

## **Background Note on Fundamental Rights vs Fundamental Duties**

**Source- Department of Legal Affairs, Ministry of Law and Justice**

Fundamental Rights is a [charter of rights](#) contained in [Part III](#) (Articles 12 to 35) of [Constitution of India](#). The development of constitutionally guaranteed fundamental human rights in India was inspired by historical examples such as [England's Bill of Rights](#) (1689), the [United States Bill of Rights](#) (approved on 17 September 1787, final ratification on 15 December 1791) and [France's Declaration of the Rights of Man](#) (created during the [revolution of 1789](#), and ratified on 26 August 1789).

2. It is a fallacy to regard fundamental rights as a gift from the State to its citizens. Individuals possess basic human rights independently of any Constitution by reason of the basic fact that they are members of the human race. These fundamental rights are important as they possess intrinsic value. Part III of the Constitution does confer fundamental rights and confirms their existence and gives them protection.

3. The fundamental rights were included in the constitution because they were considered essential for the development of the personality of every individual and to preserve human dignity. These fundamental rights guarantee civil freedom to all the citizens of India to allow them to live in peace and harmony. These are the basic rights that every Indian citizen has the right to enjoy, irrespective of their caste, creed and religion, place of birth, race, color or gender. These fundamental rights include:

- (i) Right to Equality, (Article 14 to 17)
- (ii) Right to Freedom, (including Right to Education) (article 18 to 22)
- (iii) Right to Freedom of Religion, Cultural and Education Rights, (Article 25 to 30)
- (iv) Right against Exploitation, (Article 23 and 24)and
- (v) Right to Constitutional Remedies. (Article 32)

4. Article 13 (1) of the Constitution declares that all laws in force in the India immediately before the commencement of the Constitution, in so far as

they are inconsistent with the provisions of Fundamental Rights guaranteed under Part III of the Constitution, shall to the extent of such inconsistency be void. Article 13(2) fettered the right of the State in making laws. The State is not to make any law which takes away or abridges the rights conferred by Part III and if such law is made then to the extent of conflict, it would be void. In other words, except for the limitations stated in the articles contained in Part III itself, this article is the reservoir of the fundamental protections available to any person/citizen. The term 'law' as specified in Article 13(3), includes custom or usage has the force of law. Further 'law in force' includes law passed or made by a Legislature before the commencement of the Constitution.

5. Fundamental Rights are having more importance than any other legal rights. Inclusion of certain rights in the Part III of the Constitution makes them distinct from other legal rights in following ways:

(a) Fundamental Rights cannot be diluted or abridged by any other ordinary legislation. It can only be diluted or abridged by amending the Constitution itself. And as ruled by the Supreme Court in many judgments, basic Structure of the Constitution cannot be altered. On the other hand, any other legal right may be diluted by ordinary legislation.

(b) As mentioned in Article 13(2), no law can be made which takes away or abridges any of the fundamental right guaranteed in Part III.

6. However, as a no right can be absolute, reasonable restrictions can be made. However restrictions should be on the grounds mentioned in the Constitution itself and it can only be imposed by way legislation and not by any executive order.

### **Fundamental Duties**

7. When the Constitution was adopted in the year 1949, it did not contain provision for Fundamental Duties. Parliament realised the need for inserting the fundamental duties as a part of the Indian Constitution and required every citizen of India to adhere to those duties. By the 42<sup>nd</sup> Amendment to the Constitution, a new part (Part IVA) was inserted for providing Fundamental Duties of a Citizen of India. Article 51A was inserted to provide that 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

8. The 11th Fundamental Duty [51-1(K) was added by the 86th Constitutional Amendment Act, 2002 which reads as under:

(k) who is 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.

9. These fundamental duties at best be regarded as 'directory'. As regards enforceability of these duties, it has been held that these duties being of individual citizens cannot be enforced through mandamus, as they cast no public duties. However, there is no doubt that these duties are a constant reminder to us of the national goals as well as the basic norms of political order. They may inspire us to inculcate in ourselves a sense of social responsibility. The Supreme Court has held that Article 51 A can be used to interpret ambiguous statutes. Fundamental Duties have been particularly invoked in litigation concerning the environment. They are much of an

educational and psychological value for the citizens. Article 51A is confined to 'citizens' unlike some of the articles relating to Fundamental Rights which extend to 'all persons'. In **Ramlila Maidan Incident, In re, (2012) 5 SCC 123** it was held:

*“Thus, the word “fundamental” has been used in two different senses under our Constitution. The essential character of the fundamental rights is secured by limiting the legislative power and by providing that any transgression of the limitation would render the offending law pretendo void. The word “fundamental” in Article 37 also means basic or essential, but it is used in the normative sense of setting, before the State, goals which it should try to achieve.”*

10. The Apex Court in **AIIMS Students' Union v. AIIMS, (2002) 1 SCC 428** observed as under:

*“Almost a quarter century after the people of India have given the Constitution unto themselves, a chapter on fundamental duties came to be incorporated in the Constitution. Fundamental duties, as defined in Article 51-A, are not made enforceable by a writ of court just as the fundamental rights are, but it cannot be lost sight of that “duties” in Part IV-A Article 51-A are prefixed by the same word “fundamental” which was prefixed by the founding fathers of the Constitution to “rights” in Part III. Every citizen of India is fundamentally obligated to develop a scientific temper and humanism. He is fundamentally duty-bound to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievements. State is, all the citizens placed together and hence though Article 51-A does not expressly cast any fundamental duty on the State, the fact remains that the duty of every citizen of India is the collective duty of the State.*

11. Recently in **Charu Khurana v. Union of India, (2015) 1 SCC 192** the Supreme Court stated that, it is clear as day that the duty of a citizen has been extended to the collective duty of the State. To elaborate, it becomes the duty of the State to provide for opportunities and not to curtail the opportunities.

### **Relationship between Fundamental Rights and Fundamental Duties-**

12. As provided in Article 32 of the Constitution (which itself is a fundamental right) fundamental rights are enforceable through Supreme Court. High Court also under Article 226 can issue Writs etc for enforcement of

fundamental rights. However, Fundamental Duties are not enforceable through courts.

13. The Courts while interpreting Fundamental Rights or any restrictions imposed on such rights may take into account the Fundamental Duties and also the Directive Principles of the State policy enshrined in Part IV of the Constitution.

14. In **Javed v. State of Haryana, (2003) 8 SCC 369** it has been held that Fundamental rights are not to be read in isolation. They have to be read along with the chapter on directive principles of State policy and the fundamental duties enshrined in Article 51A.

15 Further, in **State of Gujarat v. Mirzapur [(2005) 8 SCC 534]** while considering provisions of Articles 48, 48-A and also Article 51-A(g), the Supreme Court held:

*“58. It is thus clear that faced with the question of testing the constitutional validity of any statutory provision or an executive act, or for testing the reasonableness of any restriction cast by law on the exercise of any fundamental right by way of regulation, control or prohibition, the directive principles of State policy and fundamental duties as enshrined in Article 51-A of the Constitution play a significant role.”*

16. In **Ramlila Maidan Incident, In re, (2012) 5 SCC 123** it was held:

*“There has to be a balance and proportionality between the right and restriction on the one hand, and the right and duty, on the other. It will create an imbalance, if undue or disproportionate emphasis is placed upon the right of a citizen without considering the significance of the duty. The true source of right is duty. When the courts are called upon to examine the reasonableness of a legislative restriction on exercise of a freedom, the fundamental duties enunciated under Article 51-A are of relevant consideration. Article 51-A requires an individual to abide by the law, to safeguard public property and to abjure violence. It also requires the individual to uphold and protect the sovereignty, unity and integrity of the country. All these duties are not insignificant.*

17. In **N.K. Bajpai v. Union of India, (2012) 4 SCC 653** it was observed:

*“18. A common thread runs through Parts III, IV and IV-A of the Constitution of India. One Part enumerates the fundamental rights, the second declares the fundamental principles of governance and the third*

*lays down the fundamental duties of the citizens. While interpreting any of these provisions, it shall always be advisable to examine the scope and impact of such interpretation on all the three constitutional aspects emerging from these Parts.”*

## **Conclusion**

18. Fundamental Rights guaranteed under Part III of the Constitution are important natural rights necessary for development of human beings. They are enforceable through court of law. No law can be made which takes away or abridges any fundamental rights. On the other hand, Fundamental Duties though not enforceable, but always taken into account while interpreting any fundamental rights.