

ADVOCACY



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Student Editor

Nitish Bhalerao
LL.B 3rd Year

Faculty In-Charge

Asst. Prof. Vidhya Shetty
Asst. Prof. Saurabh Dhote

Articles invited for the next issue, interested candidates can mail your articles on advocacytmv@gmail.com

FOREWORD

Dear Readers,

I am delighted to share the maiden issue of our eMagazine known as "ADVOCACY" with all of you, which will provide insights on various legal aspects. The eMagazine is an attempt made by TMV's Lokmanya Tilak Law College to inculcate research habits and promote writing skills. This eMagazine democratically belongs to the students, i.e., to say "of the students, for the students, and by the Students and will contain write-ups written by students belonging to the courses offered by Tilak Maharashtra Vidyapeeth .

"ADVOCACY" is an activity by a student or group of students which aims to influence peers' decisions within their political, economic, and social rights and obligations towards society. In other words, someone's advocacy of a particular action or plan is their act of recommending it publicly.

Students from various disciplines, viz., Law, Medicine, Social Work, Management, Psychology, Political Science, Economics, and Languages, can advocate their views in this eMagazine.

Lack of legal awareness remains one of the biggest impediments to the development and smooth functioning of society. Law remains a significant subject for every human being in day-to-day life. Hence, legal literacy is one of the crucial goals of any democratic state.

Every citizen is a consumer in one way or the other. To encourage students and provide them knowledge on developing the literature, I would like to give few snapshots of consumer laws.

The Consumer movement in India started in 1966 from Maharashtra. After establishing the Grahak Panchayat in Pune in 1974, institutions for Consumer welfare were found in many States, and this movement continued to grow.

In December 1986, The Consumer Protection Bill was passed on the then Prime Minister Rajiv Gandhi's initiative and came into force nationwide after the President's signature. On 20th July 2020, an amendment in this law was made to make Customers more empowered and competent.

The Central Government has made several significant changes to the Consumer Protection Act. After enacting the new consumer law, the accountability of Companies and artists who advertise for them has become more than ever.

The Government has also included e-Commerce Companies under the Consumer Protection Act, 2019.

Indian Medical Association moves Supreme Court challenging Amendments to Ayurveda Regulations, alleges Ayurveda Doctors Performing Surgery will cause Critical Damage. The Supreme Court on Monday, i.e., 15th March 2021 sought the Central Government's response on a plea by Indian Medical Association (IMA) challenging the changes introduced to Ayurveda Regulations in 2020 by which Post Graduate Ayurveda Scholars have been allowed to perform modern Surgical Procedure. The IMA has challenged the verse of Indian Medicine Central Council (Post Graduate Ayurveda Education) Amendment Regulations 2020. The Regulations allow surgeries to be conducted by the ones who have done Post Graduation in Shalya Tantra (Surgery) and Shalakya Tantra (ENT issues).

As per Section 16 of the Vaccination Act of 1880, no fee shall be charged by any vaccinator except private vaccinator to the parents or guardian of any child for any of the duties imposed on the vaccinator by or under the said Act.

As Indian culture is imbued with festivals, one can be cautious enough while purchasing and consuming any of the food items.

Food adulteration is a heinous crime that has led to severe health conditions, and adulterated food is still being consumed in India which has made it mandatory to take action against those who are practicing food adulteration.

When any manufacturer sales, distribute, imports, or store any food article which is adulterated, he will be liable under Section 16 of the prevention of Food Adulteration (FA) Act, 1954 and with a fine of Rs.1000/- under Section.272 of Indian Penal Code (IPC) for selling of adulterated food or drink which are hazardous for health consumption. The punishment could also extend depending on the grievousness of the Act done by the manufacturers or vendor.

I would take this opportunity to congratulate and thank each one of you for all your efforts who participated in giving inputs for this issue. We are working together to give our students a platform to seek pleasure from writing. We hope this eMagazine will take students of Tilak Maharashtra Vidyapeeth a step further in their journey to research, explore and write.

With best wishes

Prof. (Dr.) K K Sri Rama Chandra Murthy
Principal and Head of Department
TMV's Lokmanya Tilak Law College
Pune.

CONSUMER PROTECTION ACT 2019

By PRITHVIRAJ CHINDHE

INTRODUCTION

Market is a place where sellers and buyers interact. In good olden days, the products were limited and the markets were too small. Therefore the consumers were able to select their product according to their need. So also in most cases there exist a cordial relationship between the seller and buyer as they know each other very well. The consumers were considered as a King in the Market. However, in course of time, there were industrial revolution and it has resulted in large scale mechanization and invention of new products. So also the development in international trade and commerce has allowed foreign players to enter to domestic markets. As a result new and variety of products and services being introduced in the market and most of such products are complex in nature and an ordinary consumer finds it difficult to make a right choice.

All these developments in the markets are considered as good for consumers at the same time it has created various concerns also. The complex nature of products and services, well organized sectors of manufacturers, distributors, and sellers with better knowledge etc. has caused a change in the functioning of market. With the better knowledge about products and services, some of the market players started exploiting consumers and as a result though consumer is the king of market, become very weak. Against this backdrop, the society first reacted through consumerism and consumer movements and as a result, worldwide different nations have enacted legislations or introduced provisions specifically for the protection of consumers. In India, the first consumer protection legislation was enacted in 1986 and in 2019 the said legislation was replaced with a new Act. This paper seeks to examine the promises and nuances of Consumer Protection Act, 2019.

CONSUMER PROTECTION LAWS IN INDIA

The roots of consumer protection laws in India can be traced back to ancient Vedic times. In pre independence era also, provisions were there in various legislations for the protection of consumers. In post-independence era, especially immediately after the adoption of Indian Constitution, there was a wave of consumer movements for the protection of consumer's interest. As a result, these period has witnessed establishment of number of voluntary for the protection of consumers. Based on the Constitutional provisions, legislatures has enacted various legislations and some of these such as Drugs Control Act, 1950; Indian Standards Institution (Certification Marks) Act, 1952; Drug and Magic Remedies (Objectionable Advertisement) Acts, 1954; Prevention of Food Adulteration Act, 1954; Essential commodities Act, 1955; Standard of Weights and Measures (Enforcement) Act, 1985; etc. had a direct impact on the rights of consumers.

In 1984, the Law Commission of India, in its 105th Report on Quality Control and Inspection of Consumer goods suggested for establishing a system for safeguarding the interest of consumers against long and costly litigations for seeking remedies⁶. Similarly, there was an attempt on the part of Madhya Pradesh Law Commission to adopt a State Consumer Protection Law and had introduced Madhya Pradesh Consumer Protection Bill in 1984⁷. Further, the adoption of United Nations Guidelines for Consumer

Protection (UNGCP) by the UN General Assembly in 1985 has also acted as major reason for the adoption of a law specifically for the protection of consumers.

Based on the UN Guidelines, in order to protect consumers against all forms of exploitation in the market including defects in products, deficiency in services etc., the Central Government has enacted a Consumer Protection Bill in 1986 and the same was received the assent from the President on 24th December, 1986. This Bill was enacted with the aim of providing better protection to consumer interests and for that purpose to establish certain authorities. It also established authorities for settlement of consumer disputes in a faster and efficient way.

The enactment of this legislation is a milestone in the direction of protection of consumers in India. It is divided into 4 Chapters and it contained 31 Sections. It is to be noted here that, this Act is in addition to and not in derogation to any of the existing legislations and provisions dealing with the market practices. The most important feature of this legislation are as follows:

1. It is the first and foremost legislation enacted to protect exclusively individual consumers.
2. All types of goods and services except those are specifically exempted by Central Government would come under this Act
3. It provides statutory recognition to six consumer rights such as right to safety; right to information; right to accessibility; right to be heard; right to redressal and right to consumer education.
4. All these sectors such as public, private and co-operative sectors are covered under this Act
5. It provides protection against defects in goods; deficiency in services; restrictive trade practices; unfair trade practices; charging of excessive prices; and misleading advertisements.
6. It establishes Consumer Protection Councils at District, State and National level to promote and protect consumer's interests and rights.
7. It provides for the establishment of forums at District, State and National level for the settlement of consumer disputes and to provide remedies to consumer.
8. The Act provides provisions for compensation and other remedies to consumers in case of violation of their rights.
9. The Act contains provisions for imposing penalty for filing frivolous or vexatious complaints.
10. The Act also prescribes a time limit within which a consumer complaint is to be disposed.

NEED FOR CHANGE AND INITIATIVES

The enactment of 1986 Act is a revolutionary step taken by the Central Government for the purpose of ensuring the welfare of consumers in the country. Over the years, there arose several challenges in the implementation of this legislation. In order to fine tune and update, this legislation has undergone three amendments in 1991, 1993 and in 2003, nevertheless several issues had popped up. One of the most important

objective this Act was to provide quick and time bound effective remedies to consumers. However, it is severely criticised that, the Consumer Forums were failed to attain this solemn objective.

The Comptroller and Auditor General of India in its Report No. 14/2006, titled 'Implementation of the Consumer Protection Act and Rules' has observed that, 'there is an average delay of 16.5 months in obtaining remedy from the date of filing the consumer complaint'. Moreover, though the Act envisages an inexpensive redressal, around 82% of cost of complainants are spending for the lawyer's fee¹⁶. Another study reveals that, only twenty eight percent of the complaints are disposed of within the stipulated time period and around thirty percent of complaints takes more than a year and a large number of complaints are pending in certain district forums for more than five years¹⁷. Report of the Working Group on Consumer Protection also points out that, 'in urban areas the disposal rate of complaints within the stipulated time period at District forum is 9 percent and in rural areas it is 9 percent'¹⁸. Thus all these studies show that, the delay in disposal of consumer complaints is one of serious lacunae of Consumer Protection Act, 1986 and it should be adequately addressed in the interest of consumers. Other most important alleged shortcomings of the 1986 Act are:

- Lack of awareness about consumer rights and redressal methods even after there is a provision for consumer education
- Ineffectiveness of Consumer Protection Councils
- Absence of clear provisions to deal with misleading advertisements
- Though Unfair Contract Terms are adversely affecting the rights of consumers, there is no provisions under 1986 Act to deal with it.
- It is generally accepted that, 1986 Act is insufficient to deal with the issues and concerns posed by E-Commerce
- The 1986 Act does not provide for e-filing and other related use of online facilities

In order to remedy the weakness of the Act, an amendment Bill was introduced in 2011 for incorporating provisions relating to unfair contract terms and online filing. But, the Bill lapsed as a result of dissolution of the Lok Sabha. In 2015, Mr. Ram Vilas Paswan, the then Minister of Consumer Affairs, Food and Public Distribution has introduced a new Bill to replace the 1986 Act. The said Bill was referred to a Standing Committee on Consumer Affairs, Food and Public Distribution and they had submitted the report in 2016. Based on the recommendations of the Standing Committee a new Bill was introduced in 2018 replacing the 2015 Bill to replace the 1986 Act. The 2018 Bill was passed by the Lok Sabha in December, 2018 and while it was pending before the Rajya Sabha, the Lok Sabha was dissolved and as result, the 2018 Bill got lapsed. Therefore in 2019, the same was reintroduced before the Lok Sabha¹⁹.

Accordingly, a Bill, namely, the Consumer Protection Bill, 2018, was introduced in Lok Sabha on the 5th January, 2018 and was passed by that House on the 20th December, 2018. While the Bill was pending consideration in Rajya Sabha, the Sixteenth Lok Sabha was dissolved and

the Bill got lapsed. Hence, the present Bill, namely, the Consumer Protection Bill, 2019 was introduced before the Lok Sabha and the same was passed on 30th July, 2019 and subsequently it was passed by Rajya Sabha on 6th August, 2019. The 2019 Bill has received Presidential assent on 9th August and from 20th July, 2020 onwards the Act came into effect

CONSUMER PROTECTION ACT, 2019

2019 Act is enacted with a view to protect the interests of consumers by establishing authorities for timely and effective settlement of consumer's disputes and other related matters. This Act contains 107 Sections and is divided into VIII Chapters. The major features of this Act are as follows:

- 1) **Introduction of Key Definitions:** For the effective operation of an Act, it is very essential to have a clear meaning about various terminologies being used in the Act. Therefore every legislation will give a very precise definition, which is most suitable for the implementation of such legislation. The 2019 Act provides very precise definition for various key terms such as Advertisement and Misleading Advertisements; Consumer Rights; Design; E-Commerce; Electronic Service Provider; Product Liability; Injury; Spurious Goods . It is to be noted that it is the first time through this Act, the Consumer Rights are statutorily defined. Introduction of these terminologies will guide the market players to modify their behaviours accordingly and also it will help consumers to understand the activities in the market.
- 2) **Widening of Existing Definitions:** The 2019 Act has widened the scope of various existing definitions such as Consumer; Complainant; Complaint; Deficiency; unfair trade practices etc. Through expanding the existing definition, this Act has widened the ambit of consumer so as to include any purchaser or hirer through offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing. Another significant additions are the inclusion of food as Goods and product liability under the term compliant. Most importantly, the Act has included all the acts of negligence or omissions or commissions thereby causing any loss or injury to a consumer as well as if any person deliberately withholds the relevant information to a consumer as deficiency. Further, the Act widens the scope of the term unfair trade practices in such a way so as to include, non-issuance of bills, cash memo, receipts for the goods and services as well as disclosure of personal information's of consumers.
- 3) **Inclusion of E-Commerce:** The Act has introduced various provisions so as to cover the expanding domain of e-commerce under its purview. The past few years has seen an unprecedented development in online transactions. These increasing use of online platforms has created various hardships to consumers. The inclusion of e-commerce under the purview of this Act will safeguard the interest of consumers and protect them from malpractices in the online transactions.
- 4) **Central Consumer Protection Authority:** The Act provides provisions for the establishment of Consumer Protection Authorities. The purpose of this

authority is to deal with violations of consumer rights, unfair trade practices, false or misleading advertisements which are prejudicial to the interests of public and consumers and to promote, protect and enforce the rights of consumers as a class. It consist of a Chief Commissioner and such number of other Commissioners as may be prescribed by the rules and are pointed by Central Government. In order to facilitate the functioning of CCPA, the provides for the appointment of an investigation wing comprises of Director, Additional Directors, Joint Director, Deputy Director and Assis5) Consumer Dispute Redressal Commission: In 1986 Act, the dispute settlement mechanisms where called as forums, but the 2019 Act designates it as Commissions. Along with the change of name there were several changes introduced in these commissions. Most importantly, membership in commissions where increased also the pecuniary jurisdiction of District, State and National Commissions were also increased. The most important change in the functioning of Redressal Commission is that, a consumer is given a liberty to file his complaint to the District Commission within the local limits where he resides or personally works for gain. This change is very beneficial to consumers while pursuing a remedy for protecting his rights.

- 6) **Use of Mediation:** Most important innovative idea in the 2019 Act is the use of mediation for the settlement of consumer disputes. At the first stage of hearing itself, if the Commission feels that there is an element of settlement, they should refer the complaint for mediation with the consent of parties. For the purpose of this Act, State Government will set up a State Mediation Cell and the District and State Commissions will empanel mediators. Chapter V of the Act provides a detailed provisions for the settlement of consumer disputes through mediation. The use of mediation is proposed as one of the effective solution for delay in settlement of consumer disputes.
- 7) **Product and Service Liability:** Another innovative idea in the 2019 Act is the provisions relating to product liability. According to the Act, product liability is the responsibility of a product manufacturer or product seller, of any product to compensate for any harm caused to a consumer by such defective product manufactured or sold. It is to be noted that, there is no express use of the term service liability under the Act, however, the definition of product liability and the provisions relating to product service liability under Section 84 are sufficient to deal with service liability.
- 8) **Unfair Terms in Contract:** The need for introducing a separate law regulating the unfair terms in contract was highlighted by Law Commission of India in its 199th Report on Unfair (Procedural and Substantive) Terms in Contract, 2006. The introduction of provisions relating to unfair terms in contracts are providing safeguards to consumers against all sorts of unfair terms in contracts. The State Commissions and National Commission are empowered to declare any terms of contract, which is unfair to any consumer, as null and void.
- 9) **Misleading Advertisements:** The influence of false and misleading advertisements are very grave. Therefore, the Act has introduced stringent provisions relating to advertisements. Any complaints about false or misleading advertisements can be filed before the Central Authority as a class suit. The Central Authority is empowered to impose a penalty up to

Rs. 10 lakhs. It is to be noted here that, the Authority can impose penalty up to Rs. 10 lakhs to the endorser of the advertisement also for misleading advertisements. So also in fit cases, the Authority can prohibit the endorser of a false or misleading advertisement from making endorsement of any product or service for a period which may extend to one year. The Act also imposes criminal punishment for misleading advertisements under Section 8940.

10) Class Action: Class action suits are suits of representative nature when there are large of number consumers involved. This is considered as one of the highlight of 2019 Act. The practices such violation of rights of consumers, unfair trade practices and false or misleading advertisements, class action suits can be filed before the Central Authority. In such cases the Authority is empowered to issue orders like recall of goods or withdrawal of services which are dangerous, hazardous or unsafe; Reimbursement of the prices of goods or services so recalled to purchasers of such goods or services; and Discontinuation of practices which are unfair and prejudicial to consumer's interest.⁴² In cases of false or misleading advertisements, they can impose penalty also⁴³.

11) Criminal Liability: The Act provides provisions for the awarding criminal punishment such as imprisonment for certain practices like noncompliance of order of Commissions and Authority; as punishment for false or misleading advertisement⁴⁵; As punishment for manufacturing for sale or storing, selling or distributing or importing products containing adulterant; As punishment for manufacturing for sale or for storing or selling or distributing or importing spurious goods.

12) E-Filing of Complaints and Documents: The 2019 Act facilitates the use of online and electronic modes for filing complaints, serving notices and submitting documents.

13) Assistance from Expert: The Act expressly provides that National Commission and State Commissions in the larger interest of consumers can seek assistance from any individual or organisation.

14) Measures to Prevent UTP in E-Commerce: Another major highlight of this Act is, it empowers the Central Government to take appropriate measures to prevent malpractices in e-commerce. As a result, the Central Government has adopted Consumer Protection (E-Commerce) Rules, 2020. This rules mainly talks about Duties of e-commerce entities; Liabilities of marketplace e-commerce entities; Duties of sellers on marketplace; and Duties and liabilities of inventory e-commerce entities. These rules will provide a better protection to consumers against different types of malpractices in online shopping.

CONCLUSION

The 2019 Act was enacted after 33 years of the enactment of 1986 Act. During the last 33 years there was a sea change in the nature of products and services available in the market. So also the development in international trade as well as developments in digital technology has also significantly

influenced the market, behaviour of market players and consumers. Therefore, laws which are enacted to protect consumers from malpractices in the market should be capable enough to contain the threats posed by changing market practices and structure. The 2019 Act was enacted mainly after observing and identifying the weakness of 1986 Act, nevertheless there are certain imperfections in this Act. Most important among them are:

- The use of mediation and its statutory recognition for settlement of consumer disputes is revolutionary change. However, it is to be noted that there is no time period prescribed for settlement of dispute through mediation. It may cause unnecessary delay in disposal of complaints. Moreover any decision made by Commission on the basis of mediation settlement is appealable. This will further dilute the benefit of using mediation.
- One of the major legal battle under 1986 Act was about the inclusion of medical service under the purview of the Act. The new Act does not specifically include the term medical service under the definition of Service. This opens possibilities for further litigations.
- The Act includes 'Telecom Service' under the definition of Service. The Telecom Regulatory Authority of India Act, 1997 uses the term telecommunication service and provides a wider definitions which encompasses all the related matters also. It is to be noted that, when the 2019 Act uses only 'Telecom Service' its coverage become very narrow and may exclude internet, cellular and other related services.
- Another imperfection in the Act is that, it does not refer to educational services. Since under 1986 Act a large number of conflicting judgements were there dealing with different educational services, it was expected that the 2019 Act will clarify and specifically include those educational services which can be treated as a consumer service under the purview of the Act.
- Any complaints about unfair contracts can be filed only to State Commission or National Commission. This condition impose a hurdle to individual consumers as approaching District Commission is more convenient and easy for them.

Contempt of Court Act 1971

By Bharat Kakasaheb More

Introduction-

The origin of the law of Contempt in India can be traced from the English law. In England Superior Courts of record have from early times, exercised the power to commit for contempt persons who scandalized the Court or the Judges. The right of the Indian High Courts to punish for contempt was in the first instance recognized by the Judicial Committee of the Privy Council which observed that the offence of the contempt of court and the powers of the High Courts to punish it are the same in such courts as in the Supreme Court in England. It also observed that the three chartered contempt. Almost all the High Courts in India, apart from the chartered High Courts have exercised the jurisdiction inherent in a court of record from the very nature of the court itself. It has been judicially accepted throughout India that the jurisdiction was a special one inherent in the very nature of the court.

The first Indian statute on the law of contempt i.e., the Contempt of Courts Act was passed in 1926. It was enacted to define and limit the powers of certain courts in punishing contempt of courts. When the Contempt of Courts Act, 1926 (XII of 1926) was in existence in British India, various Indian States also had their corresponding enactment. These States were Hyderabad, Madhya Bharat, Mysore, Pepsu, Rajasthan, Travancore-Cochin and Saurashtra. State enactments of the Indian States and the Contempt of Courts Act, 1926 were replaced by the Contempt of Courts Act, 1952

in order to maintain the sanctity of Judiciary, the courts are empowered with the jurisdiction to take actions against those who are responsible for 'contempt of court.' India witnessed the genesis of three legal instruments to reach to the final law on Contempt of Court that is applicable today; The Contempt of Court Act 1971. The present Act evolved from the Contempt of Court Act 1926 and the Contempt of Court Act 1952.

Meaning and Concept-

This term Contempt of Court can be easily understood as when we are disrespectful or disobedience towards the court of law which means that we wilfully fail to obey the court order or disrespect the legal authorities. Then the judge has the right to impose sanctions such as fines or can send the contemnor to jail for a certain period of time if he is found guilty of Contempt of Court.

This term can also be understood in terms of the freedom of limits of the judicial proceeding. As we know that all judges in courts can give judicial proceedings which have a certain limit in which it has the freedom to make any judicial proceeding and anything which curtails or stops it in making any judicial proceeding which is of necessity can amount to contempt of court

Halsbury, Oswald, and Black Odgers have also given the definition of Contempt of Court and in addition to that, they have talked about its misuse and its wrong interpretation and also its broad prospectus.

In India, the concept of Contempt of Court is defined in Section 2(a) of the Contempt of Courts Act, 1971 which has broadly describe it as civil contempt or criminal contempt.

There are two Articles in the Constitution of India which talk about the Contempt of Court and these are Article 129 and Article 142(2).

Article 129 says that the Supreme Court shall be the 'Court of Record' and it has all the powers of such courts including the power to punish for contempt of itself.

Now, we should know about the meaning of 'Court of Record' to understand why anything commented wrongly against the decision of the courts leads to Contempt of Court.

Here, is the answer to this question. The 'Court of Record' means a Court having its acts and proceedings registered for everlasting memory or that memory which has no end and

as evidence or proof. The truth of these records cannot be questioned and also these records are treated as a higher authority. And anything stated against the truth of these records comprised Contempt of Court.

Article 142(2) talks about Contempt of Court. This Article says that when any law is made by the Parliament on the provisions mentioned in clause 1 of this Article, the Supreme Court has all the power to make an order for securing any person's attendance, production of any documents or has the power to give punishment to anyone for its contempt.

This also does not mean that the Supreme Court can do anything against the right of personal liberty if it has the power to punish for Contempt of Court. We know that it is the guardian of all the rights that we get from the Indian Constitution so it has to safeguard these rights and cannot violate these rights itself.

Essentials of Contempt of Court

Contempt of Court also has certain essentials and these are as follows:

1. Disobedience to any type of court proceedings, its orders, judgment, decree, etc should be done 'willfully' in case of Civil Contempt.
2. In Criminal Contempt 'publication' is the most important thing and this publication can be either spoken or written, or by words, or by signs, or by visible representation.
3. The court should make a 'valid order' and this order should be in 'knowledge' of the respondent.
4. The action of contemnor should be deliberate and also it should be clearly disregard of the court's order.

These essentials should be fulfilled while making someone accused of Contempt of Court.

Types of Contempt of Court in India

Depending on the nature of the case in India, Contempt of Court is of two types.

1. Civil Contempt
2. Criminal Contempt

Civil Contempt

Section 2(a) of the Contempt of Court Act, 1971 states Civil Contempt as wilful disobedience to the order, decree, direction, any judgment or writ of the Court by any person or willfully breach of undertakings by a person given to a Court. Since Civil Contempt deprives a party of the benefit for which the order was made so these are the offences essential of private nature. In other words, a person who is entitled to get the benefit of the court order, this wrong is generally done to this person.

There is a case on the willful disobedience of the court order which a person should know *Utpal Kumar Das v/s Court of the Munsiff, Kamrup,*

This is the case of non-rendering of assistance, although the court has ordered to render assistance. Decree executed by the court to deliver immovable property but because of certain obstruction, the defendant failed to do so. Hence, he was held liable for constituting disobedience to the orders of the competent Civil Court.

U.P. Resi. Emp. Co-op., House B. Society v. New Okhla Industrial Development Authority

In this case, the Supreme Court has directed the Noida Authorities to verify and state on the affidavit details given by persons for allotment of plots. In pursuance to the same direction by

the Supreme Court a person Mr. S filed a false affidavit to mislead the court. The Registry directed a show-cause notice against him to say that why an act of contempt should not be taken against him for misleading the Supreme Court.

Defences to Civil Contempt

A person who is accused of Civil Contempt of case can take the following defences:

Lack of Knowledge of the order: A person can not be held liable for Contempt of Court if he does not know the order given by the court or he claims to be unaware of the order. There is a duty binding on the successful party by the courts that the order that has passed should be served to the Individual by the post or personally or through the certified copy. It can be successfully pleaded by the contemner that the certified copy of the order was not formally served to him

The disobedience or the breach done should not be : If someone is pleading under this defence then he can say that the act done by him was not done willfully, it was just a mere accident or he/she can say that it is beyond their control. But this plead can only be successful if it found to be reasonable otherwise the plead can be discarded.

The order that has disobeyed should be vague or ambiguous: If the order passed by the court is vague or ambiguous or this order is not specific or complete in itself then a person can get the defence of contempt if he says something against that order.

In *R.N. Ramaul v. State of Himachal Pradesh*, this defence has been taken by the respondent. In this case, the Supreme Court has directed the corporation of the respondent to restore the promotion of the petitioner from a particular date in the service. But the respondent has not produced the monetary benefit for the given period and a complaint was filed against him for Contempt of Court. He pleads for the defence on the given evidence that it has not mentioned by the court in order to pay the monetary benefit. Finally, he gets the defence. • Orders involve more than one reasonable interpret

Orders involve more than one reasonable interpretation: If the contempt of any order declared by the court and the order seems to be given more than one reasonable and rational interpretation and the respondent adopts one of those interpretations and works in accordance with that then he will not be liable for Contempt of Court.

Command of the order is impossible: If compliance of the order is impossible or it can not be done easily then it would be taken as a defence in the case of Contempt of Court. However, one should differentiate the case of impossibility with the case of mere difficulties. Because this defence can be given only in the case of the impossibility of doing an order.

Criminal Contempt

According to Section 2(c) of the Contempt of Court Act, 1971, Criminal Contempt is Defined as (i) the publication of any matter by words, spoken or written, or by gesture, or by signs, or by visible representation or (ii) doing of any act which includes:

- a) Scandalize or tends to scandalise, or lowers or tends to lower the authority of any court, or
- b) Biasness, interferes or tends to interfere with the due course of any type of Judicial proceedings, or
- c) obstructs or tends to obstruct, interfere or tend to interfere with the administration of justice in any manner.

Jaswant Singh v/s Virender Singh

In this case an advocate caste derogatory and scandalous attack on the judge of the High Court. An application was filed an election petitioner in the High Court, who was an advocate. He wanted to seek to stay for further arguments in an election petition and also the transfer of election petitions. These things cause an attack on the judicial proceeding of the High Court and had the tendency to scandalize the Court. It was held in this case that it was an attempt to intimidate the judge of the High Court and cause an interface in the conduct of a fair trial.

Punishment for Contempt of Court

Section 12 of the Contempt of Court Act, 1971 deals with the punishment for Contempt of Court. High Court and the Supreme Court have been given the power to punish someone for the Contempt of Court. Section 12(1) of this Act states that a person who alleged with the Contempt of Court can be punished with simple imprisonment and this imprisonment can extend to six months, or with fine which may extend to two thousand rupees or can be of both type punishment. However, an accused may be discharged or the punishment that was awarded to him maybe remitted on the condition that if he makes an apology and this apology should satisfy the court then only he can be exempted from the punishment of Contempt of Court. Explanation of this sentence is that if the accused made an apology in the bona fide then this apology shall not be rejected on the ground that it is conditional or qualified. The court can not impose a sentence for Contempt of Court in excess of what is prescribed under the given section of this Act either in respect of itself or of a court subordinate to it.

Remedies against an order of Punishment

Section 13 has been added in the Contempt of Court Act, 1971 after amendment in 2006. The new Act may be called The Contempt of Court (Amendment) Act, 2006. This Section tells that contempt of court cannot be punished under certain circumstances or certain cases.

Clause (a) of Section 13 of the Contempt of Court (Amendment) Act, 2006 states that no Court under this Act shall be punished for Contempt of Court unless it is satisfied that the Contempt is of such a nature that it substantially interferes or tend to substantially interfere with the due course of Justice.

Clause (b) of Section 13 of this Act states that the court may give the defence on the justification of truth if it finds that the act done in the public interest and the request for invoking that defence is bona fide.

Contempt Proceedings

Two Sections of the Contempt of Court Act, 1971 deals with the procedure of Contempt proceeding. One talks about the proceeding in the face of the court of records and other talks about the proceedings other than the court of records.

Section 14 of the Contempt of Court deals with the procedure of contempt proceeding in the face of the court of record whereas Section 15 of this Act deals with the procedure of the contempt proceeding outside the court of records.

These courts of record have got the power to punish for its contempt inherently. Therefore, these courts of record can deal with the matter of contempt by making their own procedure. While exercising the contempt jurisdiction by the courts of record the only case to be observed is that the procedure adopted must be fair and reasonable in which the alleged contemnor should be given full opportunity to defend himself. If the specific charge against the person who is punished for the contempt is distinctly stated and he is given a reasonable opportunity to answer and to defend himself against the charge then only he will be liable for contempt of court and the court proceeding runs against him. Where the person charged with contempt under this section applies whether orally or in writing to have the charge against him, tried by some judge other than the judge or judges in whose presence or hearing the contempt is alleged to have been committed and the court is of the opinion that it is necessary in the interest of justice that the application should be allowed, it shall cause the matter to be transferred before such judge as the Chief Justice may think fit and proper under the circumstances of the case or placed before the Chief Justice with the statement of facts of the case.

Contempt committed outside the court

Criminal Contempt rather than Civil Contempt committed outside the Court. Section 15(1) of the Contempt of Court Act, 1971 deals with the notice of Criminal Contempt by Court of Record such as the Supreme Court and the High Court. Following manners can be taken by the Supreme Court and the High Court for cognizance of the Criminal Contempt:

1. On the motion of court of records.
2. On the motion of the Advocate General of the Supreme Court and the High Court.
3. If any person proceeds the motion with the consent of the Advocate General in writing.
4. If the law officer who is related to the High Court for the Union Territory of Delhi as the Central Government notify proceeds the motion. Then it can be considered as contempt committed outside the court.

Section 15(2) of this Act states that in the criminal contempt of the subordinate court, the high court may take certain actions in the manner given in this Act.

Contempt by a Company

In case any person is found guilty of contempt of court for any undertaking given to a court while he is a member of the company. Then the person who at that time was in charge of that company will be responsible for the conduct of the business of that company and shall be deemed to be guilty of the contempt. The punishment may be enforced by the detention in the civil prison of such person with the leave of the court=

However, that person can be free from liability if such person proves that the contempt was committed without his knowledge or that he exercised all possible means to prevent its commission.

Liability of officer of the company

If the contempt of court has been committed by a company and it is provided that the contempt has been committed with the consent of, or is attributable to any neglect on the part of, any director, manager, secretary or other officers of the company, then such persons shall also be deemed to be guilty of the contempt and the punishment will be

enforced against them by the detention in civil prison of such director, manager, secretary or other officer with the leave of the court.

Contempt by the third party to the proceeding

If a third party has a part to play in the offence then the third party to the offence may be guilty of contempt of court and proceeding can initiate against him. In *LED Builders Pty Ltd v Eagles Homes Ptv. Ltd* Lindgren J stated:

“It is not necessary to show that a person who has breached the order of the court can be liable for contempt of court but the only necessary thing to confirm his liability for contempt is to show that the person knew of the order which was breached.”

In another case of *M/S. Gatraj Jain & Sons v. Janakiraman* it has been stated about the third party to the proceeding that if a third party to the contempt petition found to be wilfully disobeying the court order then he cannot prevent the court from restoring the status quo.

Cases

ZahiraHabibullah Sheikh &Anr vs State Of Gujarat &Ors

It was held in this case that the punishment that is given for contempt in the Contempt of Court Act, 1971 shall only be applicable to the High Court but for Supreme Court, it acts as a guide. The judgment that was given was not accompanied by rationality, this was worrisome because the Supreme Court has been given great powers that the drafters of the Indian Constitution has also not given.

Sudhakar Prasad vs. Govt. of A.P. and Ors.

This case is also similar to the Supreme Court Bar Association Case. In this case also once again the Supreme Court declared that the powers to punish for contempt are inherent in nature and the provision of the Constitution only recognised the said pre-existing situation..

P.N. Duda vs V. P. Shiv Shankar & Others

In this case, the Supreme Court observed that the judges cannot use the contempt jurisdiction for upholding their own dignity. Our country is the free marketplace of ideas and no one could be restricted to criticise the judicial system unless this criticism hampers the ‘administration of justice’.

R. Rajagopal vs State Of T.N

This case is also known as the Auto Shankar case; in this case, Justice Jeevan Reddy invoked the very famous doctrine of John Sullivan. This doctrine states that public must be open to strict comments and accusations as long as made with bonafide diligence, even if it is untrue.

In Re: Arundhati Roy

In this case, the Supreme Court observed that the fair criticism on the conduct of a Judge or the institution of Judiciary and its function may not amount to contempt if it is made in good faith and in the public interest.

Indirect Tax practitioners' Association v. R.K. Jain

In this case, the Supreme court observed that the defence of truth can be permitted to the person accused of contempt if the two conditions are satisfied. These are: (i) if it is in the interest of public and (ii) the request for invoking the said defence is bonafide. These are given in Section 13 of the Contempt of Court Act, 1971.

Justice Karnan's case

He was the first sitting High Court Judge to be jailed for six months on the accusation of Contempt of Court. In February 2017, contempt of court proceeding was initiated against him after he accused twenty Judges of the Higher Judiciary of Corruption. He wrote a letter to PM Modi against this but he did not provide any evidence against them.

Analytical Study on Fundamental Duties

Aditya Gavane

ABSTRACT

The Government is planning to assign its different Ministries with the task of spreading awareness about Fundamental duties among people. The idea of Fundamental Duties is inspired from the Constitution of Russia. All the eleven duties are listed in Article 51-A of the Constitution (the sole Article in Part-IV-A). The fundamental duties serve as a reminder to citizens that while enjoying their rights, they have also to be quite conscious of duties they owe to their country, their society and to their fellow-citizens.

Introduction

The concept of obligation is not a new one, especially when it comes to Indian society. For a long time, there has been an emphasis on performing one's "Kartavya" towards society, parents and the country. As we all know underlying duty exists when there is a right, and therefore rights and duties are correlative. The fundamental responsibilities nudge every citizen of the country to ensure that they recognize the fact that when the Constitution specifically confers certain fundamental rights on them it also requires them to comply with certain rudimentary standards of democratic behavior.

. Article 51-A of the Constitution sets out the different fundamental duties of the citizens of India, which were initially been ten in number, but later the Fundamental Duties were further increased to eleven by the 86th Amendment in 2002. Fundamental Duties have been borrowed from the Constitution of Russia.

In *Chandra Bhawan Boarding v. The State of Mysore 1*, the Supreme court made the following observation prior to the insertion of Article 51-A: "It is a fallacy to think that our Constitution, there are only rights and no duties. The provisions in Part IV enables the legislature to build a welfare society and that object may be achieved to the extent the Directive Principles are implemented by legislation."

In *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh 4*, a complete ban and closing of mining operation carried on in Mussoorie hills was held to be sustainable by deriving support from the fundamental duty as enshrined in Article 51-A (g) of the Constitution. The court held that preservation of the environment and keeping the ecological balance unaffected in a task which not only government but also every citizen must undertake. It is a social obligation of the state as well as of the individuals.

Fundamental Duties:

Article 51-A Says that it shall be the duty of every citizen of India-

1. To abide by the constitution and respect its ideal and institutions;
2. To cherish and follow the noble ideals which inspired our national struggle for freedom;
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 diversities, to renounce practices derogatory to the dignity of women;
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;
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. Further, one more Fundamental duty has been added to the Indian Constitution by 86th Amendment of the constitution in 2002.

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.¹

FEATURES

Following are some of the characteristics of the Fundamental duties:

1. While some of the basic obligations are of a moral nature, others are civic in nature. As an illustration: While respecting the National Flag and National Anthem is a civic obligation, cherishing nationalism is a moral duty.

2. Foreigners do not have a responsibility to perform fundamental obligations; only country citizens do.

3. These basic responsibilities lack any legal standing. Although direct enforcement is not practicable, the basic obligations can still be legally enforced through a bill that the parliament can approve.²

SOURCES OF FUNDAMENTAL DUTIES

It is significant to notice that none of the constitutions of Western nations provide explicit provision for citizens' rights and obligations. The Japanese Constitution is one of the democratic constitutions we find reference of specific obligations of the citizens. Only a little mention of citizen obligations appears in the French Constitution. Only fundamental rights and not citizen obligations are outlined in the American Constitution.

The Yugoslavian Constitution's Article 32, Chapter VII of the Soviet Constitution, Chapter II of the Constitution of the Republic of China, and other socialist country constitutions, however, place a strong focus on the obligations of citizens. All of the aforementioned Constitutions expressly outline the tasks of the populace and give everyone the "Right to Work," whereas the Indian Constitution currently does not. Every citizen who is expected to do specific duties for the country should consequently be given the "right to work."³

Need of Fundamental duties:

People from many castes, creeds, religions, beliefs, sects, etc. coexist in India, a country that celebrates diversity. In terms of language, there is variation. The Fundamental Duties are outlined in order to preserve peace and harmony and to promote a sense of fraternity and unity among citizens. The sovereignty, unity, and integrity of our nation are vitally important to them, and they play a crucial part in maintaining and defending those values. It serves as a reminder that duties and rights are intertwined.

They are correlated, rights and obligations. Every citizen has certain fundamental rights that were expressly granted to them by the Constitution, while the fundamental duties serve as a continual reminder of their obligations. The general public is expected to adhere to a few fundamental principles of democratic behaviour. Congress, the then-ruling party, asserted that current events are making up for any mistakes made by the Constitution's framers. The

¹Art. 51A, the Constitution of India.

²Critically Evaluate Fundamental Duties (Art. 51A) with case law, Our Legal World, available at <https://www.ourlegalworld.com/fundamental-duties-with-case-law> last seen at 27/03/2023

³Fundamental Duties, Legal Service India, available at <https://www.legalserviceindia.com/legal/index.html> Last seen on 27/03/2023

addition of a chapter on citizens' obligations to the country filled in this gap. In India, rights are prioritised over obligations.

This viewpoint was untrue. In this nation, it is customary to carry out one's obligations even when doing so partially in violation of one's rights and privileges. Since the beginning of time, people have placed a strong focus on their KARTAVYA, which is the fulfilment of their obligations to their parents, country, and society. People should carry out their obligations without regard for their rights, according to both the Geeta and the Ramayana.

Traditional obligations now have legal protection under the constitution. If one carefully examines the Constitution, they will not only find their rights but also their obligations. The argument put out by those who contend that the Constitution solely establishes the rights of citizens and ignores their obligations to society will unquestionably be answered by a close examination of the document. As the state may impose reasonable constraints on them for the good of society, these are not absolute rights. The remainder of the Preamble focused on obligations in the areas of justice, society, business, and politics.⁴

Objective of Fundamental Duties:

In addition to their constitutional rights, citizens are expected to adhere to a number of fundamental standards of behaviour and conduct. Though the Constitution grants citizens a number of fundamental rights, it also allows the state the authority to put logical limitations on those rights. Citizens can only access the rights that the Constitution guarantees when they carry out their obligations. The clauses of our Constitution already include this.

Significance of Fundamental Duties:

These obligations serve as a constant reminder to individuals that, even as they use their rights, they also have obligations to their country and fellow citizens. These also serve as a reminder to the populace to avoid engaging in any anti-social behaviour that denigrates the country, such as burning the flag, damaging public property, or upsetting public tranquilly.

Additionally, they aid in fostering in the populace a sense of discipline and dedication to the country. By encouraging residents to take an active role rather than just being spectators, they aid in the achievement of national goals. The Court can use it to determine whether a law is constitutional. Any statute approved by the legislature, for instance, would be considered reasonable when it was challenged in court for its constitutional legitimacy if it was carrying out a Fundamental Duty. The parliament can enforce them by law and impose any type of penalty or punishment for violating any of the Fundamental Duties.

In the words of late Prime Minister Indira Gandhi, "The moral value of fundamental duties would not be to smother rights but to establish a democratic balance by making people conscious of their duties equally as they are conscious of their rights".⁵

Case laws

In the case of [Bijoe Emmanuel vs. State of Kerala](#)⁶ which is popularly known as the National Anthem Case, on refusing to sing the National Anthem in the school, three children of the Jehovah's Witnesses were expelled from the school. There was a circular that was issued by the Director of Instructions, Kerala which made it compulsory for the school students to sing

⁴ShivaniVerma, Fundamental duties, IpleadersBlog, available at <https://blog.ipleaders.in/fundamental-duties-2/>

Last seen on 27/03/2023

⁵Critically Evaluate Fundamental Duties (Art. 51A) with case law, Our Legal World, available at <https://www.ourlegalworld.com/fundamental-duties-with-case-law> last seen at 27/03/2023

⁶[Bijoe Emmanuel vs. State of Kerala](#), 1987 AIR 748, 1986 SCR (3) 518

the National Anthem. These three children did not join the singing of the National Anthem but they stood up out of respect. They didn't sing the National Anthem because their religious faith didn't permit it and it was against their religious faith. They were expelled on the ground that they violated their fundamental duties and committed an offence under the [Prevention of Insult to National Honours Act](#), 1971. The court reversed this decision of the High Court because they did not commit any offence and also they committed no crime under the Prevention of Insult to National Honours Act, 1971 as though they did not sing the National Anthem but they stood out of respect.

In *M.C.Mehta (2) vs. Union of India*⁷, the Supreme Court held that it is compulsory for all the educational institute to organise a teaching lesson of at least one hour a week on the protection and improvement of the natural environment and it is the duty of the Central Government under Article 51A (g) to introduce this in all the educational institute. The Central Government should also distribute books free of cost on the same subject in all the institutes and also raise consciousness amongst people towards clean environment. The government should organise 'keep the city clean' week at least once in a year

Conclusion:

Fundamental Duties are the section of the Constitution of India that prescribe the duties of the citizens to the State. The Fundamental Duties are a kind of moral obligations of all citizens to help promote a spirit of patriotism and to uphold the unity of India. The Fundamental Duties are although not legally enforceable, i.e. without any legal sanction in case of their violation or non-compliance yet the citizens are morally obligated by the Constitution to perform these duties.

There is a need for these duties to be obligatory for all citizens i.e. subject to the State enforcing the same by means of a valid law. The Supreme Court has finally, issued directions to the State in this regard, with a view towards making the provisions effective and enabling a citizens to properly perform their duties properly.

⁷[M.C.Mehta \(2\) vs. Union of India](#), 1998