



FUNDAMENTAL DUTIES: TIME TO RECONSIDER THE ECLIPSED PART OF CONSTITUTION

*By Suyash Gaur & Anchita Sood
From GGSIP University, Delhi*

INTRODUCTION

Fundamental duties along with fundamental rights and directive principles of state policy constitute the bills of rights of every citizen under the Constitution of India. The framers of the Constitution from the Soviet Union adopted fundamental duties. 42nd and 86th Amendment Acts of the Constitution of India introduced fundamental duties. The basic object of including fundamental duties are to regulate the conduct of every citizen along with laying down certain moral responsibilities they must abide by towards the country.

The concept behind introduction of fundamental duties was that the rights and duties are inseparable as two sides of the same coin. The fundamental rights are correlated to the fundamental duties. Therefore for the effective exercising of the fundamental rights, there are some duties, which the citizen must abide.

NATURE OF FUNDAMENTAL DUTIES

The fundamental duties under the constitution unlike the rights are only applicable on the citizens and not to aliens. Further these duties bring our constitution in conformity with Article 21(1) of the Universal Declaration of Human Rights, which states, "Everyone has duties to the

community in which alone the free and full development of his personality is possible." Further it also brings our constitution together with several other modern constitutions of other countries. Out of the ten clauses in article 51A, six are positive duties and the other five are negative duties. Clauses (b), (d), (f), (h), (j) and (k) require the citizens to perform these Fundamental Duties actively.

NEED FOR THE INTRODUCTION OF FUNDAMENTAL DUTIES

Fundamental duties were not initially inserted in the constitution by the framers. However during the national emergency period from 1975 to 1977, there were over utilization of the rights by the people of the country. This led to the introduction of the concept known as fundamental duties in the Indian Constitution. The reason was clear, people neglected the fact that they owe something to the society and the nation and made the most out of fundamental rights by using them under all possible circumstances in their favor.

The presence of the fundamental duties in the constitution has the effect of a reminder to every citizen that along with the fundamental rights they exercise is in balance with the corresponding duty they have to fulfill. This leads to the proper evolution of the people in the state towards striving excellence and shaping of the community.

The Indians before the independence have raised the slogan that freedom is our birthright. The democratic rights are based on the fact that every individual inherits them by birth as natural rights and they are



inseparable and indispensable even at the hands and will of the person. They are only recognized and protected by the state.

On the inspiration from the Soviet model, the fundamental duties were added by 42nd amendment in the Indian constitution in 1976. The fundamental duties are specified in Art. 51A.

VARIOUS LEADERS AND JURISTS ON FUNDAMENTAL DUTIES

According to **Mahatma Gandhi**: “The true source of right is duty. If we all discharge our duties, rights will be far to seek. If leaving duties unperformed we can after rights they will escape us like will-o-the-wisp.”

According to **USA President Kennedy**: “Ask not what the nation has done for you but what you have done for the nation.”

According to **Indian Prime Minister Smt. Indira Gandhi**: “the moral value of fundamental duties would be not to smother rights but to establish a democratic balance by making the people conscious of their duties equally as they are conscious of their rights.”

According to **Sir. John Salmond**: “there can be no right, without a corresponding duty.”

INSPIRATION OF FUNDAMENTAL DUTIES

Fundamental duties were adopted from the Soviet Union. The socialist countries lay down greater emphasis on the duties of the citizen towards the state in relation to capitalists countries.

Yugoslavian Constitution:

Under chapter III, Article 32, it clearly signifies that the right of an individual can be fulfilled only by the fulfillment of the duties along with them by the person.

Article 4 speaks, “*The freedoms and rights of man and citizen are an inalienable part and expression of the socialist and democratic relations which are protected by the Constitution, and through which man is being emancipated from every exploitation and arbitrariness, and [through which man] by his personal and socially organized work is creating the conditions for comprehensive development, for the unrestricted expression and protection of his personality and the attainment of his human dignity. The freedoms and rights shall be achieved in solidarity among the people and by the fulfillment of their duties toward one another.*”¹

Soviet Constitution:

The soviet constitution has always been conscious of the fact that the citizen owes some duty towards the state and hence they must be abiding by for the exercising use of the rights. Under Chapter VII it states the

¹ 1974 Yugoslav Constitution



duty of the citizen in broad terms and not specifically.

Article 59 speaks, “Citizens' exercise of their rights and freedoms is inseparable from the performance of their duties and obligations. Citizens of the USSR are obliged to observe the Constitution of the USSR and Soviet laws, comply with the standards of socialist conduct, and uphold the honour and dignity of Soviet citizenship.”

Article 60 speaks, “It is the duty of, and matter of honour for, every able-bodied citizen of the USSR to work conscientiously in his chosen, socially useful occupation, and strictly to observe labour discipline. Evasion of socially useful work is incompatible with the principles of socialist society”

Article 69 speaks, “It is the internationalist duty of citizens of the USSR to promote friendship and co-operation with peoples of other lands and help maintain and strengthen world peace.”²

Republic of China Constitution:

The constitution of china under Article 51 expressly states that the citizens of the state while exercising their rights shall not infringe upon the interest of the state, society or the collective rights of other citizens. Further under other Articles it lays down the duties of the citizens as follows:

Article 52 speaks, “It is the duty of citizens of the People’s Republic of China to safeguard the unification of the country and the unity of all its nationalities.”

Article 53 speaks, “Citizens of the People’s Republic of China must abide by the Constitution and other laws, keep State secrets, protect public property, observe labour discipline and public order and respect social ethics.”

Article 54 speaks, “It is the duty of citizens of the People’s Republic of China to safeguard the security, honour and interests of the motherland; they must not commit acts detrimental to the security, honour and interests of the motherland.”

Article 55 speaks, “It is the sacred duty of every citizen of the People’s Republic of China to defend the motherland and resist aggression.

It is the honourable duty of citizens of the People’s Republic of China to perform military service and join the militia in accordance with law.”

Article 56 speaks, “It is the duty of citizens of the People’s Republic of China to pay taxes in accordance with law.”³

Democratic Republic of Vietnam Constitution:

Chapter II of the Republic of Vietnam constitution deals with the duties, which every citizen must abide. These duties serves as a reminder as well as obligations to

² 1977 Soviet Constitution

³ Constitution of the People’s Republic of China 1982



be performed on part of the citizens against the rights granted to them.

bound by certain restriction in favor of public interest and the state as a whole.

Article 44 speaks, “A citizen has the obligation to be loyal to the Fatherland. High treason is the most serious crime.”

Article 45 speaks, “1. It is the sacred duty and the noble right of citizens to defend their Fatherland.

2. A citizen shall perform military service and participate in building a national defense of all the people.”

Article 46 speaks, “A citizen has the obligation to obey the Constitution and law; participate in the safeguarding of national security and social order and safety, and observe the rules of public life.”

Article 47 speaks, “Everyone has the obligation to pay taxes in accordance with the law.”

Article 48 speaks, “Foreigners residing in Vietnam shall abide by the Vietnamese Constitution and law; and have their lives, property, rights and justifiable interests protected by Vietnamese law”⁴

On the other hand, in certain countries such as U.S.A., Australia, Canada, the fundamental duties are not specifically laid down. The common law and judicial precedents govern them. However, it does not mean that the citizens of those countries can act in irresponsible manner and they are

WHAT ARE FUNDAMENTAL DUTIES UNDER INDIAN CONSTITUTION

Fundamental duties were added by 42nd and 86th amendment acts. These acts laid down the following 11 fundamental duties under Part IVA of the Constitution of India.

Article 51A of the constitution expressly states the following duty of every citizen of the country:

Article 51A: Fundamental duties

It shall be the duty of every citizen of India –

- (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity and integrity of India;
- (d) to defend the country and render national service when called upon to do so;
- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of our composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for

⁴ The Constitution of the socialist Republic of Vietnam 2013



living creatures;
 (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
 (i) to safeguard public property and to abjure violence;
 (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.
 (k) to provide opportunities for education by the parent the guardian, to his child, or a ward between the age of 6-14 years as the case may be.⁵

general norms must be specified so as to the principles an individual must live by in the society.

- *Non justiciable:* Fundamental rights cannot be enforced in a court of law but the Hon'ble courts have in various judgments dealt with the importance and significance of the fundamental rights and the duty of every citizen not to ignore them just because they are not enforceable.
- *Collective interest:* In an era of development where individual interests are at supreme, the fundamental duties serve as a reminder towards the collective interest of society over the individual interest. They provide a sense of responsibility of an individual towards the state.

IMPORTANCE OF FUNDAMENTAL DUTIES

The fundamental duties are of very wider scope in terms of interpretation. Fundamental duties in short sentences define the very culture of our country. They clearly lay down the ideology, which every citizen of the country must cherish. The important features of the fundamental duties can be categorized as the following:

ENFORCEABILITY OF FUNDAMENTAL DUTIES

The Parliament of India has laid down no enforcement mechanism for the fundamental duties while passing them in the houses. This has led to the decline in the effective implementation of the fundamental duties in our country. The non-enforceable nature has led to decline in the importance and significance of the fundamental duties as the people pay less attention to the written postulates in comparison to the law, which provides punishment to the violators. Therefore, in comparison to the rights exercised by the people, it is clearly found that there is a negligence and ignorance on their part to imply and follow the duties as well. It is also found that these duties in today's era has become vital and essential for the growth of society, which has neglected them from the past till date. This can be found out in the following scenarios:

- *Common Heritage:* India in terms of culture is a very diverse country, but fundamental duties helps to uphold our common heritage which every man must perform and is accepted by almost every culture in the society.
- *Accepted by everyone:* Politicians of different age agree on the essence of the fundamental duties in the society. It is believed that to regulate the society certain

⁵ The Indian Constitution 1950



- *For the Fundamental Duty enumerated in 51A (a):* The government of India in power tried to implement a protocol of presenting the national anthem before the movie in the theaters which lead to nation wide criticism. This was non a bad step to promote the sense of patriotism and indirectly also upholding the duty under 51A (a). However, due to such criticisms, objections and different perspective of people, the Hon'ble courts of law have declared it non-mandatory for the people to stand and playing the national anthem before movies.
- *For the Fundamental Duty enumerated in 51A (e):* This duty is one of the most essential duty the country requires in today's time. There has been various mob violence acts around the country in the name of religion. Various criminal acts have been performed by the people which are neither acceptable by the society, nor the other religious groups. The people do intentional acts to harm and cause mental agony to certain religious groups. On the other part, still in the backward areas of the country, the practices, which are derogatory to the dignity of the women, are still performed as a custom such as female feticide. There are various laws enacted by the parliament but there is a clear failure in the implementation of such laws and a change from within the people themselves.
- *For the Fundamental Duty enumerated in 51A (g):* The era of development has harmed our environment in almost every way possible. The forest covers of our countries have vanished significantly to make the path for multiplex shopping centers and various offices. For the earning of profits and competing with other states we have harmed and extinct some of the diverse flora and fauna in the country. There have been crores spent by the government to clean our rivers but it is quite shameful that two of our main rivers, that is, Ganga and Yamuna make the way into top 10 world's most polluted rivers. There have been various acts and judicial pronouncements to stop such practices, which pollute the rivers, however still the pollution level keeps on increasing due to the unawareness and negligent act of the people.
- *For the Fundamental Duty enumerated in 51A (i):* People while utilizing the public property take it for granted because they have the mindset that it does not belong to them. They show no consideration and care for such property and utilize and damage it as per their convenience. The Tejas Express train launched by the government can prove one such example. People stole the headphones, scratched the LED screens after the only maiden run. This clearly shows that the mindset of viewpoint of people towards the care of the public property.
- *For the Fundamental Duty enumerated in 51A (k):* This duty was added later on and was not there in the initial duties. Child Labor has been one of the most prevalent practices in the country. This is mainly due to increasing wealth gap and poverty, which exists from the pre British period. Poverty is based on a principle, 'necessity knows no law' and therefore children with or without their will have been engaged in labor work to earn money. This has lead to the sacrifice of their education. Even the backward people who fails to earn the money or don't have the money to hire labor believes that increasing the count of



child will contribute as their helping hand which gradually leads to increase in the number of poor people.

SIGNIFICANCE OF FUNDAMENTAL DUTIES

A duty is an obligation on the part of the citizen whether he likes it or not. The citizen has to fulfill the obligation even if it against his will for the betterment of the cause. Fundamental duties are those duties, which are imposed by the state on the citizen as his/her basic duties towards the state which he must comply with. Hence, it is a responsibility as well as moral and in some states a legal obligation to perform these duties. The significance of fundamental duties can be summarized in the following points:

- Fundamental duties act as a corresponding responsibility of the individual towards the state while exercising the rights granted by the state.
- Fundamental duties promote patriotism among the people with a sense of belongingness towards the state. It also helps to prevent the anti national acts of the citizens.
- They help to regulate and ensure the involvement of the people in the country for the functioning of the society rather than mere spectators.

COMMITTEES AND COMMISSION ON FUNDAMENTAL DUTIES

Swarn Singh Committee

The committee was formed after the national emergency from 1975-1977. The object of the committee was the formulation of the fundamental duties. They lay down certain duties, which every citizen must follow along with the rights they enjoy. At first they decided to formulate 8 duties, however two more were added while formulating.

The committee recommended for the enforcement of such fundamental duties and laws for the effect enforcement of duties by the parliament. They also suggested that all the violators must be punished for the integrity of the fundamental duties.

The National Commission to Review the Working of the Constitution, 2002

The commission recommended that certain additional duties must be implemented along with the other duties under Article 51A of the Constitution of India. These recommendations were following:

- Duty to vote at elections
- Duty to actively participate in the democratic process of governance
- Duty to pay taxes
- Duty to foster family values and responsible parenthood



- Duty of industrial organizations to provide education to children of their employees
- With the increasing incidents of communal violence and religion-based mob violence (example beef lynching), strict adherence to fundamental duties is the need of the hour to foster feeling of common brotherhood and to maintain the unity and integrity of India.

CRITICISM OF FUNDAMENTAL DUTIES

Fundamental duties is one of the most undisputed chapter in our constitution which every political party as well as a citizen find sensible and important for the better upbringing of the state. However, it is usually criticized on the grounds that they are just laid down postulates without any enforceability and effectiveness. Fundamental duties are considered as a car without petrol, which cannot run on its own. Several other criticism can be summarized as the following:

- *Complicated:* Certain terms such as ‘noble ideas’ and ‘composite culture’ are too vague and not possible to figure out by a common man. They are not expressly defined along with their essence.
- *Not enforceable:* Parliament has laid down to enforcement mechanism for the fundamental duties and hence they cannot be challenged or enforced in a court of law. This gives the violators an open door to perform any act even if it is in contradiction with the fundamental duties.

- *Not required:* Fundamental duties by various eminent jurists are considered as a general obligation, which every man fulfills in a socialized society and hence, they are not required to be laid down in the constitutions along with the law of the land.
- *General duties:* It is also criticized on the ground that a duty may be important for one but not for another person. For example under duty (d), not everyone wants to go ahead and participate in the defense forces. It also considered that important duties such as to pay tax and several others should have been placed there.

Constitution: Many jurists believed that when the rights are enforceable in a court of law then duties must also be mentioned along with them so remind every citizen of the duties corresponding to rights.

WHY FUNDAMENTAL DUTIES SHOULD NOT BE ENFORCEABLE

When one go through the fundamental duties, the person wonders as to why such duties are not enforceable in the country as there are no objections for the enforcement of the fundamental duties. Fundamental duties are positive and greatly contribute towards the effective and positive building of the society. However, if we go through all the legislations enacted by the parliament of the country, we find that there are already protection laws present for the most of them. For the enquiry about the enforcement of the fundamental duties, the **JS Verma Committee** was formed. Certain specific legal provisions as noted by the committee were as following:



JUDICIAL ACTIVISM AND FUNDAMENTAL DUTIES

- *For the Fundamental Duty enumerated in 51A (a):* The Prevention of Insults to National Honour Act 1971 was enacted to ensure that no disrespect is shown to the National Flag, Constitution of India and the National Anthem.
- *For the Fundamental Duty enumerated in 51A (e):* Section 153A of the Indian Penal Code (IPC) prohibits writings, speeches, gestures, activities, exercises, drills, etc. aimed at creating a feeling of insecurity or ill-will among the members of various communities.
- *For the Fundamental Duty enumerated in 51A (c):* Activities and assertions prejudicial to national integration constitute offence under Section 153B of the IPC.
- *For the Fundamental Duty enumerated in 51A (e):* Offences related to religion and caste are covered in Sections 295-298 of the IPC (Chapter XV) and provisions of the Protection of Civil Rights Act, 1955.
- Section 123(3) and 3(A) of the Representation of People Act, 1951 declares soliciting of votes on the ground of religion and the promotion of feelings of ill will and hatred among different religious communities as a corrupt electoral practice.
- Article 51A(g) regarding protection of environment has received particular attention from the various courts. The JS Verma committee on Fundamental Duties has listed and documented as many as 138 Supreme Court cases in the area of environmental protection.⁶

Fundamental duties per se are not enforceable and non remedial in the court of law hence a writ of mandamus cannot be sought against any individual, as pronounced in the judgment by the Hon'ble Rajasthan High Court in **Surya V. Union of India**.⁷ However, the Indian judiciary has always considered them to be an integral part of our constitution and in various judgments pronounced the importance of the duties as laid down by the framers of the constitution.

The realization and importance of the fundamental duties can be figured out from the following judicial pronouncements:

In **Chandra Bhawan Boarding V. State of Mysore**,⁸ the Supreme Court before the insertion of fundamental duties, the court emphasized that the absence of duties in respect of the rights granted to the citizens is a fault in the constitution. There must be presence of the duties, which enables the legislature to build the society in a more effective and welfare method.

In **Ambuja Petrochemicals Limited V. A.P. Pollution Control Board**,⁹ the industry was discharging the partially treated effluents in the river. The state board gave the order for the factory to be closed.

⁷ AIR 1982 Raj 1, WLN 198

⁸ 1970 AIR 2042

⁹ AIR 1997 AP 41

⁶ JS Verma Committee Report



On appeal it was held that the order was neither shocking nor excessive punishment and hence valid.

In **AIIMS Student's Union V. AIIMS**,¹⁰ the Supreme Court laid down the importance of the fundamental duties. The Hon'ble court observed that though the duties are not enforceable, yet they provide guidance for the people and for various legal issues.

The Supreme Court in **Sanjeev Bhatnagar V. Union of India**,¹¹ the Supreme Court rejecting the plea to exclude 'Sindh' from the National Anthem on the basis of territorial allegations stated that the word 'Sindh' has cultural connotation and the National Anthem is immortal and inalienable and cannot be changed or altered.

There have been numerous cases by social activists such as MC Mehta for the protection and restoring of the environment. The courts and tribunals punish the polluters of environment with heavy fines and seizures of certain illegal factories.

CONCLUSION

Every right comes with certain duty and if we enjoy all our fundamental rights be it right to equality or right to life and personal liberty, we must abide by the fundamental duties which are defined under Part IV of the Constitution of India for the common interest of the individuals.

Fundamental duties are those duties, which are imposed by the state on the citizen as his/her basic duties towards the state which he must comply with. A Fundamental Right Heavy democracy in total disregard to Fundamental Duty is on shaky ground in the long run. For a multi racial, multi cultural and plural society like India, nation building has to be a main concern and hence, the importance of symbols of nationhood – the anthem, the flag, the song, the epics and texts, culture must be felt.

The only problem is, the parliament while passing these duties, followed the no enforcement mechanism which lead to the deterioration in implication of these duties and people don't even bother about their duties towards the society.

USA 35th President Kennedy had famously said, '**Ask not what the nation has done for you but what you have done for the nation.**'

His words appear prophetic when we look at the existing situation in India. Everyone seems to be looking at the state for freebies, there appears to be no concern for self development & self empowerment and yes, people are increasingly vocal about their rights for which they don't think twice before taking to streets and damaging public property.

It is usually criticized on the grounds that they are just laid down postulates without any enforceability and effectiveness. People don't comprehend that these duties are vital for the growth of the citizens individually as well as for the growth of the society as a whole. Ambedkar incorporated the civil rights for the depressed classes into law books because he felt Hindu society won't change by mere calls for change. The same

¹⁰ AIR 2001 SC 3262

¹¹ AIR 2005 SC 2841



needs to be done now. Fundamental Duties are very important for building nationhood and an energetic civil society. They are no less important than the Fundamental Rights and therefore there is a need for these duties to be obligatory for all the citizens subject to the State enforcing the same by means of a valid protection laws.

