

MY FUNDAMENTAL DUTIES UNDER THE CONSTITUTION OF INDIA

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INTRODUCTION

The Constitution of India, the longest written Constitution of the world, has envisaged a holistic approach towards civic life in a democratic polity. Certain rights have been guaranteed within the Constitution as Fundamental Rights. Since human conduct cannot be confined to the realm of Fundamental Rights, the Constitution has envisaged certain duties, which are correlated to the rights, and those duties have been described as Fundamental Duties.

True, the framers of the Constitution did not deem it appropriate to incorporate those duties in the text of the Constitution when it was originally promulgated. There could have been several reasons for this omission. Firstly, the concept of Dharma is deeply rooted into Indian society. Certain duties are practised by every Indian citizen as basic values regardless of a threat of penalty. Secondly, the duties of citizens are encapsulated in the preamble itself which contains not only the aspirations of the people i.e. the goals of the nation, but also the assurances of the Constitution. It is thereby implied that whatever is required for the fulfilment of these goals be undertaken by every citizen as his duty. Moreover, logically, the Fundamental Rights enlisted in the Constitution bring in an inference of a set of duties which are essential for their realisation. If these rights are to be available to people, they are obligated to perform their corresponding duties.

However, the post Constitution civic life, for around a quarter century, did not portray a rosy picture, and therefore, it was thought fit to have a framework of duties in the Constitution itself. It may sound paradoxical that the preparatory work for the introduction of Fundamental Duties was done when the Fundamental Rights were under suspension during the Emergency. Subsequently, majority of the Amendments to the Constitution during the Emergency were scrapped by the 44th Amendment but the Parliament did not touch the

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Amendment on Fundamental Duties. That shows how the country seriously meant the duties to be written in the Constitution and to be observed in civic life.

No democratic polity can ever succeed where the citizens are concerned only about their rights and are not willing to be active participants in the process of governance by assuming responsibilities, discharging citizenship duties and coming forward to give their best to the country. There are three things which build a nation. The first is noble ideals. The second is the capability of the citizens for achieving these ideals. The third and very significant is also the constant and relentless effort made by each citizen to strive for excellence and take his country forward.² The Fundamental Duties act as the foundation of human dignity and national character and to further this idea, an attempt is made in this paper to trace the evolution of duties under the Indian civilisation and examine if a few additional Fundamental Duties in the Constitution of this country could help in balancing out the rights of its citizens and further make them more responsible towards the country's development.

The Father of the Nation, Mahatma Gandhi, while commenting on the performance of duties had once said that:

"The true source of right is duty. If we all discharge our duties, rights will not be far to seek. If leaving duties unperformed we run after rights, they will escape us like will-o-the-wist, the more we pursue them, the farther they will fly."

The Constitution of India casts a duty on every citizen to abide by its principles and respect its values. On the one hand, we are given various rights which when breached are enforceable against the state. While we are given these rights, certain duties are expected from the citizens because the concept of duty is embedded in the highest tradition of the Indian culture, thought, literature, history and philosophy. It is a fact that the Fundamental Duties will become enforceable only when they receive the sanction of the state in the form of a law made by the Parliament. However, it can be undoubtedly stated that the rights flow from duties when well-performed. Harold Laski, the great political philosopher once said that the rights are related to functions and are given only in return for some duties to be performed.³

² Government of India, Report: *National Commission to Review the Working of the Constitution*, Volume II, p 373 (Ministry of Law, Justice and Company Affairs, 2001).

³Harold Laski, *A Grammar of Politics* (London: George Allen & Unwin Ltd., 1925).

Rights are conferred on the individuals not for their individual upliftment but also for social and collective good.

THE CONCEPT OF DUTY IN INDIAN SOCIETY:

Although the evolution of our civilisation is not uniform and has several links missing⁴, it is enriched with the notion of rights and duties of individuals. The entire socio-political affairs of the Indian civilisation have been based on the performance of duties. This is one of the unique features of its tradition that more emphasis is given on duties than rights. In ancient days, people and their lives were based on noble conduct of life, where the four *Vedas* protected the firm followers of the prescribed division of duties and the various stages of life. The belief was that observance of one's own duty will lead to heaven and infinite blessing. *Varnashramadharma* lays down the duties of different classes of people at different stages of life. Beyond that duties have given birth to rights to all traditions.⁵

The *Vedas*, *Rigveda*, *Samaveda*, *Yajurveda*, and *Atharvaveda*, together with other religious digests prescribe the respective duties of the four *Varnas* and four stages of life.⁶ They lay down duties in the form of commands. It was considered that failure to perform individual's duty would result in 'sin' for which there was 'punishment' in another world.⁷ Thus, the force behind the performance of duties in the ancient Indian jurisprudence was 'religious commands' compared to 'legal commands' in today's world. Duties were performed under the fear of an unseen power. There was a concept of birth and re-birth and that the life in re-birth would depend on one's *Karma* in the existing life.

⁴The Indian Civilisation starts with Vedic (*Sruti*) or pre-sutra period, followed by epic period of *Ramayana* and *Mahabharata* (2,300 B.C. to 1,000 B.C.). Then comes Dharma-Sutra period, which is the golden period of Hindu-legal history. The Prime exponents of this period are *Gautama*, *Budhayana*, *Apastambha*, *Vasistha*, and *Vishnu*. Another period starts with *Smritis* of Manu, *Yajnavalkya*, *Narada*, *Brhaspati* and *Katayayana*. Post-Smritis saw many Digests like Kautilya's *Arthashastra*.

⁵Mahendra P. Singh, et al. edited), *Human Rights and Basic Needs (theory and Practice 3*, in Mahendra P. Singh, *Human Rights in the Indian Tradition- Search for an Alternative Model*, 23 (2008).

⁶S.C. Dube, *Indian Society* (1990).

⁷T.K. Tope, *Fundamental Duties and Justiciability*, (1982) 2 SCC J- 11.

THE INCORPORATION OF FUNDAMENTAL DUTIES IN THE INDIAN CONSTITUTION:

The founding fathers of our Constitution were, no doubt, eminent jurists and men of scintillating intelligence and sparkling insight. That they did not think it necessary to include a specific Chapter on Fundamental Duties at the time of framing the Constitution was perhaps because they assumed the rights to follow obligations of citizens in any civilised society.⁸ But on May 29, 1976, the All India Congress Committee while adopting the first batch of proposals made by the Swaran Singh Committee suggested that it should also formulate proposals for inclusion in the Constitution of certain Fundamental Duties and obligations which every citizen owes to the nation. After its meeting on July 15, the Swaran Singh Committee recommended the incorporation of eight duties in the Constitution of India.⁹ The non-compliance with these duties was to be met with a sanction.¹⁰ The concept of Fundamental Duties, thereafter introduced in Part IV-A of the Constitution of India by the 42nd Amendment is an attempt to reiterate the fact that the citizens have some duties towards the State, the society and towards each other.

The Government evidently thought it was imperative that Fundamental Duties be introduced, not to take away the scope of the rights but to ensure a “democratic balance”¹¹. H.R. Gokhale, the then Union Law Minister, stated that the post-independent history, demonstrated that people were over-emphasising the Fundamental Rights available to them with “*a zeal much more than that shown for fulfilling their fundamental obligations of respecting the established legal order.*”¹² A chapter on Fundamental Duties was hence meant to have “*a sobering effect on the restless spirits who have led a host of anti-national, subversive and unconstitutional agitations.*”¹³ The Government thought that non-declaration of citizen’s duty was a missing part of the ‘social contract’ which the citizens’ are deemed to have entered into with the Government under the framework established by and under the Constitution of India.

⁸M.N. Morje, “The Fundamental Duties,” Yojna, Vol. 21, No. 3, 1977, p.25.

⁹Swaran Singh Committee Report, (1976) 2 SCC (Jour) 45.

¹⁰G.G. Morje, Reporting India, 1975(Edn. 1977), p.211.

¹¹Stated by Indira Gandhi, Prime Minister of India, see V.D. Mahajan, Constitutional Law of India, Eastern Book Co. (1984) 311.

¹²Ibid at 310

¹³Ibid

The general objectives behind the Forty-Second Amendment were to “remove the difficulties in achieving the objective of socio-economic revolution...to end poverty, ignorance, disease, inequality.”¹⁴

The incorporation of Fundamental Duties in the Constitution was an attempt to balance an individual’s civic ‘freedoms’ with his civic obligations. It is expected that a citizen of India, while enjoying Fundamental Rights, should also perform these duties. Article 51-A commands the confidence of all political parties and has remained in the statute book for more than 35 years. Inclusion of this Article has brought our Constitution in line with Article 29(1) of the Universal Declaration of Human Rights which provides that: “*Everyone has duties to the community in which alone the free and full development of the personality is possible.*”¹⁵

The following ten Fundamental Duties were introduced by the 42nd Amendment Act, 1976 -

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 which inspired our 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 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 our composite culture;
- g. to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures;
- h. to develop the scientific temper, humanism and the spirit of inquiry and reform;

¹⁴Sunder Rahman, Constitutional Amendments, Eastern Law House (1989) New Delhi.

¹⁵ Article 29(1), Universal Declaration of Human Rights

- 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.

Subsequently, another duty was added by the 86th Constitutional Amendment Act of 2002:

- k. who is a parent or guardian to provide opportunities for education of his child, or as the case maybe, ward between the age of six and fourteen years.

DUTIES WHICH CAN BE INCORPORATED UNDER ARTICLE 51-A.

A right generally implies a corresponding duty. They are two sides of the same coin. It is for this reason that the two concepts – Right and Duty, are considered correlatives¹⁶ and therefore, inextricable. Sir Holland explains, “*Every right, whether moral or legal, implies the active or passive furtherance by others of the wishes of the party having the right. Wherever any one is entitled to such furtherance on the part of others, such furtherance on their part is said to be their duty*”¹⁷.” The two concepts are so interwoven that they cannot be divorced from each other. Therefore, it is pertinent that every right must be complemented by a duty.

The current set of Fundamental Duties in Part IV-A of the Constitution of India were added in the year 1976. The only Fundamental Duty that was added post the 1976 Constitutional Amendment, is contained in Article 51A(k) i.e. the duty of every parent or guardian to provide opportunities for education to his child between the age of six and fourteen years. This duty was inserted to correspond with the incorporation of the right to free and compulsory education in Part III as Article 21A through the 86th Constitutional Amendment Act of 2002.

Since then, the scope of Fundamental Rights under Part III of the Constitution has seen significant expansion through judicial pronouncements. The Right to Free Legal Services to the poor¹⁸, The Right to Speedy Trial¹⁹ and Right to Live in a Clean and Healthy Environment²⁰ are just a few examples of this expansive interpretation accorded to Fundamental Rights by the Supreme Court to meet the challenges posed by the changing socio-political situation in our democracy. As a result, an imbalance has been created between the current set of Fundamental Rights and Duties.

The changing nature of the Indian socio-political structure is another reason to consider the addition of new Fundamental Duties to Part IV-A. With the advent of technology and the evolution of societal norms, new obligations have arisen that members of the society owe to

¹⁶W. Hohfeld, “Some Fundamental Legal Conceptions as Applied in Judicial Reasoning”, 23 Yale L.J. 16, 28–59 (1913).

¹⁷Thomas Erskine Holland, *The Elements of Jurisprudence*, p. 71(West Publishing Co., St Paul, Minnesota, 1896).

¹⁸*M.H. Hoskotv. State of Maharashtra*, (1978) 3 SCC 544.

¹⁹*Hussainara Khatoon v. Home Secretary, State of Bihar*, (1980) 1 SCC 98.

²⁰*Consumer Education and Research Center v. Union of India*, (1995) 3 SCC 42.

each other and to the country. Along with that, certain duties that are essential to any democracy need to be reinforced within the current context so as to instil a new sense of civic responsibility.

➤ **DUTY TO VOTE:**

Active participation by citizens in the election process is the cornerstone of any democracy. India has provided us with a Constitution which provides the citizens the right to vote. Article 326 of the Constitution read with Section 62 of the Representation of People's Act, 1951 confers the right to vote. However, quite often the question arises as to whether that right also implies an obligation. To understand it in a nutshell, a right is a privilege to be granted, whereas an obligation is an act or omission which one is required to do. Therefore, it is very crucial to analyse if the said adult suffrage should be articulated as a right and a duty to vote.

Voting is considered as our civic duty determining our future and hence the citizens need to play a part in shaping it. Voting provides the citizens with an opportunity to benefit the society through their involvement in the democratic process. However, looking at the voter turn-out during the last general elections in 2014, it can be seen that the votes polled amounted only to about sixty seven per cent of the total vote population. This voter apathy should be taken seriously and an attempt should be made to make voting a citizenship obligation. Decisions taken by a government elected through a process partaken by a higher proportion of population would provide more legitimacy to the Government as it would then represent a majority of the population.

As per our Constitution, voting is a civic right and not a civic duty. The 'Committee to Operationalise Suggestions to Teach Fundamental Duties to the citizens of India', under the chairmanship of Justice J.S. Verma recommended that "*duty to vote at elections, actively participate in the democratic process of governance and to pay taxes should be included in Article 51A of the Constitution*". The National Commission to review the working of the Constitution of India had also reiterated that "*the first and foremost step required by the Union and State Governments is to sensitise the people and create a general awareness of the provisions of Fundamental Duties amongst the citizens on the lines recommended by the Justice Verma Committee*" and strongly suggested earlier implementation of some of the

Fundamental Duties including the 'Duty to vote at elections' by amending Article 51-A of the Constitution.²¹

The state can take several steps to ensure that this duty to vote is made operational and effective. One method through which this may be achieved is by developing a system of incentives for voters and conversely disadvantages for those who abstain from performing their duty to vote. A certificate of voting should be provided to voters and it should be mandatory to produce it at the time of travel abroad, for the issue of passports or driving licence etc.. It should also be produced to get a ration card or the BPL card. To avail these benefits which flow from one's citizenship, one should be required to perform the citizenship duty of voting. If a citizen has not voted, he should not have any right to benefits or subsidies. Tax rebates under various Acts could also be made available only to those citizens who cast their vote. A very large section of people can be motivated to vote this way.²²

As one of the measures to improve the legitimacy of elections, most of the post-communist former republics of the USSR had introduced a compulsory minimum turnout level. For example, if the turnout in an electoral district did not reach 50 per cent, then the election would not be conducted. It is interesting to note that various countries deal with the issue of participation by implementing mandatory voting, including Argentina, Greece, Australia, Belgium and a few Latin American countries. In Australia, failure to vote can also result in a \$20 fine.²³

➤ **DUTY TO PAY TAXES**

The duty to pay taxes springs from providing the state with its means of existence. The state performs essential functions like maintenance of law and order, education, regulation of trade etc. and its ability to perform these functions is contingent on the fact that it has the finances to do so. All these functions are paramount for the civic organisation of society. Without

²¹Rao, K. J. "First Amend Statutes to Avoid Legal Hassles." *The Economic Times*. 25 Dec. 2009. Web.<http://articles.economictimes.indiatimes.com/2009-12-25/news/27663461_1_compulsory-voting-election-law-fundamental-duties>.

²²RanjitaGanesan, *The Right to Vote Should Include the Right to Not Vote: Subhash Kashyap*, 2015 Business Standard, June 27, 2015 at (2015).

²³Adeel Hassan, *Back Story*, 2014 N.Y. Times, Nov. 3, 2014 at (2014), http://www.nytimes.com/2014/11/03/us/latest-news-midterm-elections-supreme-court-virgin-galactic.html?_r=2 (last visited Apr. 23, 2016).

taxes, the very existence of the state would be in peril. Therefore, the duty to pay taxes becomes a salient part of one's citizenship. Justice Jackson and Justice Reed have acknowledged the same in **Miller Bros. v. State of Maryland**²⁴ -

“The fact of residence creates universally reciprocal duties of protection by the state and of allegiance and support by the citizen. The latter obviously includes a duty to pay taxes, and their nature and measure is largely a political matter.”

Several countries like Tunisia²⁵, China²⁶, Kuwait²⁷ and the erstwhile UAR²⁸ made provisions in their respective Constitutions regarding the duty of a citizen to contribute to the public exchequer according to his capacity.

Presently, the Indian Constitution does not recognise the duty to pay taxes as a Fundamental Duty, although the Swaran Singh Committee²⁹ had recommended the addition of the same as part of the 42nd Constitutional Amendment. Payment of taxes, however, continues to be a legal obligation as the government has brought into force various legislations to ensure the payment of taxes. However, in the backdrop of this, the tax gap (the revenue that a government is expected to receive as against the revenue it actually collects) continues to increase every year. The greatest indicator of this is the fact that the size of India's shadow economy as a share of the GDP reached 24.3% in the year 2012.³⁰

Such statistics make it evident that Indian citizens do not believe that it is their duty to pay tax but the duty of the state to collect it. The collection of taxes, thereby, becomes like the proverbial game of cat and mouse. The Supreme Court has long wrestled with the concepts of tax planning, tax avoidance, tax evasion etc. in **McDowell**³¹, **Azadi Bachao**³² and recently again in the **Vodafone case**³³. Such disputes are reflective of the general attitude of the masses towards the taxation regime and indicates how paying taxes is considered a burden

²⁴Miller Bros. Co. v. State of Maryland, 347 U.S. 340 (1954).

²⁵ Article 16, Constitution of Tunisia

²⁶ Article 56, Constitution of People's Republic of China

²⁷ Article 48, Constitution of Kuwait

²⁸As on March, 1964.

²⁹Swaran Singh Committee Report, (1976) 2 SCC J- 45.

³⁰Sailbal Kar & Shrabani Saha, “Corruption, Shadow Economy and Income Inequality: Evidence from Asia”, Discussion Paper No. 7106, December 2012.

³¹McDowell and Co. Ltd. v. Commercial Tax Officer, (1985) 3 SCC 230.

³²Union of India v. Azadi BachaoAndolan, (2004) 10 SCC 1.

³³Vodafone International Holdings v. Union of India, (2012) 6 SCC 613.

and not a duty. Research has found that tax evasion is a direct result of lack of trust among the people, in general, and the government, in particular.³⁴ For people to want to pay taxes, they must not only “*believe that their tax bill is fair, but also that their destiny is bound up with that of their fellow citizens*”.³⁵ Citizens must believe that their taxes are bound to be used for public good. Once such faith is established the struggle between what is immediately beneficial for the taxpayer as against what is good for the society (of which the taxpayer is a member and an indirect beneficiary), will disappear.

The incorporation of the right to pay taxes as part of Fundamental Duties in the Constitution will shift the onus onto the taxpayer to pay taxes rather than the tax department to collect them. The reassertion of the moral belief that one must pay taxes as part of their citizenship may result in a more effective and robust system of collection as opposed to the current system where the citizen is pursued by the tax department to compel him to pay his taxes

➤ **DUTY TO HELP ACCIDENT VICTIMS**

Every 60 minutes, 15 persons die in traffic accidents in India. According to the Law Commission of India, at least 50% of fatalities can be prevented if road accident victims receive medical attention within the critical first hour after the accident.³⁶ According to the data released by the Ministry of Road Transport and Highways in 2013, around 1,37,572 people lost their lives in road accidents. The number translates into 380 deaths per day. Further, a 2006 study conducted by the Indian Journal of Surgery shows that 80% of victims in India do not receive emergency medical care within the Golden Hour.

Often accident victims complain about how none of the bystanders lend a helping hand. A 2013 survey conducted by SaveLIFE Foundation, an NGO focused on improving road safety and emergency care in India, shows that 74% bystanders are unlikely to assist a seriously injured person on the road, irrespective of whether they are alone at the spot or in the presence of others.³⁷

³⁴ Callahan, D, *The Cheating Culture: Why Americans Are Doing Wrong To Get Ahead*, 2004 (New York: Harcourt, Inc.).

³⁵*Ibid.*

³⁶Law Commission of India, 201st Report on Emergency Medical Care to Victims of Accidents and during Emergency Medical Condition and Women under Labour, (August, 2006).

³⁷Borpuzari, Pranbihanga, and Ashutosh Bhattacharya. "Road Accidents: How SaveLIFE Foundation Is Addressing India's Largest Killer." *The Economic Times*. 29 Oct. 2015.

Under Law of Torts, there is a duty to rescue which talks about circumstances where a party can be held liable for not coming to the rescue of a party in peril. In most of the common law countries, it is rarely formalised in statutes which would bring the penalty down upon those who fail to rescue.

Many civil law systems, which are common in Continental Europe, Latin America and much of Africa, impose a far more extensive duty to help the accident victims. The only exclusion is that while attempting to rescue, the person must not endanger his or her own life or that of others. Anyone who finds someone in need of medical help must take all reasonable steps to seek medical care and render best-effort first aid. Usually, the situation arises in traffic accidents: other drivers and passers-by must take action to help the injured without waiting for the State to do the needful.

In the Canadian province of Quebec, which is a civil law jurisdiction, there is a general duty to rescue in its Charter of Rights: *"Every human being whose life is in peril has a right to assistance. Every person must come to the aid of anyone whose life is in peril, either personally or calling for aid, by giving him the necessary and immediate physical assistance, unless it involves danger to him or a third person, or he has another valid reason."*³⁸ In Canadian air law, it is mandatory to make oneself and one's aircraft available to aid search-and-rescue efforts if the aircraft is in the immediate area and a distress signal is received.

The Karnataka government's decision to frame a 'Good Samaritan law'³⁹ as part of an effort to encourage people to offer assistance without the fear of any criminal or civil liability is a step in the right direction. The governments of other States and Union Territories such as Rajasthan and Delhi are also in the process of drafting similar Bills. In the absence of national legislation on the subject, in October 2014 the Supreme Court directed the Union government to frame guidelines for the protection of 'Good Samaritans', or helpful bystanders, and a Standard Operating Procedure to make them work.⁴⁰ Justice K. S.

Web.<<http://economictimes.indiatimes.com/small-biz/startups/road-accidents-how-savelife-foundation-is-addressing-indias-largest-killer/articleshow/49578833.cms>>.

³⁸ Charte des droits et libertés de la personne, L.R.Q. c. C-12

³⁹ K.C. Deepika, *Good Samaritans... Law Is Now on Your Side*, The Hindu, Mar. 24, 2016 at , <http://www.thehindu.com/news/cities/bangalore/good-samaritans-law-is-now-on-your-side/article8390403.ece>.

⁴⁰Kritika Sharma Sebastian, *Guidelines to Protect Good Samaritans Soon*, The Hindu, Apr. 12, 2015 at <http://www.thehindu.com/news/cities/Delhi/guidelines-to-protect-good-samaritans-soon/article7094395.ece>

Radhakrishnan committee, appointed by the Supreme Court, has in fact framed detailed guidelines in this regard.⁴¹

The duty to help accident victims is a duty imposed by natural law upon every human being. It is this virtue of respect for life which makes one a good human being. With the increase in the number of accidents, it has become pertinent for India to recognise this duty as one owed by its citizens towards each other, as other jurisdictions have already done.

➤ **DUTY TO KEEP THE PREMISES CLEAN**

Mens Sana in corpore sano. A healthy mind lies in a healthy body.

Hygiene and cleanliness are directly linked with health and therefore required badly for the full and proper enjoyment of life. The Supreme Court has held that the Right to Life under Article 21 also includes the Right to a Clean Environment.⁴² From this right, there also flows an obligation to keep one's surroundings clean. Therefore, the duty to maintain decent standards of hygiene is not only owed to the self but also to others.

However, this obligation to keep one's own premises clean has been largely ignored. Widespread littering and poor sanitary conditions have become common features of Indian society. To combat this problem, the Hon'ble Prime Minister Shri Narendra Modi has a very thoughtful and an excellent project launched, the Swachh Bharat Mission on 2nd October 2014. The programme focuses on building toilets and solid waste management plants. The programme emphasises the need for behavioural change with respect to littering and community led cleanliness drives. It has received tremendous support from people from all walks of life.

There exists a Constitutional limitation on the Union Government to enact a legislation directly dealing with sanitation and cleanliness since 'public health' and 'sanitation' fall within the State List.⁴³ However, the Government plans on introducing a model law to be forwarded to all the states and it is a welcome move in the right direction.

⁴¹*Savelife Foundation and ors. v. Union of India and ors*, 2016 (3) SCALE 522

⁴²*Vellore Citizens Welfare Forum v. Union of India*, (1996) 5 SCC 647.

⁴³Item 6, List II, VIIth Schedule, Constitution of India.

The need to keep one's own premises clean has been recognised under the Factories Act, 1948.⁴⁴ It imposes a detailed obligation upon the occupier of a factory premise to ensure that the factory is kept clean and free from effluvia. This obligation has been incorporated in light of the health hazards that may ensue from an unclean factory premises.

In *M.C.Mehta v.Union of India &Ors.*⁴⁵, the Supreme Court recognised the need for behavioural change and stressed upon the need for awareness. While issuing directions to the Municipalities, it noted that -

“Children should be taught about the need for maintaining cleanliness commencing with the cleanliness of the house both inside and outside, and of the streets in which they live. Clean surroundings lead to healthy body and healthy mind.”

The most effective mechanism to tackle uncleanliness is to sensitise people about this duty. Therefore, it is imperative that a Fundamental Duty to this effect be added to the Constitution.

➤ DUTY TO PREVENT CIVIL WRONGS

It would be futile to expect the State or its instrumentalities to regulate human conduct at every nook and corner of public life. A responsible citizenry is actually the back bone of State. Any violation of law and any disturbance to public order by disorderly conduct is a wrong done to society. It is not enough that a citizen refrains from committing wrong; he has a duty to see that fellow citizens do not indulge in the commission of wrongs. He also has a duty to prevent commission of civil wrongs by taking appropriate action. It is common to see people breaking the law by littering the streets, easing themselves out in open, smoking in public places and vandalising public property. These acts frustrate the efforts undertaken by the Government and cause destruction of the taxpayer's money. The ill effects of these activities cannot be downplayed especially in a developing country like India which has extremely scarce resources. However, citizens often ignore such activities and do not make an attempt to appeal to the conscience of these people; neither do they take recourse to the law to bring an end to such indiscretions, thereby strengthening the audacity of such

⁴⁴ Section 11, Factories Act, 1948

⁴⁵(1988) 1 SCC 471.

offenders. What is worse is that when an individual makes an attempt to try and curb such activities, he finds himself in minority as nobody comes forward to support him.

The well meaning and educated citizens of the country have a duty to inspire compliance of the law because they are a privileged lot and they can dissuade wrongdoers from indulging in such activities by arousing their conscience. This way they can make the wrongdoers see the ill effects of their action. We must not forget that we have inherited the rich legacy of Mahatma Gandhi who always believed and preached the strength of *ahimsa* to dissuade wrongdoers. We cannot afford to relinquish those principles especially when our country is facing tough times. It may not be totally out of context to recollect a personal experience. When I was the Chief Justice of High Court of Himachal Pradesh, while walking through a public road with my wife, I saw a fairly educated person smoking in public place. I told him that he was committing an offence since smoking in public place was prohibited in that State. He immediately asked me a question, “Are you the Chief Minister?” I realised that he was convinced of his wrong but reluctant to correct. Therefore, I asked him that if he had committed a wrong, did he expect the Chief Minister to come and tell him that he was violating the law. Obviously, he had not recognised me. To put it short, in couple of minutes, I could convince him that he should be a law abiding citizen and should not take pride in breaking law with impunity merely because he may be a highly placed person. Towards the end of the conversation, I revealed my identity, and thereafter, he became one of the excellent duty-conscious citizens actively engaged in civil society movements.

➤ DUTY TO RAISE VOICE AGAINST INJUSTICE

A victim of oppression is a key stakeholder in the struggle to bring an offender to the book as he is epistemically privileged, in as much as he has knowledge of the injustice and also of the offender. Thus, he is in a position to initiate and motivate action against such injustice, and in fact, he has a duty to do so. The intervention of the victim ensures that the society is made aware of the oppression and is able to resist it. Further, the victim’s intervention ensures that the offenders are brought to the book. The same is the position of a witness of a crime. In fact, the duty of a witness of oppression stands on an even higher pedestal; he has a twin duty: (i) to help the victim during the oppression in his efforts to resist the offence and; (ii) to aid the enforcement agencies/state to bring the offender to book.

However, today people seem to have stopped reacting to atrocities; they neither report crimes nor volunteer to testify in a court. This can be attributed to various reasons such as the fear of getting stigmatised, the fear of danger to life or to avoid suffering inconvenience. According to a report of the International Victimization Survey, thirty per cent of the people in India fail to report a crime.⁴⁶ It is extremely shocking to know that people hesitate to even set the criminal law in motion, due to fear or stigma.

The duties of a victim or a witness can be classified into two main categories *viz.* duty to report a crime and duty to testify in court.

A victim or a witness's role in reporting a crime is very significant as they are aware of the details of the events and are in a position to provide first hand report of the offence. A crime is a wrong against the state and it is the interest of the society to punish him, in order to prevent similar wrongdoings from occurring in future; thus, it is not only in the interest of the victim but also the society that a criminal be punished. The victim must report a crime to the police and aid their efforts to apprehend and punish the offender. In case, the victim is not in an appropriate physical or mental condition to report the offence, the same must be done by a person who comes in contact with the victim. There are several statutes in India which impose a duty to report. For instance, the Protection of Children from Sexual Offences Act, 2013, imposes a duty to report a sexual offence committed against a child, upon certain classes of people.⁴⁷ The non compliance with this duty of reporting is punishable with six months imprisonment or fine or both.⁴⁸ In some states in the US, there are mandatory reporting laws and accordingly, certain categories of people are designated as mandatory reporters in relation to offences involving child abuse. Failure to comply with the duty is a punishable offence.⁴⁹ In California, for instance, the law imposes an obligation on forty-two categories of individuals to report cases of child abuse, in case they come across such an instance or have reasonable grounds to suspect that.⁵⁰

⁴⁶Tiwary, Deeptiman. "Why India Has a 'low' Crime Rate." *The Indian Express*. 12 Jan. 2016. Web.<<http://indianexpress.com/article/india/india-news-india/why-india-has-a-low-crime-rate/>>. (last visited on 4th May 2016)

⁴⁷Section 20, The Protection of Children from Sexual Offences Act, 2013

⁴⁸Section 21, *ibid.*

⁴⁹“Mandatory Reporters of Child abuse and Neglect” Available at <https://www.childwelfare.gov/pubPDFs/manda.pdf> (Last visited 5th April 2016)

⁵⁰ Section 1165.7, Child Abuse and Neglect Reporting Act

The victim's duty does not end by reporting the crime but he/she is also expected to testify in the trial. Victims of a criminal offence having a first-hand experience of injustice are in a position to assist the state in its endeavour to punish the accused. A criminal case stands on the very edifice of the testimony of a victim and in case, a victim refuses to participate in a trial, there is very little the state can do to punish the offender. A victim or a witness therefore has a moral duty to aid the efforts of the state to punish the offender, in whichever way possible. The State must also on its part work to ensure that the fight to bring the offender to book does not become a Kafkaesque nightmare for the victim

➤ DUTY TO PROTECT WHISTLEBLOWERS

In the original preface to *Animal Farm*, George Orwell remarked, "If liberty means anything at all, it means the right to tell people what they do not want to hear." Unfortunately, even after seventy years having elapsed since the publication of this book, one wonders whether this ideal of Orwell is anywhere near realisation, at least so far as the case of Whistleblowers is concerned. The term whistleblower was first coined by the US Civil Rights Activist, Ralph Nadar to mean a person who "blows the whistle" on any wrongdoing in a public or a private organisation. A Whistleblower plays a critical role in maintaining the moral solvency of the society, in as much as he typically exposes information about corruption and other related illegalities, human rights abuses, corporate frauds etc. and guides public discourse on issues which were hitherto kept from the public. The act of blowing the whistle often subjects organisations and individuals to external scrutiny and jeopardises the realisation of their vested interests and thus gives rise to the propensity of "shooting the messenger". One is reminded of the reaction of Shakespeare's Cleopatra when her messenger informs her that Antony had married Octavia⁵¹ :

Horrible villain or I'll spurn thine eyes
Like balls before me; I'll unhair thy head
Thou shalt be whipp'd with wire and stew'd in brine...
Let ill tidings tell Themselves when they be felt.

⁵¹ William Shakespeare, *Antony and Cleopatra*, Act II, Scene 5

The poor messenger who has nothing to do with the incident but is only doing his job is castigated, beaten up and a knife is put to his throat before he is allowed to leave. Unfortunately, a typical individual or an organisation can behave much worse than what Cleopatra did with the “bringer of bad news”. An individual who discovers an illegality and has the intrepidity to report it is often subjected to retaliatory action in the form of dismissal from employment, facing motivated civil or criminal prosecution and in some cases even physical harm, at the hands of the wrongdoers. The role of a Whistleblower was traditionally associated only with an insider who was privy to the ‘secrets’ of an organisation but now with the coming into force of The RTI Act, 2005, every citizen has become a “potential whistleblower” and is similarly susceptible to reprisal. There have been instances galore of honest and upright bureaucrats being transferred, dismissed or even killed for refusing to brush a wrongdoing under the carpet.

While the state has a great deal of responsibility in providing for their protection through appropriate legislative instruments, but at the same time the role of individuals in supporting, protecting and most importantly not persecuting them cannot be undermined. The responsibility to protect these torchbearers of transparency vests on each one of us and one cannot shy away from it. One must not forget that these individuals through their acts provide a ray of hope in an otherwise opaque society and any retaliatory action against them would dissuade citizens from exposing the wrongdoing in the society which would strike at the root of our democracy.

➤ **DUTY TO SUPPORT BONAFIDE CIVIL SOCIETY MOVEMENTS**

The concept of Civil Society can be traced back to pre-modern times. The early writings of Aristotle gave an important position to the Civil Society though the term ‘Civil Society’ was not in currency back then. Thomas Paine in his essay *Common Sense* made a strong case for the separation of Civil Society from the State. He reasoned that unbridled power could

compel a democratic Government to turn tyrannical and therefore, the presence of a strong and effective Civil Society is needed to counterbalance the weight of the State.⁵² Tocqueville, who was a staunch critic of individualism, provided some perspective to the concept of civil society. He believed that the civil society is essentially a forum wherein diverse groups come together to further their collective interests, thus shedding their individual, selfish desires to form a politically conscience society. He warned that⁵³:

“Modern democracy may be adept at inventing new forms of tyranny, because radical equality could lead to the materialism of an expanding bourgeoisie and to the selfishness of individualism. In such conditions “we lose interest in the future of our descendents...and meekly allow ourselves to be led in ignorance by a despotic force all the more powerful because it does not resemble one.”

In India also there has existed a culture of an organised and effective civil society from medieval times, back then, there existed collective institutions such as trade guilds, Village and Caste Panchayats which were outside the control of the State can be regarded as the oldest manifestations of the Civil Society.⁵⁴ In the modern times, the rise of Social Activism and the growth of Civil Society can be attributed to the Gandhian principle of ‘volunteerism’.

The Bhoodan Movement and the JP movement were based on the disenchantment of the ordinary citizens with institutions of governance. Since then, the country has witnessed a huge rise in the number of Non Governmental Organisations working in different sectors such as human rights, health, education etc. These organisations have from time to time played an important role in preserving the cherished ideals of our founding fathers by acting as a conduit between the State and the Citizens.

These organisations act as a major check on the Executive and in their absence a democracy runs the risk of being reduced to an Orwellian Society, with no hopes of redemption. Today, the society is plagued by the evils of corruption, widespread abuse of human rights and

⁵² Thomas Paine, “Common Sense”, Available at http://www.calhum.org/files/uploads/program_related/TD-Thomas-Paine-Common-Sense.pdf (Last Accessed on 15th May 2016)

⁵³ “De Tocqueville, Democracy, And The Crystallization Of American Civil Society”, Available at <https://www.hks.harvard.edu/fs/phall/07.%20Tocqueville.pdf> (Last Accessed on 15th May 2016)

⁵⁴ Bipin Chandra, *Struggle For Independence 1857-1947*, Penguin Books London, 1989

indifference on the part of elected governments to remedy the situation. The underprivileged are too in-equipped to demand their rights. In such a scenario, citizens have a moral duty to organise themselves or support the endeavor of well-meaning citizen groups so that the gaps in governance left by the Executive can be filled and the rights guaranteed by the Constitution are made available to every citizen. Mahatma Gandhi once remarked, “Be the change, you want to see.” In my opinion, every citizen is capable of bringing about a veritable change in the way this country is governed, provided he himself takes the initiative of becoming a change maker rather than waiting for someone to fill that gap.

Therefore, it is proposed that there must be an addition to Part IV-A of the Constitution of India on this account. Every citizen of the country must have a duty to support the endeavours of civil society or well-meaning citizens in their quest for change.

CONCLUSION

In modern context, it has become increasingly important to instil a reinvigorated sense of civic responsibility among Indian citizens. This can be achieved by adding new duties to the existing list of Fundamental Duties while also laying emphasis on the performance of the existing ones. Excessive emphasis on exercise of Fundamental Rights by citizens diminishes the importance of performance of their correlated duties. The continued expansion of Fundamental Rights of citizens needs to be met with additional responsibilities imposed on them for an improved quality of Indian society.

There is a perception that since Fundamental Duties are not enforceable in courts of law, they don't hold significance. Merely because a rule is not backed by sanctions on disobedience, does not mean it has no importance. It is still regarded a rule of law that is expected to be followed.

Although in the context of Directive Principles (which are essentially duties owed by the state towards its citizens), the Supreme Court in *Minerva Mills Ltd. & Ors. v. Union of India*, the Supreme Court recognised this proposition -

“There may be a rule which imposes an obligation on an individual or authority and yet it may not be enforceable in a court of law and therefore not give 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. The law may provide a mechanism for enforcement of this obligation, but the existence of the obligation does not depend upon the creation of such mechanism. The obligation exists prior to and independent of the mechanism of enforcement. A rule imposing an obligation or duty would not therefore cease to be a rule of law because there is no regular judicial or quasi-judicial machinery to enforce its command. Such a rule would exist despite of any problem relating to its enforcement. Otherwise the conventions of the Constitution and even rules of International law would no longer be liable to be regarded as rules of law”⁵⁵

Hence, Fundamental Duties too are like any rules of law that must be observed by all. Their significance is not diminished by the fact that there is no punishment prescribed for not following them. Fundamental Duties should be treated as constitutional values that must be propagated by all citizens.

The idea behind implementing Fundamental Duties of citizens was to serve a useful purpose. In particular, it is impossible for a democratic polity to ever succeed where the citizens are not willing to be active participants in the process of governance by assuming responsibilities and discharging citizenship duties. Therefore, the most important task before us is to reconcile the claims of the individual citizen and those of the civic society. To achieve this, it is required to orient the citizen to be conscious of his social and citizenship responsibilities and the society should be shaped in such a way that we all show our utmost respect to the inalienable rights of our fellow citizens. Awareness of our citizenship duties is as important as awareness of our rights. Thus, the Fundamental Duties act as the foundation of human dignity and national character. Those duties actually constitute the conscience of our Constitution.

⁵⁵*Minerva Mills Ltd. & Ors. v. Union of India*, (1980) 3 SCC 625.