



SNS COLLEGE OF TECHNOLOGY

Coimbatore-35
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DEPARTMENT OF INFORMATION TECHNOLOGY

23HST103- INDIAN CONSTITUTION

I B.TECH – AIML “B” / I SEMESTER

UNIT 1 – INTRODUCTION

TOPIC 3 – FUNDAMENTAL DUTIES



What are fundamental Duties?

- Fundamental duties are defined as the moral obligations of all citizens to help promote a spirit of patriotism and to uphold the unity of India.
- These duties set in part IV-A of the Constitution.
- They are held by the Supreme Court to be obligatory for all citizens.



History



- The fundamental duties were included in the constitution by the 42nd amendment act 1976.
- It incorporated the fundamental duties by inserting a new article 51A below article 51 which belongs to Part IV-A.
- The recommendations were passed in 1976 and came into effect on 3rd January, 1977.



History



- Originally ten in number, the Fundamental Duties were increased to eleven by the 86th Amendment in 2002.
- These duties were meant to bring our Constitution in line with the Universal Declaration of Human Rights and the Constitutions of Japan, China, and USSR.
- It was adopted based on the recommendations of the SWARAN SINGH Committee.



Swaran Singh Committee



- Swaran Singh Committee was constituted by the Government of India earlier in 1976.
- The objective of this committee was to study the questions of amending the constitution in the light of past experiences faced by the constitution.
- The committee was constituted by Indira Gandhi soon after emergency was imposed in the country.



Swaran Singh Committee



- The 42nd amendment act which is also called “Mini Constitution” amended many articles and even the Preamble was a result of the recommendations of this committee
- The 10 fundamental duties in the constitution were also added as per the recommendations of Sardar Swaran Singh committee.



Inspiration



- The inspiration for the Part IV A was the constitution of USSR.
- It is because USSR constitution directs that law, maintenance or labor discipline and honesty should be observed in the performance of public duties and also directs to respect the rules of the socialist community.



Inspiration



- U.S.S.R. constitution in this way emphasizes more on the citizens duties and imposes upon the people some definite duties towards society and state.
- Such fundamental duties are not seen in the constitution of the U.S.A., Australia, Canada and among other democratic constitution of world except for Japan where we find mention of certain duties of the citizens similar to that present in our constitution.



Inspiration



- This is because, in all these countries the citizens are imbued with a high sense of patriotism as a result of education, training in the elementary duties and obligations of citizenship.
- In contrast to this, it is generally argued that in India, people lay emphasis only on rights and it is often criticized that the Indians know only rights but not duties.
- This was primarily the reason as to why the fundamental duties were incorporated in the constitution in 1976 as



The Duties



The fundamental duties of every citizen of India according to the Constitution are:

1. To abide by the Constitution and respect its Ideals and institutions, the National Flag and the National Anthem;
2. To cherish and follow the noble ideals which inspired our national struggle for freedom;



The Duties



3. To uphold and protect the sovereignty, unity and integrity of India;
4. To defend the country and render national service when called upon to do so;
5. 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;



The Duties



6. to value and preserve the rich heritage of our composite culture;
7. to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
8. to develop the scientific temper, humanism and the spirit of inquiry and reform;



The Duties



9. To safeguard public property and to abjure violence;
10. To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement;
11. Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years



Importance



- The fundamental duties constitute a constant reminder to the citizens that they have duties in building up a free, egalitarian, healthy and responsible society.
- These are expected to act as damper to reckless and anti- social activities on the part of some individuals.
- India being a multi-racial and muti-religious nation can prosper only when the citizens of this country respect its integrity and promotes cultural harmony by doing their duties as citizen of the nation.



Importance



- Environmental pollution has become a great cause of concern. These duties remind us to keep our environment free from pollutants.
- The inclusion of providing opportunity for education for children as a fundamental duty is a big step forward towards safeguard of human-rights and abolition of social injustices



Non-enforceable and non-justiciable nature



- As the state offers the citizens fundamental rights, it is the fundamental duty of each citizen of India to further national integration and contribute towards a better society.
- There is a major difference between the fundamental rights and the fundamental duties.
- Unlike fundamental rights, fundamental duties are non-justifiable.
- This means that no one can be punished in case of their violation or non-compliance of any fundamental duty.
- Similarly these duties are non-enforceable in nature.
- That is no court can or any government body can directly enforce any of these duties on any particular citizen legally.



Non-enforceable and non-justiciable nature



- But if the State makes a law to prohibit any act or conduct in violation of any of the duties, the courts would uphold that as a reasonable restriction on the relevant fundamental right.
- For instance, a person who burns our national flag, in violation of the duty in Art. 51 A, cannot assert that it was burnt by way of demonstration against the Government should be protected by the freedom of expression right.
- In this respect, the Fundamental Duties are similar to that of the Directive principles as they stood in the Constitution of 1949.
- The directive principles lay down some high ideals to be followed by the state whereas the fundamental duties lays high ideals for the citizen.
- Here too, in both cases, violation does not invite any punishment.



Utility and Significance



- The section 'Fundamental Duties' was not a part of the original constitution.
- These were added to the Constitution much later.
- The idea behind incorporation of fundamental duties was to remind the citizens of the country that they have certain obligations towards the country and society.



Utility and Significance



- ← The three most important items in the list of Fundamental Duties
 - ← those requiring the citizens to respect the ideals of the Constitution and the institutions it establishes
 - ← to promote harmony and the spirit of common brotherhood amongst all the people of India professing different religions, speaking different languages and
 - ← to safeguard the public property and to abjure violence.



Conclusion

- These fundamental duties are not mere expressions of pious platitudes. Courts will certainly take cognizance of laws seeking to give effect to fundamental duties.
- Rights and duties are reciprocal and interdependent; they are the two aspects of the same thing or two sides of same coin
- And for the enjoyment of valuable fundamental rights, firstly we need to obey our fundamental duties seriously, as a law-abiding citizen, and must realise that he has certain duties towards the Nation to achieve the objective of Part IV-A that is National integrity and respect because as Salmond said,

“there can be no right, without a corresponding duty.”



Right to constitutional remedies



- Article 32 is known as the “spirit of the constitution and exceptionally heart of it” by Dr. Ambedkar. Preeminent Court has included it in fundamental structure regulation. Further, it is clarified that privilege to move to Supreme Court can’t be suspended with the exception of generally given by the Constitution. This suggests this privilege suspended amid a national crisis under article 359.
- Article 32 makes the Supreme Court the safeguard and underwriter of the major rights. Further, the capacity to issue writs goes under the original jurisdiction of the Apex Court. This implies an individual may approach SC straightforwardly for a cure as opposed to by appeal.
- Article 32 can be used only to get a remedy for fundamental rights enshrined in Article 12-35. It isn’t there for some other legal right for which diverse laws are accessible.



What is WRIT?



• A precept in writing, couched in the form of a letter, running in the name of the king, president, or state, issuing from a court of justice, and sealed with its seal, addressed to a sheriff or other officer of the law, or directly to the person whose action the court desires to command, either as the commencement of a suit or other proceeding or as incidental to its progress, and requiring the performance of a specified act, or giving authority and commission to have it done. For the names and description of various particular writs, see the following titles.

• In old English law. An Instrument In the form of a letter; a letter or letters of attorney. This is a very ancient sense of the word.

• In the old books, “writ” is used as equivalent to “action;” hence writs are sometimes divided into real, personal, and mixed.

• In Scottish law. Writing; an instrument in writing, as a deed, bond, contract, etc.



Types of WRIT



Habeas Corpus:

Meaning: This writ is in the nature of an order calling upon the person who has detained another to produce the latter before the Court, in order to let the Court, know on what ground he has been confined and to set him free if there is no legal justification for the confinement.

Mandamus

Meaning: “A writ issued by a court to compel performance of a particular act by lower court or a governmental officer or body, to correct a prior action or failure to act.” It is used for enforcement of various rights of the public or to compel the public statutory authorities to discharge their duties and to act within the bounds. It may be used to do justice when there is wrongful exercise of power or a refusal to perform duties.

Prohibition

Meaning: A writ of prohibition, also known as a ‘stay order’, is issued to a lower court or a body to stop acting beyond its powers.



Types of WRIT



Certiorari

Meaning: The writ of certiorari issued to quash a decision after the decision is taken by a lower tribunal while prohibition is issuable before the proceedings are completed. The law has always been, that a writ of certiorari is issued against the acts or proceedings of a judicial or quasi-judicial body conferred with power to determine question affecting the rights of subjects and obliged to act judicially.

Quo Warranto

Meaning: The writ of Quo Warranto (by what warrant) is issued to inquire about the legality of a claim by a person or authority to act in a public office, which he or she is not entitled to. The writ of Quo Warranto is a mode of judicial control in the sense that the proceedings review the actions of the administrative authority which appointed the person.