



Fundamental Duties: The Neglected Pillar Of The Indian Constitution

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Abstract

Since the time immemorial the emphasis in Indian society in accordance with the dictates of the ancient scriptures has been on the individual's "Kartavya" this is performance of one's duties towards society, the country and especially one's parents. In Hindu system *dharma* stand for duty it signifies the sum total of religious, moral, social and legal duties. The framers of the Constitution thought that fundamental duties flow from the fundamental rights and the idea that it was the citizen's duties on which were based fundamental freedoms; and fundamental duties would constitute the cornerstone of the arch of the established socio-political order. Fundamental Duties are essential for building a responsible and harmonious society. They guide citizens in their moral and civic obligations, fostering a collective ethos that is vital for the sustained progress and well-being of the nation. Fundamental Duties can be summarized as a set of moral and ethical obligations that citizens are expected to uphold towards a nation. 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 basic norms of democratic conduct and democratic behaviour. This article shades light on the importance of proper enforceability of fundamental duties along with the role of judiciary for the proper implementation of fundamental duties through different enactments. The importance of different enactment is also showing its contribution towards the fulfillment of fundamental duties.

Keywords: Dharma, Indian Constitution, Fundamental Rights, Fundamental Duties, Democracy

Introduction

चातुर्वर्त्यं मया सृष्टं गुणकर्मविभागशः।
तस्य कर्तारमपि मां विद्ध्यकर्तारमव्ययम्

Fundamental Duties are the foundations of human dignity and national character. Every man no matter in what country he stays, what religion he professes, what language he speaks or what race or caste he belongs to, has been performing his duties since time immemorial. There could be no two options that every man has duties towards the universe, his nation, his parents and his guru. The constitutional system shows that we have established a duty based society where the right guaranteed to an individual is the right to perform duty.¹ The concept of duties is very ancient one of Indian civilization. If one tries to look into the religious and cultural history of India, including the edicts of Ashoka, teachings of Bhagwat Geeta, the Bible and the Quran, one would be convinced about his religion towards the nation and towards humanity.²

Karma is duty. The law of Karma which is the fundamental assumption of Hindu ethics and of all Indian philosophical systems is the formulation of the same law necessary in the spiritual life of man. The rights and duties are complementary to each other. There are express and direct

¹ D. N. Sexena(Ed.), *Citizenship Development and Fundamental Duties* 46 (Abhinav Publications, New Delhi, 1st edn., 1988).

² Sylvia Arnold, *The Bhagwat Gita in Day-to-Day Life* 36(Wiltshire, United Kingdom, 1st edn., 1983).

provisions of fundamental duties in some nations in their constitution or otherwise. Indian Constitution also contains the provisions related to fundamental duties.

Fundamental Duties

Throughout the freedom struggle the duty concept was always there in our thoughts. Gandhiji emphasized the importance of fulfillment of one's duty, not merely in an individual's life but also in the very freedom struggle. When freedom appeared to us to be at our doorstep, we started thinking in terms of having a chapter on fundamental duties in our Constitution.³ Swaran Singh committee was appointed by congress party for a review of the constitution and recommended that certain fundamental duties and obligations should be included in the Constitution. And by the 42nd Amendment Act 1976 fundamental duties were added in the Indian Constitution under part IV-A.

Article 51-A⁴

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 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 endeavor and achievement.
- k) 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.⁵

It is submitted that there is no originality in the idea of fundamental duties of citizens either in the suggestions made by Dr Karan Singh (which is more or less paraphrase of some of the articles of the Constitution of the USSR) nor in the supplementary report of Swarn Singh Committee. None of them talked of the fundamental duties of the state. Since independence, probably the country has been living under unexpressed apprehensions, where an attempt is made to dilute everything.⁶

Objects of Fundamental Duties

The fundamental duties have been incorporated in the Constitution with the mere object to remind every citizen that while enforcing his fundamental rights, he must also be conscious of his fundamental duties. That he cannot enforce his fundamental rights without adhering to the fundamental duties. These duties would help to strengthen our democracy. The makers of our Constitution had never contemplated any controversy between fundamental rights and fundamental duties. We have borrowed these duties from the Constitution of Japan, Republic of China and USSR.⁷

As stated earlier, fundamental duties are part of ancient Indian culture towards the nation. Against these duties what they expected was to have certain welfare schemes as contemplated in part IV of our Constitution which refers to the directive principles of state policy.⁸ Therefore, by the 42nd amendment to our Constitution all doubts have been removed and the fundamental rights of an individual are now made subservient to the directive principles under the constitution.⁹

³ Paras Diwan, *Indian Constitution* 325 (Allahabad Law Agency, Allahabad, 2nd edn., 1981)

⁴ The Constitution of India

⁵ Ins. By 86th Amendment Act, 2002.

⁶ Dr. Abhinav, *The Indian Constitution* 22 (Shashwat Publication, Chhattisgarh, 1st edn., 2023).

⁷ A. D. Girme, A. Ghatol, J. Khandare, "Fundamental Rights and Duties: Two Sides of a Coin" *IJHS* 2404 (2022).

⁸ Gautam Bhatia, Rights, "Duties and the Constitution" *The Hindu* Feb. 26 2024.

⁹ *ibid*

Need for Fundamental Duties

Rights and duties are correlative. The fundamental duties are, therefore, intended to serve as a constant reminder to every citizen that while the Constitution specially conferred on them certain fundamental rights, it also requires citizens to observe certain basic norms of democratic conduct and democratic behaviour.¹⁰ It was claimed by the ruling party congress that what the framers failed to do was being done now. The omission is being rectified by providing a chapter on citizen's duties. It was argued that in India people lay emphasis only on rights and not on duties.¹¹

Speaking at a seminar organised by Socialist India on October 17, 1976 Shri Gokhale observed that the duties of a citizen enumerated in the bill read like a poem, crossing all barriers of politics. They were the beacon light of a citizen, guiding him in his function.¹² While defending the inclusion of the fundamental duties in the Constitution, Prime Minister Indira Gandhi stated in Parliament that the chapter on fundamental duties had been introduced not to smoothen rights but to establish democratic balance.

Enforcement of Fundamental Duties

Fundamental rights are specially made enforceable, the directives shall not be enforceable by any court as regards the fundamental duties nothing is stated.¹³ Although fundamental duties provided by part IV-A of the Constitution are not enforceable like fundamental rights. Yet the Parliament is competent to implement these duties by making laws. Some of these duties are enforceable under ordinary law. The Prevention of Insults to National Honors Act 1971, Wildlife Protection Act 1972, the Water (Prevention and Control of Pollution Act 1974 are some such laws. A time may come when the Parliament may be required to give a second look and to provide teeth for the enforcement of these duties and our experience regarding Directly Principles may be repeated in this case as well.¹⁴

Article 51-A does not provide any legislative power to enforce these duties if they can be made enforceable at all. The legislative action, as also the judicial action and executive action in due course, might reflect the awareness of the moral obligations underlying of the citizens and might adopt legislation for purposes of provisions of Part III of the Constitution; but courts may make use of the moral perception behind that duties for interpretation of legislations and for imposing legislative limitations on fundamental rights in situations in which the duty of the state in Part IV-A a might conflict; that conflict must at present be deemed as remote.¹⁵

Legal Utility of Fundamental Duties

The fundamental duties inscribed in the Constitution are a mixed bag of exceptions and exhortation. Quite a good number of these items are those which are enforceable today even without their being specially incorporated in the Constitution. In this category all the items to abide by the Contribution, respect the National flag and National Anthem, to defend the country and render national service when called upon to do so and safeguard public property.¹⁶ To uphold and protect the sovereignty, unity and integrity of India draws sustenance from the same moral force from which the Constitution 16th or anti and secessionist amendment itself steams.

The legal utility of fundamental duties is similar to that of the directive principles as they stood in the Constitution of 1949; while the directives were addressed to the state without any sanction, so are the duties addressed to the citizens without any legal sanction for their violation.¹⁷ The citizen, it is expected, should be on his own monitor while exercising and enforcing his fundamental rights remembering that he owes the duties specified in Article 51-A to the state and that if he does not care for the duties he should not deserve the rights. For instance, a person who burns the Constitution in violation of the duty in Article 51-A cannot assert that the meeting or at which it was

¹⁰ V.D.Mahajan, *Constitutional Law of India* (Eastern Book Company, Lucknow, 1st edn., 1984).

¹¹ Uday Raj Rai, *Fundamental Rights and Their Enforcement* 786 (PHI Learning Pvt. Ltd., New Delhi, 2011).

¹² *ibid*

¹³ T.K.Tope, *Constitutional Law of India* 258 (Eastern Book Company, Lucknow, 3rd edn., 1982).

¹⁴ Dr. S. Dayal, *The Constitutional Law of India* 225 (Allahabad Law Agency, Allahabad, 7th edn., 1979).

¹⁵ *ibid*

¹⁶ Shalu Nigam, *Our Fundamental Rights and Duties* 36 (We the People Trust, New Delhi, 1st edn., 2008).

¹⁷ Durga Das Basu, *Constitutional Law of India* 134 (Kamal Law House, Kolkata, 5th edn., 1988).

burnt by way of demonstration against the government should be protected by the freedom of expression or assembling guaranteed by Article 19.¹⁸

Relationship between Fundamental Rights, Directive Principles and Fundamental Duties

The directive principles have been used to uphold the constitutional validity of legislations in the case of a conflict with fundamental rights. Article 31-C added by 25th Amendment in 1971, provide that any law made to give effect to the directive principles in article 39(b), (c) would not be valid on the grounds that they derogated from fundamental rights conferred by articles 14, 19 and 31. The application of this article was sought to be extended to all the Directive Principles by the 42nd Amendment Act in 1976, but the Supreme Court struck down the extension as void on the grounds that it violated the basic structure of the Constitution.¹⁹ The fundamental rights and directive principles have also been used together in forming the basis of legislation for social welfare.

The Supreme Court in Keshavanand Bharati case has adopted the view of fundamental right and directive principles being complementary to each other, each supplementing the other role in aiming at the same goals of establishing a welfare state by means of social revolution. Similarly the Supreme Court has used the fundamental duties to uphold the constitutional values of statues which seek to promote the objects laid down in fundamental duties.²⁰ These duties have also been held to be obligatory for all citizens, subject to the state enforcing the same by means of a valid law. The Supreme Court has also issued directions to the state in this regard, with a view towards making the provision effective and enabling citizens to properly perform their duties.²¹

Now the question arises whether these duties are fundamental in nature? Also are fundamental rights correlative to fundamental duties? The answer of both these questions is negative, because the framers of the Constitution have mentioned the limitation on the fundamental rights in the chapter of fundamental rights itself, while the chapter of fundamental duties was inserted in the Constitution in 1976 by the 42nd Amendment Act. Fundamental duties are independent of fundamental rights.²² It is incorrect to suppose that since the state confers fundamental rights on citizens and undertakes obligations upon itself in the form of directive principles, duties should likewise be imposed on citizens.²³ Also these duties are not fundamental in nature but rather they are vaguely defined standards of behaviorism for the citizens.

Drawbacks in Fundamental Duties

The chapter containing fundamental duties is generally criticized on the ground that these duties are not justifiable like directive principles of state policy. These duties have been termed or seen merely as moral homilies and platitude.²⁴ It is submitted that certain fundamental duties under chapter IV-A of the Constitution are so vague in their meaning that they can hardly be perceived by the common people of this country where most of the people are illiterate and poor and quite unaware about their fundamental rights, not to speak of these fundamental duties.²⁵

For instance, different interpretation may be made as to what includes and what does not in the valuation and preservation of rich heritage of our composite culture likewise people may have basically different notions about what constitute the spirit of inquiry; in the same way different sections of the people may have their own version in striving towards the excellence in all spheres of collective and individual life so that the nation constantly rises to higher level of endeavor and achievement.²⁶

The most slippery position lies with the duty of cherishing and following the noble ideas which inspired our national struggle for freedom. This duty should be examined in the light of this fact that the different forces and classes of the country took part and supported the freedom struggle with different aims in their minds, because liberation meant to them the solution of their problem. Thus these duties are so worded as to enable a common man to understand the underlying meanings of the

¹⁸ibid

¹⁹ Sunita Adhav, "Importance of Fundamental Rights vis-a vis Fundamental Duties" 5 *OJLSS* 43 (2010).

²⁰ Shamim Bano, "Relevance of Fundamental Duties in Indian Scenario" 11 *IJCRT* 936 (2023).

²¹ Dr. M.V.Pylee, *Constitutional Government in India* 221 (S.Chand & Company Ltd., New Delhi, 6th edn., 2006).

²² Subhash C. Kashyap, *Citizens and the Constitution* 179 (Ajanta Publications, New Delhi, 3rd edn., 1994).

²³ ibid

²⁴ N.V.Pranjape, *The Role of Directive Principles Under the Indian Constitution* 116 (Central Law Agency, UP, 1st edn., 1975).

²⁵ Abantika Ghosh, "Explained: What Fundamental Duties mean" *The Indian Express*, December 4, 2019.

²⁶ <https://en.wikipedia.org> (last visited on 15 July, 2024).

words.²⁷ Yet another loophole of the fundamental duties is that despite being duties they have been appended to the directive principles of the state policy as part IV and not to the part III that contains fundamental rights. So, as it has been attached after part IV which is non-enforceable, it can thus be deducted that part IV-A should also be non-enforceable.

Judicial aspects

The fundamental duties added to the Constitution as part IV-A are term fundamental, yet they are not enforceable by courts. However, the Judiciary particularly the Supreme Court has taken help of part IV-A along with part IV to interpret the provisions of fundamental rights.

Bijoe Emmanuel vs. State of Kerala²⁸ The Supreme Court held that no person could be compelled to sing the National Anthem if he has genuine conscientious objection based on his religious belief. In this case the students belonging to Jehovah's were expelled from the school for refusing to sing the National Anthem during school prayers. The Supreme Court observed that they did not commit any offence. It was held that the expulsion of the children was violation of their fundamental right under article 19(1) (a) which also included freedom of silence. It may be stated that freedom of expression includes the right not to express.

S.N.Chouksey vs. Union of India²⁹ The court put a ban on the exhibition of the film "Kabhi Khushi Kabhi Gham" and held that the National Anthem, the symbol of history, unity, pride and glory of the country could not be sung in the movies as it was a song of advertisement for a commercial purpose. The court holding that incorporation of the National Anthem in film was improper, issued appropriate direction against the dramatization.

In West Bengal Headmasters Association v. Union of India³⁰ The syllabus was prescribed for reading in history in the state of West Bengal. West Bengal Headmasters Association laid challenge to the syllabus and laid emphasis on studying Bolshevik, Chinese and South-East Asia Revolution. But it did not lay emphasis on different phases of freedom movement in India. The association pleaded that the syllabus was violation of fundamental right under article 19 (1) (a) and fundamental duty under article 51-A (b) of the Constitution of India.

Chandra Rajkumari v. Police Commissioner, Hyderabad,³¹ In this case Andhra Pradesh High Court has observed that holding of beauty contest by depicting in any manner the figure of a women, form, body or any part thereof in such way so as to have the effect of being in decent or derogatory to the women, offended article 14, 21 and 51-A (e).

In Rajiv Mankotia v. State of Haryana,³² The Punjab & Haryana High Court examined the provisions of the Ancient Monuments and Archaeological Sites and Remains Act, 1958 and uphold the Government notification under section 4 of the Act declaring an area around Brahm Saronvar at Kurukshetra to be a controlled areas for the purpose of this Act.

M.C.Mehta v. Union of India,³³ also known as Taj Trapezium Case, in this case the petitioner M.C. Mehta filed public interest litigation in the court drawing the attention towards the derogation of Taj Mahal. Due to the atmospheric pollution caused by a number of foundries, chemically hazardous industries established and functioning around the Taj Mahal. The Supreme Court observed that the Taj is being a cultural heritage and also a source of revenue for the country, should be protected from the deterioration and damage due to the atmosphere and environmental pollution.

Devandranath Gupta vs. State of Madhya Pradesh³⁴ reference was made to the duty contained in article 51-A (d). In this case Davendranath Gupta in his Capacity, as a teacher as well as secretary of

²⁷ <https://knowindia.india.gov.in> (last visited on 15 July, 2024).

²⁸ AIR 1987 SC 748.

²⁹ AIR 2003 MP 233.

³⁰ AIR 1983 Cal.448.

³¹ AIR 1998 AP 302.

³² 1997 (4) SCALE 368.

³³ AIR 1997 SC 734.

³⁴ AIR 1983 MP 172.

the Divisional Teachers Union, Gwalior claims a writ in the nature of mandamus directing the respondents not to take any work from the teachers other than 'teaching' and claims quashing of all such instructions/ orders issued by the respondents which is the violation of the fundamental right guaranteed under Article 23 of the Constitution of India.

The court held that Article 51-A confers the duties on every citizens. As clause (d) of Article 51-A defined that it shall be the duty of every citizen of India to defend the country and render national service when called upon to do so. The term 'national service' and 'public purpose' are synonymous. The service required to be rendered by the teachers towards educational survey, family planning, preparation of voting list, general elections, preparation of election cards etc. were for public purpose and therefore, even if no compensation was paid, that did not contravene Article 23.

Legislative approach

Legislature is one of the most important pillars of the Constitution. Parliament has made number of Acts by which these duties are made enforceable. Some of these Acts are mentioned as under-

Prevention of Insults to National Honours Act, 1971

The prevention of insults to national Honours Act 1971 is a law in India prohibiting desecration of or insult to the country's national symbols including the flag, Constitution and Anthem. The legislative passed a version of this law in 1971 with significant amendments in 2003 that further prohibited many previously common uses the flag such as draping it over a podium during a speech, using it as decor or incorporating it into clothing designs. This Act is widely applied in all cases of insult to national honour through disrespect to national symbols, is reported. Whoever in any public place or in any other place within public view burns mutilates, defaces, defiles disfigures, destroys, tramples upon or otherwise shows disrespect to or brings into contempt (whether by words, either spoken or written or by act) the Indian National Flag or the Constitution of India or any part therefore, shall be punished with imprisonment for a term which may extend to three years, or with fine or with both.

Ancient Monument and Archaeological Sites and Remains Act, 1958

This Act provides for the preservation of ancient and historical monuments and archaeological sites and remains of national importance for the regulation of archaeological excavations and for the protection of sculptures, carvings and other like objects.

Antiquities and Art Treasures Act, 1972

This Act is enacted to regulate the export trade in antiquities and art treasures and to prevent smuggling and fraudulent dealings in antiquities. Antiquities includes sculptures in stone, terracotta, metals, ivory, painting in paper wood, cloth, skin etc. which have been in existence for not less than 100 years. The Act defines that it is unlawful for any person or other than the central government or any authority authorized by central government to export antiquity or art treasures, is liable for punishment for a term not less than three months which may extend to three years or with fine.

Indian National Trust for Art and Cultural Heritage, 1984

INTACH was founded in 1984 in New Delhi with the vision to create the membership organisation to stimulate and spearhead heritage awareness and conservation in India. Among the tasks undertaken by INTACH are restoration of monuments and their management; advocacy for Heritage property conservation; public awareness; establishment of heritage clubs in school and colleges and heritage walks to various unprotected sites.

The Forest (Conservation) Act, 1980

Alarmed at India's rapid deforestation and resulting environmental degradation, the central government enacted the Forest (conservation) Act in 1980. As amended in 1988, the Act requires the approval of the central government before a state derecognises a reserved forest, uses forest land for non-forest purposes, assigns forest land to a private person or corporation or clears forest lands for the purpose of reforestation. An advisory committee was constituted under the Act advises the centre on these approvals.

The Water (Prevention and Control of Pollution) Act, 1974

The Water Act of 1974 was the culmination of over a decade of discussion and deliberation between the centre and the states. The statement of the objects and reasons of the Act states that show that problem of population of rivers and stream has assumes considerable importance and urgency and it seeks to ensure that the domestic and industrial effluents are not allowed to be discharged into water courses without adequate treatment. The Act is quite comprehensive in its coverage of various types of waters. The objective of the Act is very clear that it seeks to prevent and control water pollution and also to maintain and restore the wholesomeness of water which is indicative of the legislative intent.

The Act also makes the provisions for the establishment of Central Board for prevention and control of water pollution and State Boards for the same purpose which are autonomous bodies. The Act further seeks to control pollution primarily through standards to be laid down by the boards and the consent orders issued by them. As the Act aims at the welfare of the people and is seen to have more immediate and visible impact on the social services like hazardous of pollution, the Act can very well be called welfare legislation.

The Air (Prevention and Control of Pollution) Act, 1981

The Air Act framework is similar to the one created by its predecessor, the Water Act of 1974. To enable and integrated approach to environmental problems the Air Act extended the authority of the Central and State Board established under the Water Act, to include air pollution control. States not having water pollution was required setting up air pollution board. Under the Air Act, all Industries operating within designated air pollution control must obtain a consent from the state boards. The states are required to prescribe emission standards for industries and automobiles after consulting the Central Board and noting its ambient air quality standards. Prior to its amendment in 1987 the Air Act was enforced through mild courts administrated penalties on violators. The 1987 amendment strengthen the enforcement machinery and introduced stiffer penalties. Now the boards may close down defaulting industrial plants or may stop its supllly of electricity or water. Notably the 1987 amendment introduced a citizen's initiative provision into the Air Act and extended the Act to include air pollution

Conclusion

Fundamental duties are the essence of a democratic country like India, notwithstanding its non enforceability. A democratic state cannot exist if its citizens are not willing to participate actively in government and assume responsibility for the country's best interests. Fundamental duties are given in part IV-A of the Constitution are addressed to the citizens, but these duties are also useful in matters of constitutional and statutory interpretation, this view is also accepted by the Supreme Court. Though these duties are not directly enforceable against the state, the court may issue appropriate directions under article 32. There is no proper legislation on fundamental duties. But the parliament is empowered to make legislation in this regard. The fundamental duties may be made more effective if these duties would be directly enforceable. We, as responsible citizens of India should fulfill the duties as listed in the Constitution with the same quantum of importance which we give to the other articles and enforceable regulations. Only this will contribute to the development of the nation into a model nation.

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