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LEGAL PHILOSOPHY AND ENVIRONMENTAL OBLIGATIONS: EXPLORING THE JURISPRUDENCE OF FUNDAMENTAL DUTIES RELATING TO ENVIRONMENT

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Abstract

The interrelationship between legal philosophy and environmental obligations has gained significant importance particularly when the world grapples with unprecedented environmental challenges. This paper delves into the jurisprudence of fundamental duties concerning the environment, exploring how various schools of jurisprudence favours environmental obligations and inspired a framework for ecological stewardship. The paper begins by tracing the origins of duties to ancient civilisations, where the concept of responsibility was deeply intertwined with moral, religious, and legal codes and that are found in other ancient cultures, underscoring a universal recognition of human obligations towards the environment. The study examines how these age-old principles have influenced contemporary legal systems, laying the foundation for integrating environmental responsibilities within the legal framework. A critical analysis is provided on the evolution of fundamental duties within modern constitutional frameworks, particularly in India, where the Constitution explicitly enshrines duties relating to environmental protection. The study concludes by emphasizing the importance of fostering a culture of environmental responsibility, where fundamental duties serve as a moral and legal compass for individuals and institutions alike.

Key Words: *Legal Philosophy, Environmental Duties, Constitution of India, Environmental Policies, Judiciary*

I

Introduction

In 1947 Julian Huxley, English evolutionary theorist and director-general of UNESCO, wrote to Mahatma Gandhi to ask him to contribute to a collection of philosophical reflections on human rights. Gandhi declined. "I learnt from my illiterate but wise mother," he replied, "that all rights to be deserved and preserved came from duty well done. Thus the very right to live accrues to us only when we do the duty of citizenship of the world."¹

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¹Samuel Moyn, *Rights versus Duties*, BOSTON REV. (2016) available at – <https://www.bostonreview.net/articles/samuel-moyn-rights-duties/> (last visited Nov. 6, 2024).

There is no dearth of philosophers, jurists and thinkers in defining the concept of duty from jurisprudential aspect. Various philosophers have dealt it differently keeping in view the school of thought to which they belong. It is worth recalling that most of the great philosophical systems of past—those of Plato and Aristotle, of Aquinas and the Scholastics, of Hegel and the Idealists—were grounded in the view that the highest purpose of human reason is to evolve a comprehensive understanding of mankind's place in the universe, not merely to serve as a detector of consistency and causality and thus as an instrument for morally bind desire.² "The emphasis "was on ends rather than on means."³ The notion that nature in particular embodies values apart from its usefulness in serving man's desires is familiar even in the western post enlightenment tradition. Kant, for example, was of the view that a propensity to exploit or destroy non human and inanimate nature might violate a person's duty to himself.⁴ Contemporary philosopher John Rawls, after restricting his own theory of justice to the human sphere, went on to assert that it is "[c]ertainly ... wrong to be cruel to animals and the destruction of a whole species can be a great evil."⁵ In his work, John Rawls turns briefly to the topic of "right conduct in regard to animals and the rest of nature."⁶ Rawls asserted that "[a] correct conception of our relations to animals and to nature" would depend on "metaphysics," which he defined as "a theory of the natural order and our place in it."⁷ Rawl's assertion...also have resonated in the nascent environmental movement... .Conversations about *nature circa* supposed that ideas about the planet...were changing. It was ordinary to expect a new; "ecological" view of the human role in the world, with large, if unspecified, practical implications.⁸ Environmental philosophers moved

²Availableat>

https://www.amacad.org/sites/default/files/academy/multimedia/pdfs/publications/books/values_chapterthree.pdf> (last visited Nov 6, 2024).

³ Max Horkheimer, ECLIPSE OF REASON 5 (The Seabury Press, New York, 1947).

⁴ Immanuel Kant, THE METAPHYSICAL PRINCIPLES OF VIRTUE (J. Ellington, trans., Bobbs-Merrill, New York, 1964) available at — https://www.amacad.org/sites/default/files/academy/multimedia/pdfs/publications/books/values_chapterthree.pdf (last visited Nov. 6, 2024).

⁵ John Rawls, A THEORY OF JUSTICE 512 (The Belknap Press of Harvard University, Cambridge, Mass., 1971).

⁶ Ibid.

⁷ Ibid.

boldly into the questions that Rawls envisioned: what kind of value the natural world presents and how humans should approach it.⁹ Environmentalists asserted that “ecology [which yesterday] was a science . . . had better become something like a religion,”¹⁰ and called for a “cultural transformation” marked by “personal commitment to a new philosophy and poetry of ecology.”¹¹ The syncretic spiritual movements of the 1970s did indeed take a strong ecological cast, combining strands of Asian teaching with the nature oriented romanticism of the US tradition.¹² As per Roderick, the evolution of moral and legal consciousness over centuries should now culminate in recognising the moral importance of natural entities, living and otherwise, for their own sake.¹³ Duties have long been the central framework for western ethical theory, in large part thanks to Cicero’s textbook on practical ethics—*De Officiis*, routinely translated as *On Duties*—which, for hundreds of years, introduced the subject to young men. Enlightenment thinker Immanuel Kant provided a revolutionary foundation for morality: the freedom of people to choose their own ends. But when he lectured on practical ethics, his teaching took a familiar form, expounding a catalogue of duties.¹⁴ Kant’s concept of duty can be summarized as:

⁸ Jeddiah P. Urday, *Our Place in the World: A New Relationship for Environmental Ethics and Law*, 62 DUKE L.J. 859 (2013).

⁹ Id., at 860.

¹⁰ Elizabeth Rogers, *Protest!*, SIERRA CLUB BULL. 20 (1969).

¹¹ Connie Fleteboe, *Environmental Teach-In*, SIERRA CLUB BULL. 14-15 (1970).

¹² Paul Shepard wrote in *The Subversive Science*, a 1969 treatment of the political and ethical meaning of ecology, that we must . . . affirm [nature’s] metabolism as our own—or rather, our own as part of it. To do so means . . . a wider perception of the landscape as a creative, harmonious being . . . [W]e must affirm that the world is a being, a part of our own body. Paul Shepard & Daniel McKinley (eds.), *THE SUBVERSIVE SCIENCE: ESSAYS TOWARDS AN ECOLOGY AND MAN – A VIEWPOINT* 1-3 (Houghton Mifflin, 1969). In the same spirit, Buddhist popularizer Alan Watts argued that continuity among all things, joined with the role of perception in creating experience, meant that “[o]ur whole knowledge of the world is, in one sense, self-knowledge,” a conclusion he claimed should be deeply reassuring. Robert Disch (ed.), *THE ECOLOGICAL CONSCIENCE: VALUES FOR SURVIVAL* 181-188 (Prentice-Hall, 1970).

¹³ See Roderick Frazier Nash, *THE RIGHTS OF NATURE: A HISTORY OF ENVIRONMENTAL ETHICS* 13-32 (UW Press Books, 1989).

¹⁴ *Supra* note 1.

*To act from duty is to necessarily act according as the moral law stipulates and with reverence to such law; for an action to have moral worth, that particular action must be done from duty; the Good will is responsible for making rational agents perform actions out of duty.*¹⁵

Duty and obligation are central concepts in modern moral philosophy and are requirements of a special kind.¹⁶ They appear to be the strongest normative statements in the language of morals. One of the most clear-cut concepts of duty is to be found in John Stuart Mill's Utilitarianism. According to Mill, the core idea of a duty is "that a person may rightfully be compelled to fulfill it."¹⁷

The origin of duty can be traced back to the development of ancient civilisations. For instance, the concept of *Dharma* in ancient India means righteousness and duty. *Dharma* consists of both legal and religious duties. Several religious texts dealt with the concept of duties such as duties of king, citizens, and court proceedings etc. With the growth of new religions like *Buddhism* and *Jainism*, the emphasis on duties was observed as responsibility or *dharma*.¹⁸ Eastern jurisprudence encompasses all the aspects of human behaviour within *Dharma* for which it is said *Dharmo Rakshti Rakshta* (respect *dharma* *dharma* will respect you) *Dharma* in its core involves duties as its subject matter. Hindu jurisprudence believes that the central moral concept is that of *dharma*, which originally meant the rules of correct ritual performance whose enactment maintains both the social order and order of the cosmos. The notion was extended to mean the rules of correct social conduct. It also came to mean the abstract notions of natural law, and social and religious duty.¹⁹ Even the King is said to have duties falling under *Raj*

¹⁵ Kow Kwegya & Amissah Abraham, *On Immanuel Kant's Concept of Duty*, AFRICAN JOURNAL (Online) 20 (2019) available at – [file:///C:/Users/HP/Downloads/ajol-file-journals_442_articles_193786_submission_proof_193786-5245-490878-1-10-20200316%20\(1\).pdf](file:///C:/Users/HP/Downloads/ajol-file-journals_442_articles_193786_submission_proof_193786-5245-490878-1-10-20200316%20(1).pdf) (last visited Nov. 9, 2023).

¹⁶ *The Concept of Duty and Obligation*, available at – <https://link.springer.com/chapter/10.1007/978-94-015-9365-6> (last visited Nov. 10, 2024).

¹⁷ *Ibid.*

¹⁸ Shamim Bano, *Relevance of Fundamental Duties in Indian Scenario*, 11 INT'L J. CREATIVE RES. THOUGHTS (2023) available at – <https://ijcrt.org/papers/IJCRT2302484.pdf> (last visited Nov. 11, 2024).

dharma. Duties have prevalence and predominance in eastern jurisprudence while the right is subservient, collateral and relative in contrast to western jurisprudence.²⁰ In *Bhagwat Geeta*²¹ following verses among others have relevance which says:

Your right is to work only, but never to the fruit thereof. Let not the fruit of action be not your object, nor let your attachment be to in action.

Though the message apparently says about the right but here the right is itself in the form of duty to work. In subsequent verse it unequivocally speaks about duty, where the message says:

Arjuna, perform your duties dwelling yoga, relinquishing attachment, and indifferent to success and failure; equanimity is called Yoga.

The jurisprudence of west and *dharma* of east is law and/or science of law. Once it is arrived at that jurisprudence is in relation to law, it is imperative to deliberate inter-alia upon the right and duties as concept of law.²²

This article argues that there is no necessary or essential disconnect between environmental law and environmental ethics. Rather, the relationship between the two has been deeply shaped by the changing context of events, and that change continues. Reviewing the philosophy and views of various philosophers and jurists on environmental values and ethics shows that the relation between environmental values and law is time immemorial.

Accordingly, the paper delves into exploring the jurisprudential basis of various schools of thoughts that reveal underlying environmental values. The paper also emphasises that the origins of duty can be traced back to the evolution of ancient civilisations. For example, the concept of *dharma* in ancient India represents righteousness and duty, encompassing both legal and religious obligations. Numerous religious texts have addressed the idea of duties. It further explores how these perspectives have inspired an

¹⁹ Tom Angier (ed.), *ETHICS 241* (Bloomsbury Academic, 2023).

²⁰ *Ibid.*

²¹ BHAGWAT GEETA, verse 47 & 48.

²² R.L. Koul & Meenakshi Koul, *Jurisprudential Aspects of Fundamental Duties and their Enforceability: A Study* available at – file:///C:/Users/HP/Desktop/ARTICLE%20ON%20FUNDAMENTAL%20DUTIES/Jurisprudential%20Aspect%20of%20Fundamental%20Duties.pdf (last visited Nov. 11, 2024).

ambitious vision of collaboration among legal scholars. The paper also traces that how the work and thoughts of early environmental scholars influenced and engrained the environmental values and ethics in law making process and in judicial approaches also. Thus, the subject-matter of this paper comprised of philosophical, social and spiritual values in different periods and various laws such as environmental laws, Constitutional provisions of India and the judicial aspects of fundamental duties relating to environment.

II

Rights and Duties: Concept of Law

There has been some rather disproportionate emphasis on the rights of citizens as against their duties even though the traditions and temper of Indian thought through the ages laid greater emphasis on duties. Actually, rights and duties are the two sides of the same coin. For every right, there is a corresponding duty. Rights flow only from duties well performed. Duty is an inalienable part of right: What is duty for one is another person's right. If everyone performs their duty, everybody's rights would be automatically protected.²³ Harold Laski has also said that rights are related to functions and are given only in return for some duties to be performed. Rights are conferred on individual citizens not only for their own development but also for social good.²⁴ As the universal declaration of Human Rights put it:

*Everyone has duties to the community in which alone the free and full development of the personality is possible.*²⁵

The law protects protected rights for a person by imposing duties upon other persons, the observance of which by them will, or probably will, preserve or bring into existence the protected state of fact, when a duty is created by the law in order to protect certain right, the duty and the right correspond to each other. Not all duties correspond to all rights; i.e., a state of fact which the law recognises as one proper to be protected is not necessarily protected from impairment by any kind of conduct which for any purpose the law forbids, but usually only by some kind of such conduct.

²³ National Commission to Review the Working of the Constitution, DUTIES OF THE CITIZENS 376 (2001) available at – file:///C:/Users/HP/Desktop/ARTICLE%20ON%20FUNDAMENTAL%20DUTIES/(V)Effectuation%20of%20Fundamental%20Duties%20of%20Citizens.pdf (last visited Nov. 11, 2024).

²⁴ Ibid.

²⁵ Universal Declaration of Human Rights, art. 29, cl. 1.

Some duties correspond to many rights; others to but few. Some rights have many duties corresponding to them; others few.²⁶

III

Beyond Human Needs: A New Rationale for Environmental Policy

A touchstone piece of early environmental law scholarship exemplifies the openness and dynamism of the law and ethics relationship in the early 1970s.²⁷ Laurence Tribe's "Ways Not to Think about Plastic Trees," is a reflection of classic meditation at the intersection of environmental law and ethics. Tribe urged lawmakers to recognise "rights" for natural entities, especially the procedural right of standing, the power to bring a legal action under one's own name.²⁸ In another landmark argument, Christopher Stone proposed that natural entities should have standing (via court-recognised trustees), less for "legal-operational" reasons than because it might contribute to "a radical new theory or myth felt as well as intellectualized of man's relationships to the rest of nature," in which "we may come to regard the earth . . . as one organism, of which mankind is a functional part."²⁹ Lynton Caldwell, the policy scientist... presented the stakes of this pre-eminently formal statute in similar terms. He argued that "two major ways of looking at the world have characterised man's attitude . . . ; the first may be termed economic, the second ecological." The first he described as embracing a simple ethic: "to make nature serve man's material needs."³⁰ These found support from all directions: the courts, allied academic fields, national politics, media, and social movements and all of this can be seen as the spirit of the development of environmental law and ethical consciousness globally.

IV

²⁶ Henry T. Terr, *Duties Rights and Wrongs*, 10 AM. BAR ASS'N J. 123-128 (1924) available at – <https://www.jstor.org/stable/25711521> (last visited Nov. 11, 2024).

²⁷ See Laurence H. Tribe, *Ways Not To Think About Plastic Trees: New Foundations for Environmental Law*, 83 YALE L.J. 1315 (1974).

²⁸ *Id.*, at 1340-43.

²⁹ Christopher Stone, *Should Trees Have Standing?: Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 98-99 (1972) available at – <https://huminst.red.uic.edu/wp-content/uploads/sites/412/2019/04/May-6-Stone-Should-Trees-Have-Standing.pdf> (last visited Nov. 15, 2024).

³⁰ See Lynton Keith Caldwell, *Environment: Challenge for Modern Society*, 11 NAT. RESOURCES J. 237 (1970).

Scope and Significance of Fundamental Duties

During the making of Constitution, the Indian Constitution dreamers coined the idea of fundamental duties but it was rejected because they thought that duties come within the rights itself. However, Dr. Rajendra Prasad observed that people have become ignorant towards lawfulness which deeply disturbed him. Yet they encompassed the duties in shape of Chapter IV (Directive Principles of State Policy).³¹ The Swarn Singh committee was formed in 1976 to make recommendations in regards to the fundamental duties and to be included as distinct division in the Constitution.³² The modern concept of fundamental duties was adopted from the USSR and incorporated into the Constitution of India in 1976 based on the recommendations of the Swaran Singh Committee. Fundamental duties ought to be considered as corner stone for nation hood to be read with the preamble, besides, other provisions.³³ The duties initially being ten in numbers were placed under Article 51-A of the Constitution of India.³⁴ The scope of fundamental duties after the 42nd Amendment in India is wide ranging. They are not limited to the individual citizen but also extend to institutions and the state. For instance, it is the duty of the state to promote scientific temper, protect the environment, and promote international peace and security.³⁵ The scope of fundamental duties also includes protecting the country's rich cultural heritage and preserving its natural resources.³⁶ It is the duty of every citizen to contribute to the welfare of society and to promote harmony and the spirit of brotherhood.³⁷ The fundamental rights in Part III, the directive principles of state policy in Part IV and the fundamental duties in Part IVA forms a compendium and have to be read together. It is true that there is no legal sanction provided for violation or non-performance of fundamental duties. There is neither specific provision for enforceability nor

³¹ *Supra* note 22.

³² *Ibid.*

³³ *Supra* note 18.

³⁴ Originally they were ten in numbers. Eleventh duty was added vide the constitution (Eighty-sixth Amendment) Act, 2002 sec 4 (w.e.f 1.4.2010).

³⁵ The Constitution of India, art 51, cl.h.

³⁶ *Id.*, art 51, cl.f .

³⁷ Abhishek Kaushik, "Significance of Fundamental Duties Indian Perspective" 5 *International Journal of Sociology and Political Science (Online)* 65 (2023), available at: www.sociologyjournal.in (last visited December 2, 2024).

any specific prohibition. However, fundamental duties have an inherent element of compulsion regarding compliance.³⁸

Analysing the fundamental duties outlined in the Constitution of India reveals that some are merely declaratory, others can be considered remedial, and some are a hybrid of both. Declaratory duties simply state the right without offering any remedy for its violation. Remedial duties establish and affirm duties while providing remedies for breaches, either within the same statute or in existing statutes.³⁹ For hybrid duties, the remedy may only address part of the breach rather than the entirety of the duty. Using this criterion, declaratory duties include Article 51-A (b), (d), (f), (h), and (j), while remedial duties are covered by Article 51-A (c), (e), and (g). Hybrid duties, combining both declaratory and remedial elements, fall under Article 51-A (a) and (i). The analysis is *inter-alia* based on the fact that some of the duties and their breach do create a statutory offence for prosecution.⁴⁰ The remedy provided is curative and not punitive, perhaps in view of the delicate relations. But for declaratory duties in other areas, there does not seem to be any corresponding remedial statute whether curative or punitive to prevent the breach and/or punishment for any deviation.⁴¹

V

Constitutional Obligations for Environmental Protection: A Duty Based Perspective

It was at the first UN Conference on the Human Environment in 1972, in Stockholm that concerns for environment protection was raised. The conference had the effects of initiating worldwide participation by urging governments all over the world to consider that environment must be protected in order to operationalise the right to life.⁴² The manifesto, *Protect Environment to save Mankind* saw a worldwide evolution as a result of this

³⁸ Out of the ten clauses in article 51A, five are positive duties and the other five are negative duties. Clauses (b), (d), (f), (h) and (j) require the citizens to perform these Fundamental Duties actively.

³⁹ *Supra* note 18.

⁴⁰ For example, the breach of remedial duties under 51-A(c), (e) & (g) constitute offences under Indian Penal Code and like law, besides, the breach of duty under 51-A(k) is again strengthen by section 10 of the Right to Free and Compulsory Education Act, 2009.

⁴¹ *Supra* note 22.

⁴² P.B. Sahasranaman, ENVIRONMENTAL LAW 2 (Oxford Univ. Press, 2nd edn., 2012).

conference.⁴³ After the Stockholm conference, the government in India passed a historic 42nd Constitution (Amendment) Act, 1976.⁴⁴ This amendment incorporated two significant articles article 48-A and 51-A (g) to protect and improve the environment. Further, it introduced several changes in the Seventh Schedule of the Constitution.⁴⁵ These changes are:⁴⁶

48-A Protection and Improvement of the Environment and Safeguarding of Forests and Wildlife-The State shall endeavour to protect and improve the environment and to safeguards the forests and wildlife of the country.

51-A (g) – It shall be the duty of every citizen of India –to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.

Seventh Schedule: List III, Concurrent List:

17-A-Forests

17-B- Protection of wild animals and birds

20-A-Population control and family planning

Various entries of State List II were transferred to List III (Concurrent List) which empowered parliament to legislate on environmental issues such as forests, wildlife etc.⁴⁷

The amendment makes two fold provisions on environment protection, the duty of the State and citizens. Together, these provisions highlight the national consensus on the importance of environmental protection and improvement and also lay the foundation for jurisprudence of this important area of law.⁴⁸

VI

Judicial Aspects of Fundamental Duties Relating to Environment

⁴³ See Sarath Chandra, *Human Rights and Environmental Protection*, COCHIN UNIV. L. REV. 59 (2002).

⁴⁴ It came into force on 7-1-1977.

⁴⁵ S.C. Shastri, *ENVIRONMENTAL LAW* 52 (Eastern Book Co., Lucknow, 2022).

⁴⁶ Cited in *Ibid*.

⁴⁷ Cited in *Ibid*.

⁴⁸ *Supra* note, 18. See also *Supra* note 42 at 3. See also *M.C Mehta v. Union of India*, AIR 1992 SC 225, “The Indian Constitution, in the 42nd (Amendment) Act, 1976 has laid the foundation of Article 48-A and 51 A for the jurisprudence of environment protection”.

The judiciary expands the scope of the fundamental environmental duty of citizens itself, expressly or by implication, in at least two ways: the duty bearers include citizens as well as the state, and the corresponding right holders include the environment and future generations.⁴⁹ In fact, the judiciary in India has relied on Constitutional environmental duties of citizens and the state while exercising its writ jurisdiction in a number of cases concerning non-realisation or violation of fundamental rights 'to pass strong and wide-reaching orders and directions'.⁵⁰ The judiciary relies on Constitutional environmental duties of citizens and the State regarding right to environment into the Constitutional right to life, or to restrict the scope of other Constitutional rights. In several cases, the Supreme Court has upheld the validity of laws relating to ecology and environment and has made directions binding the citizens and the state finding the source of power to do so in article 51A. In *Chandra Bhavan Boarding and Lodging, Bangalore v. The State of Mysore*⁵¹, the court held:

It is a fallacy to think that under our Constitution there are only rights and no duties. While rights conferred under Part-III are fundamental, the directives given under Part-IV are fundamental in the governance of the country...The provisions of Part-IV enable the legislatures and the government to impose various duties on the citizens. The provisions therein are deliberately made elastic because the duties to be imposed on the citizens depend on the extent to which the directive principles are implemented...

The genesis of scope of fundamental duties started in early eighties. In *L.K.Koolwal v. State of Rajasthan*⁵², the court explained the true scope of article 51-A in the following terms:

We can call article 51 –A (g) ordinarily as the duty of the citizens as to create rights in favour of citizens to move to the courts to see that the State performs its duties faithfully and obligatory and primary duties are performed in

⁴⁹ Lovleen Bhullar, *Environmental Constitutionalism and Duties of Individuals in India*, OXFORD J. ENVTL. L. 406 (2022).

⁵⁰ Armin Rosencranz & Shiraz Rustomjee, *Citizens' Right to a Healthful Environment*, 25 ENVTL. POL'Y & L. 327 (1995).

⁵¹ (1969) 3 SCC 84.

⁵² AIR 1988 Raj. 2.

*accordance with the law of land... Article 51-A gives the right to the citizens to move to the courts for the enforcement of duties cast on the state. The court also pointed that rights and duties co-exist...*⁵³

A year later the high court of Himachal Pradesh in *Kinkri Devi v. State of Himachal Pradesh*⁵⁴, reiterated that in articles 48-A and 51-A (g) there is both a Constitutional pointer to the state and a Constitutional duty of the citizens, not only to protect but also to improve the environment and to preserve and safeguard the forests, flora, fauna, rivers and lakes and all other water resources of the country.⁵⁵ The Supreme Court referred to 'the constitutional mandate to protect and improve the environment' and pointed out that whenever a problem of ecology is brought before the court, the court is bound to bear in mind Articles 48-A and 51-A (g) of the constitution.⁵⁶

From the above observation of the cases it is evident that in certain cases the courts can take affirmative action commanding the other organs of the State, i.e., legislature and executive, to comply with the..obligations of protecting and improving environment.⁵⁷ Moreover, while the Constitution guarantees the fundamental right to life to every person, fundamental duties are confined to every citizen of India. Subsequently, however, the court observed that constitutional environmental duty of citizens and the state have to be considered in the light of Article 21 of the Constitution.⁵⁸ The mandatory nature of this order ('have to be') mean that a narrow interpretation of the fundamental right to life can limit the scope of environmental Constitutionalism including the contribution of the fundamental environmental duty of citizens to the development of environmental rights and environmental law in India.⁵⁹ The judiciary draws upon the Constitutional environmental obligations of both citizens and the state to define the extent, purpose, and limitations of other fundamental

⁵³ *Id.*, at 4.

⁵⁴ AIR 1988 HP 4.

⁵⁵ *Id.*, at 8-9.

⁵⁶ *Sachidanandan Pandey v. State of West Bengal*, A.I.R.1987 S.C. 1109.

⁵⁷ P.S. Jaswal et al., ENVIRONMENTAL LAW 53 (Allahabad Law Agency, 2022).

⁵⁸ *See MC Mehta v. Kamal Nath and Others*, (2000) 6 SCC 213 para 8.

⁵⁹ *Supra* note 49 at 407.

rights protected by the constitution. The Supreme Court has also emphasised in number of cases that these duties should be considered when interpreting the nature and scope of fundamental rights.⁶⁰ Subsequently, the Bombay High Court considered the fundamental environmental duty of citizens while interpreting the scope purport of the freedom of religion guaranteed under Article 25 of the Constitution.⁶¹ The high court of Gujarat in *Abhilash Textile and Others v. The Rajkot Municipal Corporation*⁶², observed that the fundamental right to carry on trade or business could not be asserted without any regard to the fundamental environmental duty.⁶³ The court relied on the duty in addition to reasonable restrictions placed on the fundamental right under the Constitution. Subsequently, the judiciary referred to the duty while testing the reasonableness of restrictions imposed by legislation on the fundamental right to carry on any occupation, trade or business guaranteed under Article 19(1) (g) of the Constitution.⁶⁴ Here, the judiciary's approach shifted from the expansion of constitutional rights to restricting them, reflecting the original rationale for insertion of fundamental duties in the Constitution through the 1976 constitutional amendment.⁶⁵

The court has declared in *H.P. Bus Stand Management & Development Authority v. Central Empowered Committees* ⁶⁶(2021) 4 SCC 309, :

Articles 21, 47, 48-A and 51-A (g) of the constitution give a clear mandate to a State to protect and improve the environment and to safeguard the forests and wildlife of the country. Proper structures for environmental decisions making find expression in the guarantee against

⁶⁰ For example, see *Intellectuals Forum Tirupathi v. State of Andhra Pradesh and Others*, (2006) 3 SCC 549.

⁶¹ See *Campaign against Manual Scavenging v. State of Maharashtra and Others*, 2015 SCC Online Bombay 3834; *Rajesh Madhukar Pandit and Others v. Nashik Municipal Corporation and Others*, PIL No 176 of 2012 (Bombay High Court, 18 December 2018), available at: <https://indiankanoon.org/doc/77305325/> (last visited December 2, 2024).

⁶² AIR 1988 Gujarat 57.

⁶³ *Id.*, at 7.

⁶⁴ See also *State of West Bengal and Others v. Sanjeevani Projects (P) Ltd and Others*, 2005 SCC Online Cal 563. Cited in

⁶⁵ *Ibid.*

⁶⁶ (2021) 4 SCC 309.

*arbitrary action and the affirmative duty for fair treatment under article 14 of the Constitution.*⁶⁷

It has also been observed by the court that the inaction of the state to the constitutional and statutory duties cannot be permitted as provided under the articles mentioned above, and any dereliction in duty or inaction on the part of the government officials attracts punishment.⁶⁸

In some other cases, the fundamental environmental duty was held to be both positive and negative in nature. The Supreme Court observed that every citizen must undertake the constitutional duty to preserve the environment and to keep ecological balance unaffected. High Courts have extended the scope of the fundamental duty to preserve and safeguard the rivers and lakes and all the other water resources of the country, and to maintain a hygienic environment. Arguably, it is easier to perform the less resource intensive negative duty to keep ecological balance unaffected and to maintain hygienic environment than the positive duty to preserve and safeguard the environment.⁶⁹

VII

Conclusion

Changing values lie at the very heart of changes in the environmental law regime. The recent impression that environmental law gets along well enough without engaging environmental value and imagination becomes less plausible when one appreciates that they have always been intertwined. The new ecological era added to a cultural and legal palimpsest of ethical views. Reformers such as Tribe and Stone and many others proposed embedding dynamic environmental values within legal process, by innovations in standing doctrine and rights. It is said that by their nature, it is not practicable to enforce the fundamental duties and they must be left to the will and aspiration of the citizens. However, in the case of citizens holding public office, each and all fundamental duties can be enforced by suitable legislation and departmental rules of conduct. Appropriate sanctions can be provided for lapse in respect of each fundamental duty and it is quite practicable to enforce the sanction against every citizen holding a public

⁶⁷ *Ibid.*

⁶⁸ *Tatat Housing Development Co. Ltd. v. Aalok Jagga*, (2020) 15 SCC 784 Cited in *supra* note 23 at 57.

⁶⁹ *Supra* note 49.

office. It is no longer correct to say that fundamental duties enshrined in article 51A are not enforceable to ensure their implementation and is a mere reminder. Fundamental Duties have the element of compulsion regarding compliance. What is needed is to enact suitable legislation wherever necessary to require obedience of the duties by the citizens, with legal sanctions. There is need for comprehensive legislation in this area to ensure a faithful and effective implementation of the fundamental duties.⁷⁰

The implementation of such fundamental duties requires aspiration of the citizens rather than enforcement or sanction. When at the formative age of life such noble ideals are inculcated and hammered upon, and also practiced in daily life, aspiration to practice them throughout life will be inevitable; it will become part and parcel of the nature and character of the citizen. Although these duties are not legally enforceable, the Supreme Court of India emphasised their importance in the case of *Minerva Mills Ltd. v. Union of India*.⁷¹ The Parliament and the Supreme Court have introduced measures to give binding nature to some of these duties, such as the Environment (Protection) Act, 1986, and the Forest (Conservation) Act, 1980. Many countries have evolved into developed economies by embracing the principles of "Responsible Citizenship."⁷² For example, USA exemplifies this with its Citizens' Almanac, published by the US Citizenship and Immigration Services, which outlines the responsibilities of its citizens. Similarly, Singapore's remarkable development has been driven by its citizens' unwavering commitment to their duties, transforming it from a less developed nation to a highly developed one in a relatively short period. Although Article 51A (g) mandates the duty to protect and improve the environment, India continues to face severe air and water pollution and the impacts of climate change. The main principles explained by Rajasthan high court in *Singh Punia v. Rajasthan State Board of Pollution Control of Water Pollution*⁷³, enunciated in article 21, 48 A and 51-A (g) shall be the hallmark of the nature of fundamental duties relating to the environment:

⁷⁰ *Supra* note 23.

⁷¹ AIR 1980 SC

⁷² The USA exemplifies this with its Citizens' Almanac, published by the US Citizenship and Immigration Services, which outlines the responsibilities of its citizens. Similarly, Singapore's remarkable development has been driven by its citizens' unwavering commitment to their duties, transforming it from a less developed nation to a highly developed one in a relatively short period.

⁷³ AIR 2003 Raj 286.

- (i) All human beings have a fundamental right to unpolluted environment, pollution-free water and air;
- (ii) The state is obliged to preserve and protect the environment;
- (iii) It is mandatory for the state and its agencies to conceive, anticipate, prevent, and attack causes of environmental degradation;
- (iv) Industry cannot be permitted to continue as a matter of right, in case it creates pollution;
- (v) Polluter must meet cost of repairing environment and ecology and pay reparation to those who have suffered because of pollution caused by them (polluter pays principle);
- (vi) Consideration of economy cannot prevail over concerns for environment and ecology.⁷⁴

In *Dasarathi v. State of Andhra Pradesh*⁷⁵, it was held that under article 51A (j) of the Constitution, we all owe a duty to ourselves to strive towards excellence in all spheres of individual and collective activity so that this nation may constantly rise to higher levels of endeavour and achievement. When the state undertakes to promote excellence, it can do so only through the methods which our Constitution permits to adopt. Rewarding of sycophancy only helps to retard the growth of efficiency and excellence. The clause (j) has the potential not only to regenerate and reconstruct the country but also to raise it to the highest level. "Excellence" is the secret of all development and all success. "Excellence" brings about communion with the Divine "Yogah Karmasu Kaushalm".⁷⁶

⁷⁴ Cited in: B. Sahasranaman, *Environmental Law* 8(Oxford University Press, 2nd edn., 2012).

⁷⁵ AIR1985 AP 136.

⁷⁶ Cited in: *Supra* note 23.