Fundamental duties have been laid down in the Constitution for the citizens of India. The original Constitution of India, which came into force with effect from January 26, 1950, has a preamble which declares India as a Sovereign Democratic Republic, resting on the four pillars of civilization, viz. Justice, Liberty, Equality and Fraternity. Chapter III of the Constitution includes a "Bill of Rights", i.e. "Justiciable Fundamental Rights". These Fundamental Rights are the rights of the citizens against the State, although some of them are also the rights of non-citizens. But the Constitution in its original form was silent in regard to the Fundamental Duties of the citizens.

More emphasis on Rights in the Constitution.

The over-riding pre-occupation of the founding fathers of the Constitution with the rights of the citizens is quite understandable. India's freedom struggle was essentially a struggle for acquiring the right to freedom. The colonial rule had been a prolonged one and it had brought in its wake political oppression resulting in complete denial of human rights. The main sweep of the freedom struggle, therefore, was towards assertion of the people's right to national freedom. The liberal struggle, its deep awareness of
the evils embodied in fascism and totalitarianism and bitter experience of these evils under the British regime had also no less contributed to increased emphasis on assertion of Fundamental Rights in the Constitution.¹

All these explain why the founding fathers of the Constitution took pains to ensure basic human rights in Part III of the Constitution. The incorporation of the Fundamental Rights of the citizens had indeed a salutary impact on the society as it helped the growth of a new sense of self-respect among the citizens of India, hitherto subjected to indignities and humiliations under the colonial regime.

Gandhian emphasis on duties overlooked.

As rights and duties are two sides of the same coin, it looks rather enigmatic that the framers of the Indian Constitution did not lay down Fundamental Duties for the citizens along with their Fundamental Rights.

"Right", as defined by Mahatma Gandhi, "is duty well performed".² Right carries with it a corresponding obligation. There is a well-known incident which illustrates Gandhiji's attitude towards the rights. H.G.Wells once drew up a Charter of Human Rights and sent it to Gandhi for his subscription to it. Gandhi cabled him back: "Begin with a Charter of Duties
of man, and, I promise, the rights will follow as spring follows winter". Gandhi also said that "the true source of right is duty. If we all discharge our duties, rights will not be far to seek. 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."  

**Duties in the Constitution of the world.**

In the context of the very great emphasis which Mahatma Gandhi laid on the natural link between rights and duties, it is gratifying to note that the Fundamental Duties were incorporated into the Constitution under Art 51-A by the 42nd Constitution (Amendment) Act, 1976.

Insertion of Part IV-A in the Constitution containing Fundamental Duties can hardly be called an innovation on the part of the Indian Parliament. There are many Constitutions in the world containing such duties. In fact, there are more than 50 nations in the world having specific provisions in regard to Fundamental Duties in their Constitutions. These include Japan, Yugoslavia, China etc., as would be evident from APPENDIX I.
On the other hand, there are many countries which do not have fundamental duties listed in their Constitutions. England, which is called 'the mother of democracy', has neither any Fundamental Right nor any Fundamental Duty. In fact, England does not even have a Constitution, a reality which induced Bagehot to affirm: "Elle na existe point". The reason for this lies embedded in English history. The Englishmen, themselves being instrumental in the evolution of democracy in England, were conscious not only of their rights but also of their obligations right from the days they spearheaded the glorious revolution of 1688. Hence, they did not deem it necessary to create any document of the nature of a Constitution, either to enshrine a citizen's rights or to enunciate a citizen's obligations.

But people belonging to those nations which for ages remained subjugated had a bitter experience of the misuse or abuse of power by the State machinery. Therefore, when they threw off the yoke of colonial rule, they took pains to ensure that the State is restrained from encroaching upon their valuable rights. As unbridled freedom can be a danger to the very freedom itself, they recognized
their basic obligations and incorporated them as their duties into the Constitution. It is mainly for this reason that in the Constitutions of such States which were emancipated from colonial rule in recent years, Fundamental Duties are incorporated side by side with the Fundamental Rights.

India, surprisingly enough, does not fit into this scheme. Its Constitution, when enacted in 1949, was bereft of provisions relating to Fundamental Duties, although quite a number of Fundamental Rights had been incorporated therein. Perhaps, it was this realization which prompted Sir Ivor Jennings to observe that "Essentially Indian Constitution is an individualistic document: its prophets are Burke, Mill and Dicey".

Emphasis on duties during freedom struggle.

Not that the freedom fighters did not realise the importance of duties. In fact, their participation in the freedom struggle was itself a sacred duty which inspired them to fight for the emancipation of their motherland. Throughout the struggle for freedom, the concept of duty prominently occupied the minds of freedom fighters. Gandhiji always laid emphasis on the duty. When the
Constitution of India was first discussed, he proposed incorporation of a Chapter listing Fundamental Duties of citizens. This becomes evident from a study of the thought provoking brochure on "Gandhian Constitution For Free India", by Shri S.N. Aggrawal. The book to which a foreward was written by Gandhiji himself, has a full Chapter on Fundamental Rights and Duties. This Chapter emphasised the need for "a clear enumeration of civic rights in the Indian Constitution", holding it "of paramount importance specially in view of the communal problem" that faced this country. However, it took cognizance of the fact that all these rights shall be contingent on the performance of the fundamental duties", which were enumerated as follows:

1). All citizens shall be faithful to the State specially in times of national emergencies and foreign aggression;
2). Every citizen shall promote public welfare by contributing to State funds, cash, kind or labour as required by Law, and
3). Every citizen shall avoid, check
and, if necessary, resist exploitation of man by man.

Such enumeration of duties, it was urged, would in no way abridge the Fundamental Rights but would help remind the people that no rights are absolute or unconditional.6

Absence of Duties in the Indian Constitution.

It was rather unfortunate that in the years after independence, the people of India became so much right conscious that they tended to forget their fundamental duties and responsibilities. A suggestion to define the duties of the citizen was no doubt mooted by Dr. Rajendra Prasad, who felt deeply disturbed on account of indiscipline and lawlessness in the country in general, and the irresponsible behaviour of some legislators in particular. Moreover, this issue also attracted attention of the Servants of the People's Society under the Presidentship of veteran leader Shri Biswanath Das, former Chief Minister of Orissa. The Society brought out a pamphlet entitled:'Place of Duty in our lives and Constitution of India', to suggest "without altering or abridging any of our Fundamental Rights, a few purposeful additions to
fill up the gap in our Constitution, bringing in certain duties from which citizen's right flow and without which such rights cannot survive.  

However, the fact remains that Fundamental Duties of the citizens were not incorporated into the draft Constitution, and when the Constitution of India came into force, it had not doubt a Chapter on Fundamental Rights, vide part III, but there was no Chapter on Fundamental Duties. It seems that the people in the country had been so much obsessed with rights that they tended to forget the importance of their duties and obligations towards the society and the nation which enabled them to claim and exercise their rights.

**Impact of absence of duties on the Indian society.**

Presence of rights and absence of duties in the Constitution had, in the long run, ushered in an era of indiscipline in the Indian society. Strikes and lockouts became endemic. Here it would be pertinent to recall the growing incidence of indiscipline in India from the late sixties when, with the weakening of the hold of the Congress Party on the electorate, there emerged an era of coalition governments in the various States. With foot-loose politicians crossing the floor of the House for gaining power and privilege, political
interference in administration increased so much so that the administration became completely paralysed. Cashing in on this atmosphere various trade unions not only started gheraoing the management but also the police officials. As recorded by a prominent author on law enforcement, "Gherao of police officers is now a daily exercise. All incidents are not reported to us. Many officers suppress such reports to avoid more trouble and this further complicates matters. Senior police officers state that many of their colleagues have surrendered to the unions because they want to be on the safe side to avoid harassment". 8

The deterioration in the law and order situation was also partly caused by the fact that some of the governments had issued instructions forbidding police officers to intervene in cases of gheraos. Here it may be pertinent to mention that "in Jay Engineering case a Special Bench of the Calcutta High Court struck down the executive instructions of the Government whereby policemen were forbidden to interfere even in cases of gheraos amounting to offences of wrongful confinement and being members of unlawful assemblies without first consulting the Labour Minister. The Court held that
the Government circulates clearly conflicted with the law,......, and were therefore illegal".

Similar views were also expressed by the High Court of Tamil Nadu and Karnataka in separate cases. Even the Supreme Court has observed that "...... it is essential to emphasise that under our constitutional system the authority to make the law is vested in the Parliament and the State Legislatures and other law-making bodies and whatever legislative power the executive administration possesses must be directly from the delegation of the legislature and exercised validly only within the limits prescribed. The notion of inherent or autonomous law-making power in the administration, is a notion that must be emphatically rejected".

All these underscored the need for a new jurisprudence in which stress and emphasis could be placed more on duty rather than on right, in order to restore the much needed balance in the Indian society.

Demand for incorporation of Fundamental Duties.

The immediate impulse for incorporating a schedule of basic duties for citizens in the Constitutional document might have stemmed from a reaction to the erosion of national discipline that was becoming increasingly evident in the year preceding the promulgation of internal emergency in
1975, but, by and large, it was influenced by a general realisation that, as people, we are far more inclined to think of our individual rights than care for our obligations to the community.

The reasons for including a specific Chapter on Fundamental Duties of the citizens were quite pressing. It was necessary to make duties explicit as undue stress was being laid by self-seekers on rights, leading to gross misuse of liberty. The Preamble to the Constitution declares India as a "Sovereign Democratic Republic" which is committed to secure to all its citizens - Justice - social, economic, political; liberty of thought, expression, belief, faith and worship; Equality of status and opportunity and shall promote among them all fraternity, assuring the dignity of the individual and unity of the Nation". These lofty ideals could not be achieved unless citizens discharged their national obligations. Unfortunately some unscrupulous elements were misusing liberty to the detriment of the society, and this had to be checked if the values enshrined in the Constitution were to be preserved.

The incorporation of the duties in the Constitution was further necessitated by the growing concern of the Government to zealously safeguard the natural environment. The ruthless deforestation of our jungles and the impending extinction of wild life in
consequence, and the growing tendency among the people to damage national property, unmistakably called for such a measure as a reminder to unscrupulous elements that they had certain obligations towards the nation which had bestowed upon them certain basic rights.

Over and above all these, the inclusion of duties should be appreciated also in the background of the twin concept of rights and duties. They ought to be correlative. Since Fundamental Rights had already been included, the inclusion of Fundamental Duties within the framework of the Constitution, therefore, was also strongly supported.  

It was felt that there was no need to define in the Constitution such duties as might flow from the rights or other parts of Constitution themselves. What was considered necessary was to specify in the Constitution the duties which every citizen must perform for making possible the redemption of the undertaking contained in the Preamble.  

It is important to note that while the Constitution had adopted most of the principles contained in the Universal Declaration of Human Rights (1948), there was no provision corresponding to Art.29(1) of the Declaration, according to which:
"Everyone has duties to the community in which alone the free and full development of his personality is possible". The incorporation of Fundamental Duties in the Constitution, therefore, was indeed a significant demand to include duties of citizens towards the State. As pointed out by Lord Bryce: "Constitution of a State or nation consists of those of its rules or laws which determine the form of its Government and respective rights and duties of it towards citizens and of citizens towards the Government".

Critics of the Constitution took note of the provision of Fundamental Duties in the Constitution of various countries and observed that what the founding fathers of the Constitution had omitted to do initially must be done even belatedly to save the Indian society from degenerating into a chaotic society. In fact, an American had lamented over the growing lawlessness in India in those days by observing that India was a "functioning anarchy".

Presiding over the second All India State Bar Council, Law Minister Shri H.R. Gokhale, exhorted the legal community to consider the possibility of introducing a Chapter on Fundamental Duties in the Indian Constitution. It was realised that too much emphasis on the Fundamental Rights
without any stress on corresponding obligations had proved detrimental to the country in the past, and the need of the hour was the inclusion of Fundamental Duties in order to stem the tide of growing lawlessness in India. The All India Congress Committee, at its session held in New Delhi on May 29, 1976, took note of this suggestion and recommended inclusion of a Chapter on duties and obligations in the Constitution at an early date. The Congress President thereupon appointed the Swaran Singh Committee.

**Swaran Singh Committee.**

The Swaran Singh Committee had been entrusted with the task of formulating "some proposal for inclusion in the Constitution of certain Fundamental Duties and obligations, which every citizen owes to the nation, inter-alia, to sustain and strengthen the integrity and unity of the nation; to act in accordance with the Constitution and the laws of the land; to maintain discipline in every sphere; to honestly perform all duties to safeguard public property."\(^{16}\)

After detailed discussion, the Swaran Singh Committee recommended inclusion of the following eight Fundamental Duties for incorporation into the
Constitution:

1) To uphold the sovereignty of India and function in the way to strengthen the unity and integrity of India.

2) To respect and abide by the Indian Constitution and the laws of the nation.

3) To respect every democratic institutions enshrined in the Constitution and to avoid doing anything that may impair their dignity and authority.

4) To abjure communalism in any form or manner.

5) To defend India and to render national service, whenever required to do so.

6) To assist and co-operate in implementing the Directive Principles of State Policy and promoting the common good of the nation in order to subserve the interests of economic and social justice.

7) To pay taxes as is required by laws of the land.

8) To safeguard and protect public properties and not doing anything that may either cause destruction or damage to such properties, besides abjuring violence.
The duties proposed by the Committee were to be obligatory in nature. The Committee therefore, suggested that "Parliament may, by law, provide for the imposition of such penalty or punishment as may be considered appropriate for any non-compliance with, or refusal to observe, any of these duties". The panel went on to recommend that "no law imposing such penalty or punishment shall be called in question in any Court on the ground of infringement of any other provisions of the Constitution". The Committee was of the opinion that the abuse or misuse of the rights conferred under Art. 19 may be by an individual, a group, a party, or an association, and each of these would have to be guarded against.

**Fundamental Duties incorporated by 42nd (Amendment) Act**

The 42nd Amendment did incorporate some of these duties but in a modified form. Moreover, the duties were not made enforceable in a Court of Law. According to the Statement of objects and reasons appended to the Bill, the 42nd Amendment was intended to achieve "the objective of socio-economic revolution, which end poverty and ignorance and disease and inequality of opportunity...." On October 29, 1976, the Lok Sabha passed the Bill to embody in the Indian
Constitution a Chapter specifying Fundamental Duties of the citizens. Shri H.R. Gokhale, the former Union Law Minister, described the Chapter as "by far the most fundamental and very important for the purpose of every generation, the present as well as the future".

Finally in 1976, the Fundamental Duties were incorporated into the Constitution by 44th Amendment Bill (which was later adopted as 42nd Amendment Act, 1976). The amendment was effected as a sequel to a resolution on the subject passed by the All India Congress Committee endorsing the recommendation of Swaran Singh Committee.

**List of Duties.**

The ten Fundamental Duties listed in Art 51-A of the Constitution, following enactment of 42nd Amendment Act, call upon the citizens to:

(a) "to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem";

(b) "to cherish and follow the noble ideals which inspired our national struggle for freedom";

(c) "to uphold and protect the sovereignty, unity and integrity of India";
(d) "to defend the country and render national service when called upon to do so";
(e) "to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities, to renounce practices derogatory to the dignity of women";
(f) "to value and preserve the rich heritage of our composite culture";
(g) "to protect and improve the natural environment including forests, lakes, rivers, wildlife and to have compassion for living creatures";
(h) "to develop the scientific temper, humanism and the spirit of enquiry and reform";
(i) "to safeguard public property and to abjure violence";
(j) "to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement".

Shri H.R. Gokhale, the Union Law Minister, while speaking in Lok Sabha on 29th October, 1976, had assured the members of Parliament that "no political consideration, no consideration of partisanship has come at all in the formulation of these duties". On
yet another occasion, while addressing the Socialist India Convention on Constitutional Amendments, Shri H.R. Gokhale said: "no one can say that my political views are different. Therefore, I cannot subscribe to these Duties. If you look at these Duties they transcend all barriers of political or other views on which people may be different, but this is a single common denominator on which we expect every citizen of the country will agree and that is where the Duties become, again like the Preamble, the guidelines, the beacon light....."

**Fundamental Duties not made enforceable.**

Although it was suggested by some of the thinkers that it would be necessary to provide for punishment for the breach of Fundamental Duties by a citizen, no cognizance of this suggestion was taken by our Parliament as it would have been repugnant to the historical, social, religious, approach towards the duties.

One of the most controversial issues regarding these duties had been the recommendation to make them legally enforceable. The Swaran Singh Committee was in favour of it but it was dropped after the Bill came up for discussion in the Parliament. In the Lok Sabha also, Sardar Swaran Singh, Jamilurahman and some others spoke strongly in favour of making the violation of these duties legally punishable on the ground that in the absence of legal force behind them, they would remain mere platitudes.
Importance of Duties as explained by Government.

But the suggestion was not accepted, with the result that the breach of any Fundamental Duty is not punishable. It therefore, becomes obvious, that the real purpose behind the incorporation of a set of duties in the Constitution was to lay down a system of norms, which in due course could help change established attitudes, generate new ones and create a psychological climate conducive to the development of alert, informed and dedicated citizenship. Reacting to the question as to how the mere inclusion of a set of duties in the Constitution would be of any help to the nation, the then Prime Minister, Mrs. Indira Gandhi, had observed: "If people only kept the Fundamental Duties in their mind, we will soon have a peaceful and friendly revolution".

Despite the fact that the then Prime Minister Mrs. Indira Gandhi underlined with clarity and force the role which these duties could play in bringing about a change in the attitude and thinking of the people, there were many thinkers who expressed reservation on the rationale behind these Fundamental Duties which were non-enforceable.

The Fundamental Duties contain noble principles. It is obligatory on the part of every citizen who seeks the enforcement of his Fundamental Rights not to violate the Fundamental Rights of any
other person.

This is what Indira Gandhi meant when she said: "The Chapter on Fundamental Duties has been introduced not to smother rights but to establish democratic balance. Our Constitution was notable for highlighting Directive Principles along with Fundamental Rights. Neither can bear flower and fruit without performance of the duties". 21

The Indian Parliament, by approving of the incorporation of Fundamental Duties in Chapter IV-A of the Constitution, thus, took care of one of the greatest jurisprudential lacunae encapsulated in the maxim: "Law is not merely right alone. The only real right of man in the society is to do his duty". 22
NOTES


2. D.D. Chawla, The concept of Fundamental Duties, Socialist India, Vol 13, No.21, p.44.


11. R. Deb, op. cit, pp. 110-111.
12. P.D. Kudal, on Legal Aid and Fundamental Duties; Socialist India, Vol.13 (23rd Oct, 1976) p.44.