



CRITICAL ASSESSMENT OF FUNDAMENTAL DUTIES

PART I: INTRODUCTION

“The real freedom of any individual can always be measured by the amount of responsibility, which he must assume for his own welfare and security.”

– Sir Robert Welch

As per the Social Contract theory of jurisprudence, citizenship is the validation of the social contract between the people of the country and the government elected by them, and the rights given in the Constitution are the basis of this contract. However, while we emphasize rights, it is pertinent to remind the citizens about their respective duties towards the other, and the State, especially with regard to its safety and security imperatives. The true source of right is duty; if we all discharge our duties, rights will not be far to seek.

Having said so, the provisions concerning Fundamental Duties were added to the Constitution through amendment. However, the non-justifiability element of these duties is a point of concern. Recently, Hon'ble Supreme Court, while hearing a petition, stated that the Fundamental Duties should be made enforceable to fulfil their objectives.

PART II: ABOUT THE FUNDAMENTAL DUTIES: -

1. There exists an obligation of the citizen in exchange for the comprehensive fundamental rights enjoyed by them. Hence, the Fundamental Duties were held to be incorporated into the Indian Constitution to implement the relevance of the rights in a better way.
2. The need and necessity of the Fundamental Duties were felt during the emergency period in 1975. Hence, in the year 1976, the Saran Singh Committee was set up to make a recommendation for the Fundamental Duties, which recommended the inclusion of Fundamental Duties under a different chapter.
3. The government, for implementing the suggestions of the Committee, added Chapter IV-A in the Indian Constitution, wherein Article 51A enshrined ten Fundamental Duties through the 42nd Constitutional Amendment Act in the year 1976.
4. The concept of Fundamental Duties has been borrowed from the Constitution of Russia. However, we have made pertinent changes in the Indian

version of the Duties. Moreover, the inclusion of fundamental duties has brought our Constitution in line with Article 29(1) of the Universal Declaration of Human Rights.

5. In the case of AllMS Student's Union vs. AllMS, Hon'ble Supreme Court ruled that the Fundamental Duties, although not enforceable by way of writ jurisdiction, not only provide valuable guidance for the interpretation of constitutional and legal issues but also for constructing or molding the relief to be given by the Courts.
6. In another case of Rural Litigation and Entitlement Kendra vs. State of Uttar Pradesh, the Apex Court, while holding that preservation of the environment and keeping the ecological balance unaffected is a task that not only the government but also every citizen must undertake, reiterated to enforce the Duties. It is a social obligation of the state as well as of the individuals.
7. Further, In Vellore Citizens' Welfare Forum vs. Union of India, and M.C. Mehta vs. Union of India, the Supreme Court recognized 'the Precautionary Principle', 'the Polluter Pays' principle as essential features of 'sustainable development' and part of the environment law of the country in view of Articles 21 and 51-A(g).
8. The list given in the Duties is not exhaustive; other duties are also included in the same through the Constitutional Amendment. For instance, in the 86th Constitutional Amendment Act, the duty of every parent or guardian is to provide opportunities for education to his child between the age of 6 and 14 years, which corresponds to the right to free and compulsory education in Article 21-A of the Constitution, was included.
9. In this line, the Verma Committee on Fundamental Duties of the citizens (1999), which also recommended "duty to vote at elections, actively participate in the democratic governance and to pay taxes should be included, has identified the existence of legal provisions for the implementation of some of the Fundamental Duties:
 - (1) The Prevention of Insults to National Honour Act (1971) prevents disrespect to the Constitution of India, the National Flag, and the National Anthem given in Article 51A (a) of the Constitution.

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- (2) The various criminal provisions in the Indian Penal Code and other Criminal Laws have been incorporated to provide for punishments for encouraging enmity between different sections of people on grounds of language, race, place of birth, religion, etc. as given in Article 51A (e) of the Constitution.
 - The Indian Penal Code (IPC) declares the imputations and assertions prejudicial to national integration as punishable offences.
 - The Unlawful Activities (Prevention) Act (1967) provides for the declaration of a communal organization as an unlawful association.
- (3) The Protection of Civil Rights Act (1955) provides for punishments for offences related to caste and religion as given in Article 51A (e) of the Constitution.
- (4) The Wildlife (Protection) Act of 1972 prohibits trade in rare and endangered species as given in Article 51A (g) of the Constitution.
 - The Forest (Conservation) Act of 1980 checks indiscriminate deforestation and diversion of forest land for non-forest purposes.

PART III: SIGNIFICANCE OF FUNDAMENTAL DUTIES: -

Constant Reminder: - These duties are a constant reminder to the citizens that while enjoying their rights, they should acknowledge their duties towards the nation and other fellow citizens. These Duties also serve as an alarm to the people to refrain from any anti-social, anti-legal activities that disrespect the nation like burning the flag, destroying public property, or disturbing public peace, and tranquility.

Inculcate a Sense of Commitment: - They also help in inculcating a sense of discipline and commitment in the citizens towards the nation. They help in realizing national goals through the active participation of citizens rather than mere spectators. They give the impression that citizens are not passive bystanders but active participants in achieving national goals.

Determinant to the Constitutionality: - It helps the Court in determining the constitutionality of the law. For instance, any law passed by the legislatures, when taken to Court for constitutional validity of the law, if it is giving force to any Fundamental Duty, then such law would be taken as reasonable.

For instance, the Supreme Court ruled in 1992 in the case of Mohan Kumar Sighnania vs. Union of India, that when determining the constitutionality of a law, if a court finds that the law in question seeks to give effect to a

fundamental duty, it might believe such regulation to be 'sensible' according to Article 14 or Article 19, and in this manner save such regulation from unlawfulness.

Motivation for Parliament: - The parliament can enforce them by law and impose any type of penalty or punishment for violating any of the Fundamental Duties. In the words of late Prime Minister Indira Gandhi, "The moral value of fundamental duties would not be to smother rights but to establish a democratic balance by making people conscious of their duties equally as they are conscious of their rights".

Work as a Deterrence: - The Fundamental Duties work as a deterrent to anti-national and anti-social activities such as burning the national flag and destroying public property. They are ideal and guide citizens in the right direction.

Shape the Society: - Fundamental duties make citizens aware of their social and citizenship responsibilities, thereby shaping a society where everyone is concerned and considerate of our fellow citizens' inalienable rights.

PART IV: CRITICAL ANALYSIS OF THE FUNDAMENTAL DUTIES: -

Non-justifiable Duties: - These duties are a code of conduct laid down on the recommendations of the Swaran Singh Committee. Since they are unjustifiable there is no legal sanction behind them. This makes the inclusion redundant in nature.

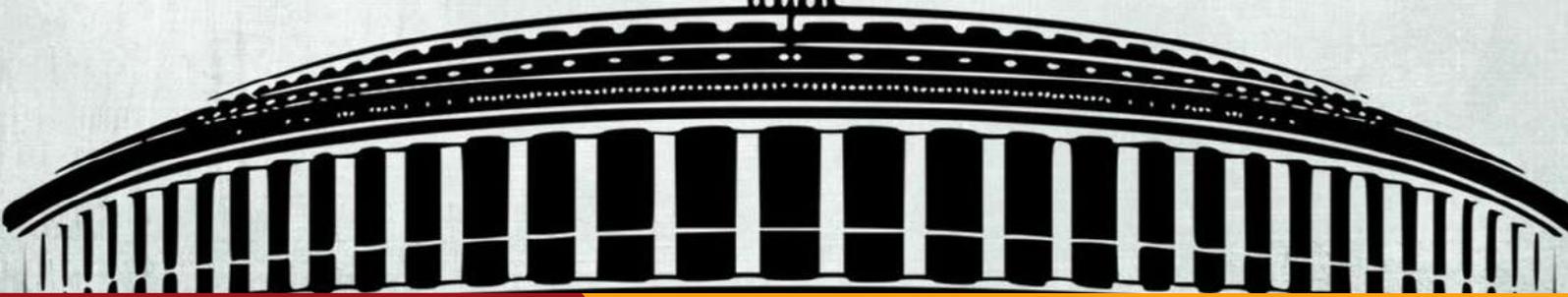
Vague in nature: - Certain Fundamental Duties are vague in their interpretations. For instance, for a common citizen, the interpretation of 'composite culture', 'rich heritage' 'humanism', or 'excellence in all spheres of individual and collective activities' may differ. They will realize the importance of these duties only when these terms are simplified.

Revision and Review are needed: - There is a need to revise the present list, simplify their language and make them more realistic and meaningful and add some urgently required more realistic duties. Also, it should be tried to make them justiciable.

Non-inclusion of Certain Issues: - In the Fundamental Duties, certain issues, which are dynamic in nature, are not included. For instance, taxation, family planning, voting, other important responsibilities, etc should also be included.

Non-required Inclusion: - Their incorporation in the Constitution was considered pointless by several jurists. The sense of duties should come from inward as the obligations specified in the Constitution as essential are completed by individuals regardless of whether they were not revered in the Constitution.

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PART V: WHY THERE IS A NEED TO MAKE THE FUNDAMENTAL RIGHTS ENFORCEABLE-?

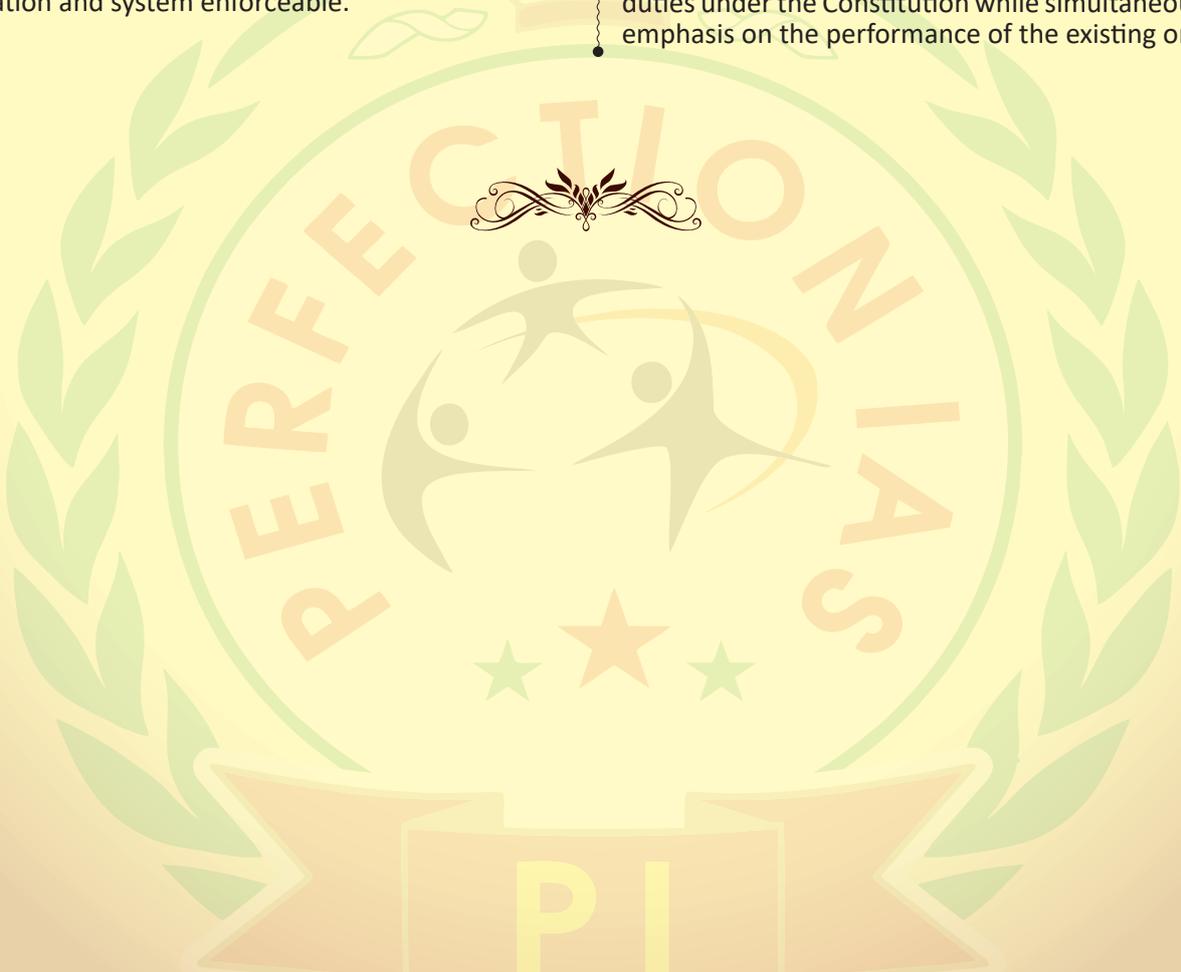
New Unreasonable Trend: - The need to enforce fundamental duties arises due to a new unreasonable trend of protest by protestors in the garb of the fundamental right to freedom of speech and expression, by way of blocking road and rail routes in order to compel the government to meet their demands. Moreover, the current stances of cow vigilantism, hate speech, mob violence, etc. make it pertinent to enforce the duties through the stringent laws.

Moral Obligation is Insufficient: - As the Fundamental Duties are designed concerning the individual and the nation. The sole purpose of incorporating the Duties was to instill a sense of patriotism, and nationalism among the citizens. Due to the non-enforceability regime, making the citizens only morally obligated, people do not give an eye to this. Hence, it is essential for a country like India to make the duties that are essential for the proper working of the nation and system enforceable.

Democratic Requirement: - In today's time, it is important to emphasize the need to remember fundamental duties for the progress of India. Democracy cannot be established deep roots in society until the citizens don't complete fundamental rights with their fundamental duties. For a polity and a nation to survive, citizens should have a high sense of duty.

PART VI: CONCLUSION: -

The Fundamental Duties, undoubtedly, supplements the Fundamental Rights enshrined in Part III of the Constitution. However, there is a need for these Duties to be justifiable and obligatory for all the citizens subject to the State enforcing the same by means of enacted laws. The Supreme Court, in this direction, has already directed the State in this regard, with a view towards making the provisions effective and enabling citizens to properly perform their duties properly. Conclusively, in the modern context, it has become increasingly important to inculcate civic obligations among Indian citizens. This object can be achieved by adding new duties to the existing list of duties under the Constitution while simultaneously laying emphasis on the performance of the existing ones.



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