

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. 67 OF 2022

IN THE MATTER OF:

DURGA DUTT

...PETITIONER

VERSUS

UNION OF INDIA

...RESPONDENT

WRITTEN NOTE BY THE ATTORNEY GENERAL FOR INDIA

Brief Background

1. *Vide* order dt. 21.02.2022, this Hon'ble Court was pleased to issue notice on the limited aspect of prayers (a) and (g) of the present petition, taking into consideration the observations made in *Ranganath Mishra v. Union of India*, (2003) 7 SCC 133 and had accordingly directed the Union of India to inform the court "*as to whether any steps have been taken in pursuance to the judgment or does it propose to take any steps in furtherance thereof.*"
2. Prayers (a) and (g) deal with the following aspects:
 - (a) Prayer (a) seeks a direction to the Union/State Governments to make comprehensive laws ensuring adherence to Part IV-A of the Constitution and requiring citizens to perform their duties.
 - (b) Prayer (g) seeks a direction to the Union/State Governments to frame regulations for taking steps to sensitize people and spread general awareness about fundamental duties.
3. Pursuant thereto, the Union of India has filed its Counter Affidavit on 08.12.2022, detailing the efforts made by various Ministries in spreading awareness and giving effect to the Fundamental Duties under Article 51-A of the Constitution of India, 1950, including but not limited to the efforts that are consistently made, on a periodic basis.
4. Notably, the petition itself does not disclose any specific grievance pertaining to non-implementation or lack of adequate implementation of a particular fundamental duty but simply prays for the same to given effect through legislation/regulations.

Importance of Fundamental Duties

5. Fundamental Duties enshrined under Part IV-A of the Constitution of India, 1950 form a core part of the constitutional and legal framework of the nation. Originally, ten Fundamental Duties were incorporated by way of the Constitution (Forty-Second Amendment) Act, 1976, upon the recommendations of the Swaran Singh Committee. Thereafter, an eleventh duty *viz.* the duty of 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, was added by way of the Constitution (Eighty-Sixth Amendment) Act, 2002.
6. However, the executive as well as the judiciary have always been aware that mere incorporation of these duties in Article 51-A is insufficient to ensure that they are actually effectuated, particularly given their non-justiciable status. To address these concerns, the Government of India, as far back as 1998, set up a Committee to Operationalize the Suggestions to Teach Fundamental Duties to the Citizens of the Country (“**Verma Committee**”) with the following Terms of Reference:
 - (a) To develop a package for teaching Fundamental Duties at primary, secondary, senior secondary and university levels;
 - (b) To decide the activities as part of curriculum and co-curricular activities;
 - (c) To review the existing programme already being implemented by the NCERT under the National Curricular Framework and the need for identifying additional inputs into it;
 - (d) To develop programme packages for preservice/in-service training of teachers at various levels;
 - (e) To develop a separate package for the training of citizens through non-formal education/adult education programme/media (print, electronic, etc.)
7. Accordingly, the Verma Committee then proceeded to deliberate upon the various aspects of operationalization of Fundamental Duties, including the meaning of ‘operationalize’ and what would be the best way to do the same. After conducting an extensive consultation and deliberation process involving seeking views from the general public and other stakeholders, they submitted their final recommendations by way of their Final Report dated 31st October, 1999, including a recommendation for addition of some additional duties such as duty to vote in an election and duty to pay tax in Article

51A. Pursuant to these recommendations, the Ministry of Education has undertaken various measures to give effect to Fundamental Duties and spread awareness about the same, as outlined in the Counter Affidavit dt. 08.12.2022.

8. Thereafter, on 6th July, 2001, the National Commission to Review the Working of the Constitution prepared a Consultation Paper on Effectuation of Fundamental Duties of Citizens, which emphasised on the various ways to give effect to these duties and noted that even efforts made by non-governmental organisations towards this goal could be channelized. It examined the recommendations made by the Verma Committee and observed that there is an imperative need for wider dissemination of information and generating greater awareness in regard to the Fundamental Duties of citizens and obligations of citizenship. On this basis, it made some further recommendations for implementation of Fundamental Duties, some of which were acted upon by the Union of India, as detailed in their counter affidavit.
9. Similarly, the judiciary and this Hon'ble Court in particular, has also been consistently pro-active about taking steps to give effect to Fundamental Duties as far as possible. While examining the importance of Fundamental Duties in various cases, this Hon'ble Court has consistently opined that such duties provide a valuable guide and aid to the interpretation of constitutional and legal issues as also imposing a social obligation on all citizens of India. As such, it would be difficult for any court to exclude the same from its consideration. At the same time, it is also well settled that Fundamental Duties are not justiciable *per se* and implementation of the same lies within the domain of the executive.¹
10. It is in this context that this Hon'ble Court would have to consider the efforts that have already been made for effectuating these Fundamental Duties enshrined in Part IV-A of the Constitution of India, 1950, and operationalizing the decision of this Hon'ble Court in *Ranganath Mishra*, and determine whether the same are adequate. Notably, the obligation to give effect to these duties must also lie with each and every citizen, and as such, the stance taken by the various State governments with respect to the efforts made by them in this regard, would also be important and relevant for arriving at such a determination.

¹ *Rural Litigation and Entitlement Kendra v. State of U.P.*, 1986 (Supp) SCC 517; *AIIMS Students' Union v. AIIMS*, (2002) 1 SCC 428; *Indian Handicrafts Emporium v. Union of India*, (2003) 7 SCC 589; *State of Gujarat v. Mirzapur Moti Kureshi Kassab*, (2005) 8 SCC 534; *In Re Ramlila Maidan Incident*, (2012) 5 SCC 1.

Effectuating the Fundamental Duties

11. It is pertinent to note here that the eleven fundamental duties, while legally placed on the same footing, are not all cast in the same mould. While some of these duties, such as those enshrined in Article 51-A (a),² (f),³ (g)⁴ and (i),⁵ postulate more determinate aims and have received recognition in the legislative sphere as well. Other duties, such as the ones under Article 51-A (b), (h) and (j) seek to imbue citizens with the pursuit of ideals or philosophies, which may require multi-faceted approaches. In fact, these ideals have even been used by the judiciary as guiding principles for interpreting provisions or adjudicating the validity of actions taken, in certain instances.⁶
12. For instance, the fundamental duty “to safeguard public property and to abjure violence” is one that has received attention from this Hon’ble Court as also from the Central and State legislatures. In 2007, upon noticing the lack of adequate enforcement mechanisms for dealing with mob violence and destruction of public property as also the lacunae in the Prevention of Damage to Public Property Act, 1984, this Hon’ble Court had initiated *suo motu* proceedings,⁷ and thereafter appointed two committees to look into these matters, one headed by Justice (Retd.) K.T. Thomas and another under Mr. Fali S. Nariman, Senior Advocate.
13. Upon consideration of the reports submitted by the respective committees in 2009, this Hon’ble Court then proceeded to adopt the same and issue guidelines in terms thereof on several aspects of public property, including the method for determination of liability for damage thereto etc., while leaving it to the Parliament to enact an appropriate legislation towards this end.⁸
14. Subsequently, in 2015, after accepting the recommendations for amendment that were made by the Justice (Retd.) K.T. Thomas Committee, the Ministry of Home Affairs prepared a draft of the Prevention of Damage to Property Act (Amendment) Bill, 2015

² The Prevention of Insults to National Honour Act, 1971; Flag Code, 2002.

³ The Ancient Monuments and Archaeological Sites and Remains Act of 1958; The Antiquities and Art Treasures Act, 1972.

⁴ The Environment Protection Act, 1986; The Forest (Conservation) Act, 1980; The Wildlife (Protection) Act, 1972; The Water (Prevention and Control of Pollution) Act, 1974; and The Air (Prevention and Control of Pollution) Act, 1981.

⁵ The Prevention of Damage to Public Property Act, 1984.

⁶ See for instance, *Mohan Kumar Singhania v. Union of India*, (1992) Supp (1) SCC 594; *Subramaniam Swamy v. Union of India*, (2016) 7 SCC 221.

⁷ *In Re: Destruction of Public and Private Properties*, (2007) 4 SCC 474.

⁸ *In Re: Destruction of Public and Private Properties v. State of Andhra Pradesh*, (2009) 5 SCC 212.

and even invited public comments on the same. Noticing that the issue was being considered by the Parliament, this Hon'ble Court in *Kodungallur Film Society v. Union of India*, (2018) 10 SCC 713, refrained from interfering on this issue.

15. More recently, three States – namely, Haryana, Uttar Pradesh and Madhya Pradesh – have all enacted State legislations to recover damages for destruction of public property during riots or public protests, in the wake of specific incidents or events that gave rise to the need for such a law.
16. As such, it is evident that effectuation of this fundamental duty is a constant and ongoing process, and both Central and State legislatures have taken appropriate steps from time to time, as and when felt necessary in light of the need of the hour, to appropriately implement the same.
17. Similarly, in the case of the fundamental duty “to value and preserve the rich heritage of our composite culture”, there are several legislations in place to deal with various aspects of this issue, such as the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (AMASR Act), the Indian Treasure Trove Act, 1878 and the Antiquities and Art Treasures Act, 1972. Pursuant to the obligation to give effect to this fundamental duty, these legislations have been adequately amended from time to time as found necessary with the most recent amendment to the AMASR Act being introduced in the Parliament in 2022, to rationalise the prohibited and regulated areas as also give more teeth to the enforcement powers of the Archaeological Survey of India.
18. In fact, in 2015, when certain issues pertaining to some stolen antiquities were brought to the notice of this Hon'ble Court in *Subhas Datta v. Union of India*, (2015) 11 SCC 324, various steps were immediately taken towards implementation of better security and training, maintenance of inventory of cultural artefacts etc. In addition, the Ministry of Culture has several financial assistance schemes and undertakes events/workshops to spread awareness across various parts of the country. Similarly, the Hon'ble Madras High Court, when faced with the specific issue of preservation of archaeological monuments in Tamil Nadu, passed detailed directions and guidelines which led to a series of improvements.⁹ At the same time, when a petitioner before the Hon'ble Madras High Court simply sought a *mandamus* for amendment to specific sections of the Antiquities and Art Treasures Act, 1972, the court reiterated that no such direction can be issued by

⁹ *In Re: Archaeological Survey of India*, 2021 SCC OnLine Mad 2091.

the judiciary and directed relevant authorities to consider the petition as a representation.¹⁰

19. Therefore, as evident from the above, it is clear that the effectuation of fundamental duties is and will always be a continuing task, calling for duty-specific legislations, schemes and supervision. Ministries, both at the Central as well as at the State level, in relation to education and culture, may be called upon to continue to be engaged in the above regard.
20. By way of illustration, two measures that could be considered are:
 - (a) Re: Article 51-A (f), aspects such as strengthening the definition of ‘antiquities’ and providing an appropriate incentive structure for collectors, buyers and sellers to register their antiquities could help in ensuring the creation of a robust and accurate database of all such antiquities – an exercise that is partially covered under the aegis of the National Mission on Monuments and Antiquities, launched in 2007 but is yet to be completed.
 - (b) Re: Article 51-A (b), each State could consider establishing a museum/knowledge center for spreading awareness about the struggles and efforts of freedom fighters from that particular State and for inspiring ordinary citizens to learn from them.
21. At the same time, as reiterated by this Hon’ble Court and various High Courts time and again, it is not for the judiciary to direct the legislature to enact a law in a particular manner and courts ought to be circumspect about stepping in to fill any perceived gaps, particularly when the issue at hand is under active consideration by the legislature.¹¹ Ultimately, while this Hon’ble Court can provide guidance on specific and pressing issues that truly require immediate attention, the task of how best to deal with them through legislation or policy, must be left to the Parliament/the executive, as appropriate.
22. Therefore, in light of the above, it is evident that the observations made by this Hon’ble Court in *Ranganath Mishra* are under active consideration in several spheres and appropriate steps in pursuance thereof are continuously undertaken when found necessary. Thus, it is submitted that this Hon’ble Court may be pleased to take note of the various steps proposed/taken and accordingly close the present proceedings, subject to any directions as may be deemed fit to be passed by this Hon’ble Court in this regard.

¹⁰ Order dt. 04.02.2021 in W.P. No. 34702 of 2019, *S. Sridharan v. The Secretary to Government*.

¹¹ *Ashwani Kumar v. Union of India*, (2020) 13 SCC 585.