



J&K JUDICIAL ACADEMY e-NEWSLETTER



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Tashi Rabstan

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Composed by

Ms. Vishali Razdan

LEGAL JOTTINGS

“Human dignity is an integral part of the Constitution. Reflections of dignity are found in the guarantee against arbitrariness (Article 14), the lamps of freedom (Article 19) and in the right to life and personal liberty (Article 21).”

Dr D.Y. Chandrachud, J.

In *K.S. Puttaswamy v. Union of India*,
(2017) 10 SCC 1, para 108

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From the Editor's Desk



We are back with yet another issue of J&K Judicial Academy e-newsletter, providing a glimpse of the few important pronouncements of Hon'ble the Supreme Court & Hon'ble High Court of J&K and Ladakh during the month of December 2022. The issue has a lot of interesting news which reflects how our quiet looking Academy campus is always buzz with activity underneath.

Looking back, as the New Year ushers in new hopes and aspirations, we realize that 2022 had been epoch making as the Academy hosted eminent speakers, organized various conferences, seminars, workshops and training programmes for judicial officers, police and prosecution officers, Advocates and employees with significant thrust on academic rigor. Interestingly, the important Legislations like Protection of Children from Sexual Offences (POCSO) Act and Juvenile Justice (Care and Protection of Children) Act were also deliberated in the Academy under the able guidance of the Hon'ble Chairperson and Hon'ble Members of Governing body of J&K Judicial Academy.

Understandably, the vision of the Academy is far reaching and a lot needs to be accomplished. With each new year, a slew of new ideas are brought to the table so as to translate them into reality along with my team in the Academy.

I and my team holds the privilege to compile them so that we could navigate our path and steer our growth in right direction under the guidance of Hon'ble Patron-in-Chief and Hon'ble Governing body of the Academy.

Finally, I wish to conclude with the ever inspiring words of Margaret Mead-
"Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it's the only thing that ever has."



SLP(Criminal) 9897 of 2022

Chandi Puliya v. State of West Bengal

Decided on: December 12, 2022

Law Point:

Application U/S 300 Cr.P.C can be considered only at the stage of discharge under Section 227 Cr.P.C and not at the stage of 228 Cr.P.C as the stage of discharge U/S 227 is prior to Stage of Charge U/S 228 Cr.P.C

A bench of Hon'ble Supreme Court comprising of Hon'ble Justices MR Shah and Hon'ble Justice CT Ravikumar has held that the an application moved by accused under section 300 CrPC, has to be considered by the Court at the stage of discharge under section 227 CrPC only. In this case appellant along other accused was acquitted of charges U/S 148,149,448,364, & 506 IPC in FIR No 61/2002 dated 26.09.2002 of Keshpur Police Station. Subsequently, another FIR was lodged on the allegation of having caused death of the same person who was alleged to have been kidnapped in the earlier case and in which the accused person were acquitted. Appellant accordingly, had filed a petition for quashing the FIR but same was dismissed by the Hon'ble High Court on the ground that appellant has liberty to agitate all the points at the stage of charge. Appellant accordingly, had filed an application for discharge but same was also dismissed on the ground that application under Section 300 CrP.C can be considered only at the stage of Charge. The order passed by learned trial Court was also confirmed by High Court. Aggrieved by the order passed by the Hon'ble High Court, the appellant had challenged the same before the Hon'ble Supreme Court. Hon'ble Supreme after considering the submissions and referring to Sections 227 and 228 has held that an application moved in terms of Section 300 Cr.P.C is to be decided only at the stage of discharge U/S 227 Cr.P.C and not at the stage of 228 Cr.P.C

CrlA No. 885 of 2019

Sukhpal Singh Khaira v. State of Punjab

Decided on: December 05, 2022.

Law point:

Power U/S Section 319 Cr.P.C for summoning additional accused can be invoked only before pronouncing the order of sentence where there is judgment of conviction and in case of acquittal same should be exercised before order of acquittal is pronounced.

A bench of Hon'ble Supreme Court comprising of Hon'ble Justices Abdul Nazeer, B.R. Gavai, A.S. Bopanna, V. Rama Subramanian and BV Nagarathna, while considering the questions; whether the trial Court has power under section 319 Cr.P.C for summoning additional accused when trial with respect to the co-accused has ended and the judgment of conviction has been rendered on the same date before pronouncing the summoning order? Whether the trial Court has power under Section 319 of the Cr.P.C for summoning Additional accused when the trial in respect of certain other absconding accused is ongoing/pending, having been bifurcated from the main trial" and What are the guidelines that the competent Court must follow while exercising Powers under Section 319 Cr.P.C?

has held that power under section 319 Cr.P.C can be exercised in a judgment of conviction till the time sentence is not pronounced and in case of acquittal judgment till the time same has not been pronounced. Held, that a criminal trial is not complete on the pronouncement of the Judgement of conviction of the accused, but with their sentencing.

C.A. No. 2035/2022

Amar Chand v. State of Himachal Pradesh

Decided on: December 01, 2022

Law point:

In the cases under NDPS Act if there are lacunae and gaps in the prosecution case and non-compliance of mandatory provisions during investigation, accused deserves to be acquitted.

A bench of Hon'ble Supreme Court comprising of Justice Sanjiv Khanna and Hon'ble Justice JK Maheshwari noting various lacunae and gaps in the prosecution case and non-compliances of the mandatory provisions of NDPS Act, has set aside the Judgment of conviction of the appellant under section 20 of Narcotic Drugs and Psychotropic Substances Act, 1985 by observing in the judgment that prosecution has failed to prove Arrest Memo and personal body Memo of the accused and the site plan/spot-map was also incorrect. Hon'ble Court taking note of the lacunae and gaps in the case of the prosecution held that conviction of the appellant under section 20 of NDPS Act cannot be sustained.

CRA 2310 of 2022

Hasmukhlal Vora v. State of Tamil Nadu

Decided on: December 16, 2022

Law point:

Inordinate and un-explained delay in filing of complaint can be a crucial factor for quashing a complaint.

Hon'ble Supreme Court in the above case has held that unexplained and inordinate delay can be considered as a very crucial factor for quashing a criminal complaint. Bench of Hon'ble Justice Krishna Murari J has observed that law is meant to exist as a shield to protect the innocent, rather than being used as a sword to threaten them. In the present case there has been a gap of more than four years between the initial investigation and the filing of the complaint, and even after lapse of substantial amount of time, no evidence has been provided to sustain the claims in the complaint and respondent has not provided any explanation for extraordinary delay of more than 4 years. Infact, the absence of such an explanation only prompts the court to infer some sinister motive behind initiating the criminal proceedings. While inordinate delay in itself may not be ground for quashing of a Criminal Complaint, in such cases, but unexplained inordinate delay of such length must be taken into consideration as a very crucial factor as ground for quashing a criminal complaint.



CA 8531-8532 of 2022

Bhagyoday Cooperative Bank Ltd v. Ravindra Balkrishna Patel(D)

Decided on: December 13, 2022

Law Point:

Application for permission to sue as an indigent person under Or.33 Rule 1, is liable to be rejected if the suit filed by the plaintiff itself is abuse of process of law and/or Court or is otherwise barred by law.

Appellants i.e original plaintiffs while instituting the suit had submitted an application for permitting them to sue as indigent persons under Or.33 Rule1 of the Code of Civil Procedure. The application was dismissed by the learned trial Court on the ground that the suit filed by the plaintiffs is vexatious and an abuse of the process of law and the Court and that suit is also barred by res-judicata. The order was confirmed by the High Court and consequently was challenged before the Hon'ble Supreme Court. It was argued on behalf of the appellants/plaintiffs before the Hon'ble Apex Court that while considering an application for permission to sue as indigent person it was not open for the learned trial Court or the High Court to express any opinion on the merits of the suit and at the most the trial Court has the power to dismiss the application as in that case plaintiff can pay the requisite Court fee and to proceed with the suit. Per Contra , learned Counsel for respondent / defendant relying upon the case titled Kamu Alias Kamala Ammal Vs Manikandan and Anr (1998) 8 SCC 522, argued that at the time of deciding the application for permission to sue as an indigent person , it is open for the Court to consider whether suit is an abuse of process of law and/or Court or not.

Hon'ble Apex Court comprising of Hon'ble Justice M.R Shah & Hon'ble Justice M.M Sundersh, referring to various provisions of Order 33 CPC observed that from the Scheme of the Order 33CPC, it emerges that the application under Or. 33 Rule 1 CPC can be rejected on the grounds mentioned in Order 33 Rule 5 CPC which includes the allegations in the application would not show cause of action..... or the allegations in the application would show that suit would be barred by law for the time being in force. Hon'ble Apex Court taking note of the judgment in Kamu Alias Ammal (supra) held that trial Court had not committed any error in rejecting the application.

CA 6901 of 22

Kamla Neti (D) v. Special Land Acquisition Officer

Decided on: December 09, 2022

Law point :

A member of Schedule Tribe is not governed by the provisions of Hindu Succession Act for the reason that Hindu Succession Act has not been made applicable to members of Scheduled Tribe.

A Bench of Hon'ble Supreme Court comprising of Hon'ble Justice MR Shah and Hon'ble Justice Krishna Murari while dealing with the question as to whether a daughter belonging to a Scheduled tribe category is entitled to compensation with respect to land acquired on survivorship basis or not, has held that a member of scheduled tribe is not entitled to any right of survivorship under the provisions of Hindu Succession Act as Hindu Succession Act

is not applicable to members of Scheduled Tribe. Hon'ble Bench has further observed that until section 2 (2) of the Hindu Successions is not amended the parties will continue to be governed by same. The Bench has urged the central government to consider the need for bringing a suitable amendment to Hindu Succession Act, in this regard.

CA 8885 of 2022

Solomon Selvaraj v. Indrani Bhagwan Singh

Decided on: December 03, 2022.

Law Point:

Dismissal of Execution Petition on the ground of default or withdrawal of the first Execution Petition will not operate as bar for filing or prosecuting a second execution petition:

A Bench of Hon'ble Supreme Court comprising of Hon'ble Justice K.M Joseph and Hon'ble Justice Hrishikesh Raj has held that mere dismissal of the first execution petition on the ground of default or withdrawal will not preclude a decree holder from filing a fresh Execution Petition provided the same is filed within the period of limitation. In this Case Appellant/Plaintiff Bank had granted a financial facility to respondents/defendants, firm namely M/S Vimal traders. Since, the amount was not re-paid, a Suit was instituted by Appellant/plaintiff before the Board of Nominees under The Gujrat Cooperative Societies Act, 1961. The adjudicatory Authority passed an Award and also issued a certificate in terms of Section 103 (a) of the said Act for executing the Award/ Deemed and thereafter, Appellant/ Decree holder had presented the execution petition before Court of learned City Civil Court, Ahmadabad which finally was dismissed as withdrawn by the Appellants/Decree holder and later the appellant Bank had filed another Execution application. After withdrawal, the Appellant/Decree holder bank had filed Second Execution Petition before the Court of learned 4th Addl Senior Civil Judge Ahmadabad Rural. During pendency of the execution petition an application was moved by the Appellants/Decree holders for passing an order of garnishee and to direct Nazir/registrar of the Court of Id Civil Judge (S.D) to deposit the remaining credited amount in the said execution. The application was allowed by the Executing Court which was challenged by the judgment debtors before the Hon'ble High Court and the High Court had set aside the order impugned on various grounds including that the second Execution Petition was not maintainable. The order passed by the High Court was challenged before Hon'ble Supreme Court and Hon'ble Court has held that the mere dismissal of the first application on the ground of default may not result in the decree holder being precluded from filing a fresh execution petition provided same is within time.



CRMC No. 71/2019

Mohammad Ayoub Dar v. State of J&K

Pronounced on: December 16, 2022

Law point:

Jurisdiction vested in High Court in-terms of Section 561-A Cr. P.C (482) cannot be readily exercised, where an alternative efficacious remedy is available to petitioner.

The Hon'ble High Court of J&K and Ladakh while dismissing the petition U/S 561-A CrPC, throwing challenge to the order dated 01/03/2019 passed by the Court of Ld. Principal Sessions Judge, Kulgam whereby the bail application of the petitioner arising out of Case FIR No 105/2018 for offences U/S 147,148, 149, 336, 302,212 RPC, 7/27 Arms Act r/w Sections 13(2), 18, 19,20, 38,39 of ULAP, was rejected, has reiterated the settled position of law that the High Court would be reluctant in exercising its jurisdiction under section 561-A CrPC in a case where a litigant has an alternative efficacious remedy available to him. The Hon'ble Court has observed that in the case in hand petitioner definitely has an alternative efficacious remedy available to him U/S 21 of N.I Act as he has a statutory right to file an appeal against the impugned order before the High Court which is to be heard by a bench of two Judges which remedy is not only efficacious but is effective as well.

CrIa(AD) No. 01/2020

Union Territory of JK th. P/S Bijbehara v. Mumtaz Ahmad Lone

Pronounced on: December 02, 2022.

Law Point:

To bring home the guilt against the accused for a Charge U/S 8(b)/20(c) NDPS, the prosecution is not only required to prove that contraband was recovered from the conscious possession of the accused but is also required to prove that it was the recovered/seized contraband which was sent to FSL for chemical examination and the chain of custody was properly maintained.

A division bench of the Hon'ble High Court of J&K and Ladakh comprising of Honble Justice Rajnesh Oswal and Hon'ble Justice Rahul Bharti, while dismissing an appeal against judgment of acquittal dated 30/05/2019 passed by the Court of learned Additional Session Judge, Anantnag in a case titled State v. Nazir Ahmed Shah & Anr, whereby the respondent along-with other accused (now deceased) were acquitted of the charges for commission of offence under section 8(b)/20(C) of NDPS Act, has held that in order to convict a person for commission of offences U/S 8/20 NDPS, it is mandatory for the prosecution to not only prove that the recovery was effected from the accused but also that it was the said recovered material only which had been sent to FSL for chemical analysis.



WP(C) No. 1810/2021

Dr. Rehana Kausar v. UT of J&K & Ors

Pronounced on: December 23, 2022.

Law Point:

Participation in the enquiry proceedings without demur and without any protest regarding the constitution or functioning of the committee, amounts to acquiescence and therefore, petitioner has no right of being heard after the result of enquiry has went against the petitioner.

The Hon'ble High Court of J&K and Ladakh while considering challenge thrown to enquiry report and order constituting complaints committee under Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013 has held that the petitioner having acquiesced in the constitution of the complaints committee by her conduct by fully participating in the enquiry proceedings without any demur or protest cannot be heard to question the constitution of the complaints committee, when the result of the enquiry has gone against her and more particularly when the enquiry proceedings have been conducted after observing the principle of natural justice and the findings of the committee are based upon the material produced before it.

CMP No. 813/2021

Life Insurance Corporation of India & Ors v. Hamida Bano & Anr.

Pronounced on: December 19, 2022

Law Point:

Filing of copy of FIR to support Claim for accidental death, is not sine qua non, for processing the claim under the policy of life insurance.

A division bench of the Hon'ble High Court comprising of Hon'ble Justice Sanjeev Kumar and Hon'ble Justice Moksha Khajuria Kazmi, has upheld the order of State Consumer Grievance Redressal Commission, Srinagar, whereby the commission had allowed the consumer complaint against repudiation of claim in respect of accidental death under policy of Life Insurance, after rejecting the stand of the LIC that claim filed by the petitioner was not supported by a copy of FIR. Hon'ble High Court has held that in cases where the death of the insured has occurred due to injuries suffered from a fall, the registration of FIR is not required and, therefore, in such type of cases filing of FIR in support of the claim of Insurance is not a sine-qua- non for processing the claim in respect of accidental death under policy of life Insurance.



ACTIVITIES DURING THE MONTH

One Day Workshop on 'What are digital fingerprints and how to appreciate its relevance?'

J&K Judicial Academy with active support by Criminal Investigation Department, Government of J&K, organized One Day Workshop on 'What are digital fingerprints and how to appreciate its relevance?' at Judicial Academy, Jammu on 03rd December, 2022.

In his special remarks, Sh R R Swain, Spcl DG CID stressed upon the necessity to develop the innovative ways of law to deliver justice effectively and efficiently. He discussed that there is a pressing need to bring all the stakeholders on one platform to set a standardized process in dispensing justice in its true form. Mr. Swain apprized that participating officers about the clarion call of dealing with digital evidence which has far reaching consequences particularly when non-State actors are operating beyond the geographical boundaries of the country.



Mr. Shahzad Azeem, Director, J&K Judicial Academy presented the welcome address and gave an overview of the programme. He stated that the purpose of today's workshop is to keep abreast all the functionaries responsible for Criminal Justice System and have the duty to maintain law and order in society from the modern day Challenges in arena of digital world as the digital forensic field matures; advances need to be made in how forensics capabilities are specified, implemented & verified. He underscored that when it comes to Cybercrime it depends in understanding the Cyberlaw and Digital Evidence, thus necessity has been felt to know the standard procedure and protocols being followed by all the stakeholders from investigation till culmination in the courts of law.

In technical sessions, the technical team of CID dealt with the concept of digital footprints and discussed that mobile, laptop, internet and social media form the ecosystem of any digital evidence. They described the working of internet and various stakeholders in internet communication system and discussed the roles and responsibilities of internet users, TSP/IP and Social Media Intermediary. They also stated the challenges faced by LEA during investigation such as VoIP calls, geo-location of intermediary servers, virtual private networks (VPN), virtual calls etc. They deliberated on the concept of imaging, digital evidence extraction from the devices and hash values.

Sh. Nisheeth Dixit, Advocate & Cyberlaw consultant, resource person in the technical session discussed the relevancy and admissibility of digital evidences. He also emphasised on various case laws and judgements in the field of digital evidence.

Later, an interactive session was held during which the participants deliberated and discussed the various aspects of the subject topic and raised queries which were satisfactorily settled by the resource persons.

Awareness Drive on Gender Sensitization

A vigorous campaign of special awareness drive on Gender Sensitization and Sexual Violence Prevention with special emphasis on sexual harassment of women at work places with the caption "Speak Prevention Drive against Sexual Predation through Empowerment, Awareness and Knowledge "was launched at Nari Niketan, R. S. Pura Jammu by Justice Sindhu Sharma, Judge High Court of J&K and Ladakh and Chairperson, Harassment Probe Committee on 17th December, 2022.

Sheetal Nanda, Commissioner Secretary, Social Welfare, Shahzad Azeem, Director Judicial Academy, High Court of J&K and Ladakh, M.K. Sharma, Member Secretary, Legal Services Authority, Prem Sagar, Member Secretary Sexual Harassment Probe



Committee, High Court of J&K and Ladakh, Yaha Firdous, Secretary DLSA Jammu, Arusa Choudhary, Chairperson, TLSC, R.S. Pura and the Members of Committee including Sr. Advocate U K Jalali, officers of local administration, Social Welfare Department, Police were also present on the occasion.

The proceedings were conducted by Swati Gupta, CJM Kathua, who also acted as resource person for the program. The program was attended by Anganwadi workers, volunteers of UMEED, college students, Higher Secondary students, members of One Stop Centre, Mahila Shakti Kendra and NGOS.

Justice Sindhu Sharma highlighted the scheme and launched program with special emphasis on sexual harassment of women at work places and to come forward in case of victimisation and need for its implementation at grass root.

The launch drive was organised by the High Court of J&K and Ladakh in collaboration with Department of Social Welfare and will be replicated in all the districts of Jammu province.

The program was conducted in two sessions.



One Day Workshop on "Juvenile Justice (Care & Protection) Act, 2015 with special reference to the Constitutional vision of Justice and Concept of Social Justice, Child Abuse-Prevention, Protection and Redress"

J&K Judicial Academy organized One Day Workshop on "Juvenile Justice (Care &

Protection) Act, 2015 with special reference to the Constitutional vision of Justice and Concept of Social Justice, Child Abuse-Prevention, Protection and Redress” for Principal Magistrate/JJBs and Officers from Social Welfare Department Jammu Province at J&K Judicial Academy, Jammu on 31st December, 2022.

Mr. Shahzad Azeem, Director, J&K Judicial Academy presented the welcome address and gave an overview of the programme. He said that today’s deliberations are channelled on the discourse of a very vital aspect of justice delivery system. He hoped that the training programme will go a long way in motivating the participants to rejuvenate their efforts to work in missionary spirit towards the fulfilment of Constitutional Vision of Social Justice,



Rehabilitation, Reintegration, Child Abuse-Prevention and Redressal. The Courts have special responsibility to deal with such cases with extra cautious approach to ensure proper justice and rehabilitation of such children. All the stakeholders need to ensure that children in conflict with the law are treated in a manner substantially different than adults at all stages of the proceedings.

In the first technical session, Mr. Pawan Dev Kotwal, District & Sessions Judge (President, District Consumer Disputes Redressal Commission, Jammu) deliberated in detail about Juvenile Justice (Care & protection of Children) Act, 2015 with special reference to the constitutional vision and Concept of Social Justice and about the issues related to the juveniles and stressed that approach of the officers of social welfare department and the judicial system must be aimed at addressing the vulnerabilities of the children and ensuring their rehabilitation. He observed that idea behind rehabilitation is that people are not criminals by birth and have every right to get a chance to mend their character and reintegrated with society to lead a dignified life. All this can be possible with the collective efforts of all stakeholders of the society, said the expert.

In the second technical session, Mr. Pawan Dev Kotwal deliberated upon the Role of District Child Protection Units (DCPU's) and Linkages between DCPU, Juvenile Justice Boards (JJBs) and Child Welfare Committees (CWC). He also gave an indepth knowledge regarding Child Protection, Juvenile Justice and Mission Vatsalya (Integrated Child Protection Scheme) in J&K, Juvenile Justice Act Philosophy, Principles, Mandates, Juvenile Justice Boards (communication, bail, case processing, etc).

Later, an interactive session was held during which the participants deliberated and discussed the various aspects of the subject topic and raised queries which were satisfactorily settled by the resource persons.



FUNDAMENTAL DUTIES

“If we discharge our duties, rights will not be far to seek.” -----Mahatma Gandhi

INTRODUCTION

The word “Duty” is derived from the word “due”, which implies some obligation that is owed. Duty can be described as an obligation to do some act or a task. This act or task can be moral, ethical, cultural or compulsory under state jurisdiction. But as a student of law we are concerned about duties which are necessary or compulsory for citizens to be performed by them. *Rights and duties are two sides of the same coin and both are equally important in the civilized society having democratic form of government.*

Rights empower an individual to live a peaceful and privileged life whereas *duties make an individual obliged to help in the development of nation and maintain peace and harmony.* Man enjoys certain rights (fundamental rights) in civilized society but is evenly responsible to perform his duties. Rights and duties are correlated and a delicate balance between them is crux of peaceful civilized society. In a democratic form of government where citizens enjoy rights guaranteed by state, Duties serve as reminder that certain conduct or behavior must be observed by citizens to maintain law, order and tranquility. We must bear in mind that the three organs of state cannot function smoothly unless they get proper support from citizens in the shape of fundamental duties which are supposed to be carried out/performed by them.

NEED AND SCOPE

The very essence of fundamental duties can be looked into from the fact that chapter IVA is fully dedicated to the fundamental duties which serves as guidance and road map to foster spirit of patriotism and maintain unity of India. The fundamental duties are novel feature of the Indian constitution. No democratic polity can thrive where citizens don't participate in the process of governance by assuming responsibilities and discharging duties as enshrined in the constitution.

The constitution of India was adopted by constituent assembly on November 26, 1949 and came into effect a year later. It was the longest written constitution of any country. It was through a comprehensive treatise that dealt with almost all important spheres of governance but somehow did not contain fundamental duties. After independence, necessity was felt to bestow responsibilities onto the citizens to maintain tranquility, harmony and brotherhood in the country, thus finally fundamental duties had been incorporated in the constitution. The primary goal of these duties was mutual cooperation between the nation and its citizens to bolster a better administrative system.

RECOMMENDATION FOR FUNDAMENTAL DUTIES

The need for fundamental duties was felt during the period (1975 -1977) amid clamping of national emergency. As a result in 1976 a committee was formed known as “Sardar Swaran Singh Committee” to make recommendations and suggestions for inclusion of fundamental duties in the Indian constitution. The purpose to make these duties as integral part of constitution was to make citizens conscious that besides the

enjoyment of rights, they have to perform certain duties as well. It was on recommendation of “Sardar Swaran Singh Committee” report, that the fundamental duties were added by 42nd amendment act 1976 in our constitution. The Committee initially suggested eight fundamental duties but after discussions finally ten fundamental duties were approved. Later on one more duty was incorporated by 86th amendment act in year 2002. Hence the number of duties increased from 10 to 11.

FUNDAMENTAL DUTIES AS INCORPORATED IN INDIAN CONSTITUTION

Before discussing further it will be apt to mention the fundamental duties as enshrined in Art. 51-A of part IV-A of constitution of India.

It shall be the duty of every citizen of India —

- To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- To cherish and follow the noble ideals which inspired our national struggle for freedom;
- To uphold and protect the sovereignty, unity, and integrity of India;
- To defend the country and render national service when called upon to do so;
- 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;
- To value and preserve the rich heritage of our composite culture;
- To protect and improve the natural environment including forests, lakes, rivers, wildlife and to have compassion for living creatures;
- To develop the scientific temper, humanism, and the spirit of inquiry and reform;
- To safeguard public property and to abjure violence;
- 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;
- 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 to fourteen years.

The idea of incorporating fundamental duties as integral part of Indian constitution was taken from erstwhile Union of Soviet Socialist Republic (USSR). Art 29 (1) of the universal declaration of human rights 1948 was also considered while drafting the report of the committee.

FEATURES OF FUNDAMENTAL DUTIES

1. There are two categories of Fundamental Duties. Moral duty like cherishing the Nobel ideas of Freedom Struggle and civic duty like respecting the constitution, National Flag and National Anthem
2. Fundamental duties are limited to Indian citizen and don't extend to foreigners like fundamental rights.
3. These are non-justifiable because the Indian constitution does not state that they are enforceable like fundamental rights in the court of law.

VERMA COMMITTEE OBSERVATIONS

The Verma Committee on Fundamental Duties of the Citizens (1999) identified the existence of legal provisions for the implementation of some of the Fundamental Duties. They are mentioned below:

- The Prevention of Insults to National Honor Act (1971) prevents disrespect to the Constitution of India, the National Flag, and the National Anthem.
- The various criminal laws in force provide for punishments for encouraging enmity between different sections of people on grounds of language, race, place of birth, religion and so on.
- The Protection of Civil Rights Act (1955) provides for punishments for offences related to caste and religion.
- The Indian Penal Code (IPC) declares the imputations and assertions prejudicial to national integration as punishable offences.
- The Unlawful Activities (Prevention) Act of 1967 provides for the declaration of a communal organization as an unlawful association.
- The Representation of the People Act (1951) provides for the disqualification of members of Parliament or a state legislature for indulging in corrupt practice that is, soliciting votes on the ground of religion or promoting enmity between different sections of people on grounds of caste, race, language, religion and so on.
- The Wildlife (Protection) Act of 1972 prohibits trade in rare and endangered species.
- The Forest (Conservation) Act of 1980 checks indiscriminate deforestation and diversion of forest land for non-forest purposes.

CRITICISM

The biggest criticism about these provisions as enshrined in constitution under Art. 51A is that the fundamental duties are not enforceable in court of law and its inclusion in constitution does not have any effect on the social and political fabric of country .But before considering its enforceability we should not lose sight of the fact that India is multicultural and plural country.

Some feel that language used in describing these duties is vague, and ambiguous Words like 'ideal', 'institution', 'scientific temper', 'Brotherhood etc. used in these provisions (fundamental duties) create ambiguity. These are relative terms and need to be defined with precision in order to avoid any confusion. Also not all Indian masses are literate and therefore average man is not in a position to comprehend the complex words used.

Fundamental duties as enshrined in constitution appear to be exhaustive but it is not so. There are certain area which need to be included with in the ambit of fundamental duties. The list doesn't include other significant responsibilities like ,voting (as suggested by Justice J.S.Verma in his report) ,paying taxes (Swaran Singh committee recommended the duty to pay taxes ,which was not included), family planning, help accident victims, keep the premises clean etc. which is need of present day society .

Supreme Court Judgments On Fundamental Duties

Courts have played crucial role in upholding the sanctity of fundamental duties as enshrined in Indian constitution. Time and again through various pronouncements our apex court has interpreted various provisions of law in light of these novel provisions of constitution and impliedly or by explicit means reiterated that the laws must be tested on the touch stone of fundamental duties. In other words we can also say that fundamental duties have helped in interpreting 'Rights' and existing laws. Recently a petition has also been filed in Supreme Court seeking enforcement of fundamental duties, wherein notice has been sent to center to respond to petition. There are numerous Judgments delivered by Supreme Court where in fundamental duties have been discussed and interpreted. Some of them are given below as:-

1. In **Bijoe Emmanuel v/s State of Kerala, 1986 SCC (3) 615** which is known as the National Anthem Case, the children on refusing to sing the National Anthem in school were expelled. The three children didn't sing the National Anthem but stood up in respect of National Anthem. They were expelled as they violated fundamental duties and omitted offence under Prevention of insult to National Anthem act 1971. The Supreme court reversed the order of High court because they didn't commit any offence and also didn't commit any crime under Prevention of insult to National Anthem act 1971 as they stood up in respect of National Anthem.
2. In **Javed v/s state of Haryana, AIR 2003 SC 3057**, the Haryana Panchyat Raj Act 1994 was challenged as it debarred persons with more than two children from holding certain offices in Haryana Panchayat. The apex court upheld the act and stressed that fundamental rights must be read with directive principal of state policy and fundamental duties. Fundamental rights must be tempered by duties.
3. In **Shri Rangnath Mishra v/s union of India and ors.**, the Supreme Court directed the center to implement the recommendations of Justice J.S Verma committee with respect to disseminating information on fundamental duties to public. The committee was set up in 1998 to suggest ways in which fundamental duties may be taught in schools.
4. In **Re Ramlila Maidan incident v/s Home Secretary, Union of India &ors.,(2012) 5 SCC 1**, the court took suo motu cognizance of eviction of hundreds of people from Ramlila Maidan in Delhi in Feb. 2011. The court held that eviction was unreasonable as sufficient notice was not given to public before they were evicted. It emphasized that while citizens are entitled to fundamental rights, a fundamental duty to obey lawful order and extend full cooperation in maintaining public order and tranquility is cast on citizen.
5. In **Dr. Dasarathi v state of Andhra pardesh, AIR 1985 AP136** the court held that it is the duty of every citizen to constantly strive towards excellence in the various spheres of life and continuously make relentless efforts to achieve accolades and that is how the nation as a collective body of its citizens will constantly move towards new levels of excellence.
6. In **Balaji Raghavan v/s Union of India, 1996 SCC(1) 361**, the Supreme court upheld the validity of national awards as the Bharat Ratan, Padam Vibhushan, Padam Bushan, and Padam Shri. The Judgement stressed that conferring the (Transfer petition civil, 09

of 1994) awards is not violative of principal of equality as these awards recognized merit. Article 51A(j) of the Indian constitution speaks of fundamental duties of every citizen of India which exhorts citizen to strive towards excellence in all activities so that nation constantly rise to higher level.

CONCLUSION

Every citizen owes some responsibility towards society and nation. These responsibilities always existed but they were put in black and white in 1976 and a Chapter IV-A was incorporated in the constitution. In order to uphold the validity of these duties, many laws have been passed which are in consonance with the fundamental duties. All the duties are equally important. Courts have also felt the importance of fundamental duties and there are catena of judgments passed by higher judiciary upholding the validity of fundamental duties.

The need of present scenario is to remind citizens that fundamental duties are as important as fundamental rights under constitution. It is duty of every citizen of country to obey the law of land and only then claim rights. The time has now come where there must be balance of rights, liberties, and fundamental duties in order to foster peace, tranquility in society and maintain brotherhood.

The word 'fundamental' has been attached to duties, which bring it at parity with fundamental rights which is considered as sacrosanct provision of constitution. It implies that as fundamental rights and fundamental duties go hand in hand. Citizen enjoying rights are under obligation to perform their duties which are fundamental for peaceful survival of civilized society. These duties are in nature of a code of conduct. It is responsibility of citizens to follow the fundamental duties in its true spirit for the betterment of country. The issue of enforceability should be immaterial and for that it is imperative that the concept and values of fundamental duties should be taught in the school to children from the very beginning.

***-Contributed by:
Ms. Rupali Ratta
District & Sessions Judge, LRP***



