

# CONSTITUTION AND FUNDAMENTAL DUTIES



25th January, 2023



Our Constitution declares India a sovereign, socialist, secular, and democratic republic and assures its citizens justice, equality, and liberty and endeavours to promote fraternity. The Constituent Assembly was founded on 9th December 1946 and the draft of the Constitution prepared under the guidance of Dr. B. R. Ambedkar was approved on 26th November 1949 and it took effect on 26th January 1950.

Most of us are aware of the distinctions of our Constitution like it has been the longest written Constitution in the world and has been amended over 100 times till date. Every action of the legislature or the executive must fit within the boundaries of the Constitution, and if such action is held to overstep such boundaries, the action is negated and held to be constitutionally invalid.

Many legislations and state actions have been challenged successfully before the courts and if the same have been found discriminatory, the same have been set aside on a range of issues like section 377 of the Indian Penal Code for more than a century was set aside by the Court[2],

a commercial law SARFAESI was challenged on account of being discriminatory but permitted[3]. Currently, constitutional validity of Assisted Reproductive Technology (Regulations) Act, 2022[4] is being challenged before the Madras High Court[5] and the list goes on.

To ensure that our own elected representatives do not overstep the boundaries of the Constitution, the judiciary has evolved the most interesting **doctrine of basic structure** in the landmark judgement of Keshavanand Bharati vs Union of India[6].

The great stalwart of all times, Nani Palkhivala argued the case before 13 judges of the Supreme Court for a period of 68 days, the arguments commencing on October 31, 1972, and ending on March 23, 1973, and the judgement consists of 700 pages over the rights of parliament to amend our Constitution.

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[1] This article reflects the general work of the authors and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

[2] Navtej Singh Johar v. Union of India W.P.((Criminal) 76 of 2016 : Supreme Court of India

[5] S Shanmugalatha and others v Union of India and others : WP 33666 of 2022

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[3] M/S M. SONS GEMS N JEWELLERY PRIVATE LIMITED & ORS v. RESERVE BANK OF INDIA & ORS : W.P.(C) 1122/2021& CM APPL. 3147/2021, CM APPL. 36355/2021CM APPL. 46482/2021 (Delhi High Court)

[4] More information on Assisted Reproductive Technologies Act can be found here: Microsoft Word - 3-Wednesday Wisdom Team Sayusa Article 1\_ART Clinics v1\_.docx (ynzgroup.co.in) here.

Are we edging closer to our goals everyday as envisioned by the founders of the constitution? Is our faith in our constitution growing every day and do we truly live by it? Are we vigorously fighting and insisting on all our rights and religiously discharging all our duties?

There is no noble prize for the answer.

In 2001, Justice Ranganathan Mishra Supreme Court wrote an awakening letter to the Hon'ble Chief Justice of India lamenting on the state of affairs and the same was converted to a PIL[7]. Justice Ranganathan wrote:

“All of us are experiencing to our horror degrading human behaviour in society every day. The deterioration is gradually becoming sharper and unless this fall is immediately arrested and a remedial measure found out and enforced, the situation would not improve. Fundamental Duties have remained in the Constitution Book and have not come out to reach even the class of people who handle the Constitution.” “..... it is the obligation of the State to educate the citizens in the matter of Fundamental Duties so that a right balance between Rights and Duties may emerge.”

The Fundamental Duties that were spoken about have been incorporated in Part IV-A of the Constitution by the 42nd Constitutional Amendment Act, 1976. Originally there were 10 and one more was added in 2002. Courts have time and again reiterated the aspect of adherence to fundamental duties by its citizens through multiple judgements[8].

[7] Writ Petition (Civil) No. 239 of 1998

[8] Rural Litigation and Entitlement Kendra & Ors. Vs. A State of Uttar Pradesh & Ors., (1986) Supp. SCC 517 OR Sachidanand Pandey & Anr. Vs. State of West Bengal & Ors., (1987) 2 SCC 295 OR State of Punjab & Ors. Vs. G.S.Gill and Anr., (1997) 6 SCC 129.

- To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem,
- 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 promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women,
- To value and preserve the rich heritage of the country's composite culture,
- To protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures,
- To develop scientific temper, humanism and the spirit of inquiry and reform,
- To safeguard public property and to abjure violence,
- 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, and
- To provide opportunities for education to his child or ward between the age of six and fourteen years (added by the 86th Constitutional Amendment Act, 2002).



In **Rangnath Mishra Vs. Union of India and others** {(2003) 7 Supreme Court Cases 133}, while considering the report of **Justice J.S. Verma Committee on "operationalization of fundamental duties of citizens"**, the Hon'ble Supreme Court has referred to the observations of the Committee in para-4 of its judgment which says "Duties are observed by individuals as a result of dictates of the social system and the environment in which one lives, under the influence of role models, or on account of punitive provisions of law. It may be necessary to enact suitable legislation wherever necessary to require obedience of obligations by the citizens. If the existing laws are inadequate to enforce the needed discipline, the legislative vacuum needs to be filled. If legislation and judicial directions are available and still there are violations of fundamental duties by the citizens, this would call for other strategies for making them operational."

The desired enforceability can be better achieved by providing not merely for legal sanctions but also combining it with social sanctions and to facilitate the performance of the task through exemplar role models.

The element of compulsion in legal sanction when combined with the natural urge for obedience of the norms to attract social approbation would make the citizens willing participants in the exercise. The real task, therefore, is to devise methods which are a combination of these aspects to ensure a ready acceptance of the programme by the general citizenry and youth, in particular.

The Committee is strongly of the view that the significance of dignity of the individual in all its facets and the objective of overall development of the personality of the individual must be emphasized in the curriculum at all the stages of education. This requires consciousness of citizenship values which are a combination of rights and duties, and together give rise to social responsibilities.

**Methods must be devised to operationalize this concept as a constitutional value in our educational curriculum and in co-curricular activities, in schools and colleges."**

Recently, a writ petition *Durga Dutt v. Uoi And Ors.*[9], has been filed before the Supreme Court praying that fundamental duties should be made enforceable and the same is listed for hearing on 14th February 2023. One wonders whether we need a penalty to adhere to these duties and how would the penalties be determined? Also, some of the terms may have a different connotation, like how does one define how to determine if an individual is following noble ideas that inspired the freedom struggle? Words like development of scientific temperament may also be interpreted differently.

In view of these developments, Companies being corporate citizens of the Country, are expected to follow the Fundamental Duties. As a good practice, corporates can devise their operations, policies and procedures that will consider Fundamental Duties and accordingly implement in letter and spirit. Thus, it can be said as true compliance of Constitution.

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[10] Jane Goodall's Heartwarming Message For Young People About The Planet | World Economic Forum (weforum.org)

In case of individuals, sometimes the big picture truly disappoints us, and we give up the power to even do the simplest things that are definitely in our control alone and tend to go with the crowd. An inspiring video of Jane Goodall is worth noting which was recently published on the Annual Meeting of World Economic Forum where she encouragingly states that instead of focusing on the big picture, young people should find a small project that inspires them. [10]

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### About Aarti

Aarti is experienced in corporate legal matters having specialization in drafting, vetting and negotiation of agreements. By qualification she is an advocate and a solicitor