

RIGHTS, DUTIES AND THE CONSTITUTION

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

[At the height of the Emergency](#), Indira Gandhi's government [enacted sweeping changes to the Constitution](#), through the 42nd Amendment. These changes were intended to entrench the supremacy of the government, permanently muzzle the courts, and weaken the constitutional system of checks and balances which was designed to avoid concentration and abuse of power. And in the Amendment's Statement of Objects and Reasons, one line stands out: "... it is also proposed to specify the fundamental duties of the citizens and make special provisions for dealing with anti-national activities."

"Fundamental duties" and "anti-national activities" came into the world fused at the hip. And while [Indira Gandhi's Emergency regime](#) has long been consigned to the dustbin of history, its legacies endure. "Anti-national" has become a boundlessly manipulable word, that, in the spirit of Humpty Dumpty, can mean whatever those in power want it to mean. "Fundamental duties" have been making a comeback as well: at an [International Judicial Conference 2020](#) this weekend, the Chief Justice of India, S.A. Bobde, drew attention to the Constitution's Fundamental Duties chapter. He then went further, and citing Gandhi's *Hind Swaraj*, observed that "real rights are a result of [the] performance of duty."

There is, of course, an intuitive plausibility to the CJI's words. They conjure up the image of the ungrateful and selfish citizen, happy to pluck the fruits of civilisation, but unwilling to do their bit to water the tree. Nonetheless, despite its plausibility, this conflation of rights and duties ought to be resisted.

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The first thing to note is that as citizens, there exists a wide range of duties that bind us in everyday life. These duties are owed both to the state, and to other individuals. We have a legal duty to pay our taxes, to refrain from committing violence against our fellow-citizens, and to follow other laws that Parliament has enacted. Breach of these legal duties triggers financial consequences (fines), or even time in jail. At any given time, therefore, we are already following a host of duties, which guide and constrain how we may behave. This is the price that must be paid for living in society, and it is a price that nobody, at least, in principle, objects to paying.

Our duties and the consequences we bear for failing to keep them therefore exist as a self-contained whole. They follow a simple logic: that peaceful co-existence requires a degree of self-sacrifice, and that if necessary, this must be enforced through the set of sanctions.

Rights, on the other hand, follow a different logic entirely. This is a logic that is best understood through history. At the time of the framing of the Indian Constitution and its chapter on Fundamental Rights, there were two important concerns animating the Constituent Assembly. The first was that under the colonial regime, Indians had been treated as subjects. Their interests did not count, their voices were unheard, and in some cases — for example, the "Criminal Tribes" — they were treated as less than human. Apart from the long and brutal history of colonialism, the framers also had before them the recent example of the Holocaust, where the dignity of more than six million people had been stripped before their eventual genocide.

The first role of the fundamental rights chapter, therefore, was to stand as a bulwark against

dehumanisation. Every human being no matter who they were or what they did had a claim to basic dignity and equality that no state could take away, no matter what the provocation. One did not have to successfully perform any duty, or meet a threshold of worthiness, to qualify as a rights bearer. It was simply what it meant to be human.

Second, the framers were also aware that they were inheriting a deeply stratified and riven society. The colonial regime had not been the only oppressor; the axes of gender, caste and religion had all served to keep masses of individuals in permanent conditions of subordination and degradation. The second role of rights, thus, was to stand against hierarchy. Through guarantees against forced labour, against “untouchability”, against discriminatory access to public spaces, and others, fundamental rights were meant to play an equalising and democratising role throughout society, and to protect individuals against the depredations visited on them by their fellow human-beings.

The twin principles of anti-dehumanisation and anti-hierarchy reveal the transformative purpose of the fundamental rights chapter: the recognition that true democracy could not exist without ensuring that at a basic level, the dignity and equality of individuals was protected, both from the state as well as from social majorities. It was only with these guarantees could an individual rise from the status of subject to that of citizen. And, as should be clear by now, it was only after that transformation had been wrought, that the question of duties could even arise.

This is not to suggest, of course, that duties are unimportant. As indicated above, duties exist in every sphere of society. Moreover, the language of duties can play an important role in a society that continues to be divided and unequal: in such a society, those who possess or benefit from entrenched structural and institutional power (starting with the state, and going downwards) certainly have a “duty” not to use that power to the detriment of those upon whom they wield it. That is precisely what the guarantees against “untouchability”, forced labour, and discriminatory access in the Constitution seek to accomplish.

The problem, however, lies in the conflation of rights and duties. As Samuel Moyn points out in an illuminating article in *The Boston Review*, “the rhetoric of duties has often been deployed euphemistically by those whose true purpose is a return to tradition won by limiting the rights of others”. Moyn’s target here are traditions that invoke the language of duty (often alongside terms such as “community” or “family”) in order to subordinate or efface the individual in the face of the collective (whether state or community). In that context, it is always critical to remember Dr. B.R. Ambedkar’s words in the Constituent Assembly (which were also cited by the CJI in his speech): that the fundamental unit of the Constitution remains the individual.

If the position of the individual and the Constitution’s commitment to combating hierarchy is kept in mind, then the language of duties can be understood in its proper context. Without that, however, we risk going astray. A good example of this is a Supreme Court judgment from the early 1980s, which upheld the differential treatment of male and female flight attendants on the ground that women had a “duty” to ensure the “good upbringing of children” and to ensure the success of the “family planning program” for the country.

The judgment is a stark reminder that without the moral compass of rights and their place in the transformative Constitutional scheme the language of duties can lead to unpleasant consequences. It can end up entrenching existing power structures by placing the burden of “duties” upon those that are already vulnerable and marginalised. It is for this reason that, at the end of the day, the Constitution, a charter of liberation, is fundamentally about rights. It is only after guarantee to all the full sum of humanity, dignity, equality, and freedom promised by the Constitution, that we can ask of them to do their duty.

Perhaps, then, it is time to update *Hind Swaraj* for the constitutional age: “real duties are the result of the fulfillment of rights”.

(Gautam Bhatia is a Delhi-based lawyer)

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