

# Relevance of Fundamental Rights and Duties – A Critical Study

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**Abstract:** *The Indian tradition through the ages has laid greater emphasis on duties than on the rights of citizens. According to Ramayana*

*“As words are made to fly and rivers to run, so the soul to follow duties”*

*Duty is derived from the word ‘Due’ which means something that we owe towards the society we are a part of. Thus we can consider duties as obligations or responsibilities towards the individual as well as the society. The fundamental duties and fundamental rights are inseparable and two side of same coin. Every citizen must follow the fundamental duties. But unless people know the fundamental duties, they cannot observe fundamental duties. The unawareness about fundamental duties among citizens in India is major problem. The jurisprudence of law is that each right has a relating obligation. Moreover, Rights and Duties are cut out of the same cloth which cannot exist independently. A responsible citizen is a person who plays out his social and moral commitments and his ethical obligations towards the state and their compatriots..*

**Keywords:** Duty, obligation, Fundamental duties, jurisprudence, moral

## I. INTRODUCTION

Constitution being supreme in itself creates the fundamental right with a remedy to enforce them under Article 32 or 226 of the constitution of India. The request may be that of citizens and aliens. The corresponding duty is with the state. The right is enforceable against the state and the instrumentalities of the state, as the case may be. Likewise, though Directive principles were non-justiciable, their justiciability in some situations has not been ruled out. Again the constitution creates some aspect of the democratic process and provides a mechanism for compliance. The said mechanism may be by a constitutional process itself or through statute (s). [4]The Fundamental Duties are the latest addition to the constitution, making such duties explicit. In the Constitution of China, the burdens on citizens are dealt with among others in a distinct chapter deliberated from now on. Among the various constitutions in the Indian SubContinent, some duties on citizens are inbuilt in the body, while in others, they are by law, custom and precedent. Are fundamental rights, the sort of rights entrenched in written constitutions and human rights instruments, binding on individuals or other private actors? With few exceptions, most legal systems of the constitutional democratic type answer this question in the negative. The German Basic Law, for example, provides in article 1(3) that ‘constitutional rights bind the legislature, the executive, and the judiciary’, which means that they bind all the three standard state powers but not private actors such as individuals, corporations, labor unions and the like. Similarly, the Fourteenth Amendment to the United States Constitution provides that ‘no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States’. The U.S. Supreme Court built a notoriously large and obscure body of case law on top of this seemingly harmless provision — the basis of the so-called ‘state action doctrine’ — the gist of it being that constitutional rights do not bind private actors unless they are acting as surrogates of the state or are placed under privileged protection from it<sup>7</sup>. What it all comes down to is rejection of the view that fundamental rights normally bind private as well as public actors or that such rights produce not only ‘vertical’ but ‘horizontal’ effect as well. But this is hardly the end of the story. Even if fundamental rights cannot be invoked in private relations — meaning, for instance, that the plaintiff cannot base her complaint on the defendant’s violation of a

constitutional entitlement or that the defendant cannot invoke a constitutional liberty to evade liability — they are fully operative against the state in its capacity as law-maker, law-executor and law-enforcer.

In summary, the essential qualities for this research are: i) the beneficiary in whom the right resides, ii) the person burdened with matching obligation, iii) the subject matter of the right, and iv) the act or forbearance giving rise to the violation. Furthermore, the right may be discussed in a broader sense, with the right being divided into four categories: i) right, ii) liberties, iii) power, and iv) immunity. As a result, each type of right should have a correlative, such as i) Duties ii) No Right iii) Liabilities; and iv) Disabilities.

When it comes to essential responsibilities, no specific shape or type is given. As a result, the discussions focus solely on the duty at hand. 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 right topic. While the beneficiary in whom the fitting vests are arguable, the act or forbearance is the citizen's behaviour. First and foremost, the fitting vests with 'we the people of India' on them, both individually and collectively in groups, societies, and states.

#### **Origin of duties:**

The origin of duty<sup>5</sup> can be traced back to the development of ancient civilizations. For instance, the concept of “Dharma” in ancient India means righteousness and duty. Dharma consists of both legal and religious duties. Several religious texts dealt with the concept of duties such as duties of kings, citizens, and court proceedings etc. With the growth of new religions like Buddhism and Jainism, the emphasis on duties was observed as responsibility or Dhamma.

#### **Direction of Duties after Commencement of the Constitution**

After the Independence of India during the making of Constitution, the Indian Constitution dreamers coined the idea of Fundamental Duties but it was rejected because they thought that Duties comes within the Rights itself. And also the concept of Duty was always a part of Indian Ethos. However, Dr. Rajendra Prasad observed that people have become ignorant towards lawfulness which deeply disturbed him. Yet they encompassed the Duties in shape of Chapter IV (Directive Principles of State Policy). The infamous National Emergency (1975) imposed by former Prime Minister Mrs. Indira Gandhi on the grounds of “internal disturbance” revoked the idea of incorporating Duties in the Constitution. The Fundamental Duties will play a vital role in establishing the legal order in the Country which was also justified by then Law Minister H.R. Gokhale who stated it will be a “Sobering Effect” on “Restless Spirits”. He said, “Fundamental Duties is a poem embodying noble ideas, rhythm and harmony”, with the impress of “the hand of the Prime Minister”.

#### **Nature of Fundamental Duties**

The concept of Duties is ancient in India than in Greek and Roman political system. Our mythological scriptures such as Bhagwat Gita and Ramayana also taught people to perform their duties dedicatedly. According to Indira Gandhi, “The moral value of Fundamental Duties[2,3] would not be smother rights but to established a Democratic balance by making people conscious of their duties equally as they are conscious of their rights”

Fundamental Duties are of moral and civic nature. Respecting the Constitution, National Flag and National Emblem, uphold and protect the sovereignty, unity and integrity of India comes under the civic domain while preserving rich heritage, countries composite culture, safeguard public property, protect and improve Natural Environment comes under moral domain.

Fundamental Duties were created to teach Indians to live within a certain code of conduct.

The constitution holds some Fundamental Rights for foreigners while all the Fundamental Duties are exclusively reserved for Indian citizens.

Fundamental Duties are not-enforceable as there is no legal sanction behind them.

**Relevance:** The Fundamental Duties serve as reminder to citizens that while abusing the rights, they must also be aware of the obligation they owe to their Nation, Society and fellow citizens. Although Fundamental Duties are not enforceable legally, Supreme Court of India has stated that it does not mean that Duties hold no significance in Case of

Minerva Mills Ltd. Vs Union of India (1980) Some acts have been brought by the Parliament and verdict by Supreme Court to make Fundamental Duties of the binding nature – Environment (Protection) Act, 1986; National Honour Act, 1971; The Forest (Conservation) Act, 1980; Justice Verma Committee, 1998.

### **Features of Fundamental Duties**

The fundamental responsibilities included both moral and civic obligations. Respecting the constitution, national flag, and national emblem, for example, is on the moral front line, while cherishing good values from the freedom struggle is on the civic front line.

While some fundamental rights are provided to both foreigners and aliens, fundamental responsibilities are limited to Indian citizens and do not extend to foreigners.

Fundamental Duties, like Directive Principles, are non-enforceable in nature. The government is powerless to hold them accountable for their actions.

The responsibilities are largely based on Indian mythology, religions, and customs.

Essentially, they were the responsibilities that codify chores that are essential to the Indian way of life.

### **Fundamental Rights as Principles**

The law is a balance of rights and responsibilities. 'A right is an interest recognised and protected by the rule of law,' says Salmond. It is a conflict of interest, respect for which is a responsibility, and disrespect for which is a sin.' Except in a few cases under general exclusions, breach of duty or disrespect must be prosecuted. Duguit, on the other hand, concludes that "no one has any other right except to execute his duty constantly." In his opinion, the law is simply a manifestation of each individual's tasks as a member of the social organisation to promote social unity. Like Prof. Kelson, the proponent of the Pure Theory of Law, several jurists believe that there is no such thing as a legal right. Roseau's balanced viewpoint is that humans were born free, but they are enslaved everywhere. On closer examination, these shackles appear to be self-imposed by males in society and as members of a democracy. The restraint on one's right is what the chains refer to. Whatever shape it may be named, the total of all bonds forms law. These restraints assist a society's shared cause for cohesiveness and toward a common purpose.

"Thus, the word "fundamental" has been used in two different senses under our Constitution. The essential character of the fundamental rights is secured by limiting the legislative power and by providing that any transgression of the limitation would render the offending law pretendo void. The word "fundamental" in Article 37 also means basic or essential, but it is used in the normative sense of setting, before the State, goals which it should try to achieve."

The Supreme Court has held that Article 51 A can be used to interpret ambiguous statutes. Fundamental Duties have been particularly invoked in litigation concerning the environment.

Fundamental Rights are having more importance than any other legal rights. Inclusion of certain rights in the Part III of the Constitution makes them distinct from other legal rights in following ways:

(a) Fundamental Rights cannot be diluted or abridged by any other ordinary legislation. It can only be diluted or abridged by amending the Constitution itself. And as ruled by the Supreme Court in many judgments, basic Structure of the Constitution cannot be altered. On the other hand, any other legal right may be diluted by ordinary legislation.

(b) As mentioned in Article 13(2), no law can be made which takes away or abridges any of the fundamental right guaranteed in Part III. 6. However, as a no right can be absolute, reasonable restrictions can be made. However restrictions should be on the grounds mentioned in the Constitution itself and it can only be imposed by way legislation and not by any executive order.

The **Apex Court in AIIMS Students' Union v. AIIMS**, (2002) 1 SCC 428 observed as under: "Almost a quarter century after the people of India have given the Constitution unto themselves, a chapter on fundamental duties came to be incorporated in the Constitution. Fundamental duties, as defined in Article 51-A, are not made enforceable by a writ of court just as the fundamental rights are, but it cannot be lost sight of that "duties" in Part IV-A Article 51- A are prefixed by the same word "fundamental" which was prefixed by the founding fathers of the Constitution to "rights" in Part III. Every citizen of India is fundamentally obligated to develop a scientific temper and humanism. He is

fundamentally duty-bound to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievements. State is, all the citizens placed together and hence though Article 51-A does not expressly cast any fundamental duty on the State, the fact remains that the duty of every citizen of India is the collective duty of the State.

Recently in *Charu Khurana v. Union of India*, (2015) 1 SCC 192 the Supreme Court stated that, it is clear as day that the duty of a citizen has been extended to the collective duty of the State. To elaborate, it becomes the duty of the State to provide for opportunities and not to curtail the opportunities.

In *Javed v. State of Haryana*, (2003) 8 SCC 369 it has been held that Fundamental rights are not to be read in isolation. They have to be read along with the chapter on directive principles of State policy and the fundamental duties enshrined in Article 51A.

Further, in *State of Gujarat v. Mirzapur [(2005) 8 SCC 534]* while considering provisions of Articles 48, 48-A and also Article 51-A(g), the Supreme Court held: “58. It is thus clear that faced with the question of testing the constitutional validity of any statutory provision or an executive act, or for testing the reasonableness of any restriction cast by law on the exercise of any fundamental right by way of regulation, control or prohibition, the directive principles of State policy and fundamental duties as enshrined in Article 51-A of the Constitution play a significant role.

## II. CONCLUSION

Fundamental rights and duties are an important part of the Indian constitution. There are six fundamental rights that include right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights, and right to constitutional remedies. The fundamental rights are given in the article 12 – 35 of the Indian constitution. These rights help in the personality development of every citizen and protect his/her dignity. Fundamental duties are the responsibility of the Indian citizens towards the country. There are 11 fundamental duties given in article 51(A) of the constitution.

## REFERENCES

- [1]. Amogh Dabholkar & Vaishnavi Kamble, Fundamental Duties as a mean to achieve responsible Citizenry, SCC Online Blog (July 1,2020), Fundamental Duties as a mean to achieve responsible Citizenry | SCC Blog (sconline.com)
- [2]. Kesavananda Bharati Sripadagalvaru & Ors. vs. State Of Kerala & Anr (1973) 4 SCC 225, AIR 1973 SC 1461
- [3]. Minerva Mills Ltd. And Ors. vs. Union Of India And Ors. AIR 1980 SC 1789
- [4]. Manusmriti Verse 8.15
- [5]. Fitzgerald P. J., Salmond on Jurisprudence (12th Ed. 1966)
- [6]. Harold Joseph Laski, Leon Duguit & Frida Laski, Law in the Modern State (8th august 2015) AndesitePress
- [7]. R.S. Clark, Hans Kelsen’s Pure Theory of Law (vol. 22) Association of American Law Schools
- [8]. Mohd Aqib Aslam, Rights And Duties In The Light Of Jurisprudence. An Overview, Legal Service India E-Journal, M.C. Mehta (2) vs. Union of India (1983) 1 SCC 471