



Fundamental Duties

Though the rights and duties of the citizens are correlative and inseparable, the original constitution contained only the fundamental rights and not the fundamental duties. In other words, the framers of the Constitution did not feel it necessary to incorporate the fundamental duties of the citizens in the Constitution. However, they incorporated the duties of the State in the Constitution in the form of Directive Principles of State Policy. Later in 1976, the fundamental duties of citizens were added in the Constitution. In 2002, one more Fundamental Duty was added.

The Fundamental Duties in the Indian Constitution are inspired by the Constitution of erstwhile USSR. Notably, none of the Constitutions of major democratic countries like USA, Canada, France, Germany, Australia and so on specifically contain a list of duties of citizens. Japanese Constitution is, perhaps, the only democratic Constitution in world which contains a list of duties of citizens. The socialist countries, on the contrary, gave equal importance to the fundamental rights and duties of their citizens. Hence, the Constitution of erstwhile USSR declared that the citizen's exercise of their rights and freedoms was inseparable from the performance of their duties and obligations.

SWARAN SINGH COMMITTEE RECOMMENDATIONS

In 1976, the Congress Party set up the Sardar Swaran Singh Committee to

make recommendations about fundamental duties, the need and necessity of which was felt during the operation of the internal emergency (1975–1977). The committee recommended the inclusion of a separate chapter on fundamental duties in the Constitution. It stressed that the citizens should become conscious that in addition to the enjoyment of rights, they also have certain duties to perform as well. The Congress Government at Centre accepted these recommendations and enacted the 42nd Constitutional Amendment Act in 1976. This amendment added a new part, namely, Part IVA to the Constitution. This new part consists of only one Article, that is, Article 51A which for the first time specified a code of ten fundamental duties of the citizens. The ruling Congress party declared the non-inclusion of fundamental duties in the Constitution as a historical mistake and claimed that what the framers of the Constitution failed to do was being done now.

Though the Swaran Singh Committee suggested the incorporation of eight Fundamental Duties in the Constitution, the 42nd Constitutional Amendment Act (1976) included ten Fundamental Duties.

Interestingly, certain recommendations of the Committee were not accepted by the Congress Party and hence, not incorporated in the Constitution. These include:

1. The Parliament may provide for the imposition of such penalty or punishment as may be considered appropriate for any non-compliance with or refusal to observe any of the duties.
2. No law imposing such penalty or punishment shall be called in question in any court on the ground of infringement of any of Fundamental Rights or on the ground of repugnancy to any other provision of the Constitution.
3. Duty to pay taxes should also be a Fundamental Duty of the citizens.

LIST OF FUNDAMENTAL DUTIES

According to Article 51 A, 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 that inspired the 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 and to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of the country's composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures;
- (h) to develop 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 endeavour and achievement; and
- (k) to provide opportunities for education to his child or ward between the age of six and fourteen years. This duty was added by the 86th Constitutional Amendment Act, 2002.

FEATURES OF THE FUNDAMENTAL DUTIES

Following points can be noted with regard to the characteristics of the Fundamental Duties:

1. Some of them are moral duties while others are civic duties. For instance, cherishing noble ideals of freedom struggle is a moral precept and respecting the Constitution, National Flag and National Anthem is a civic duty.
2. They refer to such values which have been a part of the Indian tradition, mythology, religions and practices. In other words, they essentially contain just a codification of tasks integral to the Indian way of life.
3. Unlike some of the Fundamental Rights which extend to all persons whether citizens or foreigners¹, the Fundamental Duties are confined to citizens only and do not extend to foreigners.
4. Like the Directive Principles, the fundamental duties are also non-justiciable. The Constitution does not provide for their direct enforcement

by the courts. Moreover, there is not legal sanction against their violation. However, the Parliament is free to enforce them by suitable legislation.

CRITICISM OF FUNDAMENTAL DUTIES

The Fundamental Duties mentioned in Part IVA of the Constitution have been criticised on the following grounds:

1. The list of duties is not exhaustive as it does not cover other important duties like casting vote, paying taxes, family planning and so on. In fact, duty to pay taxes was recommended by the Swaran Singh Committee.
2. Some of the duties are vague, ambiguous and difficult to be understood by the common man. For example, different interpretations can be given to the phrases like 'noble ideals', 'composite culture', 'scientific temper' and so on².
3. They have been described by the critics as a code of moral precepts due to their non-justiciable character. Interestingly, the Swaran Singh Committee had suggested for penalty or punishment for the non-performance of Fundamental Duties.
4. Their inclusion in the Constitution was described by the critics as superfluous. This is because the duties included in the Constitution as fundamental would be performed by the people even though they were not incorporated in the Constitution³.
5. The critics said that the inclusion of fundamental duties as an appendage to Part IV of the Constitution has reduced their value and significance. They should have been added after Part III so as to keep them on par with Fundamental Rights.

SIGNIFICANCE OF FUNDAMENTAL DUTIES

In spite of criticisms and opposition, the fundamental duties are considered significant from the following viewpoints:

1. They serve as a reminder to the citizens that while enjoying their rights, they should also be conscious of duties they owe to their country, their society and to their fellow citizens.
2. They serve as a warning against the anti-national and antisocial activities

- like burning the national flag, destroying public property and so on.
3. They serve as a source of inspiration for the citizens and promote a sense of discipline and commitment among them. They create a feeling that the citizens are not mere spectators but active participants in the realisation of national goals.
 4. They help the courts in examining and determining the constitutional validity of a law. In 1992, the Supreme Court ruled that in determining the constitutionality of any law, if a court finds that the law in question seeks to give effect to a fundamental duty, it may consider such law to be 'reasonable' in relation to Article 14 (equality before law) or Article 19 (six freedoms) and thus save such law from unconstitutionality.
 5. They are enforceable by law. Hence, the Parliament can provide for the imposition of appropriate penalty or punishment for failure to fulfil any of them.

H R Gokhale, the then Law Minister, gave the following reason for incorporating the fundamental duties in the Constitution after twenty-six years of its inauguration: 'In post-independent India, particularly on the eve of emergency in June 1975, a section of the people showed no anxiety to fulfil their fundamental obligations of respecting the established legal order the provisions of chapter on fundamental duties would have a sobering effect on these restless spirits who have had a host of anti-national subversive and unconstitutional agitations in the past'.

Indira Gandhi, the then Prime Minister, justified the inclusion of fundamental duties in the Constitution and argued that their inclusion would help to strengthen democracy. She said, 'the moral value of fundamental duties would be not to smother rights but to establish a democratic balance by making the people conscious of their duties equally as they are conscious of their rights'.

The Opposition in the Parliament strongly opposed the inclusion of fundamental duties in the Constitution by the Congress government. However, the new Janata Government headed by Morarji Desai in the post-emergency period did not annul the Fundamental Duties. Notably, the new government sought to undo many changes introduced in the Constitution by the 42nd Amendment Act (1976) through the 43rd Amendment Act (1977) and the 44th Amendment Act (1978). This shows that there was an eventual

consensus on the necessity and desirability of including the Fundamental Duties in the Constitution. This is more clear with the addition of one more Fundamental Duty in 2002 by the 86th Amendment Act.

VERMA COMMITTEE OBSERVATIONS

The Verma Committee on Fundamental Duties of the Citizens (1999) identified the existence of legal provisions for the implementation of some of the Fundamental Duties. They are mentioned below:

1. The Prevention of Insults to National Honour Act (1971) prevents disrespect to the Constitution of India, the National Flag and the National Anthem.
2. The various criminal laws in force provide for punishments for encouraging enmity between different sections of people on grounds of language, race, place of birth, religion and so on.
3. The Protection of Civil Rights Act⁴ (1955) provides for punishments for offences related to caste and religion.
4. The Indian Penal Code (IPC) declares the imputations and assertions prejudicial to national integration as punishable offences.
5. The Unlawful Activities (Prevention) Act of 1967 provides for the declaration of a communal organisation as an unlawful association.
6. The Representation of People Act (1951) provides for the disqualification of members of the Parliament or a state legislature for indulging in corrupt practice, that is, soliciting votes on the ground of religion or promoting enmity between different sections of people on grounds of caste, race, language, religion and so on.
7. The Wildlife (Protection) Act of 1972 prohibits trade in rare and endangered species.
8. The Forest (Conservation) Act of 1980 checks indiscriminate deforestation and diversion of forest land for non-forest purposes.

NOTES AND REFERENCES

1. The Fundamental Rights guaranteed by Articles 14, 20, 21, 21A, 22, 23, 24, 25, 26, 27 and 28 are available to all persons whether citizens or foreigners.

2. D D Chawla, the then president of the National Forum of Lawyers and Legal Aid, Delhi, observed: 'The duties may be spelt out in a more concrete form, one is left guessing the noble ideals. To some even the Bhagat Singh cult may be such an ideal as inspired our national struggle. Again what is the rich heritage of our composite culture and what is scientific temper, humanism and the spirit of inquiry and reform? The values are beyond the ken of the general run of the people and carry no meaning to them. Duties should be such and so worded as to catch the imagination of the common man.'

D D Chawla, 'The Concept of Fundamental Duties', *Socialist India* (New Delhi), October 23, 1976, P. 44–45.

3. C K Daphtary, former Attorney General of India, while opposing the inclusion of fundamental duties in the Constitution, said that more than 99.9 per cent of the citizens were law-abiding and there was no need to tell them about their duties. He argued that as long as the people are satisfied and contented, they willingly perform their duties. He said, 'To tell them what their duties are implies that they are not content. If that is the case after 26 years, it is not their fault'. A K Sen also opposed the inclusion of fundamental duties in the Constitution and remarked, 'A democratic set-up, instead of thriving on the willing cooperation and confidence of people, is reduced to the position of a harsh school master asking the student to stand up on the class room bench because he has not done the home work. To begin with, it were the people of India who created the Sovereign Democratic Republic of India in 1950, but the Republic is now claiming to be the master of the citizens enjoining habitual obedience to its command to do his duty. The state's confidence in the citizens is obviously shaken'.
4. This Act was known as the Untouchability (Offences) Act till 1976.