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## A STUDY ON JURISPRUDENTIAL ASPECTS OF FUNDAMENTAL DUTIES AND THEIR ENFORCEABILITY

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### ABSTRACT

On the proposal of the Swarn Singh committee, ten fundamental duties were included in the Constitution by the Constitution (Eighty-sixth Amendment) Act, 2002. The 11th duty was introduced by the 86th Amendment in 2002. Except for a few such obligations, there appear to be few leading elements to remedy the violation. Some citizens' responsibilities are enshrined in the constitutions of the Indian Subcontinent, while others are governed by law, tradition, and precedent. The law is a balance of rights and responsibilities. The person burdened with the relevant obligation is a citizen 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. Some of the responsibilities and remedies are outlined in the Indian Penal Code, the Environmental Protection Act of 1986, the Emblem and Names(Prevention of Improper Use) Act of 1950, and the Prevention of Insult to National Honour Act of 1971. There appears to be no remedy for the breach under Article 51-A(b),(d),(f),(h) & (j), necessitating the adoption of corrective measures to instil obligations. In the first instance, breach of duty as an act or omission should be treated as an actionable wrong of 'civil misconduct,' rather than being remedied by a penalty for an offence except in its severe form and for persistent wickedness. As a result, the matter has been discussed and debated based on the strength of theological methodology, which includes using both primary and secondary source material.

**Keywords:** Jurisprudence, Fundamental duties, Right, Constitution, Civil Misconduct, Remedy for Breach.

## 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). 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 Sub-Continent, some duties on citizens are inbuilt in the body, while in others, they are by law, custom and precedent. However, it is perceived that obligations are imposed on citizens under the Indian Constitution, but there seem least guiding factors for the remedy of the breach. The study assumes importance from various angles, especially from a jurisprudential point of view. Jurisprudence, as per dictionary, means, "Knowledge of law, the science or philosophy of law; a body or branch of law".<sup>1</sup> Depending on the school of thought to which they belong, different writers have approached it differently. Salmond describes jurisprudence as "the science of law".<sup>2</sup> According to Professor Allen, Jurisprudence is "the scientific synthesis of the main concepts of law".<sup>3</sup>

## Right & Duties

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

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<sup>1</sup> The Chambers Dictionary, New Edition Published by Allied Chambers (India) Ltd

<sup>2</sup> Salmond on Jurisprudence by P.J. Fitzgald, 1966 ( Salmond was a judge of the Newzeland Supreme court. He Published his Jurisprudence in 1902 )

<sup>3</sup> Law in Making by C.K.Allen

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.

The majority of the substratum of law is made up of rights and responsibilities, which are intertwined. In the West's eyes, if the law provides a right, then there must be a matching obligation, but who bears it? To do so, one must research the good features that different authors have handled differently. 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.

### **Duties without Right and vice-versa**

There are, however, exceptions to the norm. Consider the Directive Principles enshrined in India's Constitution. They issue governmental directions in the form of tasks without any corresponding rights. In some cases, whether via a PIL or otherwise, Indian courts still enforce them.<sup>4</sup> There is also the possibility of a right arising without a corresponding responsibility or a duty appearing without a corresponding request, known as an imperfect obligation.

Due to the correlative nature of rights and responsibilities in a larger sense, a duty without a remedy can also be regarded writ in water. However, some jurists believe that responsibilities

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<sup>4</sup> Vellore Citizens Welfare Forum Vs Union of India , AIR 1996 SC 2715

can exist without matching rights. In such cases, the responsibilities are referred to as Absolute Duties, but the duties linked to an equal right are referred to as Relative Duties. Suppose one analyses Austin's position on the topic, which CK Allen backs. In that case, he defines absolute responsibilities as duties that do not concern people, assignments that are owed indefinitely, self-regarding responsibilities, and duties owed to the sovereign. On the other hand, tasks can be divided into positive and negative duties and primary and secondary obligations.

The Supreme Court stated in *Minerva Mills Ltd.* that "it is the job, if not the obligation, of judges to rule on the legality of legislation." If courts are entirely stripped of this power, the people's fundamental rights would become only ornamental, for rights without remedies are writ in water. After then, a controlled Constitution will become uncontrollable.<sup>5</sup>

### **Fundamental Duties**

On the advice of the Swaran Singh Committee, the notion of Fundamental Duties was borrowed from the Soviet Union and integrated in 1976. The duties, initially ten in number, were put under Article 51-A of the Indian Constitution. The 11th duty was introduced in 2002 due to the 86th Amendment. Fundamental obligations, together with other clauses such as prohibitions against discrimination based on religion, race, sex, or place of birth, should be regarded as cornerstones for Indian Nationhood to be read with the preamble.<sup>6</sup> It posed a danger to India's sovereign statehood, etc. The Allahabad High Court stated that the Constitution's authors intended for inhabitants of this magnificent nation to discharge their tasks with excellence rather than half-heartedly. The Constitution governs these responsibilities. The current legal view is that the requirements of the Fundamental Duties Act cannot be implemented unless accompanying legislation exists. They can be aided by constitutional means, such as legislation.<sup>7</sup>

The fundamental duties reflect the east's ancient evolved ideals, which are less adhered to in the present period. Apart from that, based on an examination of the basic obligations outlined in India's constitution, it is clear that some are only declaratory, while others may be classified as remedial, and yet others as a hybrid of declaratory and remedial tasks. The declaratory obligations state the right but do not remedy if it is violated. The corrective obligations establish duties with a remedy for a breach, either in the same legislation or in another statute. In the

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<sup>5</sup> *Minerva Mills Ltd V Union of India & others* ; AIR 1980 SC 1789

<sup>6</sup> Article 15,16 & Others of the Constitution of India on the subject

<sup>7</sup> *Mumbai Kamgar Sabha V. abdulbhai* AIR 1976 SC 1455

case of hybrid responsibilities, the remedy may be limited to a portion of the violation rather than the whole set of obligations. Article 51-A(b),(d),(f),(h), and (j) appear to cover declaratory responsibilities, whereas Article 51-A(c),(e), and (g) appear to cover remedial obligations. The hybrid obligations are a combination of declaratory and remedial duties that come under 51-A (a) & (b) (i).

The analysis is based on the fact that certain of the obligations and the obligations institute a statutory offence that may be prosecuted. For example, violations of remedial duties under 51-A(c), (e), and (g) are punishable under the Indian Penal Code and similar laws, and violations of duty under 51-A(k) are reinforced by section 10 of the Right to Free and Compulsory Education Act, 2009, which states: Every parent or guardian has the responsibility of admitting or causing their third, as the case may be, to elementary education at the neighbourhood school. The remedies for a breach are outlined in Chapter VI of the Act and Article 21-A of the Indian Constitution. Because of the sensitive nature of the relationship, the cure is therapeutic rather than punishing. However, there does not appear to be any similar remedial law, whether curative or punitive, to avoid the violation and penalty for any departure for declaratory responsibilities in other areas.

### **Innovation towards Enforcement of Duties**

Once the law, which is too big to be called a "constitution," carves out the obligations, there should be a consequence for any transgression of those duties, which in the administration of justice might result in physical, monetary, or both punishments. Otherwise, they may result in unsatisfactory obligations in light of Austin and/or just declaratory responsibilities. As a result, once the duties are recognised, jurists must decide where the right resides or if the duties/responsibilities without a matching right. It cannot be stated that there is no equal right in this circumstance. 'We, the people of India,' have the privilege. The people and their representatives can take action if their freedom is violated (s). To prevent a plethora of activities, the enforcement of a request might be delegated to a collection of people, companies, or agencies through legislation. On the other hand, it appears that failure to perform a responsibility should be treated as a "civil wrong" that requires remediation. A legislative act can do this. Other approaches, however, must be considered until adequate legislation is enacted. As a result, a breach of fundamental obligation can be treated as a civil wrong in the name and form of misbehaviour under this subhead, preventing abuse and adjudication delays. Let us now consider the viability of executive, judicial, and legislative action in this regard.

**By Executive Action:** Because no explicit law exists executive determination might also be considered. However, when in executive mode, one must think about how to derive power to set guidelines. Furthermore, that may have a propensity to be biased in some cases, but at the very least, bias will be asserted. As a result, a quasi-judicial method is preferred to give the institutional legitimacy.

**By Judicial Approach:** The judicial approach alone is insufficient to heal tank and correct. Depending on the seriousness of the subject in the eyes of the judiciary, the highest court, such as the supreme court, may engage in public interest litigation or Pro Bono. Even if that happens, the measure may only be temporary until permanent legislation is established by parliament since it comes under the union list of India's constitution's schedule VII.

### **By Legislative Act:**

By legislative action, we mean framing a bill, either as a government proposal or as a private members bill, for passage in parliament in Byles and regulations, so that law for breach of fundamental duties emerges with an innovative solution of first making such a breach a "civil wrong" or "civil misconduct," as in service rules. The constitution appears to be concerned about fundamental tasks to a nation's security and integrity, but it does not allow for particular corrective actions. As a result, for any infraction, one must consider the remedies available under other laws, if any. As a result, there is a need for a statutory framework to defend and enhance the constitutional requirements included in Article 51-A to instil nationalism, social solidarity, and loyalty to the law. To deal with such a circumstance, the violation should be referred to as a civil wrong or constitutional misbehaviour that should be sold with by 'admonition' after following a short method that incorporates natural justice principles. Admonition can be classified based on the severity of the wrongdoing so that an order of 'advice' against the offender can be issued, or in more severe cases, 'counselling,' 'warning,' or 'censure,' as the case may be. If an act or omission is repeated, a penalty may be imposed. Furthermore, a temporary ban on receiving government benefits or a monetary penalty may be charged for repeated wrongdoing. It is possible to imagine a stigma associated with holding public office.

### **Conclusion:**

The legislation itself creates the remedy for a breach. However, if there is a constitutional violation, the constitution offers treatment in a writ or an order. In some cases, a secondary

remedy is provided by legislation. In a larger sense, the wrong might be civil, criminal, or taxation, depending on the instance and the regulatory structure in place. However, if the violation is not grave, there is no legal remedy for the infringement. According to the findings, most fundamental responsibilities appear to be without treatment for their offence. As a result, there is an urgent need for statutory protection and avoiding actual duty violations as a remedy rather than punishment. Counselling, warning, or getting bail are proposed as treatments, with fines or incarceration as a last resort if all other options fail. To summarise, a violation of fundamental obligation can be considered civil wrongdoing, with legislation in place to ensure that responsibilities are honoured and that the breach is prevented. Furthermore, the situation must be undisturbed if the law covers a purposeful violation of duty with grave consequences. However, no jurisprudence is required to correct the general breach by offering remedial measures at the outset and getting a bond for recurring wrongdoing or misbehaviour. The wrong/misconduct is repeated; a persistent violation may result in an offence after exhausting curative options and securing a bond for forfeiture. If the obligations are not honoured, the law will become a paper tiger if not sanctioned and enforced. The shortcomings of justice administration are clogged with adjudication and enforcement, causing the lustre of law to suffer at the altar of social order and national flavour. As a result, the essential tasks to be the form of legislation should be sanctioned in whatever way. To make India great, duty adherence must be instilled. East's thinking and ideal for loyalty to nationalism, social solidarity, and mutual coexistence are that a tree must love the ground on which it rests.