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Comparative Analysis of Fundamental Duties: A Cross-National Study of India, USA, and China

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ABSTRACT

Even though the former Soviet Union was the first nation in the world to contain provisions for basic obligations in its constitution, provisions for fundamental duties can now be found in the constitutions of communist and non-communist nations worldwide. To promote national integration, unity, and cultural harmony among individuals of Indian society of all castes and creeds, citizens should obligate themselves to the fundamental duties. The Indian Constitution did not initially include any mention of Fundamental Duties. They were included to the constitution for the first time with the 42nd Constitutional Amendment Act (1976). These were adopted in direct reaction to the Swaran Singh Committee's recommendations. After some time had passed, the 86th Amendment to the Constitution was ratified, making the education of children between the ages of 6 and 14 a Fundamental Duty of parents. The courts have the ability to preserve and enforce basic rights, but fundamental duties cannot in any manner be compelled to conform with the law. According to P.V.K.R.V. Rao, there should be mechanisms for penalising those who violated their Fundamental Duties so that Article-51A may be applied as effectively as feasible. In the twenty-first century, the notion of basic responsibilities is becoming increasingly significant.

Keywords: Legal Philosophy, Justice Varma Committee, Duties in USA, Judicial Dynamics.

I. INTRODUCTION

Duty originates from an Anglo-Norman French word “*Duete*” meaning obligation. Fundamental has its roots in the Latin word “*fundamentum*”, which means foundation. Combining these two words gives rise to the soul of this research paper i.e., Fundamental Duties.

Fundamental Duties are described as the moral responsibility of all Indian people to aid, encourage patriotism, and preserve India's unity. Rights and duties are the two sides of a coin upon which the chariot of life smoothly travels. If rights and responsibilities go hand-in-hand

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and become complimentary, it will resolve most of the issues in a nation.

Enforceability and Existence of Duties trace back to the 3rd century BCE, in the most revered Hindu Text i.e., Bhagavad Gita. In the Bhagavad Gita, Lord Krishna says, *“one must do one’s duties, but one has no control over the fruits. Nor must one claim any right to the results. We should expect nothing in return for what we do.”*

The rule of jurisprudence is that every right has a corresponding duty. If we follow a duty, we shall empower ourselves with the rights as well. 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-wisp, the more we pursue them, the farther they fly.”

An individual is the primary organ of a state, and all organs must collaborate to accomplish the welfare of the state. Individuals have the right to exercise their rights and play a significant part in a state's welfare. The Preamble of the Constitution of India, the biggest democracy in the world, enshrines for the "People of India" the ideals of Justice, Liberty, Equality, and Fraternity. Part III of the Constitution guarantees fundamental rights, which emerged from a collective source of other nations, including the United States, the United Kingdom, Australia, and Canada. Evidently, the Constitution's Preamble emphasises rights in all sectors of life in order to provide shelter, protection, and security for its residents. Duties are analogous to rights. The contentious 42nd Amendment to the Indian Constitution incorporates fundamental obligations. The 42nd Amendment introduced the Fundamental Duties of citizens to the Constitution in 1976, based on the recommendations of the Swaran Singh Committee, which had been appointed by the government earlier that year. The Fundamental Duties aid in regulating the conduct of citizens and fostering excellence in all aspects of their lives.

Luminaries such as Lokmanya Tilak and Mahatma Gandhi were ardent supporters of the ancient notion of 'Dharma', which encompasses duties in eastern law as a component of human behaviour. The Vedas are the source of the notion of obligations, which take the shape of religious mandates. Epics such as the Bhagavad Gita, the Ramayana, and the Mahabharata also include duty as a component of one's Dharma, as mentioned above. Thus, eastern jurisprudence is duty-oriented, and rights are viewed as incidental to or a result of executing duty.

In view of suffering, it is evident that the writers of the Constitution did not feel it suitable to include responsibilities in the Constitution's wording when it was initially ratified.

Indian constitution framers added fundamental obligations to the constitution by the 42nd amendment in 1976, per the suggestions of the government-appointed Swaran Singh Committee. Initially, there are ten responsibilities. By 2002 amendment, there are now eleven tasks. We have extracted these responsibilities from the Japanese constitution. It is vital to note that none of the western constitutions have basic obligations. In Australia, Canada, and the United Kingdom, common law and court judgments dictate basic obligations. The United States Constitution does not specify fundamental obligations. It simply contains the Bill of Rights.

The purpose of including the Fundamental Duties in the Constitution is to serve as a gentle reminder to all citizens that in addition to exercising his fundamental rights, they are also obligated to be aware of and fulfil their fundamental responsibilities. That he cannot use his fundamental rights unless he complies with the fundamental obligations outlined in Article 51A of the Constitution. The concepts of rights and duties go hand in hand. It's possible that one person's right is another person's obligation.

II. FUNDAMENTAL DUTIES IN INDIA

The inclusion of the Fundamental Duties in the Constitution serves the objective of serving as a constant reminder to each and every citizen that in order to fully exercise his fundamental rights, he must also be aware of and mindful of his fundamental obligations. That he is unable to enjoy his basic rights without first complying with the fundamental requirements mentioned in Article 51A, and that this is an indisputable fact. There is a connection between rights and obligations. It's possible that someone else is responsible for your right to do something. It is a common misunderstanding that our Constitution just outlines individual rights with no corresponding responsibilities. Our democracy will be strengthened by taking on these tasks. These rules target activities that are harmful to the nation that are carried out by people or organisations.

(A) Basis of Fundamental Duties:

The concept of the fundamental duties is not new but it is of old time. The basis in this regard is:

1. Legal Philosophy: The concept of the legal duties is defined by Hoheld who provides that the rights and duties are correlative to one another. Further one can't exist without the other.

2. Religious philosophy: Lord Krishna in the religious book of Hindus namely: 'GITA' says: "Karmanevadhikaraste Mam Phalesu Kadachan"

3. Constitutional Philosophy: If we in this regard ignore the concepts like: Liberty of thought, liberty, expression, belief, faith and worship the rest of the constitutional preamble only talks about the ‘Duty’.

(B) Fundamental Duties

“51A. 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 the people of India transcending religious, linguistic and regional or sectional diversities; 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;

(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;]

[(k) 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.]”

a. Swaran Singh Committee report on Fundamental Duties:

In 1976, the committee was established in order to offer a suggestion for basic responsibilities, the need and urgency of which was felt during the emergency time. In other words, the committee was established to make a recommendation for fundamental obligations. The group suggested adding a new chapter under the subject of Fundamental Duties to accommodate its recommendations. It will make citizens aware of their responsibilities while allowing them to enjoy their fundamental rights. The government decided to take the recommendation into consideration, and as a result, article 51A of the constitution now includes 10 basic responsibilities. The previous administration admitted that they made a significant error when

they did not include basic responsibilities in the original constitution, and the current government has now confirmed that this was a mistake. Although the Swaran Singh Committee recommended including just eight fundamental tasks, the 42nd Amendment included 10 duties instead. It should not come as a surprise that the previous administration did not adopt each and every proposal; some of the non-recommendations include the following:

1. The Parliament may pass a law that allows for the implementation of a reasonable punishment or penalty for the non-compliance with these requirements.
2. A legislation or penalty of this kind will not be called into question in a legal proceeding for the purpose of upholding fundamental rights or in the event that it resulted in a violation of fundamental rights.
3. The responsibility of the citizen to pay taxes was also included on the list of fundamental obligations.

b. Justice Varma Committee

In 1998, the Justice Varma Committee was established to plan a strategy and to work out for a methodology for operationalizing a programme that was to be initiated nation-wide for the purpose of teaching fundamental duties and making it enforceable in every educational institution as well as to initiate as in-servicing training. The programme was intended to teach fundamental duties and make it enforceable in every educational institution. The committee was aware of the non-operationalization of fundamental tasks, and they knew that the reason for this was not a lack of care or a lack of availability of legislative provisions; rather, it was because of the implementation strategy. There are sufficient legal provisions, and the committee has supplied with the following legal provisions:

1. The Act for the Prevention of Insults to the National Honour of 1971 has already been put into effect, and it states that no citizen may disrespect the National flag, the Constitution of India, or the National anthem, all of which are enshrined in the first clause of Article 51A. This law has already been put into effect.
2. There are a variety of criminal laws that have been passed to impose punishment for persons who encourage animosity between different sections of people on the basis of factors such as race, religion, language, place of birth, and other similar factors.
3. In 1955, the Protection of Civil Rights Act was passed into law in order to provide penalties for crimes connected to social caste and religious affiliation.
4. The Indian Penal Code has a number of clauses that, among other things, make it clear

that imputations and claims that are harmful to a nation's integrity and unity are considered to be crimes that can result in criminal punishment.

5. In 1967, Congress passed the Unlawful Activities (Prevention) Act with the intention of making it more difficult for a community group to be labelled as an unlawful association.
6. The Representation of the People Act of 1951 was passed into law in order to facilitate the process of disqualifying members of Parliament or state legislatures who have participated in corrupt practises. These practises include things like soliciting votes in the name of religion or promoting enmity between different sections of people on the basis of race, caste, language, religion, or any other ground. These members can be removed from office.
7. The Wildlife (Protection) Act of 1972 is the piece of legislation responsible for the conservation of wildlife as well as the prohibition of trade in rare and endangered animal species.
8. In order to guarantee the execution of Clause (g) of Article 51A, the Forest (Conservation) Act of 1980 was put into effect. This law prohibits the indiscriminate clearing of forest land and the use of forest land for purposes other than those related to forestry.

III. DUTIES IN USA

(A) Citizenship Responsibilities

Citizenship can be defined as both the state of having the rights, privileges, and duties of a citizen as well as the personality of an individual as seen through the lens of their role as a member of society. Citizenship is the state of being vested with the rights, privileges, and duties of a citizen. Citizenship in the United States confers numerous benefits, but it also comes with a significant number of obligations.

No matter who a person is, where they come from, or what religion they practise, the rights guaranteed to them by the Constitution of the United States of America are respected and upheld. In spite of the fact that the Constitution guarantees all citizens of the United States the freedoms, protections, and legal rights outlined in the document, citizens also have the obligation, sometimes known as the "civic duty," to adhere to the norms and principles established by their society.

The democratic principles enshrined in the Constitution and the Bill of Rights must be protected, and civic obligations are the means by which this can be accomplished. A person's

responsibilities may be broken down into two categories: those that are voluntarily taken on and those that are mandated by law.

(B) Mandatory Duties of U.S. Citizens

The law requires its citizens to fulfil a number of civic tasks that are seen as fundamental to the democratic ethos of the nation. Citizens of the United States are required to abide by a number of legal responsibilities, including the following:

- a. **Obeying the law.** Every resident of the United States is required to abide by federal, state, and municipal laws, as well as pay any fines that may be imposed for breaking these laws.
- b. **Paying taxes.** In one form or another, federal, state, and municipal taxes, as well as Social Security, property, and sales taxes, must be paid by every person in the United States. It is difficult to continue providing essential services and programmes like schools, roads, police and fire protection, Medicare, and national security without the funding that is provided by taxes. Taxes fund these essential services and programmes.
- c. **Serving on a jury when summoned.** Everyone has the right to a trial conducted by a jury consisting of a group of their contemporaries, regardless of whether or not they are citizens of the United States. Once they have been randomly called to jury duty, individuals are obligated to make themselves available to serve in order to be selected as jurors from the general population of residents in a jurisdiction. During the course of a trial, a citizen may also be called upon to act as a witness. If this occurs, the citizen is obligated to attend in court and testify under oath about information that is significant to a specific occurrence in the case.
- d. **Registering with the Selective Service.** The Selective Service is a federal agency that operates under the supervision of the executive branch of the United States government. Its primary mission is to ensure that there is sufficient manpower available for the armed forces in the event that a war or some other type of national emergency occurs. Registration with the Selective Service is mandated by federal law for almost all men in the United States who are between the ages of 18 and 25, regardless of citizenship status. Men who do not register are susceptible to prosecution, and if convicted, they face potential penalties including a fine of up to \$250,000 and/or imprisonment for up to five years, or

both. In order to be eligible for a variety of government programmes and benefits, such as student loans, job training, federal employment, and naturalisation, one must first register for Selective Service.”

(C) Voluntary Responsibilities of U.S. Citizens

Other civic tasks, while not obligatory, are essential to the functioning of a democratic society. Citizens of the United States are urged to make use of the rights and benefits that come with their citizenship, such as voting.:

- a. **Voting.** Voting is not just a right and privilege that come with citizenship, but it is also a duty or obligation that citizens must fulfil. Citizens of the United States have a duty to participate in the governance of their country by registering to vote and casting ballots in elections. Voting provides citizens with a voice in their government and helps to sustain a democratic representative system of government. Citizens have a voice in their government because of voting.
- b. **Staying informed.** It is the duty of each citizen to participate actively in the processes of civic life and to keep themselves apprised of the local, regional, national, and worldwide concerns that are relevant to them and their communities. This includes things like being properly informed about the topics and candidates before voting in an election, being active in a political campaign, or competing for public office, or making use of their right to address the government through activism.
- c. **Community involvement.** Citizens should also contribute to the well-being of the community by recognising areas in which assistance or change is needed and by getting involved in local organisations, committees, and community projects by offering their knowledge and talents. This is another way citizens can help the community.
- d. **Practicing tolerance.** With democracy comes variety, and it is the obligation of citizens of the United States to support and safeguard the rights of others as well as to accept the variations in beliefs, faiths, cultures, and ethnic groups that exist in the world.
- e. **Passing it on.** Citizens have a duty to instil in subsequent generations an appreciation for the responsibilities and privileges that come with being a citizen. Parents and other adults may provide an example for how to make society better by educating their children how to remain educated, how to get engaged in their

communities, how to respect the law, and the importance of voting.”

IV. FUNDAMENTAL DUTIES IN CHINA

While the Chinese Constitution does guarantee some rights to its citizens, it also imposes certain obligations on them to fulfil their duties to society and the state. According to Article 33 of the Constitution, every citizen ‘enjoys the rights and, at the same time, is obligated to carry out the responsibilities defined by the Constitution and the law.’ By unifying the rights and responsibilities of the Chinese people inside the People's Republic of China's Constitution, Karl Marx's theory that ‘no rights without duties, no obligations without rights’ is being put into practise. In addition to personal liberties, the Chinese Constitution grants its inhabitants a vast array of economic, social, and political rights. However, the Constitution also contains a caution that the enjoyment of these rights and freedoms must not interfere with the State's or society's interests, nor harm the rights and freedoms of other individuals. Article 42 of the Constitution stipulates that every individual not only holds the right to work, but also the obligation to do so. Every able-bodied individual has a ‘great obligation’ to work honestly in whatever profession they choose, since ‘labour is the lovely obligation.’ Citizens not only have the right but also the responsibility to make education a top priority. Marriage and family rights are guaranteed by the law. However, the obligation for family planning lies equally on both the man and the woman. And it is the parents' obligation to raise and teach their young children. Children who have attained the age of responsibility are required to care for and aid their parents in every manner possible. In addition to the previously listed tasks, the Constitution of China outlines a number of responsibilities that are specific to the country's citizens. These responsibilities are as follows:

1. Every Chinese citizen has the duty to safeguard the unity of the country and the unity of all its nationalities.
2. Every citizen must observe the Constitution and the law.
3. It is the duty of all citizens to keep State secrets, protect public property, observe labour discipline, maintain public order, and respect social ethics.
4. It is the duty of every citizen to safeguard the security, honour and interests of the motherland. He must not do such things that may harm the security, honour and interests of the motherland.
5. Citizens of China have the sacred duty to defend the motherland and resist aggression. "It is an honourable duty" of a Chinese citizen to perform military service and join the

militia.

V. JUDICIAL DYNAMICS

1. M.C. MEHTA (2) V. UNION OF INDIA (1983) 1 SCC 471:

According to art.51-A(g), the Supreme Court has ruled that it is the responsibility of the central government to provide mandatory instruction of at least one hour per week on conservation and enhancement of natural environment in all educational institutions in the nation. It instructed the federal government to have free textbooks created on the subject and distributed to educational institutions. In order to increase people's awareness of environmental cleanliness, it was recommended that keep the city clean week, keep the town clean week, and keep the village clean week be held at least once a year in every city, town, and hamlet in India.

2. AIIMS STUDENT UNION V. AIIMS AIR 2001 SC 3262:

While striking down the institutional reservation of 33% at AIIMS paired with 50% reservation disciplinarys as violating article.14 of the Constitution, the Supreme Court stated that fundamental responsibilities are just as essential as fundamental rights in this case. Fundamental obligations are not made enforceable like fundamental rights, yet this cannot be overlooked since 'fundamental' is prefixed to 'duties' in Part IV, just as it was to 'right' in Part III by the founding authors of the Constitution. Every Indian citizen is inherently obligated to cultivate a scientific temperament and humanism. Despite the fact that article 51A imposes no basic duties on the state. The reality remains that the obligation of each citizen is the state's common duty. For a constitutional reservation to be acceptable, in addition to being substantial, it must be reasonable. In evaluating the reasonableness, one of the variables to evaluate would be whether the kind and extent of reservations will impede or accelerate the nation's pursuit of its ultimate aim of excellence, so preventing it from always advancing to a higher level. It was also determined that, although not being enforceable by court order, basic obligations provide a vital reference and assistance in interpreting constitutional and legal concerns. In cases of uncertainty or choice, the will of the people as expressed in Article 51A can serve as a guide not only for resolving the difficulties, but also for structuring or shaping the remedy to be granted by the courts.

3. ARUNA ROY V. UNION OF INDIA AIR 2002 SC 3176:

In this case, the constitutionality of the National Curriculum Framework for School Education was challenged on the grounds that it was anti-secular and in violation of Article 28 of the Constitution. It imparts value development instruction according to the fundamentals of all

religions. The court determined that the NCFSE did not ban "religious teaching" as stated in article 28. What was sought to be transmitted is included in article 51A(e), which states, "to foster unity and the spirit of universal brotherhood amongst all the people of India transcending religious, linguistic, regional, or sectional diversities to repudiate behaviours degrading to the 'dignity of woman'. And to ensure that education is founded on universal principles such as truthful behaviour, peace, love, and nonviolence. Accordingly, the court determined that this type of instruction neither violates Article 28 of the Constitution nor contradicts the notion of secularism.

4. GOVERNMENT OF INDIA V. GEORGE PHILIP AIR 2007 SC 705

In this instance, the respondent has contested his mandatory retirement. The department allowed him leave to pursue advanced research training. The department allowed him leave to pursue advanced research training. He was awarded a two-year leave of absence. He overstayed in a foreign nation despite numerous instructions to return to duty when his leave expired. An investigation was launched against him, and the accusation of overstaying in a foreign nation was confirmed. He was forced to retire from the military. The tribunal and the supreme court permitted him to rejoin his service without back pay. The Supreme Court reversed the lower court's ruling. The Supreme Court ruled that article 51A(j) imposes a duty on citizens to strive for excellence in all spheres, and that this cannot be done unless employees retain discipline and dedication to their work. The courts should not issue orders that, rather than accomplishing the underlying spirit and purpose of section IV A of the Constitution, aim to nullify or destroy it. Overstaying leave and absence from duty by a government employee, and permitting him six months to return to work, is not only a reward for indiscipline, but also completely subversive of organisational work cultures.

5. Dr. Dasarathi Vs. State of Andhra Pradesh (AIR: 1985 AP 136)

It was determined that, pursuant to article 51A (j) of the Constitution, we all bear a duty to ourselves to strive for excellence in all aspects of individual and collective action so that our nation may continually attain greater levels of Endeavour and achievement. When the state attempts to encourage greatness, it can only do so using the means that our Constitution allows. Rewarding sycophancy hinders the development of efficiency and quality.

VI. FINDINGS AND SUGGESTIONS

1. Fundamental duties are only restricted to the Indians citizens. No legal sanction can be enforced by the government in case of their violation.

2. No democratic polity can ever succeed where the citizens are not willing to be active participants in the process of governance by assuming responsibilities and discharging citizenship duties.
3. Awareness of our citizenship duties is as important as awareness of our rights.
4. It is important to orient the individual citizen to be conscious of his social and citizenship responsibilities and so shape the society that we all become solicitous and considerate of the inalienable rights of our fellow citizens.
5. Every right implies a corresponding duty but every duty does not imply a corresponding right.
6. If every citizen performs his duties irrespective of considerations of any of the constraints therein then the society as a whole would be uplifted.
7. The Court should direct the Union to provide incentives to citizens to adhere to Fundamental Duties.
8. There are moral obligations on the citizens to abide by the constitutional duties.

VII. CONCLUSION

In order to fulfil their essential responsibilities, all Indians are required to contribute toward establishing a patriotic spirit and protecting India's national unity. The absence of a penalty for violating the Fundamental Duties in no way diminishes the seriousness of the responsibilities established in the Declaration of Independence. The Essential Duties are the moral compass of our Constitution; as such, they must be seen as fundamental ideals that every citizen is expected to promote. The Fundamental Duties inform each citizen of his or her obligation for the nation's well-being. The concept of basic obligations refers to a performance or responsibility that each of us has for the benefit of others and our nation. Even though they cannot be disputed in court, every Indian citizen is expected to strictly comply with the Fundamental Duties since doing so serves the national interest. It is a commonly held notion in this country that our nation will operate at its highest level if everyone takes their responsibilities to follow the Fundamental Duties very seriously.
