivocally speaks about duty, where the message says:

‘Arjuna, perform your duties dwelling Yoga, relinquishing attachment, and indifferent to success and failure; equanimity is called Yoga’

The jurisprudence of west and Dharma of east is law and/or science of law. Once it is arrived at that jurisprudence is in relation to law, it is imperative to deliberate inter-alia upon the ‘Right and Duties’ as concept of law.

Right & Duties:

Law is interplay of rights and duties. Salmond⁷ defines it as ‘*A right is an interest recognized and protected by a rule of right. It is an interest respect for which is duty, and disregard of which is a wrong.*’ Breach of duty or the disregard has to be actionable except in few situations falling under general exceptions⁸. On the other Duguit⁹ arrives at a finding that ‘*no one has any other right than always to do his duty*’. In his view *Law is only an embodiment of duties which an individual is supposed to perform as a part and parcel of the social organisation for furtherance of social solidarity*. There are number of jurists who say that there is no such conception as a right in law and Prof. Kelson¹⁰ the pro-pounder of Pure Theory of Law being one among them. A

2. The Constitution of Islamic Republic of Pakistan as promulgated w.e.f 12th February, 1973 gives the glimpses of some duties in its preamble when it says, ‘ . . . Now, therefore, we, the People of Pakistan ; . . . Dedicated to the preservation of democracy achieved by the unremitting struggle of the people against the oppression and tyranny ; Inspired by the resolve to protect our national and political unity and solidarity by creating an egalitarian society through a new order . . . ’ However, like the Constitution of India there is no distinct Article / Chapter or as the case may be .

3. The Chambers Dictionary, New Edition Published by Allied Chambers (India) Ltd

4. Salmond on Jurisprudence by P.J. Fitzgald, 1966 (Salmond was a judge of the Newzeland Supreme court. He Published his Jurisprudence in 1902)

5. Law in Making by C.K.Allen

6. Bhagwat Geeta, verse 47 &48

7. Ibid at 4

8. Sections 76 to 106, Chapter IV of the Indian Penal Code and under other like laws.

9. Leon Duguit, Law & State (1917) 31 Har. Law Review

10. Pure Theory of Law (1934) revised Version 1960

balanced view seems to be that of Roseau¹¹ who says that *men were born free but everywhere they are in chains*. These chains on analysis seem to be self-imposed by men in a society and/or as a member of democracy. The chains in fact mean the restraint on one's right. Sum total of all the restraints constitutes law in what so ever form it may be called. These restraints sub-serve the common cause of a society for its cohesion and/or towards a common goal. The Right and duties form most of the substratum of law and they are co-relative to one another. In view of the west, if law creates a right then there has to be a corresponding duty but on whom. For this one needs to study the characteristics of right which different writers have dealt differently? In brief for this study the main characteristics can be the i) beneficiary in whom right vests ii) the person burdened with corresponding duty iii) the subject matter of the right iv) the act or forbearance giving rise to breach.

Further, the right can be dealt in generic sense also where the right itself can be classified into four kinds namely i) Right ii) Liberties iii) Power; and iv) Immunities. Accordingly all these forms of right ought to have a corresponding correlative like i) Duties ii) No Right iii) Liabilities; and iv) Disabilities¹².

In case of fundamental duties none of the form/kind is specified. So the deliberations are Duty specific pure and simple. From the operative lines of Article 51-A, it is clear that the person burdened with corresponding duty is a citizen(s) of India. The subject matter of the right is Article 51-A(a) to (k) of the constitution of India. The act or forbearance is the conduct of citizen while the beneficiary in whom right vests is debatable. Firstly the right vests with 'we the people of India' both individually as well as collectively in

group or society and/or in the state.

Duties without Right and vice-versa:

However exceptions to the rule exist. Say for that matter the Directive Principles under the Constitution of India. They do carry directives on the state in the nature of duties without any corresponding right. Still the courts in India under some circumstances enforce them whether under PIL or otherwise¹³. The situation also exists where a right may emerge without corresponding duty or a duty without a corresponding right what may be termed as imperfect obligation. In *Minerva Mills Ltd*¹⁴ Supreme Court observed:

*'... It is the function of the Judges, may their duty, to pronounce upon the validity of laws. If courts are totally deprived of that power, the fundamental rights conferred upon the people will become a mere adornment because **rights without remedies** are as writ in water. A controlled Constitution will then become uncontrolled ...'*

As the right and duties being correlative in broader sense a duty without remedy also can be considered as writ in water. However, there are jurists who say that there can be duties without corresponding right. Under such circumstances the duties are labelled as Absolute Duties while the duties which are correlated to corresponding right are called as Relative Duties. If one considers Austin¹⁵ supported by CK Allen¹⁶ on the subject, he clarifies the absolute duties as duties not regarding persons, duties owed to persons indefinitely, self-regarding duties and duties owed to the sovereign. On the other the duties can be classified into positive & negative duties, besides, primary & secondary duties.

11. Jean-Jacques Rousseau born on 28 June 1712 and died on 2 July 1778 was a Genevan philosopher popular during the French Revolution

12. Based on Salmonds analysis as improved by Hohfeld in *Jural Relations* though opposed by Kocourek on being almost of mathematical accuracy. Whatever be the case classification has been adopted by the 'American Restatement of the law' by substituting word Claim for Right.

13. *Vellore Citizens Welfare Forum Vs Union of India*, AIR 1996 Sc2715

14. *Minerva Mills Ltd V Union of India & others*; AIR 1980Sc1789

15. *The Province of Jurisprudence Determined* by John Austin

16. *Infra* 5

Fundamental Duties:

The concept of Fundamental duties was taken from the USSR and were incorporated in year 1976 on the recommendation of Swaran Singh Committee. The duties initially being 10 in number were placed under Article 51-A of the Constitution of India¹⁷. By virtue of 86th Amendment in year 2002, 11th duty was added. Fundamental duties ought to be considered as corner stone for Indian Nation Hood to be read with the preamble, besides, other provisions including prohibition regarding discrimination on basis of religion, race, sex, place of birth etc.¹⁸ which were threats to India's Nation Hood as a sovereign state etc. Allahabad High Court¹⁹ observed that the Constitution 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. The performance of these duties falls within Constitutional law. The legal position at present being that the provisions of Fundamental Duties cannot be enforced except where supporting statutes exist for breach. They can be promoted by constitutional methods which include law making²⁰. The eleven Fundamental duties are enumerated as under:

'51-A Fundamental Duties – It shall be the duty of every citizen of India -

- (a) To abide by the constitution and respect its ideals and institutions, the national Flag and the National Anthem;*
- (b) To cherish and follow the noble ideals which inspired our national struggle for freedom ;*
- (c) To uphold and protect the sovereignty , unity and integrity on India ;*

- (d) To defend the country and render national service when called upon to do so ;*
- (e) 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 ;*
- (f) To value and preserve the rich heritage of our composite culture ;*
- (g) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures ;*
- (h) To develop the scientific temper, humanism and the spirit of inquiry and reform ;*
- (i) To safeguard public property and to abjure violence;*
- (j) To strive that the nation constantly rises to higher levels of endeavor and achievement.*
- (k) Who is a parent or guardian to provide opportunities for education to his child, as the case may be, ward between the age of six and fourteen years.'*

The fundamental duties are reflection of the ancient developed concepts of east but least adhered in modern era . This apart on analysis of fundamental duties as contained in the constitution of India , it can be gathered that some are mere declaratory , while few can be treated as remedial duties and some others as hybrid of declaratory and remedial duties. The declaratory duties declare the right without providing any remedy for its breach. The remedial duties create the duties and/or affirm the duties with remedy for the breach either in same statute or in already existing statute. For hybrid duties remedy may address only to part of breach and not whole of the duties. Applying this criteria, the declaratory duties fall under Article 51-A(b),(d),(f),(h) & (j) while remedial duties seem to be covered by Article 51-A(c),(e) & (g) . The duties referred to as hybrid are the amalgam of both the declaratory and remedial duties falling under 51-A (a) & (i). The analysis is inter-alia based on the fact that

17. comprising ten in number then to which eleventh was added vide the constitution (Eighty-sixth Amendment) Act, 2002 sec 4 (w.e.f 1.4.2010)

18. Article 15, 16 & Others of the Constitution of India on the subject

19. Ram Prasad V. State of Uttar Pradesh AIR 1988 All 309

20. Mumbai Kamgar Sabha V. Abdulbhai AIR 1976 Sc 1455. Also see Mohan v. Union of India AIR 1992 Sc 1 , where the court held that the recourse to Article 51-A may be made if the constitutionality of an Act is challenged

some of the duties and their breach do create a statutory offence for prosecution. For example the breach of remedial duties under 51-A(c), (e) & (g) constitute offences under Indian Penal Code and like law, besides, the breach of duty under 51-A(k) is again strengthened by section 10 of the Right to Free and Compulsory Education Act, 2009 where it says '*It shall be the duty of every parent or guardian to admit or cause to be admitted his or her child or ward, as the case may be, to an elementary education in the neighbourhood school.*' The remedy for breach is provided in Chapter VI of the Act read with Article 21-A of the constitution of India. The remedy is curative and not punitive, perhaps in view of the delicate relations. But for declaratory duties in other areas, there does not seem to be any corresponding remedial statute whether curative or punitive to prevent the breach and/or punishment for any deviation.

In the words of Austin²¹ there do exist laws which may not be command but still are within the province of jurisprudence. To this category he refers to declaratory or explanatory laws, laws to repeal laws, besides laws of imperfect obligation meaning the law which does not have sanction. The Analytical approach can make declaratory duties as not a law while the remedial duties as perfect law with sanctions in other statutes. The hybrid duties fall under both the arenas.

Comparison with China:

The Constitution of China also bears testimony of fundamental duties in various Articles under the chapter titles as 'Fundamental Rights and Duties'. The duties thereto can be classified in those towards state and others to self and family. Both the category of duties are explicit like duty to work²², duty as well as the right to receive education²³, duty to practice family

planning²⁴, parents duty to rear and educate their minor children, and the duty on children who have come of age to support and assist their parents²⁵.

Further, the citizens in China have duty to state as to safeguard the unity²⁶ of the country and the unity of all its nationalities, duty to safeguard the security, honour, and interests of the motherland²⁷, duty to perform military service and join the militia in accordance with the law²⁸. It is also the duty of citizens of the People's Republic of China to pay taxes in accordance with the law²⁹. The constitutional duties are supported by remedial methodology contained in executive orders /subordinate legislations.

Now it may be prudent to have a glance at Eastern Jurisprudence pre-dominantly of Indian Sub-Continent which remained under hibernation for considerable period due to foreign occupation, neglect to the ancient Indian languages, indifference so on and so forth.

21. *Infra 15*

22. **Article 42 . Work**

(1) *Citizens of the people's Republic of China have the right as well as the Duty to work*

23. **Article 46 . Education**

(1) *Citizens of the people's Republic of China have the duty as well as the right to receive education.*

(2).....

24. **49. Marriage, Family , Parentage**

(1) ...

(2) *Both husband and wife have the duty to practice family planning*

(3) *Parents have duty to rear and educate their minor children, and children who have come of age have duty to support and assist their parents.*

(4)

25. **Ibid at 23**

26. **52. Unity**

It is the duty of citizens of the People's Republic of China to safeguard the unity of the country and the unity of all its nationalities.

27. **54. Integrity of the Motherland**

It is the duty of the citizens of the People's Republic of China to safeguard the security, honour, and interests of the motherland; they must not commit acts detrimental to the security, honour and interests of the motherland.

28. **55. Defence**

(1) *It is the sacred obligation of every citizen of the people's Republic of China to defend the motherland and resist aggression.*

(2) *It is the honorable duty of China to perform military service of citizens of the people's Republic of China to perform military service and join the militia in accordance with the law .*

29. **56. Taxation**

It is the duty of citizens of the people's Republic of China to pay taxes in accordance with the law .

The eastern jurisprudence is duty oriented as already said. The right is secondary and/or collateral to the duty. Everybody has the duty like duty to living creatures , environment , society, state etc so that there can be so that there can be happiness all around ‘*Sarve bawan ti Sukhnam*’. M.Rama Jois,³⁰ refers to dharma and law in his Legal and Constitutional History of India in a manner as follows :

‘dharma is a Sanskrit expression of the widest import. There is no corresponding word in any other language . . .’

‘ . . . law is the king of kings ;

Nothing is superior to law ;

The law aided by the power of the king ;

Enables the weak to prevail over the king .’

Dr. Radhakrishnan,³¹ the then President of India in relation to eastern thought observes that ‘*Even kings are subordinate to Dharma , to the Rule of law*’. Similarly Manu³² says ‘ . . . *King’s (Sovereign) power to punish , keeps the people in righteous path . Fear of punishment (by the king) only yields worldly happiness and enjoyment.*’ Thus the rule of law is pointer towards performance of duty .Once every body in a given society performs his duty; there emerges the satisfaction of right. As already deliberated upon that sum total of all the duties is what the law is in actual sense. This principle creates sense of belonging to fellow individual, society, state including the environment which is the need of present to make India that is Bharat a vibrant economy with social solidarity and mutual co-existence. The nation or state is in aggregate the individuals with defined territory, government and sovereignty. The moment individual is disciplined for adherence to duty, the nation stands disciplined what in short can be termed as man making and nation building.

30. Legal and Constitutional History of India by M.Rama Jois, Published by Universal Law Publishing Co Pvt. Ltd (page 1 &9)

31. The Principal Upanishads by Dr. S. Radhakrishnan page 170

32. Manu VII -22 (Referred by M.Rama Jois in Legal and Constitutional History of India at page 11

Existing Law for Enforcement of Duty:

For this sub-head, let us examine the statute(s) relevant for remedying the breach of constitutional duties. Towards that Indian Penal Code, the Environmental Protection Act ,1986 Emblem and Names(prevention of improper use) Act,1950 read with the Prevention of Insult to National Honour Act ,1971 etc are dealt as follows. The penal code does not cover all the breaches but provides criminal remedy for breach at 51-A (c), (e) & (i) related to the sovereignty , unity and integrity of India , harmony and the spirit of common brotherhood, besides, practices derogatory to the dignity of women. In (e) & (k) law exists for environment³³ including compassion for living creatures and also for safeguarding public property and to abjure violence, besides the Right to Education Act . The provisions for criminal remedy towards 51-A (c), (e) & (i) is covered in respective statutes especially the Indian Penal Code³⁴ while those for environment

33. Penalty for Contravention of the Provisions of the Act and the Rules, Orders and Directions are contained in section 15 of the Environmental Protection Act, 1986 which prescribes punishment of imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention. But in case the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years.

34. **124A. Sedition**

Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India shall be punished with imprisonment for life to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine.

Explanation 1-

[Footnote No. 34 Contd.]

referred to in 51-A(g) have the remedy under the Environmental Protection Act ,1986³⁵. Besides

[Footnote No. 34 Contd.]

Explanation 2-

Explanation 3-

Likewise section 295 deals with Injuring or defiling place of worship with intent to insult the religion of any class and provides for punishment of imprisonment of either description for a term which may extend to two years, or with fine, or with both. while its 295A deals with deliberate and malicious acts, intended to outrage religious feelings of any class by insulting its religion or religious beliefs with punishment of imprisonment of either description for a term which may extend to three years or with fine, or with both. The other relevant sections with one year punishment being 296 for Disturbing religious assembly ,297 Trespassing on burial places, etc, 298. Uttering, words, etc., with deliberate intent to wound the religious feelings of any person-

354- deals with Assault or criminal force to woman with intent to outrage her modesty. The Punishment prescribed is imprisonment of either description for a term which may extend to two years, or with fine, or with both. To this section Criminal Law (Amendment) Act, 2013 added new sections like 354A, 354B, 354C and 354-D. 354A which relate to Sexual harassment to met with one year punishment. 354B deals with Assault or use of criminal force to woman with intent to disrobe punishable with not be less than three years but which may extend to seven years, and shall also be liable to fine. The 354-C relates to offence of Voyeurism punishable on first conviction with imprisonment of either description for a term which shall not be less than one year, but which may extend to three years, and shall also be liable to fine, and be punished on a second or subsequent conviction, with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine while for Stalking under 354D is punishable on first conviction with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and be punished on a second or subsequent conviction, with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

35. **The Environmental Protection Act ,1986 in its section 15 provides Penalty for Contravention of the Provisions of the Act and the Rules, Orders and Directions** punishable with imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or

this, the remedy in part for fundamental Duties under 51-A(a), is covered by respective Acts of parliament relating to National Flag³⁶ and the National Anthem³⁷. There seems no remedy for the breach under Article 51-A(b),(d),(f),(h) & (j) . At the same for those where remedy is provided in statutes they appear to cover the acts /omissions of gravity making such acts / omissions an offence triable by court of law as bailable / non-bailable and summon/warrant case. Accordingly difficulties do emerge as far as burden of proof and components of offence are concerned. Firstly motive and intention is to be established and secondly burden of proof on the person in whom right vests and/or collectively resides.

Keeping all this aside, there is a need for adopting curative measures for inculcating duties instead directly adopting coercive measures except in exceptional cases squarely and clearly satisfying the components of offence. All this depends on gravity of breach of duty. Thus a need arises to make the act as a actionable wrong of a 'civil misconduct' desired to be cured rather punished. Accordingly, innovative solutions may be carved out .

Innovation towards Enforcement of Duties –

Once the law that too grand norm , in other words 'constitution' carves out the duties, then for the breach of duties ,there ought to be sanction which in administration of

contravention continues after the conviction for the first such failure or contravention while its sub-section (2)says that If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years.

36. Prevention of Insult to National Honours Act,1971 which speaks about 3years imprisonment ,besides , reference can be made to The Emblems and Names (Prevention of Improper Use)Act, 1950. In the context attention can also be drawn to Flag Code of India ,2002 applicable w.e.f January 26, 2002 which superseded the Flag Code as existed earlier .
37. Section 3 of the Prevention of Insult to National Honours Act,1971. Supreme Court observed in for honour to National Anthem

justice may result in punishment physical or monetary or both . Otherwise, they may result in imperfect obligation in view of Austin and/ or mere declaratory duties. Therefore once the duties are known, then where the right resides or are these duties without any corresponding right is a question for jurists to address. In the present case, it cannot be said that there is no corresponding right. The right resides with 'we the people of India'³⁸. The breach of said right can be enforced by the people and/ or their representative (s). However to avoid multifarious action the enforceability of right can be entrusted to group of persons, entities or agencies as and by way of a statute. On the other, it is suggestive that breach of duty ought not to be made an offence but a 'civil wrong' to be met with curative action. This can be done by a legislative Act. However ,other options till an appropriate legislation is framed needs deliberations. Accordingly, under this sub-head the breach of fundamental duty can be dealt as civil wrong in name and form of misconduct to prevent misuse and also delays in adjudication. Now, let us deliberate upon the feasibility of executive, judicial and legislative action towards that as follows.

By Executive Action-

As there does not seem to be any specific legislation ,the Executive determination can also be thought of . But while adopting executive mode ,one has to ponder for deriving power to frame guidelines. Besides, that may have tendency to be bias under some circumstances but at least it is certain that bias will be alleged. Therefore, to give credibility to system a quasi-judicial approach is preferable.

Judicial Approach-

Judicial Approach itself is not sufficient to cure the ill and/or remedy the wrong .The highest court like supreme court may act either in pursuance to public interest litigation or Pro-brono depending upon the importance of the matter in the eye of judiciary . Even if that

happens , the measure may be temporary till a definite law is passed by the parliament as the same falls under union list of schedule VII of the constitution of India .

By Legislative Act –

By Legislative action is meant framing a bill either as government proposal or a private members bill for its passage in parliament in accordance with rules and regulations so that a law for breach of fundamental duties emerges with a innovative solution of making such breach initially a 'civil wrong ,or a 'civil misconduct' like in service rules .

It is seen that the constitution shows concern for duties which are fundament for security and integrity of a nation but does not provide for specific remedial measures. As such for any breach one has to ponder over the remedies, if any, provided under other laws. Therefore, in order to inculcate Nationalism, social cohesion and adherence to law, there exists a need for providing statutory frame work to protect and supplement the constitutional provisions as contained in Article 51-A . To meet such a situation the breach need not be termed as an offence but a civil wrong or constitutional misconduct to be met with 'admonition' after adopting summary procedure including the principles of natural justice. Admonition can be categorized on the strength of gravity of misconduct so that order of 'advice' against violator can be passed or in some severe case 'counseling' can be ordered or 'warning' or 'censure' as the case may be . Censure may be passed in case of repeated act or omission. In addition, for persistent wrong debarment to avail benefits under government schemes for a limited period can be pushed or monetary fines. Stigma for holding public office may be thought of. In this a new jurisprudence in relation respect to wrong against fundamental duties will emerge, on the scene, which must discipline the sons of soil .For all these sort of wrongs there ought to be a separate mechanism with Appellate provisions and authority thereto.

The other alternative is to make such acts / omissions as offence but that will add to the

38. Preamble of the Constitution of India begins with the operating words , 'WE THE PEOPLE OF INDIA'

criminal graph of country. Besides, will burden the courts who are already overburdened with backlog and disposal rate. Otherwise also may not result in prompt, adequate and effective culmination of the case concerning constitutional wrong in relation to fundamental duties.

Conclusion & Suggestions

For breach, statutes in themselves create the remedy. However for constitutional wrong the constitution itself provides the remedy of writ or order. In some matters subsidiary remedy through statute is prescribed. In broader perspective, the wrong may be civil or criminal or taxation etc as the case may be for which respective regulatory mechanism exists. But a wrong under fundamental duties, if not of gravity lacks statutory remedy for breach. From the study it is gathered that most of the fundamental duties seem to be with no remedy for their breach. Accordingly there is emergent requirement for statutory protection and prevention of breach of fundamental duties as a medicine and not by way of punishment. The remedies suggested being counseling or admonition or obtaining bond and finally if all the measures fail, then fine or imprisonment as a punishment. To be brief the breach of

fundamental duty can be treated as civil misconduct to be met with a statute for honour to duties and preventing the breach. Further, It is also imperative that wherever the intentional breach of duty with gravity is covered by law same to remain undisturbed. But neo-jurisprudence is imperative to remedy the general breach by providing curative measures at initial stages and obtaining bond for repeated wrong /misconduct. However persistent breach may result in offence after exhausting curative measures followed by obtaining bond for forfeiture if the wrong/misconduct is repeated. The duties ought to be respected otherwise Law becomes paper tiger when it loses the sanction and enforcement. The short comings of administration of justice are clogged with adjudication and enforcement in the result the sheen of law towards maintenance of social order and national flavor suffers at the altar. As such the fundamental duties to be the form of law ought to have sanction in whatsoever form. To make India great must inculcate obedience to duty. 'Tree must love the ground on which it stands'³⁹ is the thought and ideal of East for adherence to nationalism, social solidarity and mutual co-existence.

39. 'Hindu America' by Chaman Lal, Published by Bharatiya Vidya Bhavan, 1960, Bombay.