

Fundamental duties: An analysis in the Indian context

Fundamental duties: An analysis in the Indian context

by Tanmay Sen and Navin Sinha*

Cite as: (2011) PL September S-21

O citizens of the Bharat! As our ancient saints and seers, leaders and preceptors have performed their duties righteously.

Similarly, you will not falter to execute your duties. (Rig.10.191.2) At the onset let us begin by asking what is duty? Jurisprudentially speaking duty is an obligation recognised and effected by law, to conform to a particular standard of conduct towards another, deviance from which is considered as wrong. 1 This simple definition of duty, however enlightening it may appear in terms of a definition, does have its own share of confusions as well. To start with one may be bound to ask why is one obliged to do a duty? Or another may ask what is there in a duty that we are obliged to do it? Or some may ask what standard of conduct and who decides the standard for deciding the wrongness or the rightness of our conduct? And sometimes we may even dare to ask why wrong? These are some of the multi-tasked questions that one may invariably come across while dealing with the complex but highly important subject-matter of duty. Of course most of the questions have been properly dealt with in their due place by highly erudite scholars and for which convincing answers have also been provided. Nonetheless, no amount of in-depth discussion on duty will allow us to move forward with this article unless we can, in categorical terms lay down why it is considered wrong to deviate from the standard of conduct, which forms a part of our obligation towards another.

Amongst other important things which law does, it is also a great social leveller or at least it tries to do so. It is a balance-maker in the society. Strictly speaking its function is limited to reconciling conflicting interests in the society. It may have other functions to do but in the long run these functions are nothing but a facilitator towards helping law perform its basic function, namely, maintaining balance in the society.² The Hindu philosophy of law based on dharma is a prime example of it.³ Coming back to interests or more precisely conflicting interests, we are confounded face to face with yet another question, though not as difficult as the one asked before. How does law reconcile interests? Interestingly, law does not seek to reconcile all conflicting interests, but only those interests which are worthy of protection and enforcement like my interests towards my own property or my interest towards my own life and limb or my interest towards my reputation, etc. Indeed, only when law gives its protective covering towards any interest and makes it capable of legal enforcement then an interest gets converted into rights. Right because it is right and acceptable in the eyes of the society. And for every right that is recognised by law there is a reciprocal duty—a duty prescribing a standard of conduct, so that by confining our actions within the prescribed standard, we observe the rights (a claim against another to stick to the prescribed course of conduct) of another. An alleged deviance from the prescribed standard will amount to non-observance of another's right resulting in a wrong. Thus, by doing what we are obligated to do under a prescribed course of conduct we are not only doing something right but also observing someone's right. So, whenever a right is breached by a wrongful conduct, law seeks to repair the balance by providing remedies against the alleged infringement.

The reciprocity of right and duties, and the consequent rectification of the wrong done by the non-observance of duty is the edifice on which the functional aspect of our or any legal system rests. Besides that, there is very little that law does in the society. The appropriate demarcation between rights and duties, lends law the credibility of a great social leveller. For as we have already observed law has to maintain balance (order) in the society, and in so doing it has to identify between whom and what to maintain balance. Partly by recognising rights on one part and prescribing duties on the other part, law seeks to achieve this noble purpose and ensures that the observance of one is done by the prescription of another. Therefore, in this great game of observance and prescription, augmented by the recognition of right and prescription of duty, it follows that the right and duty as a matter of jurisprudential necessity, over similar subject-matter, does not vest in the same person at the same time. For if it were to happen then it would lead to a most absurd situation where A's right would be violated by the non-performance of a duty by A himself, which would in turn lead us to an anachronous situation where A will have to sue himself for the remedy.

An area pertaining to duty, which have over the years, led to an umpteen number of scholarly works being penned down, is the chapter on fundamental duties in Part IV-A of the Indian Constitution. The Constitution of India, as such already contains a chapter on the rights of the citizens and persons and to ably supplement it, a new chapter on fundamental duties was inserted in the year 1976 by the 42nd Amendment of the Constitution. Though, non-executory in nature, fundamental duties have often been invoked in a number of decisions by the Supreme Court and the High Courts. Sometimes these duties have been equated on a par with the directive principles, or sometimes they have been treated as mere guiding principles in the study of fundamental rights.⁶ However, there have been occasions when they have been invoked extensively on the justification that these duties collectively are the duty of the State.⁷ The following paragraphs aim at a critical study of the importance of fundamental duties and to analyse it in the light of numerous interpretations given to it by the High Courts and the Supreme Court.

The growth and evolution of the concept It is an undeniable fact that India has been under the influence of the Anglo-Saxon jurisprudence till 1950. Even the Framers of the Indian Constitution were under the influence of this legacy. The Founding Father of the Indian Constitution only provided 'fundamental rights' under Part III and they did not think it necessary to add a chapter on 'fundamental duties'. The Supreme Court observed prior to the insertion of Article 51-A

13. It is a fallacy to think that our Constitution there are only rights and no duties. The provisions of Part IV enable the legislatures and the Government to impose various duties on the citizens. The mandate of [our] Constitution is to build a welfare society in which justice social, economical and political shall inform all institutions of our national life.⁸

There were until 1976 no provisions in the Constitution of India laying down the duties of the individual even though the traditions and temper of Indian thought through the ages laid greater emphasis on duties. In fact, there can be no rights in a society where there are no duties. The Hindu jurisprudence emphasised the concept of 'duty' also.⁹ The religious texts also lay down duties in the form of commands. Failure to perform such duties resulted in 'sin' for which there was 'punishment' in another world.

Almost a quarter century after the people of India had given the Constitution unto themselves, a chapter on fundamental duties came to be incorporated in the Constitution.¹⁰ Part IV-A, which deals with fundamental duties of the citizens, was added by the Constitution (Forty-second Amendment) Act, 1976, in accordance with the recommendations of the Swaran Singh Committee.¹¹ It thus brought the Constitution of India in line with Article 29(1) of the Universal Declaration of Human Rights, 1948.¹² Among the Constitutions of the world, we find mention of certain duties in the Constitutions of Japan, China, USSR, etc.¹³ When Gandhiji was requested to give his thoughts on the Universal Declaration of Human Rights, he said:

The source of right is duty. If we all discharge our duties, rights will not be far to seek. If leaving duties unperformed we run after rights, they will escape us like will or the wisp, the more we pursue them, the further they will fly.¹⁴

After the Forty-second Amendment Act, which inserted Part IV-A, the responsibility of the judiciary increased considerably and a new kind of judicial statesmanship was required to interpret the Constitution in such a way as to give a meaningful place to the fundamental duties in Indian policy.¹⁵ The following observation of the Calcutta High Court makes a very interesting reading.

4. When the court is called upon to give effect to the directive principles and the fundamental duty, the court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy-making authority.¹⁶

Practically speaking these duties are moral and social obligations¹⁷ on Indian citizens to become responsible citizens and strengthen the country. In determining the constitutionality of such laws, when enacted, the court should have regard to the directives as well as fundamental duties along with fundamental rights.¹⁸ The fundamental duties can be promoted by constitutional means¹⁹ and can be enforced only by constitutional methods.²⁰ Constitutional enactment of fundamental duties, if it has to have any meaning, must be used by courts as a tool to tab, even a taboo, on State action drifting away from constitutional values.²¹ The fundamental duties enjoined on citizens under Article 51-A should also guide the legislative and executive actions of elected or non-elected institutions and organisations of the citizens including the municipal bodies.²² As the Verma Committee on fundamental duties said:

Essentially all that is contained in the fundamental duties is just a codification of tasks integral to the Indian way of life. A close scrutiny of the clauses of Article 51-A indicate that a number of these clauses basically refer to such values as have been a part of the Indian tradition, mythology, religion and practices.²³

Although the fundamental duties were inserted during the emergency and very noble in the literal sense, cannot neither be part of a Constitution or a statute²⁴ nor give any locus standi.²⁵ They cannot be enforced by a court but only by constitutional methods.²⁶ Nevertheless, fundamental duties though not enforceable by mandamus²⁷ or any other legal remedy²⁸ still provide a valuable guide and aid to interpretation of constitutional and legal issues. In case of doubt or choice, people's wish as manifested through Article 51-A, can be served as a guide not only for resolving the issue but also for constructing or moulding the relief to be given by the courts.²⁹ The fundamental duties have no sanction attached. The citizen must introspect and endeavour to perform these duties. The sanction should be self-imposed.³⁰ The newly added Part IV-A is not a law and a fortiori, not supreme law. If the directive principles are violated or ignored nothing happens; equally if fundamental duties are disregarded, nothing happens.³¹

The Supreme Court in *Students' Union v. AIIMS*³² held that 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. Again in *L.K. Koolwal v. State of Rajasthan*³³ the Court held Article 51-A as the duty of the citizens however Article 51-A gives a right to the citizens to move the court for the enforcement of the duty cast on State, instrumentalities, agencies, departments, local bodies and statutory authorities created under the particular law of the State.³⁴

Some observations relating to fundamental duties So what is the importance of fundamental duties in the Constitution or is it important at all. As has been observed by the Supreme Court in most of the above cases fundamental duties cast a duty on the State as well as the citizens. Apparently, the chapter on fundamental duties start with the following words 'It shall be the duty of every citizen of India', which as stated in the abovementioned cases have been treated as the duties of the State as such. It is submitted, this astonishing proposition is completely incorrect. The duties of the citizens cannot

become the duty of the State because "State" and the "citizen" are two different things having their own separate legal entity. As discussed earlier "rights" and "duties" over the same subject-matter cannot coincide on the same person. The much difference between "right" and "duty" and no fundamental duties have been imposed on the State, but only on citizens of India.³⁵

The Hon^{ble} Court on similar occasion also stated that the collective duties of the citizens imply the duty of the State. However, it is hereby submitted that it is a logical fallacy, because if we apply the same logic with respect to the fundamental rights then it follows that the collective fundamental rights of the citizens will amount to the fundamental rights of the State as well, which is an absurd proposition. It will, at that time, be hard to discern upon whom the right inheres and upon whom lies the duty of its observance. Finally who will enforce the right in case of its breach?³⁶

Another significant observation regarding the importance of the fundamental duties was in L.K. Koolwal case³⁷, wherein the Rajasthan High Court made a very astounding observation. According to the Hon^{ble} Court, fundamental duties give a right to the citizens to move the Court for the enforcement of duty cast on State, instrumentalities, agencies, departments, local bodies and statutory authorities created under the particular law of the State. It is submitted that interesting though it may be, the observation was nothing but a jurisprudential error on the part of the Hon^{ble} Court. How can a chapter on duties to citizens, which is inherently unenforceable, give rights to the same citizens to move the court against the State, upon which the corresponding rights allegedly lie? How can a State be asked to perform a duty under Article 51-A when it has no such duties to perform? Or in other words how can a State, upon whom certain rights inhere be asked to perform its corresponding duty also. However, this is not denying that the State does not have duties. If the State does at all have duties, then it is under Parts III and IV of the Constitution, namely, fundamental rights and directive principles, wherein corresponding negative and positive duties lie on the State. Moreover, the observation of the Court that fundamental duty gives the citizens the power to move the court is also not entirely short of errors. Considering, that the fundamental duties are not executable, how can courts forget about making decisions, even entertain petitions under it? And if the citizens do have to move the court to ask the State to do its duty it would rather do it by way of a petition under Article 32 or 226 as a matter of their rights rather than the duty of the State.

In Article 51-A under Part IV-A the Constitution of India spells out only eleven fundamental duties to the citizen. Now the question is whether such list is exhaustive? Are there no other duties of the citizen towards the country, society?

When the fundamental rights are available to any person, non-citizen, any individual whether of good or bad character, etc. then why the fundamental duties can be performed/discharged by the citizen only?

In the ultimate analysis, when in the Indian Constitution there is a separate part which deals with fundamental duties, then there must be some effective mechanism for their proper implementation so that the ultimate objectives can be achieved for which purpose it was inserted in the Constitution by an amendment. It might be urged that there are no specific legislative entries corresponding to these fundamental duties. Although Article 248 along with Entry 97 of the Union List of the Constitution of India being a residuary entry, everything relating to fundamental duties can be brought under it. Generally, we, the people are much more aware about our rights not our duties. So if some stringent piece of legislation is there along with punishment then we can only be duty-bound otherwise not. The National Commission to Review the Working of the Constitution has also recommended some steps relating to fundamental duties.³⁸

Lastly, we have some suggestions relating to this analysis as follows: First, legislative steps should be taken for enforcement of the fundamental duties. Secondly, the fundamental duties should be performed/discharged by all who enjoy the fundamental rights under Part III of the Constitution of India. Thirdly a comprehensive list of fundamental duties should be prepared and should be included under Part IV-A of the Constitution of India which would include like duty to cast vote after attaining majority, duty to industrial organisation to provide education to children of their employees, duty not to indulge himself in corruption, duty to respect humanity and human values, etc. Last but not the least adequate steps should be taken to sensitise the people and spread general awareness among them relating to fundamental duties.

*. Lecturers, S.K. Acharya Institute of Law, Kalyani University Campus, Kalyani, W.B. 741 235.

- P. Ramanatha Aiyar, The Law Lexicon (2002), R.W.M. Dias, Jurisprudence (1985) 47.

- H.L.A. Hart, The Concept of Law (1994) 69.

- Dharma is derived from the term dhri, which means to sustain. Dhri is also referential to another Sanskrit term rt, whose direct translation to English gives us the meaning "order" (balance). Thus, dharma, which in its proper perspective is a conglomeration of rights, duties and justice all mixed together, is the source of order in the society.

- See generally, the chapter on fundamental rights and directive principles in Parts III and IV of the Constitution.

- Rural Litigation and Entitlement Kendra v. State of U.P., 1986 Supp SCC 517.

- L.K. Koolwal v. State of Rajasthan, AIR 1988 Raj 2, 4.

- All India Students' Union v. All India Medical Students' Association, (2002) 1 SCC 428.

- Chandra Bhavan Boarding and Lodging v. State of Mysore, (1969) 3 SCC 84, 93, para 13.

- The word swattva used so often in the Sanskrit language literally means "that which is due to you" it is an attempt to look at rights from the point of view of duties. [V.K.S. Chaudhary, The Ivory Tower (2002) 249].

- Supra, n. 7, 458, para 58.

- D.D. Basu, Shorter Constitution of India (13th Edn., 2004) 465.

- See, Article 29(1) of Universal Declaration of Human Rights, 1948.
- M.V. Pylee, *Select Constitutions of the World* (2nd Edn., 2003) 848.
- Subhash C. Kashyap, *Our Constitution* (2008) 157.
- Trimbak K. Tope, "Fundamental Duties and Justiciability" (1982) 2 SCC J-9.
- *Sachidanand Pandey v. State of W.B.*, (1987) 2 SCC 295, 305, para 4.
- *Supra*, n. 5.
- *Supra*, n. 4.
- M.P. Jain, *Indian Constitutional Law* (5th Edn., 2004) 1396.
- Vikas Vashishth, *Constitution of India* (2nd Edn., 2004) 143.
- *Supra*, n. 3.
- *Om Prakash v. State of U.P.*, (2004) 3 SCC 402.
- *Supra*, n. 7.
- Arvind P. Datar, *Commentary on the Constitution of India* (2nd Edn., 2007) 614.
- *Supra*, n. 20.
- *Supra*, n. 13.
- *Surya Narain v. Union of India*, AIR 1982 Raj 1, 7, para 19.
- *Supra*, n. 20.
- *Supra*, n. 3.
- Brij Kishore Sharma, *Introduction to the Constitution of India* (4th Edn., 2007) 131.
- H.M. Seervai, *Constitution Law of India*, Vol. 2 (4th Edn., 2006) 2020.
- *Supra*, n. 7, 458.
- *Supra*, n. 6.
- *Ibid*, 4, para 2.
- If the State does at all have fundamental duties, then it is under Parts III and IV of the Constitution of India, namely, the chapter on fundamental rights and directive principles.
- Take for example the "Right to Clean and Wholesome Environment", which is nothing but collective rights as determined by the extended meaning given to "right to life concept" under Article 21 and also categorised as third-generation rights. Notwithstanding the fact that it is a collective right vesting in the persons, there is still a duty on the State to observe and enforce it. Thus, if the State has a duty at all to protect the environment, it flows from Article 21 of the Constitution and not Article 51-A.
- *Supra*, n. 6.
- See, Report of the National Commission to Review the Working of the Constitution (2002).