

Fundamental Duties Under Indian Constitution: Its Relevance, Utility and Enforcement

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Abstract

In Ancient Indian "Bhagwad Gita" gave the message to the society that duty is the basis of the right in this land, there are no right but only what one ordinarily by right is what others should perform duties for him. As Indian citizen, certain rights and duties are provided to us by the Indian Constitution. The Duty of every citizen is to abide by the Laws and perform his/her legal obligation. A Person should always be aware of his/her Fundamental Duties. These duties are obligatory in nature because there is no any provision in the Constitution for the enforcement of these duties.

In case of *Kesavananda Bharati* (1973) 4 SCC 225 AIR 1973 SC 1461 The Supreme Court held that the Constitutional validity of various Statutes which promote the objects that were laid down in Fundamental Duties. These Duties are not only obligatory for all the citizens but the Court can enforce them by making various laws.

Keywords: Fundamental Duty, Constitutional Provisions, Judiciary , Bhagavad Gita , Enforcement, Fundamental Rights.

Introduction

Duty (from "due" meaning i.e. owing Old French *deu*, did, past participle of *devoir*, Latin; *debere*, debitum, whence "debt") Latin debt is a term that conveys a sense of moral commitment or obligation to someone or something. The moral commitment should result in action; it is not a matter of passive feeling or mere recognition. When someone recognizes a duty, that person theoretically commits them self to its fulfillment without considering their own self-interest. This is not to suggest that living a life of duty entirely precludes a life of leisure; however, its fulfillment generally involves some sacrifice of immediate self-interest. Typically, "the demands of justice, honor, and reputation are deeply bound up" with duty.

In plain English etymology, a 'duty' is defined as a "task or action that a person is bound to perform for moral or legal reasons", or to "respect or give obedience due to superior, or elder persons". An 'obligation' is defined referentially and intertextuality as a moral or legal requirement, duty. "In everyday usage, duty and obligation are often used interchangeably, despite their semantic distinctiveness, both duty obligations are allied with, "the idea of coercion", in that they are burdens imposed on, or required of, someone. Duties carry liabilities, in that there are consequence moral or legal- breaches of duty for example, the consequence of failing to fulfill a duty may include 'forfeiture' of certain rights, transforming the fight into a conditional privilege.

Eminent Jurists Approach

Cicero an early philosopher who discusses duty in his work "On Duty", suggests that duties can come from four different sources

1. As Result Of Being Human
2. As A Result of One's Particular Place In Life (One's Family, One's Country, One' job)
3. As A Result of One's Character
4. As A Result of One's Own Moral Expectations For Oneself.

Kant reduced morality to categorical imperative of duty but depleted duty of love; for him an action done out of love is not a moral action. He created a chasm between duty and happiness, both of which according to him are equally rational demands but they do not coincide on this plane mundane existence.

John Stuart Mill wrote that the contented man or his contented family, who have no ambition...to promote the good of their country or their neighborhood...excite in us neither admiration nor approval".

The very idea of **Rousseau's** social contract presupposed rights and responsibilities and "assumed a considerable degree of communal coherence and the existence of a social ethic of public responsibility as part of heritage of feudal society".



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Remarking An Analisation

According to **Henry Maine** hypothesis of, the first social organization in the primitive communities was the '*pater familia*' having despotic authority and power over person. The next social institution was the family group a union of families. The family group was not a mere collection of individuals; it was the family and not the individual that constituted the unit of society. However the pattern of relationship among the person of the family group was also in the nature of *pater families*. The aggregation of tribes themselves led to common wealth. The common was a collection of the tribes united by common blood and a common part ancestor in a remote way. These tribal's people were governed by their status. Nobody had right except to perform duty.

It is significant to that an eminent **Western Jurist Duguit** (1859-1928) a professor of Constitutional law in the university of Bordeaux, too propounded the theory that for peace and happiness of human being, it is necessary to establish a duty based society, in these words:

"The core of law lies in the duty, which is means of securing that each one fulfils his part in the furtherance of social solidarity". The only right which any man can possess, he said, "is the rights always to do his duty". What are commonly called rights are only incidental to the relation with other people which arise in the course of performing one's social duty. The reality is thus not the right, but the duty.

Jenks, says there are three kind of duty-

1. Universal duties- binding on all normal members of the community.
2. General duties- binding on classes of normal persons not voluntarily formed.
3. Particular duties- bind only on persons who have voluntarily undertaken them.

Jenks observes, 'legal duty without a corresponding right is unthinkable; there could in that event be no effective sanction attached to the duty, and we have seen that a legal sanction is an essential concomitant of every legal duty; Conversely there can no legal right without a corresponding legal duty: for there would then be sanction and no person to whom to apply it. The only essential is, that the person on whom the legal duty is imposed should be a different person from in whom the corresponding legal right is vested for a person cannot enforce a legal sanction against him'.

According to **Salmond**, "A duty is an obligatory act it is an act the opposite of which would be wrong, duty and wrongs are correlative. The commission of wrong is the breach of a duty and the performance of a duty is the avoidance of wrong".

Austin distinguishes between relative and absolute duties, the former being those, which have rights corresponding to them and the latter being those, which have none.

According to **Lundstedt** law consists neither solely of rights nor solely of duties. Law arises from one single source only, namely, the sheer necessity for order, security and self-preservation in society, unconnected with any moral inception or connection. Thus, he excludes from his sphere of law both the subjective rights and subjective duties.

According to **Lundstedt** criminal law is based on self-preservation of social disruption. The same can be said with regard to doctrine absolute liability. The vicarious liability has no relation to the sense of justice or injustice, right or duty, lawfulness or unlawfulness but is based on expediency. The purpose of law is to prevent from harm which is detrimental to the community.

He further says, "in reality right is purely an abstract expression or a mere form for actual situations in which an account of certain rules maintained by force certain acts give rise to certain effects". Therefore for the enlistment of social values in the community duties must be followed.

Ancient Indian Approach

The great virtue of Indian culture was that it was integrated. Therefore, no protection by way of a doctrine of right was needed. The State, the individual and the classes were integrated by the great concept of 'Dharma' conceived as duty which alone was the right and the individual never thought of having the rights. Law was not the instrument of government or an agent of State nor was it an indifferent spectator to the activities of the individual.

Dharma, as a law was a total concern of man a complete philosophy of life and action. Man was only to do duty by which could participate in dharma right or Dharma, like Brahman (absolute reality), is metaphysical reality, is imminent and transcendent. Every individual is the embodiment of Brahman when he identifies with

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it. He But when he suffers from limited consciousness and thinks of himself as a limited self, he is divested of Brahman's consciousness and considers himself separate and apart from the ultimate reality which in fact he is not. In this State of Non Brahmanism consciousness he lives miserable life.

Similarly, Dharma alone is right but when a man thinks of right, he makes himself limited by his selfishness. Dharma as right is objective but when this dharma or right is broken into right and appropriated by people and institutions their own interests the since of right as good or integrating force vanishes. It results into disintegration and disorganization. The only way at own right is to perform one's function well. Right can only be expressed in being one's duty. Duty is the only passport or title of right. The **Bhagwad Gita** rightly asks the person to do his/her duty according to one's station in life (Swadharma)

Bhagwad gave the message to the society that duty is the basis of the rights in this land. It is this basic value of life, evolved through (Ch. II) which reads

कर्मण्येवाधिकारिते

Your right is to perform your duty”

There are no rights but only what one ordinarily means by rights is what others should perform duties for him. Therefore, when one speaks of rights, he is in fact pointing to words the duties at the other side. If duty is the object of the so called right we need not use the concept of right at all.

The '**Smritis**' and the '**Puranas**' were the collection of the rules of Dharma including civil rights and criminal liabilities (Vyavhara Dharma) as also Raja Dharma (Constitutional law) which were developed on the basis of fundamental ideas incorporated in the Vedas. There were also several authoritative on Raja Dharma. The most important of them were the Kamandaka, Sukraniti and **Kautilya's** Arthshastra all of them were intended for securing happiness to all.

The legal philosophy of **Manu** centered on the concept of Dharma which is the rational and moral reflection of the law which governed the universe. The word dharma clearly derived from the root 'dhr' 'to uphold', 'to support, and to nourish'. The word dharma passed through several transition of meaning and ultimately, its most important significance came to be the privileges, duties and obligations of a man, his standard of conduct as a member of the community.

Jaimini defines dharma as “**a desirable goal or result that is indicated by injunctive passage**”.

According to **Kane** the idea of dharma replaced the earlier concept of rta which in the Rig-Veda denotes the supreme transcendental law or the cosmic order by which the universe and even the Gods are governed on the relation between rta and law **Kane** quotes **Berolzheimer** who says, “Closely connected with the religious and philosophical views of the Aryans are certain fundamental position in regard to the philosophy of law which in turn became the antecedents of later legal and ethical developments Greeks and Romans”. Foremost among this philosophical conception is rta which is at once the organized principal of the universe and the divine ordering of earthy life; as the former it regulates the appearance of the sun and the moon of day and night, and the embodies the unchangeable principles that pervade the succession of phenomena; as the latter it is affiliated with purpose and human benefit and is exemplified in the flow of the rivers which fertilize the fields; in the cattle useful of men in the institution of marriage, of the monarchical state, of the patriarchal home, and in men's sense of responsibility for his sins. The derivative conceptions of vrata, dharma, sudha represent special aspects of rta, thus vrata refers to any specialized embodied rta; while dharma refers specifically to the moral function of rewarding good and punishing evil.

Therefore instead of making right as the foundation of social life and establishing a right based society the ancient philosopher of this land preferred to establish a duty based society. Where the right has given to an individual is the right to perform his duty. This fundamental approach to life has been clearly laid down and has to understand entire ancient literature. To illustrate in **Vishnupuran** there is a complete chapter devoted to define the territorial boundaries as well as the basic philosophy of this country. The importance given to duty in this land is emphasis in one of the verse, which reads:

अहिंसां च भारतं चैव पटजबूदवीपे महामुने

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यतोहत्कमभ ्रेषाततोयाभोगभम यः ॥

Among the various countries, **Bharat** is regard as great because this is the land of duty is contradistinction to the others which are lands of enjoyment i.e. based on rights.

The Doctrine of right did not get fertile soil in India. In Indian language there is no appropriate word do anything only right. The word 'Adhikar' has not the meaning of right in Sanskrit. It is only due to the Britishers who influence that it has taken over the meaning of right which was necessary for the movement of freedom against British regime 'Adhikari' in Sanskrit is one who is fit or able to qualified for a particular task. He is not understood in the sense of a person owing power or rights. The Ancient Indian is not allowed to speak as owner of the right but he is participant in the right. He is not an anarchist, who distrusts State and Government. To him religion is not confiscator of right but a follower of right. To him religion is not institutionalizing violence against other religions. Society to him is not something like a prison where there are checks or restraints on him. He never considers his civilization as a curse. The Ancient India lives and thinks in freshness spirit, works for synthesis and integration through his thought and action.

Mahatma Gandhi eulogized in the following words:

"India is to me the dearest country in the world not because it is my country but because, I have discovered the greatest goodness in it.....Everything in India attracts me. It has everything that a human being with the highest possible aspiration can want".

Duty is also a core feature of political citizenship, with different systems demanding varying degrees of obligation, common duties of citizenship include paying taxes, voting jury service participating in public life, military or social service, and obeying national laws and constitutions. Working and voting are sometimes referred to as both rights and duties. As the recent about welfare and mutual obligation in Australia suggests, the duties of citizenship are not static,

Right and duties are correlative to each other in such a way that one can not conceal of without the other in the words the existence of the one depends. On the existence of the other as there can be no child without a father and no father without a child. A right is always against someone upon whom the correlative duty is imposed in the same way a duty is always towards someone in whom the correlative rights vest.

Indian Constitutional Approach

The echo of **Salmond** can be heard in our present society where none of the duty exist in the original draft of the constitution except in the shape of reasonable restriction U/A-19 (2) --- (6) but these were helpful for discouraging the violation of Article 19 (1) (a) --- (g) and none other right were affected by these restrictions some of the reasonable restrictions also given U/A- 25 which is a one of the most restrictive fundamental right.

On the **Sardar Swaran Singh Committee Report**, recommendations Govt. of India brought the 42nd Constitutional Amendment Act 1976, by which 10 (Ten) fundamental duties were inserted in the Indian Constitution, under a new Part- IV-A, U/A-51-A. However, the irony is that these duties are not enforceable.

As the Constitution of India, declares that Fundamental duties are unenforceable. The social climate is not good, giving birth to moral crisis. Various social calamities in the shape of environmental pollution, terrorism and violence against women, degradation of the national heritage are existed.

In view of the above situation **Justice Verma Committee** recommended that the first and foremost step required to be taken by the union and the state government was to sensitize the people and create a general awareness of provisions of fundamental duties amongst the citizens. Right to freedom of religion and other freedoms must be zealously guarded and the rights of the minorities and fellow citizens respected. Reform of the whole process of education was an immediate but immensely need to free it from government or political control.

The insertion of 11(eleventh) fundamental duty relating to child education is landings step in which duty shall be impose on the parents to send their child to school which was added in **the Indian Constitution after 86th Constitutional amendment Act.**

Judicial Approach

In State of Rajasthan v Union of India AIR 1977 SC 1361.

The SC held that in a strict sense, legal rights are correlatives of legal duties & are defined as interests which the law protects by imposing corresponding duties on others.

In Minerva Mills Ltd v Union of India (1980), 3 SCC 625

The SC held that there may be rule which imposes an obligation on an individual or authority, & yet it may not be enforceable in a court of law & therefore not be rise to a corresponding enforceable right in another person. But it would still be a legal rule, because it prescribes a norm of conduct to be followed by such individual or authority.

In AIIMS Students Union of AIIMS v Union of India AIR 2001 SC 3261

The Supreme Court held that fundamental duties though not enforceable by a writ of the Court, yet provides a valuable guide and aid to interpretation of Constitutional and legal issues. In case of doubt or choice of people's wish as manifested through Article 51 A can serve as a guide not only for resolving the issues but also for constructing or moulding the relief to be given by the courts. Constitutional enactment of fundamental duties if it has to have any meaning must be used by courts as a tool to tap, even a taboo, on State action drifting away from constitutional values.

In the case of AIIMS students Union vs. AIIMS, (2002)1 SCC 428

The Supreme court held that the fundamental duties are equally important like the fundamental rights so the Court strike down the institutional reservation of 33% I AIIMS which is also couples with 50% reservation discipline –wise which was violative of Article 14 of the Indian Constitution. The Court also said that just because they are duties they cannot be overlooked. They have the same importance which the fundamental rights hold.

In the case of Hon'ble Shri Rangnath Mishra vs. Union of India, 31 July, 2003

In Order to make a right balance between Fundamental Rights and Fundamental Duties , the petitioner wrote a letter to the President of India so that he can give directions to the state in order to educate citizens in the matter related to fundamental duties. This letter was treated as a writ petition by the Court. But by the time this matter would be heard a report was submitted to the government of India by the National Commission who was reviewing the Constitution at that time. Following Suggestions were provided by the Commission in the Court:

1. In order to sensitize the people and to create general awareness regarding the fundamental duties, The state and the Union Government should take proper steps on the lines that were recommended by the Justice Verma Committee.
2. For generating awareness and consciousness of citizens related to fundamental duties, models and manners needs to be adopted.

The Court took into account the recommendations made by the National Commission and also directed the government to take necessary steps. The Writ was disposed of.

In Union of India Vs George Philip AIR 2007 SC 705

The Apex Court held that Art. 51-A (j) of the Constitution lays down that it shall be the duty of every citizen to strive towards excellence in all spheres of individual and collective activities so that the nation constantly rises to higher levels of endeavor and achievement. This cannot be achieved unless the employees maintain discipline and devotion to duty.

In Shyamlal Ranjan Mukherjee Vs Nirmal Ranjan Mukherjee (NOC) All. AIR 2008.

Court held that Constitution of India, Art. 51-A, Fundamental Duties citizens to follow "**Bhagwat Geeta**" the inspiration behind our freedom struggle state to recognize "Geeta" as national "Dharmashastra".

It is the fundamental duty of every citizen to cherish and follow the noble ideals which inspired our national struggle for freedom. Bhagwat Geeta was the source of inspiration of national struggle for freedom moment and all walks of life. It is the duty of every citizen of India under Art. 51-A, of the Constitution of India irrespective of caste, creed or religion has to follow Dharma propounded by "Bhagwat Geeta". As India has recognized national flag, national bird, national anthem and national flower, "Bhagwat Geeta" may also be considered as national (Rashtriya) Dharma shastra.

The latest Supreme Court judgment by the full bench directing the centre to enact a law for the enforcement of duties by citizens as suggested by **Justice Verma Committee** not only show but proves the importance as well as relevance of duties in today's deteriorating scenario. The direction of the Apex Court comes out on the letter of none else, but the former **chief justice of India, Rangnath Mishra**.

In the case of N.K. Bajpai vs. Union of India (2012) 4SCC 653

It was observed that there is a common thread which runs between Part III,IV,IV-A of the Indian Constitution. First part provides us with the fundamental rights while the second part provides us with the basic principle of governance of the state and the third part provides the fundamental duties of the citizens of India. The Court should consider all the constitutional aspect of fundamental duties and the directive principle of state policy while interpreting any provision.

In the case of Charu Khurana vs. Union of India , (2015) 1 SCC 192

The Supreme Court held that the State should provide for opportunities rather than curtailing it. The Court also said that the duty of the citizen have also been extended to the collective duty of the state.

Review of Literature

The Present study is qualities and interpretive in Nature. The researchers attempt to undertake Literature review for the Purpose of scanning Contribution of different Political Philosophies of Cicero's Cambridge text sin the History of Political though, John Stuart Mill's moral and Political Philosophy-first Published The Oct, 2007, Substantive revision Aug 21, 2018, Henry Maine's The Study of Comparative Law and anthropological jurisprudence, Duguit's The Juristic and Political ideas of Dugit Vol.1 No.1 July- Sept. 1939, PP 1-22, Bhagwat Gita's-Ch.II verse 1-Bhagwat Gita The Son of God, Salmond's Theory of Law and Various case study decided cases of Supreme Court of India.

Objective of the Study

The Constitution of India not only provide with the Fundamental rights but also with the fundamental duties. Although the fundamental rights were introduced in the Constitution much before the fundamental duties and also enforceable by the court. 42nd Amendment,1976 introduced the fundamental duties, But these duties are not enforceable. These are the moral duties of a responsible citizen. The Fundamental duties must be complementary to the fundamental rights.

Today's Time people only want their rights and want to perform their duties. These are many examples which shows that people while using their fundamental rights avoid their fundamental duties.

Many Political Leaders often attract votes in the name of religion. While doing this they violates their Fundamental duty that is provided in Article 51A (c) that is "the power, unity , integrity of the country" must be protected by its citizens. They divide the society into different religion and caste.

Democracy cannot establish its deep roots in the society until and unless the citizens don't compliment their fundamental rights with their fundamental duties. While enforcing their fundamental rights they should fulfill their fundamental duties.

The Fundamental duties not only guide the citizen bit also guides the legislative and executive actions of elected or non-elected institutions, organisations and municipal bodies. Duties are only observed but the citizens when either it is made compulsory by the law or under the influence of role models etc. So this makes it necessary to make suitable legislation whenever it is important for the citizens to observe the duties, These duties should be made operational only when the directions have been provided but the legislature and judiciary and still there is a violation of fundamental duties. But if the existing laws are inadequate and they cannot enforce the required discipline then the legislative vacuum needs to be filled.

Conclusion

The word "Fundamental" which is attached to the duties makes them utmost important and thus it is required that they are to be followed by everyone. Many Duties have also been set up as a separate law and are made enforceable by the law but this does not reduces the value of other duties that are provided in Article 51A. It is not only the duty of the government to provide everything in the Constitution, It is the people who should also be conscious about their role in the society. Even duties like paying taxes, right to vote must be performed by each and every citizen of the nation. These duties inculcates a sense of social responsibility in everyone. While interpreting the fundamental rights these fundamental duties are always taken into account.

Henceforth, 'Duty' is the concept without which society cannot restore peace and prosperity for everyone. If, the people will do their duty according to Shastras, Statutes and Conscience then people can have better life.

Suggestions for the further study

My Suggestions for further studies are as given below :

1. To Find out the reason WHY People wants their rights and do not want to perform their duties towards Nation.
2. To Value Education must be inclusive with Fundamental Duty among the students of the nation.

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