

Transformative Constitutionalism and the Dialectics of Rights and Duties in India

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Abstract

The concept of social justice, equality, dignity and democratic governance in the Indian Constitution is a complex one that rests on the interplay of Fundamental Rights and Fundamental Duties that have a transformative vision. There are two categories of fundamental rights: Fundamental Rights under Part III have a focus on individual rights and freedom from arbitrary action by the State; Fundamental Duties under Part IVA have a focus on civic responsibility, constitutional morality and collective welfare. The concept of 'transformative constitutionalism' has grown to become a very useful lens through which the judiciary has been able to add additional constitutional values to suit the changing social landscape. This article asks the dialectical question of rights and duties in the Indian constitution and analyses the nature of balancing individual freedoms and social obligations in the Indian judiciary. It discusses the history of the Fundamental Duties since the 42nd Constitutional Amendment, judicial activism and its role in embedding the duties in the constitutional adjudication and the growing dependence on duties in other fields like environmental protection, education, gender justice, national integrity, etc. The study also examines the nature of Fundamental Duties, whether they are merely moral claims or are of substantive constitutional significance which can impact upon what rights can be actually enforced. The article, drawing upon key judicial decisions and constitutional changes, contends that transformative constitutionalism in India is not only about the rights of citizens, but also about nourishing their responsibilities towards the Constitution, promoting democratic governance and social cohesion in the present India.

Keywords: Transformative Constitutionalism, Fundamental Rights, Fundamental Duties, Constitutional Morality, Judicial Activism

1. Introduction

The Constitution of India is not just a set of rules and regulations that creates the governmental institutions and procedures, it is a change-making document to build up the Indian society based on Justice, liberty, equality and fraternity. The framers of the Constitution had envisioned a democratic polity which would eliminate the social inequalities, discrimination, caste oppression and colonial exploitation of the past. This transformative desire is seen in the Fundamental Rights, Fundamental Duties, Directive Principles of State Policy and the Preamble. The turn towards transformative constitutionalism has, therefore, developed into a strong constitutional philosophy which reads the Constitution as a living and living document

capable of adapting to the changing contexts of society, and maintaining constitutional morality and democratic values.

Transformative constitutionalism aims to create substantive equality not just formal equality. It focuses on the role of constitutional institutions – including the judiciary – in making social change happen, through constitutional interpretation. The concept of transformative constitutionalism has emerged in India in the context of judicial activism and progressive constitutional adjudication. The concept of Fundamental Rights was expanded and the right to dignity, privacy, education, clean environment, livelihood and gender equality came into the picture. The methodology put the Constitution's Part III into an evolving instrument of social empowerment and democratic accountability.

But a transformation of the constitution is not a one way process of rights discourse. The rights are always accompanied by duties for the individual and society. The Forty-Second Constitutional Amendment Act, 1976, therefore, has included Fundamental Duties in the Indian constitution (Article 51A). These responsibilities highlight the issues of civic responsibility, constitutional patriotism, national integrity, environment protection, scientific temper and public property protection. Fundamental Duties are not of a judicial nature, but are a moral and constitutional set of guidelines for the good citizen.

Rights and duties are in a constitutional dance. While Fundamental Rights are meant to guarantee freedom from arbitrary action by the State and ensure democratic freedoms, Fundamental Duties are duties to the society which remind citizens that there can be no freedom without fulfilling their social responsibilities. Rights without responsibilities can lead to a lack of discipline and collective welfare in the Constitution. Likewise, a focus on responsibilities and neglect of rights can foster authoritarianism and dissent repression. Thus, the Indian Constitution strives to strike a balance between individual freedom and social duty (social collectivity).

Through transformative constitutionalism, the judiciary has been able to reconcile this relationship in a more and more harmonious fashion. Among other examples of Fundamental Duties being invoked by courts are in relation to issues concerning environment protection, education, public morality, gender justice and constitutional values. Right to rights enforcement is not the only part of judicial role in constitutional governance; there is also a need to promote constitutional awareness in the citizens. Thus, duties are no longer seen as an obligation to do good but as an instrument of the interpretative process leading to constitutional adjudication and public policy.

The Indian constitutional vision is full of the ideals of democratic humanism and social welfare. The Indian Constitution is a communitarian one which recognizes the interconnectedness of rights and responsibilities, unlike purely liberal constitution which emphasizes on individual autonomy only. This constitutional model aims at producing responsible citizens that are actively involved in national development and constitutional governance.

Rights and duties continue to be relevant in modern-day India, as seen in the issues of freedom of speech, environmental pollution, ethics of digital media, tolerance towards religion and social justice. So transformative constitutionalism can be said to be a link between ideals and

realities of the constitution. It allows constitutional institutions to reinterpret rights and obligations in the context of new challenges and society's demands for democracy.

2. The historical evolution of the Fundamental rights and duties in India

The evolution of Fundamental Rights and Fundamental Duties in India highlights the evolution of the Indian Constitution from the era of colonial rule to a democratic system of governance and social change. The Indian Constitution was born out of the colonial oppression, social inequality, and nationalist movements which had focused on civil liberties, political participation, and social justice. The Constitution's framers, therefore, have given particular importance to Fundamental Rights as a means of ensuring citizens' freedom from governmental oppression and democracy.

Fundamental Rights have their roots in the freedom movement in India. Under British Rule, civil liberties were often infringed upon through the enactment of legislation that limits freedom of speech, association and political participation. Leaders of the national movement like Mahatma Gandhi, Jawaharlal Nehru, Dr. B.R. Ambedkar and Subhas Chandra Bose demanded for civil liberties and human rights in the Constitution. The rights of the constitution gained more importance when the Nehru Report (1928) and the Karachi Resolution (1931) started focusing on political freedom, socio-economic justice and equality before law.

Fundamental Rights are found in Part III of the Constitution, which were inspired by international human rights documents and by the different constitutions of the world, including the United States Bill of Rights, when the Constitution was drafted. The writers of the Constitution knew that political democracy would not be complete if they did not provide constitutional protection for individual rights and minority rights. Thus, the Constitution provided for rights based on equality, freedom, freedom from exploitation, freedom of religion, cultural rights, educational rights and constitutional remedy.

In fact, Article 32 was the "heart and soul" of the Constitution as it gave citizens the right to approach the Supreme Court directly for the enforcement of Fundamental Rights, as described by Dr B.R. Ambedkar. This was the spirit of the Constitution that was supposed to give marginalized groups power and constitutional predominance over state's arbitrary power.

The concept of Fundamental Duties was not included in the Constitution in the beginning. The framers thought it was the obligation of a citizen in a democracy, and of proper social behavior, to have responsibilities. The framers felt that duties were part of democratic citizenship and social morality. But with the shift of political situation and the questions of a national discipline, civic responsibilities, and social cohesion, calls for the incorporation of duties in the constitution arose. The Swaran Singh Committee had suggested including Fundamental Duties during the Emergency time (1975-77) to highlight the duty of citizens towards the nation and the society.

This led to the addition of Part IVA (Article 51A) with a list of ten Fundamental Duties in the Forty second Constitutional Amendment Act of 1976. The tasks assigned to the citizens involved respecting the Constitution, protecting sovereignty and integrity, preserving cultural heritage and promoting harmony and protecting the environment. Later the 86th Constitutional

Amendment Act, 2002, inserted another responsibility to provide education to children in the age group 6 to 14 years in the constitution.

This was an indication of a new communitarian approach to the constitution with the introduction of Fundamental Duties. The Fundamental Duties are not enforceable by the courts and were meant as moral and civic duties to promote constitutional culture and national unity. The critics first contended that duties were not sufficiently specific, were not justiciable and were open to political exploitation. However, with the years, these things had come to be seen and valued as constitutional over time and were increasingly acknowledged by courts and policy makers.

Relevance of duties was expanded to a great extent as a result of the judicial interpretation. Article 51A was applied in cases related to environmental conservation, educational reforms, gender equality and maintenance of public order. Article 51A started being used in cases concerning environmental conservation, educational reforms, gender equality, and maintenance of public order. The principles of constitutional governance and social welfare goals were used as interpretative principles of the fundamental duties. Such a judicial method was a reflection of the changing contours of transformative constitutionalism in India.

There is also evidence of the evolution of rights and duties in history, which is indicative of the development of Indian democracy. During the first few decades of independence, constitutional debate largely centered on safeguarding civil liberties and the constraints on government. But socio-economic disparities, communal friction, environment crisis and constitutional morality issues had raised issues of civic responsibilities and collective obligations.

The constitutional balance between rights and obligations is the synthesis of two constitutional traditions, liberal and communitarian, that is found today. Fundamental Rights give people rights and Fundamental Duties ensure democratic freedoms; Fundamental Rights help develop constitutional discipline and responsible citizenship. This is an interesting development in the overall constitutional concept of empowerment and responsibility to bring social transformation.

3. Constitutional Dialectics between Individual Liberty and Collective Responsibility

Individual liberty and a sense of collective responsibility is the fundamental concept of constitutional governance in India. The Constitution attempts a fine balance between personal freedom and social welfare that embodies democratic principles, social justice and constitutional morality. This is a constitutional dialectic, with liberty and responsibility constantly influencing and shaping the other, that is, rights and duties.

The Fundamental Rights include individuals' autonomy and insure citizens against arbitrary action by the state. The right to a free expression, the right to freedom of religion, the right to equality and the right to life and personal liberty allows the people to build up their personalities and to play their role in the democratic system. The rights are the cornerstones of the human dignity, political pluralism and constitutional democracy.

Rights, however, must not exist without taking into account the interests of society. All democratic societies have reasonable limits on personal freedoms in order to keep public order, morality, national security and the rights of others in mind. This principle is itself recognized

in the Indian Constitution as the government can place reasonable restrictions on the exercise of this freedom as per the provisions of Article 19(2) to 19(6). Hence, the concept of liberty in the Indian Constitution is not absolute as it is balanced with the welfare of the people and the goals of the constitution.

Fundamental Duties are also a further reinforcement of the concept of collective responsibility. Through duties, citizens are reminded of the importance for civic engagement, respect for constitutional institutions and commitment to social harmony in democratic governance. If rights are unaccompanied by responsibilities, it can lead to an excessive individualism, constitutional indiscipline and neglect of social interests. On the other hand, obligations without rights can result in authoritarianism, and the repression of democratic freedoms. The Constitution thus tries to reconcile these two aspects.

This dialectical process is evident in the current debate on the Constitution. In the present debate on the Constitution, this dialectical process is very prominent. For example, in case of Freedom of Speech, Article 19(1)(a) is a Fundamental Right while citizens have a duty of promoting harmony and preserving national integrity under Article 51A. Likewise, under Article 21, the right to environment is one and under Article 51A(g) the obligation to protect environment is another.

The judiciary has made great contribution in keeping this constitutional balance. There is an emphasis by the courts that rights and duties are not mutually exclusive, but complementary. In a number of rulings the Supreme Court emphasized that the enjoyment of rights is the enjoyment of the rights of other people and the discharge of civic duties. Judicial interpretation has then tried to build a constitutional culture which is both liberative and responsible.

Transformative constitutionalism further enhances this by reading the constitution in the light of growing democratic values and the needs of society. The courts have come to increasingly see a need for concerted efforts by the state and citizens towards constitutional change. Social justice, gender equality, environmental sustainability and constitutional morality cannot be realised only by the law; it is equally important to have civic responsibility and ethical constitutional conduct.

It was a theme that was further confirmed during the COVID-19 pandemic, when there was a conflict between the rights of the individual and the collective wellbeing. Lockdowns, vaccine mandates, and public health restrictions sowed seeds of constitutional issues on matters of personal liberty and public safety. Such progress proved that an element of compromise and negotiation can be crucial to constitutional governance in a democratic system.

In the same way, digital media and social networking have brought about a greater focus on issues of freedom of expression and responsible citizenship. Citizens have the right to post views on the Internet, but the use of the electronic media for hate speech, misinformation and communal incitement poses a risk to the constitutional values and social harmony. This has brought the need for constitution duties in democratic society to the fore.

The interplay of liberty and responsibility is also a feature of the Indian pluralism in the social structure that is evident in the Constitution. Indian society is a complex society comprising of several religious, linguistic, cultural and ethnic communities. The unity of the nation in this

diversity can only be achieved through constitutional tolerance, mutual respect and civic responsibility. In this way Fundamental Duties can be seen as moral norms that promote constitutional patriotism and social cohesion.

In the last analysis, the system of democracy is both based on and nurtured by the exercise of civic duty and constitutional virtue as well as by legal rights. Rights give citizens the power to resist the arbitrary exercise of power and duties promote social responsibility and democratic discipline. Their collective roles produce a constitutional regime which strives for justice, equality, dignity and national integration.

4. Judicial Reading of Fundamental Duty in Constitutional adjudication

The judiciary has been a game-changer in the concept and incorporation of Fundamental Duties in the constitutional adjudications. Fundamental Duties in Article 51A are not justiciable but they are increasingly being used as constitutional principles to uphold constitutional values, public interest and democratic governance in the courts. Judicial activism has thus given a new meaning to the constitutional relevance of duties and responsibilities, moving it beyond symbolism.

At first, Fundamental duties were perceived only as moral duties which did not have a force of law. Citizens were not able to coerce enforcement of duties by going straight to the courts, as they could with Fundamental Rights. But over time the perception of the judges changed, and they began to accept that duties are integral to constitutional morality and social responsibility.

The most important early initiatives have been in the field of environmental jurisprudence. The Supreme Court had given a liberal interpretation to the right to life under Article 21, which extended to the right to a clean and healthy environment. At the same time, the Court applied Article 51A(g) which requires citizens to safeguard and enhance the natural environment. In this way, the protection of the environment became a right and the civic duty.

The importance of judicial duties in the field of constitutional interpretation can be seen in cases related to pollution control, forest protection, river protection and protecting wildlife. Judges repeatedly stressed the importance of the citizens' and the State's role in environmental sustainability. This interpretation is of a transformative constitutionalism as it transforms constitutional obligations into a tool for social governance and ecological justice.

In a similar way, the judiciary has been leveraging Fundamental Duties in educational and constitutional issues. In a like fashion, the judiciary has been invoking Fundamental Duties in education or constitutional matters. Judicial support of the Right to Education strengthened the parents' responsibility for providing education to children. Recognized, courts education as necessary for democratic participation, social empowerment, consciousness of the Constitution.

There is also a special emphasis on the responsibility to advance constitutional values and national sovereignty in judicial interpretation. In instances of national symbols not being respected, public disorder or communal disharmony, courts invoked Article 51A to remind them of the importance of constitutional patriotism and civic discipline. This method is an attempt by the judiciary to maintain constitutional morality and national unity in a multi-ethnic democratic society.

This is reflected in Fundamental Duties also, in the light of gender justice jurisprudence. Constitutional obligations to dignity, equality and fraternity have been found to be connected to judicial action to address gender discrimination, sexual harassment and social exclusion. Judicial decisions are increasingly showing that social attitudes and civic behavior need to change in order for constitutional transformation to occur.

It was the transformative constitutional approach of the Supreme Court that was seen more clearly in constitutional issues of privacy rights, rights of the LGBTQ+ community and dignity. While these judgments were mainly based on Fundamental Rights, they also highlighted constitutional morality, tolerance and respect for diversity, which are values that are closely linked to civic responsibilities and democratic responsibility.

The use of duties in judgments occasionally has been criticized as a way of allowing too much limitation on the individual freedom or as a way of fostering moral paternalism. When duties are used to permit the violation of civil liberties, stop people from exercising their right to dissent and allow censorship, concerns are raised. Rights and duties have, however, been balanced by the judiciary in general, by the doctrine of proportionality and a constitutional reason.

The interpretation of the duties on the part of the judiciary also brings out the general constitutional evolution in India. The Constitution is increasingly seen as a transformative document to attain substantive democracy and social justice in courts. This view must be looked at in context, not in isolation, with respect to constitutional provisions. Thus, Fundamental Duties are considered as supplementary to the rights and the Directive Principles of State Policy.

Further, the role of the duties became expanded in the context of Constitutional governance by Public Interest Litigation (PIL). PIL jurisprudence allowed the courts to take on the issues of environmental degradation, corruption, bonded labour, prison reforms and violation of human rights via interpreting the Constitution in an activist manner. In many such situations, courts highlighted civic responsibilities and constitutional ethics as well as the duties of the State.

Duties as well are the conditions of the judiciary and thus link to constitutional pedagogy. Judicial rulings teach the people about the values of the Constitution, their duties as citizens, and the expectations for them as ethical citizens. Courts thus play not only a role in settling conflicts but also serve as guardians of the constitutional culture and a facilitator of transformative democracy.

In the past few years, the debates over nationalism, digital expression, environmental activism, and the public morality have grown sharper, thus judicial involvement in duties has increased. Courts persist in trying to reconcile the competing interests of the people and the society in a legal structure which recognizes the rights of liberty and responsibility.

At the end of the day, the meaning of Fundamental Duties has evolved from mere symbolic statements to powerful constitutional doctrine in the conduct of government, public policy and constitutional morality. The evolution is an indication of the dynamic and transformative nature of Indian constitutionalism.

5. Transformative Constitutionalism in Contemporary Governance: Environment, Education, and Social Justice

Transformative constitutionalism has had a marked impact on the governance of India today, in terms of changing public policy, the interpretation of the Constitution by the judiciary, and the debates surrounding the Constitution. The Indian Constitution is not just a structure for the exercise of governmental power but it is a tool to create substantive democracy, inclusive development and human dignity. The current governance is more and more based on the constitutional vision of balancing rights and duties and thus contributing to social change.

Environmental governance is among the most obvious and successful applications of transformative constitutionalism. Judiciary extended Article 21 to include the right to a clean and healthy environment making the protection of the environment a constitutional right. At the same time, Article 51A(g) has a Fundamental Duty of citizens to protect and enhance the natural environment. In the dual system, rights and responsibilities are reflected in the constitution.

This transformative approach is evident in judicial cases that are related to air pollution, industrial contamination, deforestation, waste management and climate change. Sustainable development, inter-generational equity and ecological balance have been stressed as principles of good governance in court rulings. Environmental Conservation is an activity that is expected from citizens, industries and governmental authorities. This is in keeping with the constitutional principle that upholding ecological sustainability needs a commitment from the state and citizens.

Educational issues also play a key role in transformative constitutionalism. The original constitution of India had the educational objectives under the Directive Principles of State Policy. Judicial activism has over the years been able to redefine education as a Fundamental Right under Article 21A. Judicial activism has over the years evolved into the education being recognised as a Fundamental Right under Article 21A. This framework was further reinforced by the 86th Constitutional Amendment which added a Fundamental Duty for parents/guardians to provide education to the children.

Education is seen not as a process of learning to read and write but as a tool to empower people constitutionally, to take part in democracy, and to promote social mobility. Transformative constitutionalism takes into account that the marginalised communities cannot represent their constitutional rights without education. In the recent years, governance efforts gradually shift to inclusive education, equality of gender in education, digital literacy and awareness of the constitution.

The other important element of transformative constitutional governance is social justice. The Constitution hopes to remove inequalities of any kind that have been handed down through history, such as inequalities based on caste, gender, religion, disability or economic status. Judicial interpretation has broadened the scope of constitutional rights for the vulnerable by the implementation of affirmative action, anti-discrimination principles and recognition of substantive equality.

The concept of transformative constitutionalism has had a profound impact on thinking on gender justice and constitutional law. Constitutional rights have been used to consider issues including workplace harassment, reproductive autonomy, domestic violence, LGBTQ+ rights and gender discrimination. The judicial changes highlight how the Constitution has changed its focus towards dignity and equality.

Likewise, constitutional governance has started to focus on the rights of the marginalised groups such as the Scheduled Tribes, the Scheduled Castes, minorities, children and persons with disabilities. The goals of change outlined in the Constitution are captured in policies of welfare laws, reservations and social inclusion.

The digital governance challenges for transformative constitutionalism. With the growth of social media, artificial intelligence, surveillance and digital communications, privacy, free expression, misinformation and hate speech have become hotter topics of discussion. It is important that courts and policy makers strike a balance between the individual and the society's rights and duties in the digital sphere.

The judiciary's recognition of privacy as a Fundamental Right illustrates the technology-savvy nature of the emerging and evolving phenomenon of transformative constitutionalism. At the same time, issues of responsible digital citizenship and ethical internet use remind us of the ongoing need to uphold civic responsibilities in constitutional governance.

Transformative constitutionalism affects public health governance, too. This COVID-19 pandemic was a reminder of the constitutional balancing act between personal liberty and collective good. Public health restrictions, vaccination campaigns and emergency governance measures involved balancing of rights and responsibilities of society. Constitutional institutions were forced to read in the democratic freedoms in relation to the issue of public safety and humanitarian concerns.

The moral spirit of the Constitution has been at the heart of transformative governance. Increasingly, courts, to safeguard democratic values, minority rights, and social justice, have been using the principle of constitutional morality to resist majoritarian pressures or discriminatory practices. To emphasize that constitutional governance should go beyond political considerations and be based on constitutional principles.

Civic involvement and constitutional culture are the keys to successful transformative constitutionalism. Rights are necessary but not sufficient for societal change if they're not coupled with social responsibility, ethical citizenship and institutional responsibility. Fundamental Duties, in turn, complement constitutional rights, and promote active citizenship and democratic participation.

As in the modern India, transformative constitutionalism is not limited to the courtroom but is a force that helps to shape legislation, policy-making, administrative governance and the public discourse. It is constantly evolving in the face of new social, technological and environmental challenges and remains true to the constitutional values of justice, liberty, equality and fraternity.

6. Conclusion

Indian Constitution is a revolutionary concept that sought to bring equality, justice, democracy and unity in the country by balancing the Fundamental Rights and Fundamental Duties. The Fundamental Rights give the citizens the right to challenge actions by the State which may be arbitrary and ensure the freedom of the people of a democratic state, while Fundamental Duties nurture civic responsibility, constitutional morality and the common good. They form a framework of a constitution that strives to balance liberty with responsibility and personal freedom with social concerns.

Transformative constitutionalism has been crucial in broadening constitutional values' scope beyond the confines of the Constitution. By a steady evolution of judicial decisions, constitutional law has evolved into a means of social empowerment and a mechanism to ensure responsible citizenship. The interconnected nature of rights and duties in the modern constitutional governance is illustrated in the area of environmental protection, education, gender justice, social inclusion and constitutional morality.

This article highlights how Article 51A has been interpreted by the judiciary, as the constitutional role and importance of duties in democratic society has increased. While non-justiciable, Fundamental Duties have become an integral part of the constitutional adjudication, public policy and civic ethics. The evolution of the Constitution is a testament to its flexibility and adaptability, as it continues to evolve and respond to new realities in society.

Environmental issues, social inequality, polarisation and digital transformation place an increased importance on the connection between rights and duties in today's day and age. The constitutional discipline, ethical citizenry, tolerance and civic involvement are as important as the legal enforcement of rights for maintaining democratic stability.

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