

## FUNDAMENTAL DUTIES UNDER INDIAN CONSTITUTION AND THEIR ENFORCEABILITY: A STUDY

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### ABSTRACT

The Constitution of India, like the Constitutions of most other democratic countries, provides a number of Fundamental Rights for its inhabitants. The Indian Constitution not only guarantees these Fundamental Rights, but they are also more detailed and genuine than those contained in other countries' constitutions. In this chapter, we will look at the notion of Fundamental Rights established in India's Constitution's third portion. On the advice of the Swarn Singh committee, 10 fundamental obligations were included into the Constitution by virtue of the constitution (Eighty-sixth Amendment) Act, 2002. The 11th duty was introduced by the 86th Amendment in 2002. Except for a few such obligations, there appear to be few leading elements for the remedy of violation. Some citizens' responsibilities are enshrined in the constitutions of the Indian Subcontinent, while others are governed by law, tradition, and/or precedent. Fundamental obligations are also included in the Chinese Constitution in numerous Articles under the heading 'Fundamental Rights and Duties.' The law is a balance of rights and responsibilities. The person burdened with the relevant obligation is a citizen(s) of India, according to the operative lines of Article 51-A. Article 51-A (a) to (k) of India's constitution is the topic of the right. While the beneficiary in whom the right vests are arguable, the act or forbearance is the citizen's behavior. Some of the responsibilities and remedies are outlined in laws such as the Indian Penal Code, the Environmental Protection Act of 1986, the Emblem and Names (Prevention of Improper Use) Act of 1950, and the Prevention of Insult to National Honour Act of 1971. There appears to be no remedy for the breach under Article 51-A(b),(d),(f),(h) & (j), necessitating the adoption of corrective measures to instill obligations. At first instance, breach of duty as an act or omission should be treated as an actionable wrong of 'civil misconduct,' rather than being remedied by penalty for an offence except in its severe form and/or for persistent wrong. As a result, the matter has been discussed and debated based on the strength of theological methodology, which includes the use of both primary and secondary source material.

**Keywords:** Fundamental, Right, Duties, Constitution, breach, Law

### INTRODUCTION

Indian Constitution is the apex law of the Indian soil. It contains the various important topics which are required to run a nation in a smoother manner. Constitution was framed by the constituent assembly of India soon after India got independence. It was indeed a biggest challenge for the constitution maker which was accomplished after a long span of two years, eleven months and eighteen days. As stated earlier at the time of making the constitution the

constitution makers were well aware about the sufferings which India had faced during the British rule. So they tried to make it as a perfect document by taking provisions in this regard from different constitutions of the world. Thus they added the provisions of equality, religion, speech and expression, Right to life and personal liberty etc. in it. But after the long passage of the time still India don't have a framework through which the fundamental duties which are there in the Indian constitution under its part IV-A can be made enforceable on the citizens of India. The 42nd Amendment Act, 1976 added a Chapter IV-A which consists of only one Article 51-A which dealt with a Code of eleven Fundamental Duties for citizens. Fundamental duties are intended to serve as a constant reminder to every citizen that while the constitution specifically conferred on them certain Fundamental Rights, it also requires citizens to observe certain basic norms of democratic conduct and democratic behavior because rights and duties are co-relative. But the problem lies in the provision itself because it doesn't have a force of law to effectively enforce all these fundamental duties.

**Duty defined:** Duty means that some person has to do something or to abstain from doing of something. There are various definitions on duties.

**Salmond:** calls duty as an act which one ought to do, an act opposite of which would be wrong.

**Bible says:** Love thy neighbor thy self

**Duty as per Dharmashastra:** Ancient Indian texts including Dharmashastra have laid greater stress on the duties rather than the rights of the human being. It covers the duties under the heading 'Dharma'. Again Dharma had a great guiding force for the general code of the conduct to be followed by the humans. Medhatithi Provides: "The characteristic feature of the word Dharma is Duty".

**Types of Duties:** Duties are classified under Jurisprudence which provides that it can be moral or legal. Law only protects the legal duties more than that of the moral duties.

**Basis of Fundamental Duties:** The concept of the fundamental duties is not new but it is of old time. The basis in this regard is:

- (1) **Legal Philosophy:** The concept of the legal duties is defined by Hoheld who provides that the rights and duties are correlative to one another. Further one can't exist without the other.
- (2) **Religious philosophy:** Lord Krishna in the religious book of hindus namely: 'GITA' says: "Karmanevadhikaraste Mam Phalesu Kadachan"
- (3) **Constitutional Philosophy:** If we in this regard ignore the concepts like: Liberty of thought, liberty, expression, belief, faith and worship the rest of the constitutional preamble only talks about the 'Duty.'

## Fundamental Duties

**Article 51-A Provides 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.

#### Need For Fundamental Duties

India is a country where people belonging to different castes, creed, religion, sects etc. resides together and in order to maintain harmony and peace and to encourage the feeling of brotherhood and oneness among them following the Fundamental Duties on their part plays a vital role in upholding and protecting the sovereignty, unity and integrity of our country which is of inevitable importance. It reminds the citizens that rights and duties go hand in hand. It also recalls for the top fundamental duty of a citizens of a country to have faith and strong belief in serving the nation when called upon to do so or through someone's volunteer act.

#### Swaran Singh Committee report on Fundamental Duties:

In 1976, the committee was set up to make a recommendation for fundamental duties, the need and necessity of which was felt during the emergency period. The committee recommended for the inclusion of separate chapter under the heading of Fundamental Duties. It will make citizen conscious of their duties while enjoying fundamental rights. The government accepted the suggestion and included in a separate article 51A which had ten fundamental duties. The government declared that non-inclusion of fundamental duties in the original constitution was a huge mistake which has now been ratified by the present government.

Although Swaran Singh Committee suggested the incorporation of only eight fundamental duties but the 42nd Amendment had ten duties. It is not surprising that not all recommendations were accepted by the then government, some of these non-recommendations are:

1. The Parliament may provide for the imposition of punishment or penalty as considered suitable for non-compliance of these duties.
2. Such punishment or law won't be questioned in a court of law for the enforcement of fundamental Rights and in case it caused a breach of fundamental rights.
3. Duty to pay taxes by the citizen was also on the list of fundamental duties.

**Justice Varma Committee Report on Fundamental Duties:**

Justice Varma Committee was constituted in 1998 to plan a strategy and to work out for a methodology for operationalizing a programme initiated countrywide for the purpose of teaching fundamental duties and make it enforceable in every educational institution and to initiate as in-servicing training. The committee had knowledge of non-operationalization of Fundamental duties and it was not because of the lack of concern or non-availability of legal provisions, but it was because of the strategy of implementation. There are enough legal provisions and committee had provided with these provisions:

1. The prevention of Insults to National Honour Act, 1971 has already been implemented stipulating that no citizen can disrespect the National flag, Constitution of India and the National anthem which are enshrined in the first clause of the Article 51A.
2. There are various criminal laws which are enacted to provide punishment to people encouraging enmity between different sections of people on the grounds of race, religion, language, place of birth and so on.
3. To provide punishment for the offence related to caste and religion, The Protection of Civil Rights Act (1955) was enacted.
4. There are various sections in the Indian Penal Code that declare the imputation and assertions which are prejudicial to nation's integrity and unity and are punishable offences.
5. The Unlawful Activities (Prevention) Act of 1967 was enacted to prevent a communal organization to be declared as an unlawful association.
6. For the disqualification of Members of Parliament or state legislatures that have indulged in corrupt practices such as soliciting votes in the name of religion or promoting enmity between different sections of people on grounds of race, caste, language, religion or any other ground, The Representation of People Act of 1951 was enacted.
7. The protection of wildlife and prohibition of trade in rare and endangered animals is done by The Wildlife (Protection) Act of 1972.
8. To ensure the implementation of Clause (g) of Article 51A, The Forest (Conservation) Act of 1980 was implemented which provides for indiscriminate deforestation and diversion of forest land for non-forest purpose.

More emphasis on the Fundamental rights in the Indian Constitution:

The over-riding pre-occupation of the founding fathers of the Constitution with the rights of the citizens is quite understandable. India's freedom struggle was essentially a struggle for acquiring the right to freedom. The colonial rule had been a prolonged one and it had brought in its wake political oppression resulting in complete denial of human rights. The main sweep of the freedom struggle, therefore, was towards assertion of the people's right to national freedom. The liberal struggle, its deep awareness of the evils embodied in fascism and totalitarianism and bitter experience of these evils under the British regime had also no less contributed to increased emphasis on assertion of Fundamental Rights in the Constitution. But present day the situation has become quite challenging in which every individual is more concerned about his fundamental rights and not caring about the fundamental duties against the others including against the nation.

Absence of proper enforcement of Fundamental Duties in the Indian Constitution:

It is unfortunate that after years of independence, the people of India has become so much right conscious that they tended to forget their fundamental duties and responsibilities. A suggestion to define the duties of the citizen was no doubt made by Dr. Rajendra Prasad, who felt deeply disturbed on account of indiscipline and lawlessness in the country in general, and the irresponsible behavior of some legislators in particular. Moreover, this issue also attracted attention of the Servants of the People's Society under the President ship of veteran leader Shri Biswanath Das. former Chief Minister of Orissa. The Society brought out a pamphlet entitled: 'Place of Duty in our lives and Constitution of India', to suggest "without altering or abridging any of our Fundamental Rights, a few purposeful additions to fill up the gap in our Constitution, bringing in certain duties from which citizen's right flow and without which such rights cannot survive". However, the fact remains that Fundamental Duties of the citizens were not incorporated into the draft Constitution, and when the Constitution of India came into force, it had not doubt a Chapter on Fundamental Rights, vide part III, but there was no Chapter on Fundamental Duties. It seems that the people in the country had been so much obsessed with rights that they tended to forget the importance of their duties and obligations towards the society and the nation which enabled them to claim; and exercise their rights.

Fundamental duties not made enforceable:

Although it was suggested by some of the thinkers that it would be necessary to provide for punishment for the breach of Fundamental Duties by a citizen, no cognizance of this suggestion was taken by our Parliament as it would have been repugnant' to the historical, social, religious, approach towards the duties.

One of the most controversial issues regarding these duties had been the recommendation to make them legally enforceable. The Swaran Singh Committee was in favour of it but it was dropped after the Bill came up for discussion in the Parliament. In the Lok Sabha also, Sardar Swaran Singh, Jamilurrahman and some others spoke strongly in favor of making the violation of these duties legally punishable on the ground that in the absence of legal force behind them, they would remain mere platitudes.

Judicial Interpretations:

In *Rural Litigation v. State of U.P* It was observed that since the duties are obligatory for the citizens, state should strive to achieve this goal. It was also held that law may be enacted by the parliament for the fulfillment of these duties. Again it was held that penalties may also be imposed on the persons doing violation of these duties.

In *M.C Mehta V. Union of India* Apex Court held that it is the duty of the central government under article 51A(g) for introducing compulsory lesson teaching of one hour in every week on the protection and improvement of the natural environment in all the educational institutions across the country.

*State of Gujrat v. Mirazpur Moti Kureshi Kasab Jamat* Apex court held that the ban imposed under Bombay Animal Act, 1994 on cow slaughter was not violative of right to carry on business

under article 19(1) (g). The ban was held to be on reasonable restriction and in the public interest.

In *AIIMS Students Union V. AIMMS* It was held that the fundamental duties are not made enforceable like fundamental rights they cannot be overlooked as duties in part-iv of the Indian constitution.

Fundamental Duties under the different Countries:

Some of the countries of the world have the provisions of the fundamental duties. Fundamental duties in our constitution are also inspired from the foreign country. The following are the heads of the fundamental duties around the world

- (1) USA: In the constitution of the USA the Fundamental duties are not mentioned anywhere but the provisions in this regard can be taken from the Judicial decisions of the U.S Courts.
- (2) China: Chinese Constitution, 1982 has the defined fundamental duties under its Chapter II. It contains the fundamental rights and duties together which are as follow:
  - (a) Duty towards motherland
  - (b) Duty to maintain the national unity and integrity
  - (c) Duty to abide by the Constitution
  - (d) Duty to maintain the state secret
  - (e) Duty to protect public property, observance of public order and to respect social ethics
  - (f) Duty to pay tax
  - (g) Duty to work, to receive education, family planning and not to engage in religious activity
- (3) USSR: Fundamental duties in the Indian Constitution are derived from that of USSR Constitution of 1977. Constitution of USSR Chapter VII provides these duties. Article 62 of the USSR Constitution provides: Defense of motherland as a fundamental duty. Article 63 provides: Military service is the honorable duty of the citizens.

It is important to understand that no democratic system could ever succeed if the citizens are not willing to participate actively by discharging their duties which are expected to be done by them.

Our Constitution has provided us with various rights and expects us to perform certain duties as a return. Article 51(A) talks about these Fundamental Duties and has 11 fundamental duties that are expected to be performed by the citizens (there were 10 earlier and 11th was added later by the 86th amendment). First, we will discuss these 11 fundamental duties and then we can move on to the next topic whether it is needed or not.

- We need to follow our Constitution and should respect our national flag and national anthem.
- Should follow the ideals of the freedom struggle.
- Protect the sovereignty and integrity of our nation.
- Protect our nation and provide national services when required.
- Should have the spirit of a common brotherhood.
- Preserve the culture of our country.
- Protect the environment of our country.
- Generate scientific rationale for every thought.
- To protect public property.
- Strive for excellence.

- It is the duty of every parent to send their children between 6-14 years to school. From these fundamental duties, one can easily understand the need for the fundamental duty in our constitution. It is required to protect the sovereignty of our nation. To maintain the unity and integrity of our nation. Rights and duties go hand in hand and cannot be separated at any cost. Fundamental duties and fundamental rights are two sides of a coin which we know that it can't be separated. Also, it is found as the need of the hour to introduce fundamental duties in our constitution.
- **Maintain the Sovereign Nature of State:** The main aim of the insertion of fundamental duties was to maintain the sovereign nature of our state. Although these are not legally enforced then also provide some kind of sovereign power to our state.
- **To maintain Unity and Integrity of the nation:** In the current scenario, we can see that people are often talking about the term "intolerance". They are relating intolerance with unity. According to them if the people become intolerant then the compatibility with other people will be affected and ultimately the unity among different people will be affected terribly. Our Fundamental Duties help in developing tolerance among the citizens and ultimately help in developing the feeling of unity and integrity among the citizens of our country.
- **In the interpretation of different statutes which are made by the legislature:** The Fundamental Duties help in the interpretation of the law/ statutes made by the legislature. It is held in many cases that the need for Fundamental Duties in interpreting the Fundamental Right is pivotal. In the case of Mohan Kumar Singhania v. Union of India the court held that statutes made according to Article 51(A) of our Constitution are valid. Thus from this, we can clearly see that Fundamental Duties help in interpreting the constitutional provision.
- **In order to create a balance between the claims of the individual citizen and those of the civil society:** A report was submitted by a committee led by late Justice J.S. Verma in the year 1999. The need for and importance of Fundamental Duties (especially under Article 51A) was explained by this committee. It can be found in recommendation nos 3.38.1 and 3.38.2 of the report. According to this committee, it is important to create a balance between the expectations of individual citizens and to create a civil society. To achieve this goal, it becomes important to orient the citizens of our country to be aware of their social and citizenship responsibility. And by doing this we will ultimately end up by shaping the civil society (By term 'civil society', we mean that a society where all become concerned and considerate of the rights of fellow citizens).
- **Needed for the current situation:** When our Constitution was drafted by our Constitution makers they found that they didn't need to insert the fundamental duty in our constitution. But as time passes the need and importance of Fundamental Duty was felt that is why they were inserted later by 42nd Amendment in our Constitution. Earlier the feeling of patriotism, harmony, feeling to promote brotherhood, secularism were inherent and there was no need to put any moral or legal obligation on the citizen to the same. The feeling of

serving the country and defending the country at any cost was there among the citizens of the country. The people were willing to protect the rich heritage of Indian culture.

However, as time passed people were lacking these qualities. Earlier the above qualities were taught by the family and also by the teachers in school and colleges. But with the passage of time, all the people become so busy in their life that they forget to inculcate these values among themselves. Those qualities which were once an integral part of the life of the citizens of India were found to be enforced in the form of Fundamental Duties.

In *Chandra Bhavan Boarding And Lodging Bangalore v. State of Mysore And Another*, the Supreme Court held that it is not possible for our constitution to protect all the rights of citizens without assigning certain duties to its citizens. However, this decision was taken before the insertion of fundamental duties in the Indian Constitution. It clearly explains the need for fundamental duties for making a welfare society.

Need for the development of the Moral Values for the promotion of fundamental duties:

Fundamental duties can only be observed by the Indian citizens if they stay within the parameters of the morality and law. Presently the masses are such which talks about the fundamental rights more than the duties. So if the masses living the country begin to rethink of thyself as the real citizens of the nation, who not only have the rights but the basic duties to be performed than only the country can move in the right direction. The feeling that the human is only the receiver and not the giver is to be curbed and cured. Further why the human is forgetting all these duties is because his nature has become very selfish. The violation of the everyday traffic rules is the perfect example of this thing. Western countries are far ahead of our country in this respect. And it is perhaps been the causes why they are developed and still we are in a developing stage.

Value of the Fundamental Duties:

Fundamental Duties time and again serves as a useful tool for the progress of a nation. India has a democratic polity which can't succeed if its citizens are not willing to actively participate for the desired governance. Citizens should come forward for the real progress of the country. Although some of the fundamental duties have been incorporated under the separate laws but still most of them requires the legal enforceability. For E.g.: The very first duty in this regard is to respect the national flag and Anthem but then even we see disrespect of it. Every right implies a corresponding duty but every duty does not imply a corresponding right. Man can't live only for himself but is supposed to live for the others with due respect to the others. Further it is seen that the rich peoples don't care or frequently disobeys all duties and only talk about their rights.

Conclusion: Finally it can be said that the Fundamental duties works like a single pillar for the up liftment of a nation. Until one observes all the duties other can't enjoy their Fundamental rights. Both rights and duties are complimentary and supplementary to each other. Man is a social animal but he can't become a animal while doing the non observance of the Fundamental duties because animals only cares for themselves and not for the others. So if one will behave like a man only then the proper care and respect for the fundamental duties can be uphold. Ultimately it becomes the duty of the Government of the nation to protect these duties by giving



them the proper justifiable enforcement. If it is done only then there can happen a change in the ideology and the working style of every Indian citizen.

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