

Fundamental Duties And Concept Of Dharma As Was Practised In Ancient India

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“Rajdharmaparvan” Concludes That “Land With Less Moral And Lawful Life Suffer Distress, As Distress Rises It Causes More Immoral And Unlawful Life, Which Further Increases Stress”.

Almost Similar Situation Is Described By Former Chief Justice Of India Justice Rangnath Mishra In His Letter To Then Hon’ble Chief Justice Of India Hon’ble Justice M.M. Punchi “All Of Us Are Experiencing To Our Horror Degrading Human Behaviour In Society Everyday.The Detoriation Is Gradually Becoming Sharper And Unless This Fall Is Immediately Arrestedand A Remedial Measures Found Out And Enforced,The Situation Would Not Improve.”

These Are Not Mere Concerns But Based On Facts Over

- 1) More Than 30 Million Cases Are Pending In Indian Courts As Per National Judicial Data Grid Up Till June 2018.
- 2) India Ranks At Almost Bottom In List Of Corrupt Countries(81) Ranking As Per Global Corruption Perception Index For 2017 Released By Transparency International.
- 3) And In Human Development Index At 130 (In 188 Countries).As Per Human Development Rankings By UNDP (2017)

There Fore Certain Crucial Question Are Bound To Arise When The Working Of Part IV-A Of The Constitution Consisting Of Article 51A Dealing With Fundamental Duties Of Citizen Is Taken Up For Review.

Has The Article Which Has The Potential To Regenerate And Reconstruct The Nation Served Its Purpose.If Not Reasons And Possible Solution.

In This Article We Will Be More Concerned Toward Following Two Aspects

- 1) The Most Important Drawbacks Of FUNDAMENTAL DUTIES Are That They Are Irrelevant In Present Socio-Political Context

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2) Further Citizen Are Unaware About Their Duties And More Importantly Economic Activity Of Citizen Have Attained Centre Stage And Hence Are Uninterested Toward Fundamental Duties And Thus Citizen Are More Concerned About Their Rights Than Duties.

3) Whether Fundamental Duties Should Me Made Enforceable By Law For Its Better Implementation

Thus We Will Limit Our Discussion On Scrutiny Of Fundamental Duties And Provide Better Procedure For Its Implementation Based On Vedic Literature And Culture

1)Lack Of Awareness And Its Possible Solution As Perdharmashastras Dharmashastras Are Text Based On Ancient Dharmasutras Text,Which Themselves Emerged From Literary Tradition Of The Vedas.

The Dharmasutras Can Be Called The Guidebooks Of Dharma As They Contain Guidelines For Individual And Social Behaviour .Ethical Norms As Well As Personal, Civil And Criminal Laws.

They Discuss The Well Defined Duties And Right Of Individual At Different Stages Of Life Like Student Hood, Householdership, Retirement And Renunciation.

They Also Discuss The Rites And Duties Of King,Judicial Matters And Personal Law.

The Subject Matter Of Dharmasutras Is Dharma Further Dharma Is Well Defined For

- 1) Nation (DESH DHARMA)
- 2)Society (JATI DHARMA)
- 3) Family (KULA DHARMA)

APASTAMBA DHARMASUTRA Proposes That Scripture Or Text Alone Cannot Be Source Of Dharma And Dharma Has An Empirical Nature As Well.

BAUDHAYANA DHARMASUTRAS And VASISTHA DHARMASUTRAS Makes The Practices Of “SISTA” As An Important Source Of Dharma.

While GAUTAMA DHARMASUTRAS Proposes That There Are Three Sources Of Dharma

- 1) The Vedas
- 2) The Smrti (Tradition)
- 3) Acara (Practice)

After Dharmasutras, Dharmasastras Were Written And Were Much Elaborate In Defining Dharma.

The Extant Dharmasastras Texts Are

- 1) The Manusmriti –It Is Most Studied And Earliest Metrical Work Of Dharmasastras.
- 2) The Yajnavalkyasmriti Has Been Called The Best Composed And Most Homogeneous Text Of Dharmasastras.
- 3) The Naradsmriti Has Been Called The Judicial Text Par Excellence
- 4) The Vishnumriti Focuses On Bhakti Tradition.

Dharmasastras Text Presents Their Ideas Under Basically Three Categories;

- 1) Acara-Good Behaviour.
- 2) Vyavahara-Judicial Procedure, Process, Practice And Conduct.
- 3) Prayascitta-Meaning Atonement, Penance, Expiation Or Infact Corrective Measures In Dharmasastras.

CONCLUSION

The Essence Of Dharmasastras Is That It Lays Equal Emphasis On Scriptures (VEDAS) As Well As On Tradition And Practices. As Mentioned In APASTAMBA DHARMASUTRA That Written Text Alone Cannot Be Source Of Duties

DHARMASASTRAS Clearly Enumerate Four Source Of Dharma

- 1) The Vedas
- 2) Tradition
- 3) Virtuous Conduct
- 4) Approval Of One's Conscience

Therefore It Can Be Safely Concluded That In Ancient Indian Civilization As Stated By DHARMASASTRAS, Practices, Traditions And Customs Prevalent In Those Times And Which Were Considered Beneficial To The Society Were Codified As A Law And Citizens Were Asked To Follow Those Law. Thus Citizens Were Well Aware Of These Laws Which Were Mostly In The Form Of Duties. These Were Actually Their Way Of Living And Nothing Else.

This Concept Of Dharmasastras Can Be Applied In Present Socio-Political Society As Well In Which Any Good Custom, Practices And Tradition Prevalent In Current Society And Which Contribute Towards Growth And Prosperity Of Society Could Be Codified And Included As Fundamental Duties.

It Will Finally Lead To Citizen Not Only Aware Of Their Duties Towards Nation As Well As Society But Also More Importantly Will Aspire Towards Those Duties.

2) Irrelevancy And More Emphasis On Rights Than Duties And Its Possible Solution As Per BHAGWAD GITA And UPNISHAD

In The Very First Verse Of BHAGWAD GITA, DHARITRASTRA Refers To KURUKSHETRA As The "Field Of Battle Of Dharma"

It Can Be Easily Interpreted To Mean That Every Individual In Undergoing Through These Moral Battles In Their Minds Every Day About Their Duties And Hence Provide A Very Logical Concept About Duties That Should Be Performed That Will Benefit Society In Its

EIGHTEENTH CHAPTER

18th CHAPTER Of BHAGWAD GITA Examines The Relationship Between "Nature And Capacity Of Individual And Duties They Should Perform For Wellbeing Of Society And To Protect DHARMA"

It Accepts And Believe That Every Man Is Unique In Nature And Hence Duties Should Be Also Unique And Must Be Followed Strictly It Establish Relationship Between "SVADHARMA AND SVABHA" Aurobindo Gave A Very Modern Interpretation Of Concept Of SWADHARMA AND SVABHAVA In Which He States That Duty Of Any Individual Should Be As Per His Personal Capacities With Only Condition That Outcome Should Have Positive Contribution Towards Society.

It Will Lead To A Radical Individualism, Finding The Fulfilment Of The Purpose Of Existence In The Individual Alone.

MAHATMA GANDHI Recognised In The Concept Of SWADHARMA His Idea Of SWADESHI

The Idea That Man Owes His Service Above All To Those Who Are Nearest To Him By Birth And Situation.

While BHAGWAD GITA Lays More Emphasis On Practical Aspect Of Dharma The Upanishads Include Sections Of Philosophical Theories. The Chandogya Upanishad Includes One Of The Earliest Known Declaration Of Ahimsa (Non Violence) As An Ethical Percept.

The Brihadaranyaka Upanishad Discussion Of Others Duties As Self Restraint, Truthfulness, Charity, Non Hypocrisy, And Compassion. It Also Include Earliest Declaration Of "Karma". It Describe Karma Of Individual In Detail. Even Mode Of Practicing These Duties Are Discussed As Well As Outcome Towards Society.

CONCLUSION-From Various Interpretation Of THE BHAGWAD GITA As Well As THE UPANISHAD Following Conclusion Can Be Drawndharma As It Existed In Ancient Society Was A Total Concern Of A Man-Complete Philosophy Of Life And Action.

The Entire Socio-Political Affair Of The Civilization Was Based On Performance Of Duties. Further Duties Was To Be As Per Nature And Capacity Of Individual. Society Did'nt Acted As Prison As There Was No Checks Or Restraint. An Individual Was Not Only The Owner Of Right But Also A Participant Of The Right. Citizens Had The Advantage For Synthesis And Integration Of Society Through His Thought And Action. Since This Aspect Of Society Ensured That Any Individual Is Not In Any Danger Of His Alienation In Society And Hence Diminished Any Possibility Of Him Distrusting The State And Turning Into An Anarchist.

Dharma Also Served As Organising Principle That Applied To Human Being In Solitude, In Their Interaction With Other Human Being And Nature As Well As Between Inanimate Objects, To All Of Cosmos And Its Part.

Thus Dharma To Be Performed By Individual Has To Be Essentially Performed In Such A Manner That It Should Take Into Account Existence Of Other Humans, Nature, Inanimate Objects And Even To Cosmos.

The Only Right Which An Individual Possesed Was Right To Perform His Duty As Per DHARMA. And When One Spoke Of Right, He Was In Fact Pointing Towards Duty Of Other, Further Duties Of Individual Were Defined In Such A Way That They Were Never In Conflict With Duties Of Other.

Thus Svadharma As Per Svabhava Of Individual Ensured That Duties To Be Performed Never Losses Its Relevancy. Further Philosophy Of Upanishad Clearly Gave Higher Status To "Karma" Than Rights.

In Todays Context Even Fundamental Duties Should Be Assigned In Such A Way That It Will Be As Per Personal Capacity And Nature As Well As Choice Of Individual. With Only Condition That Citizen Should In Someway Or Other Contribute Towards Progression Of Society And Ultimately Nation. Not All Fundamental Duties Should Be Asked To Be Performed By Individual.

For Example Person Capable Of Donation Could Be Asked To Perform Charity.

Social Workers Could Be Asked To Work For Enviornment Protection.

Teachers To Promote Ancient Culture.-Political Workers To Promote Compassion And Brotherhood And So On.

3) Whether Fundamental Duties Should Be Made Enforceable By Law Or Not And The Vedic Text Take On That.

Vatsayan A 4th Century Scholar Explained The Concept Of Dharma By Comparing It With Adharma. The Vedic Text Also Laid Emphasis On Another Concept Which Is Defined As Higher Law In VEDAS;

HIGHER LAW

1) If A Citizen Commits Theft He Is Punished This Is Law. However If A Citizen Takes A Determined Resolve That He Will Not Commit Theft. This Is Higher Law (ASTEYA)

2) If A Citizen Causes Hurt To Another Person He Is Punished This Is Law. However If The Citizen Takes A Determined Resolve That He Shall Not Cause Hurt To Anyone This Is Higher Law (AHIMSA)

3) If A Citizen Commits Cheating He Is Punished. This Is Law However If The Citizen Takes A Determined Resolve That He Shall Not Cheat This Is Higher Law (SATYA)

4) If A Citizen Takes A Bribe He Is Punished This Is Law But If Citizen Takes A Determined Resolve Within Himself That He Shall Not Take Bribe This Is Higher Law. (APRIGRAHA)

5) If A Citizen Outrages The Modesty Of A Women This Is Law But If Citizen Takes A Determined Resolve That He Shall Always Maintain Dignity Of Women This Is Higher Law (BRAMACHARYA)

Thus According To THE VEDAS It Lays More Emphasis On Self-Resolve Of A Citizen Towards His Duties And Responsibility To The Society Rather Than Imposment Of Law In Achieving These These Goals.

CONCLUSION-In His Book "Oliver Twist" Charles Dickens Has Written That "Law Is A Bachelor" He Probably Want To Say That "Law Is Unrealistic At Most Times" Which Is True To A Great Extent. Thus To Include Fundamental Duties as Law Will Mean Asking Citizen To Perform Those Duties As Law Which Could Be Unrealistic At Most Times. This Will Not Be A Practical Solution.

Further It Is Not Completely True That Fundamental Duties Are Not A Legal Entity. Most Of The Fundamental Duties Are Already Spelt In Preamble Of The Constitution.

Similarly Some Of The Duties Are Already Covered Under Various Chapter Of Indian Penal Code For Example;

- 1) Offences Against State To Safeguard Sovereignty And Integrity Of India (Fundamental Duty) Are Covered Chapter Vi Of Indian Penal Code.
- 2) Protection Of Environment Covered Under Article 48a Of Directive Principle.

However These Provisions Have Not Served Its Purpose Despite Being Included As Law As Essential Requirement Of Better Implementation Of These Provisions Requires Public Participation, Which Is Missing. Therefore It Can Be Concluded That Higher Law Stated By The Vedas Should Be Given Special Status For Better Implementation Of Fundamental Duties. Higher Law If Given Special Status Has The Potential To Make Even Penal Law Redundant.

- 4) Prayascitta And Its Significance In Better Implementation Of Fundamental Duties Prayascitta Is Vedic Term Which Means Atonement Or Simply Corrective Measures In Dharmasastras.

Shabara In His Commentary On Mimansasutra States Prayascitta Are Atonement For “Not Doing What One Must Or Doing What Must Not” The Emphasis Is More On Inner Correction Through Penance Rather Than Imposed Punishment.

Anupata Is One Type Of Penance Mentioned In Dharmasastras Which Can Be Of Great Significance In Proper Implementation Of Fundamental Duties.

In This Person Loathes The Evil He Did, Reminds And Repeat To Himself That “I Shall Not Do That Again”

Conclusion-Acknowledgement Of An Unjust Act Is Considered A Step Towards Inner Reformation And The Start Of A Purge Of The Effects Of Immorality. Thus Citizens Could Be Asked To Acknowledge And Correct Their Unjust Act.

Thus To Conclude I Want To Quote Our First President Dr.Rajendra Prasad In His Closing Speech At Constituent Assmely On 25th Nov.1949 Observed That “After All A Constitution Is Like A Lifeless Thing.It Acquires Life Because Of The Men Who Control It And Operate It”

Modern Indian Case Law And Consequent Amendment Of The Constitution Has Been Proved As Inappropriate.

The Solution Lies In Reveting To Basic Indian Concept Of Law Which Is Already There In Ancient Concept Of Dharma.

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