

# **THE ESSENCE OF FUNDAMENTAL DUTIES**

**[Slides for the Foundation Course on Human Rights, Batch 2020]**

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## THE TOPIC

- Covers a basic understanding of the concept & features of duties. It refers to different human rights instruments and state constitutions that refer to the duties of individuals, groups and states.
- The topic also covers the Fundamental Duties under Part IV A of the Indian Constitution, the importance & scope , and few judicial decisions on the subject.
- Also, a few important questions & points on the nature, value or significance fundamental duties in general and in specific to the Indian Constitution.

## POINTS FOR DISCUSSION

1. Duties and Human Rights
2. Duties under Constitutions
3. Features of Fundamental Duties
4. Fundamental Duties under Article IV A of the Indian Constitution
5. Importance and Scope of Part IV A
6. Judicial Decisions-
  - *AIIMS Students Union v. AIIMS* [2002]
  - *Shyam Narayan v. Union of India* [2017]
  - *Subash Dutta v. Union of India* [2015]
7. Important Questions
8. Points for Consideration

# DUTIES AND HUMAN RIGHTS

Human rights imply duties.

States, individuals, communities, and corporations are all bound by duties towards human rights.

*Duty* commonly denotes a binding legal obligation.  
[Valle & Sikkink]

The term *responsibility* is widely used in context of international human rights.  
[e.g. corporate social responsibility, responsibility to protect].

Several human rights instruments expressly refer to duties in the text.

Duties have also been interpreted within existing provisions of political documents.

E.g.  
The UN General Assembly Declaration on the Right & Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms, 1998

The African Charter on Human and People's Rights has whole chapter on duties.

Article 27 says - every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community.

The Universal Declaration under Article 29 provides:

Everyone has duties to the community in which alone the free and full development of his personality is possible.

The Preambles to the ICCPR & ICESCR states;

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the Covenant.

# DUTIES UNDER CONSTITUTIONS

## Fundamental duties

under Constitutions may have a flavour distinct from the regional and international human rights instruments.

The provisions within constitutions vary in terms of the number of duties, nature of duties, and the duty bearers.

There are several overlapping facets of duties under human rights instruments & duties under constitutions including principles like non-discrimination, dignity & solidarity etc.

The Constitution of the United Republic of Tanzania provides for *Duties to the Society* including

- duty to participate in work,
- to abide by laws of the land,
- safeguard public property and
- defence of nation.

The Constitution of Ghana provides for *Duties of Citizen* including

- *To promote the prestige & good name of Ghana and respect the symbols of the nation,*
- *To uphold & defend the constitution and the law*
- To promote national unity & live in harmony with others*
- *To declare his income honestly to appropriate and lawful agencies & to satisfy all tax obligations.*

*[See Constitution for all duties]*

The constitution of the Kingdom of Bhutan under 8 (5) provides-

- A person shall not tolerate or participate in acts of injury, torture or killing of another person, terrorism, abuse of women, children or any other person and shall take necessary steps to prevent that act.

- 8 (6) responsibility to provide help, to greatest extent possible, to victims of accidents and in times of natural calamity.

*[See Constitution for all duties]*

The Indian Constitution under Part IV A provides for Fundamental Duties which are unique to the history and constitutional commitments of the country.

IV A deals with the duties of the citizen of the country.

# FEATURES OF FUNDAMENTAL DUTIES

**1. DUTY BEARERS:** The fundamental duties in political constitutions may provide for duties of the citizens, state, and entities.

**2. BINDING:** Fundamental duties have strong persuasive value and also act as *principles shaping* the governance of societies.

**3. ACTION ORIENTED:** Fundamental duties require both action and restraint from the duty bearers. E.g. the duty to not hurt the sentiments of fellow beings and the duty to pay taxes.

**4. LEGAL AND MORAL:** Fundamental duties are closely tied to principles of morality, fraternity, dignity, solidarity and state allegiance. These values and principles can also be made part of specific laws of the state for enforcement.

**5. VERTICAL AND HORIZONTAL DUTIES:** Fundamental duties include duties towards state, citizens, individuals, community, environment, resources, and the international community. *Vertical duties include those of individuals toward the state, such as the duty to obey the law, the duty to defend the state...Horizontal duties are obligations held by individuals towards other members of one's family, community or society.* [See Valle & Sikkink]

# FUNDAMENTAL DUTIES UNDER PART IV-A OF THE INDIAN CONSTITUTION

**Article 51A. Fundamental duties.**—It shall be the duty of every citizen of India—

1. To abide by the Constitution and ***respect its ideals and institutions***, the National Flag and the National Anthem;
  2. to cherish and follow the ***noble ideals*** which inspired our national struggle for freedom;
  3. to uphold and protect the ***sovereignty, unity and integrity of India***;
  4. to defend the country and ***render national service*** when called upon to do so;
  5. 5. to promote harmony and ***the spirit of common brotherhood*** amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
  6. to value and preserve the ***rich heritage of our composite culture***;
  7. to protect and improve the ***natural environment including forests***, lakes, rivers and wild life, and to have compassion for living creatures;
  8. to develop the ***scientific temper, humanism and the spirit of inquiry and reform***;
  9. to safeguard ***public property and to abjure violence***;
- Also see, Tanzania Constitution, it reads; *every person has the duty to protect the natural resources of the United Republic, the property of the State authority, all property collectively owned by the people, to combat all forms of waste and squander...*
10. 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;
  11. who is a ***parent or guardian to provide opportunities for education to his child*** or, as the case may be, ward between the age of six and fourteen years.

# IMPORTANCE & SCOPE OF PART IV A

## PART IV A

Fundamental duties are a set of 'duties' incorporated under **Part IVA of the Constitution** for the citizens.

### 42<sup>nd</sup> AMENDMENT

The **Forty Second Amendment to the Constitution** incorporated these duties in Part IVA of the Constitution in 1976. Eleventh Duty was added in the year 2002.

### VERTICAL & HORIZONTAL

Part IV A incorporates the **duties of citizens** towards the state, fellow citizens, and the environment.

### PART IVA & UDHR

Part IV A is in consonance with **Article 29 (1)** of the Universal Declaration on Human Rights. 29 (1) says *everyone has duties to the community in which alone the free and full development of his personality is possible.*

### LEGAL & MORAL

Part IV A includes **moral and legal values** that promote peace, security and dignity in society. *They have a moral underpinning and are enforced through specific laws of the state.*

### PART III, PART IV, & IV A

The trilogy of **Fundamental Rights, Directive Principles of State Policy, and Fundamental Duties** is the bedrock of the Indian Constitution. [Singh & Deva].

Rights have *co-relative duties*. Therefore, exercise of 'fundamental rights' has to be in view of the 'fundamental duties'.

### ENFORCEMENT OF IV A

They can be enforced by the adoption of **specific laws and providing for penalties** for breach of the duties. There is no provision in the Constitution for the 'direct enforcement' of these duties. Likewise, there is no provision allowing sanction to prevent the violation of these duties. **8.**

**ACTION ORIENTED** The 'duties' are *expected to be performed by every citizen*. They 'limit the operation of fundamental rights' that citizens have. **Maybe these duties were intended to be a 'part and parcel of every Indian's thoughts and actions'.**

[Basu]

Quote;

*The Preamble [Indian Constitution] expresses two ideals which compliment each other, namely,*  
*- rights of the individual which correspond to the duties of the state towards the individual, and*  
*- duties of the individual towards the state which correspond to the rights of the society against the individual.*

[Deshpande, 1973].



# JUDICIAL DECISIONS

## AIIMS STUDENTS' UNION V. AIIMS, (2002) 1 SCC 428

### FUNDAMENTAL :

“Fundamental duties, as defined in Article 51-A, **are not made enforceable by a writ of court** just as the fundamental rights are, but it cannot be lost sight of that “duties” in Part IV-A Article 51-A are prefixed by the same word “**fundamental**” which was prefixed by the founding fathers of the Constitution to “rights” in Part III.

### DUTY BOUND :

Every citizen of India is **fundamentally obligated** to develop a scientific temper and humanism. He is fundamentally duty-bound to strive towards **excellence in all spheres** of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievements.

### COLLECTIVE DUTY OF STATE:

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.**”

### VALUABLE GUIDE :

“Fundamental duties, though not enforceable by a writ of the court, yet 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 **serve as a guide not only for resolving** the issue 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 tab, even a taboo, on State action drifting away from constitutional values.”

# JUDICIAL DECISIONS

*SHYAM NARAYAN CHOUKSEY V. UNION OF INDIA, (2017) 1 SCC 421*

Referring to the Article 51-A(a) of the Constitution which reads thus: “(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem”, the Court observed that:

“From the aforesaid, it is clear ...that it is the sacred obligation of every citizen to abide by the ideals engrafted in the Constitution. And one such ideal is to show respect for the National Anthem and the National Flag....a time has come, the citizens of the country must realise that they live in a nation and are duty-bound to show respect to National Anthem which is the symbol of the constitutional patriotism and inherent national quality. It does not allow any different notion or the perception of individual rights, that have individually thought of have no space. The idea is constitutionally impermissible.”

The Supreme Court said: “...we have no shadow of doubt that one is compelled to show respect whenever and wherever the National Anthem is played. It is the *élan vital* of the nation and fundamental grammar of belonging to a nation State. However, the prescription of the place or occasion has to be made by the executive keeping in view the concept of fundamental duties provided under the Constitution and the law.”

**JUDICIAL DECISION**  
***SUBHAS DATTA V. UNION OF INDIA, (2015) 11 SCC 324***

The Supreme Court;

“Under Article 51-A(f) of the Constitution, there is *fundamental duty to value and preserve* the rich heritage of our composite culture.

There should be *proper inventory of all historical objects* preserved at different centres and such inventory should be kept at a central place under the Government of India. There should be periodical stock taking by an independent agency.”

# IMPORTANT QUESTIONS

1. Are duties of private individuals expressly provided for under human rights instruments?
2. How are *duties enforced* in domestic and international law?
3. What are the *duties* found in *the text of most* constitutions ?
4. Under IV A of Indian Constitution, are the words used **vague and ambiguous** ? [e.g. value and preserve the rich heritage of our composite culture, scientific temperament and humanism, brotherhood etc. ]
5. Are the duties under IV A *legal duties or moral duties*?
6. What measures are taken by the state to *create awareness* about fundamental duties?
7. Have some duties under Part IV A *received more attention* by the State as compared to others?
8. Is there a relationship between *fundamental duties and Directive Principles* of State Policy?

## POINTS FOR CONSIDERATION

1. ***Complementarity***: Duties of citizens are complimented with the duties of state, individuals, community and organizations.
2. ***Duties as Value Orientations***: Duties are written or provided for in domestic laws/constitutions based on values including human dignity, non-discrimination, solidarity, state allegiance, scientific progress, rule of law, good governance, environment preservation etc.
3. ***New or Unenumerated Duties***: There is recognition of new duties or the development of unenumerated duties through the process of interpretation.
4. ***International Community***: Duties of and to the international community have become an important part of the *duties framework*.

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