

PEOPLE, PROTEST, AND PUBLIC PROPERTY- THE ARGUENDO OF 3P's

Sahajveer Baweja

Pursuing B.A.LL. B 4th year, Rajiv Gandhi National University of law, Patiala

Abstract

WE THE PEOPLE

Drafting of the Constitution

During the heated debates involved in the framing of the Constitution, one thing was thoroughly questioned that is, whether there is a need to add provisions of Fundamental Duties separately? The consensus led to the denial of adding such provision believing that the fundamental duties are the basic conscious of the Citizens which they don't require to be alarmed for as it is flown in their culture from the times of evolution. Moreover, one more significant reason to treat duties as subordinate to the rights was because of the pre-occupied synchronized emotions intricated in the freedom struggle. Dominantly, India's struggle for independence was in actual fact a struggle for acquiring the right to freedom from British Colonialism. Ultimately, the constitutional framers focussed more on asserting the people's right to national freedom. The deep-rooted fascist ideologies, as well as the dictatorial regime of totalitarianism flourishing after the time of destructive World Wars, threatened feeble country-like India who after so many sacrifices had got the privilege to call it independent. These all circumstances substantiate the eternal love of founding fathers of the Constitution towards ensuring basic human rights overriding the need for duties at the time of incorporating the Constitution.

Keywords: Public property, Fundamental Duties, Citizens, Fundamental Right to Protest

1. Introduction

Although, the act of extrovertism as exemplified by drafters of the Constitution indeed had a salutary impact on society helping the civilization grew without any fear and without

even foregoing their self-respect because these Fundamental Rights remained as a guardian of citizens against the whims and fancies of authoritarianism but somewhere down the line, they have been criticized to not incorporate fundamental duties in the original draft of the Constitution.

One of the criticisms came from the protagonists of Independence that is Mahatma Gandhi. He laid its emphasis on duties being overlooked as he believed that rights and duties are correlated because there can be no rainbow without rain. Gandhi enigmatically defined Right as a duty well-performed. The quintessence of the reference is to draw the analogy towards the corresponding obligation. The cradle of right is the duty. One's right is the duty of another and if we all discharge our duties; right is not so far to enjoy. Mr. Gandhi asserted that "if leaving duties unperformed we run after rights, they will escape us like a will-O'-the-wisp, the more we pursue them, the farther they will fly."

To quiz yourselves with native questions like what are duties and why do we have duties is not an unwise thought because as a citizen of the world's biggest democratic state, we are not aware of what actually duty means. If I would simply answer the pertaining question as to what is a duty, I shall comment on it as a mere obligation. However, this colloquial meaning is precise, but partially. Jurisprudentially, Duty is an obligation backed up by the effectiveness of Law to endorse a particular standard of conduct towards another, deviance from which is deliberated as wrong. What can be inferred is that there is an obligation which is brought into effect by Law and where violation of it can steer to the pit of moral turpitude.

To address the second question posed that is; why are we obliged to do a duty?, it is because duties are the balance-maker of society. If every individual claim right then it would be a utopian fallacy as it is crystal-clear fact that rights and duties are reciprocal. Recognizing rights on one side and counselling duties on the other, the societal conflict is avoided through this noble purpose by ensuring that the observance of one is done by the prescription of another. Henceforth, in this cordial relation of observance and prescription, the right and duty as a matter of jurisprudential necessity, cannot vest in the same person at the same time and that is why one is obliged to perform duties.

2. Incorporation of Fundamental Duties (IV-A)

Unfortunately, the realism of constitutional drafters plagued in the year 1976 and Part IV (A) was inserted pursuant to the Constitution (42nd) Amendment Act, 1976 dealing particularly with Fundamental duties. This Swaran Singh committee recommended amendment was adopted to ensure that the individual did not overlook his duties while exercising his fundamental rights. Another *ration d'être* that can be inferred is the use of fundamental duties as a political weapon of the ruling government at the time of amendment i.e. Indira Gandhi. When the amendment came into effect, a national emergency was already in force; therefore, it can be held as an influential step by Indira Gandhi's regime to strengthen its hold in the midst of the Internal Emergency it had declared. Article 51-A currently identifies ten areas where it has the horizon to dictate the efficacy of obligations. The article is restricted to only citizens of India and does not compel a person who is not its citizen.

However, how convincing fundamental duties appeal to our brains, the fact remains as stated i.e. they are not enforceable by *mandamus* or any other legal remedy. If the state seeks to promote any of these duties, they can do only through methods legitimated by and in consonance with the Constitution. It is certain to claim that, although they aren't enforceable, yet they provide a valuable guide and aid to interpretation of constitutional and legal issues. The fact cannot be ignored that even these duties are prefixed by the word 'Fundamental' much like Rights. It still portrays us as the Magna Carta of duties that a citizen is obliged to do in order to protect the societal interest.

3. The Interplay of Public Property and Protest

Article 51(A) (i)

Clause (i) of Article 51(A) states that 'it is the duty of every citizen of India to safeguard public property and to abjure violence.' In common parlance, public properties are what people of a country own and use it jointly. It is crucial and ubiquitous in public life, yet we tend to disgrace its presence. For the performance of our ordinary routine, we have heavily relied on the social world which is dominated by public property. Starting from the roads to taking a bus, and then going home under those street lights; every corner at the

altar of the motherland is decorated with public property. Although the maintenance and development of the public property is in the wide ambit of government, however, as a citizen who worships sovereignty in this democracy, it is the duty of an individual as a citizen to respect the means that are provided for the easiness of life. If the government has the responsibility to create buildings and public properties, it is our reciprocal duty to help the government maintaining it.

Nonetheless as discussed, this duty like the other nine duties is not enforceable by the Law but there is no restriction to make any specific parliamentary Law keeping in mind the spirit of that duty. Hence, to enshrine this duty as an obligation backed by Law, Prevention of Damage to Public Property Act, 1984 was legislated and brought into force. Public property under this act is defined as any property, whether immovable or movable (including any machinery) which is owned by, or in the possession of, or under the control of—

- (i) the Central Government; or
- (ii) any State Government; or
- (iii) any local authority; or
- (iv) any corporation established by, or under, a Central, Provincial or State Act; or
- (v) any company as defined in section 617 of the Companies Act, 1956 (1 of 1956); or
- (vi) any institution, concern or undertaking which the Central Government may, by notification in the Official Gazette, specify in this behalf.

Unfortunately, this act although punishes the person who causes mischief to the property but has been criticized by the Apex Court for its inadequacy. The court as a matter of judicial activism has provided the guideline to care for the act but that also had a very restricted approach resulting in terming this legislative act as uneven Law. On one hand, the objective of the act is bona fide but on the other hand, the law that is not clear and free of contradictions is to be termed as bad law. Sufficient to say is that the Court in Koshi

Jacob vs Union of India reiterated the need to update the Law and make it possible to administer the society.

3.1 Fundamental Right to Protest

In a democratic country, nothing can be more abusive than restricting the expressions of a person. Democracy stands on different pillars and one such pillar is the Freedom. Freedom has a wider ambit and one of its elements is the freedom to speech and expression. On this ground, Fundamental right to protest finds its home under Article 19(1) (a) and (b) of the Indian constitution that guarantees the right to freedom of expression and speech and to assemble peacefully. The highest court of India has expeditiously incorporated the scope of peaceful protest under fundamental rights. Apex Court held that Citizens have a fundamental right to assembly and peaceful protest which cannot be taken away by an arbitrary executive or legislative action. More likely to substantiate, Hon'ble Justice Bhagwati asserted that 'democracy means government of the people by the people, it is obvious that every citizen must be entitled to participate in the democratic process and in order to enable him to intelligently exercise his rights of making a choice, free & general discussion of public matters is essential.'

A protest is not a civil disobedience movement but a movement towards obedience. It is not anti-law but within Law. The protests are called to challenge injustice and to inspire positive social change in society. It is a symbol of an informed citizenry. Even the historical books of the past convey us the long story of human protests against prejudices, hence how it could be opinionated as civil disobedience? Even in the least sense, it is termed as civil disobedience, Mr. Gandhi openly claimed that civil disobedience is an inherent right of citizens; the birthright that cannot be surrendered without surrendering one's self-respect and it is un rebutted that Mr. Gandhi through its civil disobedience has broken the fetters of imperialism and offered India its own identity.

Albert Bigelow once during a protest beautifully expressed that "I am going in the hope of helping change the hearts and minds of men in government. If necessary, I am willing to give my life to help change a policy of fear, force, and destruction to one of trust, kindness, and help. I am going because I have to-if I am to call myself a human being." Half freedom

is no freedom and just misery. Attacking the conscience of authoritarianism is no offence in any country whether constitutionally adhered or not. A protest is the sine qua non for a man to safeguard its identity. Being a Puppet of barbarianism is an acceptance to totalitarianism and further disrespect to the core of democracy. The right to protest is a step towards the cusp of democratic change as history only changes its vision when it is touched by vision.

4. Public Property and Protest

In the recent news, we all could see the present Chief Justice of India stating that he will hear all the petitions of the clash that happened during the Citizenship amendment Act protest. Although, he acerbically denied to hear the matter if violence and destruction of public property prevails, however he still has a point to make and which is the core of argument at the moment. Does the undisputed right to protest gives you the liberty to destroy public property and cause violence or is the right only limited to carry peaceful protest? To reinterpret the right to protest, it has a condition precedent which is a peaceful protest and without arms which altogether means a protest is a right unless it causes violence in society as at that moment, it becomes the punishable offence, therefore, right coming to an end while liability comes to the front foot. The Constitutional right to assembly is not absolute, and is subject to certain regulations contained in several laws, such as the Indian Penal Code, the Criminal Procedure Code, and the Police Act of 1861.

Unfortunately, the protests that are happened recently in India, in no way, can be confined under the meaning of peaceful protest as it has reached its zenith when it comes to causing destruction. Mobs have destroyed public properties with stones, bricks, lathis and what not. At some places, the mobs have resorted to setting vehicles on fire. There is no excuse for political colour getting mixed to the protest because the gatherers at the protest have no face to identify as it is a collective term that refers to each individual whether involved in it or not. Such faces often hide amidst in this pool of people. They know that in a mob, no one has to take the onus of the damage. However, seeing a bigger picture, such protests are a weapon of mass destruction that is caused by its citizens on its own people.

One thing that can be claimed by such destructive protests that is we Indians have lost the civic sense and has brought it to the minimum level. Our public places, heritage sites, and shrines are gradually turning into chronicles of our frustrations rather than symbolising our history. Moreover, we have found an escape route to make ourselves guilt-free by making Government and its Governance the scapegoat of all such lawlessness. Powerful government is the essence of democracy but so is the element of public accountability. At this noting, we have failed in the latter part likewise the way we were already failed in the first. With the right to speech and expression as a fundamental right, such right has a duty attached to it which demands to raise voice against activities that attacks the public decorum. A citizen can't be duty-free after it elected the government. It has the responsibility to act as a catalyst so that the onus shifted on the part of the government to ensure the Law is abided.

Truly, we reside in a street that is two way. One way leads to public accountability and the other is towards democracy; one leads to your rights and the other to your duties. We reside in a nation that is known for its ahimsa or non-violence. It is our duty to act as a pillar of the country to make it stand firm and strong. You cannot think of a tree giving fruits when it has corrupted roots. Mostly, people are ill-informed towards the cause and relationship of such abuse of public properties. Every time we resort to such abuse, we flush a part of the taxes we pay for the advancement of this nation into the drain of backwardness. There is a need to respect, if not citizens of the country; at least the taxes you pay for the improvement of the nation. No one is snatching the right to protest but Lawfulness is a bigger right that is to be ensured in a sovereign, so the domain of protest shall be in its boundaries that are virtually created by the word peaceful.

5. Conclusion

Mr. Pranab Mukharjee during his presidential days in one of his speeches stated that 'in the age of empires, freedom was never given; it was taken'. Agreeing to the former president's point followed by witnessing the History of World, freedom is not gifted but challenged and won. However, when you are in the periphery of a democratic nation, you are supposed in a reciprocal relationship. When you are offered the right to protest, you are expected to protest peacefully as one of your duty. Fundamental duties are not an Elysian

concept in a Constitutional country. The duties are the obligation and amount to consideration of enjoying your rights in a state.

From the flickers of India to Chandeliers of USA, the concept of duties is *prima facie* the core of democratic morality and thus oblige an individual to cast its adherence to it through obligating the architecture of the Constitution. Moreover, these duties are not based on a far-fetched thought process but developed on the principles of societal interest so that a hormonal balance of the society remains at equilibrium. Similarly, the duty to safeguard public property and abjure violence is a concept based on protecting the common good of civil society. The duty demands reverence to goods that are created for the welfare of society. Public property is the good of none but all and certainly, it should not be abused by the whims and fancies of an outlaw. By and large, no country and its citizens have risen yet who thought only for their own rights, only those did so who thought of duties because “the inferior man always talks about rights but the superior person imposes duties on himself.” Therefore, We the People of India are necessitated by the Mandate of Constitution to oblige the rights of another citizen by doing our duties blissfully.