

Aim scope of accountability /liability of a public officer, in India in the event of failure to perform public duties or to protect the fundamental rights while discharging public duties:

**AIM SCOPE OF ACCOUNTABILITY /LIABILITY OF A PUBLIC OFFICER, IN INDIA
IN THE EVENT OF FAILURE TO PERFORM PUBLIC DUTIES OR TO PROTECT THE
FUNDAMENTAL RIGHTS WHILE DISCHARGING PUBLIC DUTIES:**

ABSTRACT:

Like other modern Constitutions of most of the democratic countries, the Constitution of India, too, contains a number of Fundamental Rights for its citizens. These Fundamental Rights are not only guaranteed by the Indian Constitution, but also are more elaborate and real than those found in other Constitutions of the world. In this chapter, contains some reasons for the violation of fundamental rights by the government officials while doing their duties.

INTRODUCTION:

The State maintains the framework of social order by implementation of various laws without which well ordered social life would not be possible. Various philosophers of social contract theory are of the view that object of the creation of state is to maintain and protect the rights of individuals. According to Aristotle, State came into existence out of base necessities of life and continues for the sake of good life. Prof. Laski expressed that State is known by the rights it maintains. Similarly Locke was of the view that end of state is to remove the obstacles that hinder the development of an individual. Thus, the existence of the state is recognized with the protection of rights and liberties of individual which is the main object of state.

Protection of the dignity of an individual is essential for harmony in the society, as its violation can have grave impact on individual in particular and on society in general. Each individual is entitled to some rights which are inherent to human existence. Such rights should not be violated on the grounds of gender, race, caste, ethnicity, religion etc. these are called Fundamental rights. Fundamental rights are also known as basic rights, human rights, natural rights or inherent rights. The concept of fundamental right is not a new phenomenon, 'fundamental Rights' is a twentieth century term but its notion is as old as humanity. It has gone through various stages of development and has taken long time to become the concept of present day. These rights had place in all ancient societies though referred by different names, it includes civil rights, liberties and social cultural and economic rights. These rights are essential for all individual as these are consonant with the freedom and dignity and ultimately contribute to social welfare.

Protection of fundamental rights is a necessity for the development and growth of an individual personality, which ultimately contributes in the development of the nation as a whole. It is an internationally recognized issue and various international instruments have been established for the protection of human rights. The concept of fundamental rights

is dynamic and adapts to the needs of the nation and its people. The ultimate purpose of the national as well as international law is to safeguard the fundamental rights of the people.

At international level various efforts have been made for the protection of human rights. The United Nations through its charter represents a significant advancement in the direction for the promotion as well as protection of human rights. International bill on human rights has been incorporated in the UN Charter. The UN Charter contains various provisions for the promotion of human rights and fundamental freedoms in the Preamble and in various Articles 1, 13(b), 55, 56, 62 (2), 68 and 76(c).¹ Apart from UN Charter there are four international instruments created under the auspices of the United Nations known as International Bill of Human Rights, which include the Universal Declaration of Human Rights 1948, the International Covenant on Civil and Political Rights 1966, and the International Covenant on Economic, Social, and Cultural Rights 1966, the Optional Protocol to the International Covenant on Civil and Political Rights, 1966.² The international human rights regime is continuously growing with the passage of time, it provides certain accepted legal standards which all the nations should accept and implement in their domestic laws. The Governments of all the nations must work to promote the welfare of people by eliminating all forms of discriminations and provide right to equality and justice to all.

This topic explains about how these rights are violated by the government officials with case facts and suggestions to eradicate the government officials in violation of fundamental rights in India.

REASON FOR FAILURE OF DUTY OF PUBLIC SERVANT IN INDIA:

The fundamental rights are the basic rights of a Citizen. Bribe, corruption, misusing of power and Negligence are main reason for the failure duty of public servant. The Santhanam¹ Committee constituted by the Central Government of India, has identified

¹ S. K. Kapoor, *International Law & Human Rights* 800(Central Law Agency, Allahabad, 17th edition 2009).

⁷ *Id.* at 817.

² *Supra* note 6 at 886

certain procedural causes of corruption like red tape and administrative delay, unnecessary regulations, scope of personal discretion, cumbersome procedures, scarcity of goods and services, and lack of transparency. In India there are two dimensions of corruption. One is exploitative corruption where the public servant or the private party entrusted to perform the specific tasks exploits the helpless poor citizen. The second one is collusive corruption where the citizen corrupts the public servant by bribe and avails better benefits. In fact both perpetuates inequality thus striking at the very concept of rule of law-the bed rock of democracy, which is acknowledged as the best system of governance to ensure respect for human rights.

EFFECT OF FAILURE OF DUTY OF PUBLIC SERVANT IN FUNDAMENTAL RIGHTS:

It has been very profoundly said that the corruption really infringes the Human Rights Violations, particularly with human rights of Right to life, Liberty, freedom and equality. It also highlights about the non discrimination rights, Right to participate in politics, fair trial and access to justice, right to information, right to food, water, housing, education, environment, various more economical, social or cultural rights which also may get violated wither directly or indirectly. Principles of Equality & Non Discriminatory Rights The principles of equality as well as several non discriminatory measures whether directly or indirectly causing discriminated are strictly prohibited, thus becoming a fundamental concept of Human rights which have been incorporated in various human rights treaties as well as convention as well as enumerated in the Constitution of India. And thus the presence of corruption created illegal violations to the public services in various fields of human rights which include health, welfare services, in the fields of education, etc. Because of such personal favored conduct of persons involved in corruption the people who have to suffer who are economically as well as politically marginalized and thus these activities leads to arbitrary functions by such illegal means of practicing.

Right to participate in the political activities so prevailing From Human Rights perspective, it becomes very much indispensable to participate in the political activities so involves in the society without facing any kind of difficulty or discrimination in standing for such acts which are involved with the decision making process affecting individual as well as the society as whole. Right to Vote, Right to stand for Election, Right to access over public services. Now in reference to the political agendas certain mishaps gets created which violated the human rights of the citizens and which affects them directly as well as indirectly resulting in gross human rights violations. Such as various practices like- taking of bribery, abusing any office or the system as well all those aspects which infringes the free expression of the will of the citizens thereof.

RIGHT TO FAIR TRIAL AS WELL AS JUSTICE DELIVERY:

There could be several of the subjects which may affect the procedures of the judiciary as well as the investigation at various level which becomes the prey of corruption very easily and thus affecting the rights of that person who shall be proved innocent in the proceedings, but because of such illegal practicing of bribe can change the situation of the case drastically.

MISUSE OF POWER BY PUBLIC SERVANT:

There were many cases which briefly explain about the misuse of power by public servant. One among the important case law is about the custodial death of Jayaraj¹ and Fenix. On 19th June 2020, Fenix, a mobile accessories shop owner was informed about his dad, Jayaraj being picked up by the police. To this, Fenix was worried and shocked. He rushed to Sathakulam police station for what the police termed as an "inquiry". Three days later, the family of Fenix and Jayaraj were informed by the police that the duo had died in Kovilpatti government hospital. The hospital was around 100 kilometers from their place of residence. This evoked widespread outrage in Tamil Nadu. People took to streets demanding justice for the family of the departed. Strict action was demanded against the policemen involved in the incident. Further, this case came up to be one of the worst instances of police brutality inflicted on the public. Dragging the attention of the public, the case came to be among the worst.

INDIAN GOVERNMENT COMMISSION TO SAFEGUARD FUNDAMENTAL RIGHTS:

The Government is also working upon an anti graft law, the prevention of bribery of foreign public officials and officials of public International organizations Bill, 2011. Moreover the Government is committed to draft a strong "Jan LokPal Bill". Apart from that the country has enacted several anti corruption legislations like Prevention of Corruption Act¹, Right to Information Act, Money Laundering Act, Public servants (Forfeiture of Property Act), 1999, Whistle blowers Bill, 2010, Benami Transactions legislations, Foreign Exchange Management Act, Customs and Income Tax legislations etc. Further several institutions fighting for anti corruption like Central Vigilance Commission, CBI, Information Commission etc are in place. Contribution of higher judiciary is also laudable. While exercising its jurisdiction in PIL cases, the apex court

has unearthed corruption in several instances and has monitored the probe on several scam, Recently in a major move the apex court has directed all trial courts in the country to dispose of corruption cases quickly and required the High Court to call for quarterly report from all lower courts in this regard. Another significant trend is the development of complementarity between the Supreme Court and the national human rights commission in the enforcement of human rights and in combating corruption. The better capacity of the NHRC to directly monitor performance of institutions in certain situations has been utilized by Supreme Court in several cases. NHRC along with the national judiciary can facilitate the state responsibility of fulfilling the basic human right of corruption free governance. Vigilant and objective press can also make remarkable contribution.

CONCLUSION:

Though Indian government has Central Vigilance Commission to protect bribe and corruption and human Rights Commission for violation of human right are needed to improve. Good law and strong institution alone are not sufficient to tackle the problem of corruption. We need to focus on simplifying procedures, reducing discretion, eliminating arbitrariness, and increasing transparency in the way of Government functions. Recent Indian political scenario has witnessed the development of a vigorous civil society involving a plurality of independently organized groups progressively working towards the goal of good governance transcending to the level of human governance as enshrined in the Constitution of India. The struggle for combating corruption and promotion of human rights is long and arduous. The judiciary the NHRC, the civil society, NGO's, the media, must constantly provide excellent mechanism for influencing the national agenda on combating corruption and ensuring human rights. However common man must be in the forefront in this mission. It is true that an independent judiciary is the Constitutional watch dog in our scheme, but the ultimate responsibility for good governance is the common man. Like foreign countries new acts has to be enacted in Indian law in order make the public servant to improve the working to safeguard the fundamental rights of all the citizens.