

# A FALSE CONFLATION BETWEEN DUTIES AND RIGHTS

Relevant for: Indian Polity | Topic: Indian Constitution - Features & Significant Provisions related to Fundamental Rights, Directive Principles and Fundamental Duties

Should our rights coalesce with our duties? In recent times, it has been something of a constant refrain of the governing class to advocate an integration of duty with right. By duty here they do not mean the concomitant obligations that spring out of constitutional promises, but a set of ideals that were written into the Constitution during the acme of the Indira Gandhi-imposed Emergency. In their belief, these otherwise non-binding obligations — the “fundamental duties” as Article 51A describes them — ought to be treated on a par with, if not superior to, the various fundamental rights that the Constitution guarantees. In an inversion of the well-known dictum, they see duties, and not rights, as trumps.

On Constitution Day last month, many Union Ministers used the occasion to underline this proposal. The Minister of Law and Justice, Kiren Rijju, claimed that our country can be made great only “if we create a balance between fundamental duties and fundamental rights.” The Minister for Culture, G. Kishan Reddy, took this thought further still. “Today, on Constitution Day, it is important that we emphasise our fundamental duties for the growth and progress of our country,” he wrote in the *Hindustan Times*. “If deeper roots have to be established in a diverse and democratic country such as India, citizens will have to converge their inalienable fundamental rights with their fundamental duties.” What is more, the link between fundamental rights and duties, according to him, was not merely a constitutional debate but a “civilisation discussion” — whatever that might mean.

To be sure, it is a basic proposition that all rights come with duties. But those duties are quite distinct from the meaning ascribed to them in the popular discourse. When a person holds a right, she is owed an obligation by a duty-bearer. For example, when citizens are promised a right against discrimination, the government is obliged to ensure that it treats everybody with equal care and concern. Similarly, the guarantee of a right to freedom of speech enjoins the state to refrain from interfering with that liberty.

It is only in this sense that rights and duties go together. But the government’s position proposes something rather more ominous. It puts forward an idea that our rights ought to be made conditional on the performance of a set of extraneous obligations. This suggestion is plainly in the teeth of the Constitution’s text, language, and history.

The Constituent Assembly was clear in its belief that the Constitution’s emphasis must always rest on individual dignity. That is, the Constitution’s chief purpose must be to preserve and guarantee basic human rights, to equality, to autonomy, and to liberty, among others. To the framers, the very idea of deliberating over whether these rights ought to be provisional, and on whether these rights ought to be made subject to the performance of some alien duty, was repugnant to the republic’s vision.

But the importance placed on every person’s ethical independence did not mean that rights were seen as absolute warrants. After all, Part III of the Constitution, in which our fundamental rights are nestled, contains within it a set of limitations. However, none of those restrictions places a burden on citizens to perform duties as a condition for the enforcement of rights.

The Constitution’s framers saw the placing of mandates on individual responsibilities as nothing

more than a legislative prerogative. Any such imposition would have to conform to the language of fundamental rights, but Parliament was otherwise free to dictate personal behaviour. For example, the legislature could impose a duty on individuals to pay a tax on their income, and this duty could be enforced in a variety of ways. If the tax imposed and the sanctions prescribed were reasonable, the obligations placed on the citizen will be constitutionally valid.

In this manner, Parliament and the State legislatures have imposed a plethora of duties — duties to care for the elderly and for children; duties to pay tolls and levies; duties against causing harm to others; duties to treat the environment with care, the list is endless. What is critical, though, is that these laws cannot make a person's fundamental right contingent on the performance of a duty that they impose. A legislation that does so will violate the Constitution.

Now, no sensible person is arguing that duties of this kind are unimportant. To sustain our society, to live peacefully together, we must take seriously our civic responsibilities. But any talk aimed at making these obligations central, and at melding our rights with duties, is aimed only at undermining the Constitution. That this is so is clear from the history of fundamental duties in India.

In its original form, the Constitution did not enlist any obligations that an individual was bound to follow. The fundamental duties that are now contained in Article 51A were introduced through the infamous 42nd constitutional amendment. The Swaran Singh Committee, which was set up during the Emergency, and which recommended the insertion of the clause, also suggested that a failure to comply with a duty ought to result in punishment. Ultimately, the amendment was introduced after the binding nature of the clause was removed, but its intention was clearly expressed in the then Law Minister H.R. Gokhale's assertions that the provision would have "a sobering effect" on the "anti-national" and "subversive" sections of society.

In its finally adopted form, Article 51A encouraged citizens to perform several duties: among others, to cherish and follow the noble ideals that inspired the national struggle for freedom; to uphold and protect the sovereignty, unity and integrity of India; to defend the country and render national service when called upon to do so; to protect and improve the natural environment; and to safeguard public property.

When the Emergency came to pass, these directives were largely seen in innocuous terms — for one, they were considered too vague to make any meaningful difference. But today, when our popular discourse veers towards a need to place an emphasis on duty over right, the Constitution's basic ethos once again comes under threat. What these demands overlook is that the social revolution that the Constitution was meant to herald was underpinned by a belief that it is only a guarantee of rights — unimpeded by duty — that could help usher India into a free and egalitarian future.

This is not to suggest that human rights are by themselves sufficient. The philosopher Onora O'Neill has argued with some force that we would do well to discuss the precise nature of duties that rights create. Unless we do so, our charters of human rights may not by themselves be enough.

For example, we may want to ask ourselves if the promise of a right to free expression imposes on the state something more than a duty to forebear from making an unwarranted restriction on that liberty. Does it require the state to also work towards creating an equal society where each person finds herself in a position to express herself freely? Similarly, does the right to life include within it a positive obligation on the state to provide shelter, livelihood, and health care?

When we speak about the importance of obligations, it is these questions that must animate our

discussions. Should we instead allow the language of fundamental duties — as contained in Article 51A — to subsume our political debates, we would only be placing in jeopardy the moral principles at the heart of India's republic.

*Suhrith Parthasarathy is an advocate practising at the Madras High Court*

[Our code of editorial values](#)

**END**

Downloaded from **crackIAS.com**

© **Zuccess App** by crackIAS.com

CrackIAS.com