CHAPTER II

DUTIES AND THEIR INDIGENOUS SOURCES.

When one examines the history of human civilisation, one finds that it was the absence of the concept of duty which was largely responsible for the disappearance of the golden age of mankind. There was a period when absolute freedom was enjoyed by the people in the primordial society. The golden age, referred to with nostalgia by Western political thinkers like Rousseau and others, was an age of absolute freedom when there were only rights and no sense of duties. In India, the classical literature like Mahābhārata also depicts the existence of such a golden age of harmony and happiness, when the people enjoyed total freedom in the absence of any State to enforce law.

Disappearance of Golden age due to absence of duties.

This golden age did not last long. It eventually disappeared largely because of internecine quarrels engendered by greed, jealousy, hatred, etc. among the human beings. The Mahābhārata describes how the earthly paradise soon turned into a veritable hell and there dawned an era of "matsya nyaya" when the strong devoured the weak in
the same manner as a bigger fish eats away a smaller one in water. Such degradation of the golden age leading to anarchy has also been corroborated in Dighnikaya. It has also been a constant refrain in the work of Jinasena, Nārada and Brhaspati.

From this, one can safely assume that the anarchy or "matsyanyāya" resulting from absolute freedom eventually turned out to be a danger to the very freedom itself. In other words, there can be no civilised or just society without legal order, and there cannot be legal order without legal duties. The Romans understood this very well, and, therefore, they propounded the principle "ubi societas ibi ius", i.e. where there is society, there is law. No wonder, therefore, that the concept of right postulates the need for recognition of some compulsions or duties on the part of the people. Total absence of external restraint is unimaginable in a civilised society. If a man is allowed to enjoy limitless rights, he is bound to come in conflict with others. As rightly pointed out by J.S. Mill, "the only freedom which deserves the name is that of pursuing our own good in our own way so long as we do not attempt to deprive others of theirs or impede their efforts to obtain it". Therefore, the paramount need for some laws to regulate the affairs of men by prescribing duties can hardly be over-emphasised.
Relationship between Rights and Duties.

In other words, absolute liberty is neither desirable nor practicable. A right may involve a duty, as pointed out by Mackenzie, in two different ways: (a) If one individual has a right, some other individual or individuals must have the duty of satisfying the claim which is recognised by that right. The child's right to education implies a duty on the part of his parents or of the State to provide him with facilities for education. In some cases, the duty related to a right is not so obvious because it is largely a negative duty or a duty of abstaining from something. A man's right to the use of his own property implies a duty on the part of his neighbours to refrain from encroaching on that property. (b) If an individual has a right, it is his duty to use that right for the common good of his community. For example, if a child has a right to education, the corresponding duty of a child is to use his education in such a way that he may become a useful member of the society.

Hence, we can say that rights and duties are two sides of the same coin. While 'right', according to the Oxford Dictionary, means 'a justiciable claim on legal or moral grounds to have or obtain something or to act in a certain way', 'duty', according to Oxford Dictionary, means,
"a moral or legal obligation; a task that must be done". Both rights and duties have moral as well as legal overtones. The word 'duty' is used in a more specialised way as the correlative to the word 'right'. If a right is a justiciable claim in a community, a duty is the obligation to fulfil that claim. A duty may thus be defined as the obligation of an individual to satisfy a claim made upon him by the community or some other individual member or members of the community in the name of the common good. If citizens have a right to free movement, it is also the duty of citizens not to obstruct enjoyment of this right by others. The intimate relationship between rights and duties, thus, becomes obvious.

The relationship between Rights and Duties is viewed by various thinkers in different ways, coloured by their own perceptions. While some lay more emphasis on right vis-a-vis duty, there are quite a few who uplift duty to a higher pedestal on the plea that right automatically flows from it. Our ancient Indian system is a classic example of the latter concept. In fact, right as a concept is a gift of the modern age. It was the rebels against the existing social order who were the first to claim that there were certain fundamental rights which every human being must enjoy. This concept of rights got articulated in the original American Declaration of Independence.
Duty in Dharmashāstra.

The Indian Dhramshāstra laid stress on duties rather than on rights. It prescribes duties under the heading 'Dharma'. Dharmashāstra means by Dharma not a creed or religion but a mode of life or a code of conduct which regulates a man's work and activities, both as a member of the society and as an individual, and which intends to bring about the gradual development of a man with a view to enabling him to reach what is deemed to be the goal of human existence. Medhātithi categorically states this in the following words: "the characteristic feature of the word dharma is duty (kartavya)".

Sādhārana dharma vis-a-vis Varnāshrama Dharma.

In Dharmashāstra, 'dharma' has been classified into Sādhārana dharma and varnāshrama dharma. The Sādhārana dharma is different from the varnāshrama dharma. The former is universal in its application, to be followed by persons of all castes (varṇa) or rank and stages (āshramas) aspiring to a moral regeneration. In other words, these duties were common to all alike. The latter, i.e. varnāshrama dharma, lays more emphasis on acts, rites and ceremonies that each person is
expected to perform with reference to his status in the society. The first group involves non-injury, truthfulness, non-stealing, purity of body-mind, charity, etc, which have to be observed by all classes of people alike. The second group involves particular duties determined by the caste, such as, a Brahmin should teach and study the Vedas, the Kṣatriyas should fight for the country, etc.

The concept of 'Fundamental Duty' is quite akin to our ancient concept of sādhārana dharma as it refers to duties common to all alike.

Indian thinkers and their concept of Sādhārana dharma.

A study of ancient Indian scriptures reveals that in ancient India there were various ashramas, each with its own prescribed duties. Although the ancient Indian thinkers and sages had their own perception of duties, there were certain duties common to all the ashramas.

The Gautama dharmasutra holds that dayā (compassion or love for all beings), Kṣānti (forbearance), anasuya (freedom from envy), Saucha (purity of body, speech and thought), anayāsa (absence of painful efforts or ambitions), mangala (doing what is commanded), akarpanya (not demeaning oneself before others), asprha (not hankering after sensual pleasures or the possession of others), are
the qualities of the soul, and remarks that the person who has these eight qualities realizes non-difference from Brahma.

Vashiṣṭha says that truthfulness, freedom from anger, generosity, ahimsa (non-injury) and procreation of offspring are the common (dharmas) to all (varnas).

According to the Mahābhārata, the duties of all the varṇas are freedom from anger, truthfulness, sharing one's wealth (with others), forbearance, absence of enmity, straightforwardness, maintaining persons dependent on one self.

The vāmanapurāṇa says that the ten fold dharma is common to all, and names these ten as ahimsa, satya, asteya, dāna, forbearance, restraint, quiescence, not demeaning oneself, purity, tapas.

Manu opines that ahimsa, truthfulness, no wrongful taking of another's possessions, purity and restraint of senses, in brief, are the common duties of all varnas.

Arthashastra of Kautilya prescribes for all men ahimsa, satya, anasuya, and kṣama. In other words, non-violence, truthfulness, freedom from envy, and forgiveness are the common duties for all men.

The Viṣṇudharmasutra provides that the dharma common to all men comprises the following: forbearance, truthfulness, restraint of the mind, cleanliness, charity,
control of the senses, ahimsa, obedience to elders, visiting holy places, compassion, straightforwardness, freedom from avarice, honouring gods and brahmanas and freedom from jealousy.

By and large, there were ten principles which were common to all the asramas. These are forbearance (dhriti), forgiveness (kṣama), mental control (dama), non-stealing (asteya), purity (Śaucha), sense-control (Indriya-nīgraha), wisdom (dhih), learning (vidyā), truthfulness (satya), and absence of anger (akrodha).

Thus we see that since time immemorial, right conduct has received special importance in India. The tri-ratna of Jainism (the three Jewels), namely, perfect faith (Samyak - darshana), perfect knowledge (Samyak-jnana), and perfect conduct (Samyak-caritra) has also emphasised upon conduct. Jainism propounds that without the last, i.e. the perfect conduct, the first two are worthless. It is in the background of this perfect conduct that universal duties are to be appreciated.

**Fundamental Duties and Sādhāraṇa Dharma.**

The concept of fundamental duty is quite similar to our ancient concept of sādhāraṇa dharma, i.e., duties common to all. One can easily identify the points of similarities between some of the sādhāraṇa dharma and the fundamental duties stipulated in our Constitution. For example:

A). One of the duties laid down in the Constitution is
the duty towards the Sovereign. As mentioned in the Constitution, a citizen has "to abide by the Constitution and respect its ideals and institutions, the National Flag and National Anthem," [Art. 51 A(a)]; "to cherish and follow the noble ideals which inspired our national struggle for freedom," [Art. 51 A(b)]; and "to defend the country and render national service when called upon to do so," [Art. 51 A(d)].

The provision in ancient literature corresponding to such duties is:

(a) "Janani Janmabhoomischch Swargaadpi gariyasi".  
It means: Mother and place of birth are more desirable than heaven.

B). Our Constitution prescribes duties towards the fellow beings in the following words:" to promote harmony and the spirit of common brotherhood.....; to renounce practices derogatory to the dignity of women". [Art-51A(e)]; and "to abjure violence..... "[Art 51 A(i)].

A provision corresponding to this in our ancient literature is :"yatra nāryastu poojyante ramante tatra devta".  
It means: Where women are respected (worshipped), Gods reside there.
Similarly "Vasudheva Kutumbkam", means the whole universe is one family.

In Manu Smriti, it is stated: Ahimsa Satyamsteyam
Śāuchim indriyanigraha. Etam Samasikam dharma
chaturvarṇeyabravinmanuh. 18

In other words, Manu said that non-violence, truth, non-stealing, purity and discipline of sense-organs, are, in short, the prescribed religion for all the castes (varṇa).

Not only this, the duty of non-violence has had a prominent place in the Indian ethical thought and practice, right from the time of Buddha and Mahavira. The content of the idea varies somewhat in different quarters and at different times, yet throughout the history of Hinduism, the general principle consistently harped upon has been to refrain from injuring living creatures.

(C) Our Constitution prescribes duties towards lower animals and inanimate things in the following words: "to protect and improve the natural environment including forests, lakes, rivers, wild-life and to have compassion for living creatures". This is mentioned in Art.51A(g) of the Constitution. In Article 51A(i), it is stated that citizens have "to safeguard public property and to abjure violence".

Some of the pertinent excerpts from the ancient
Indian literature in this regard are:

(a). "Sarvabhootâhite ratah", which means that one should be engaged for the welfare of all living beings.

b). "Atah param pravakṣyami prāṇihatyāsu niṣkritim. Parashareṇa purovktam manvartheapi cha vistritam." It means "Now, I would like to suggest that atonement for violence of creatures which was formerly told by Parashar and elaborated by Manu.

c). "Shruyatār dharma Sarvasvam shrutva chairavadhāryatam. Ātmanah pratikulāni paresham na samācharet". In other words: "the quintessence of dharma is that one should not do to others what would be disliked by one's self".

d). "Ahimsā paramo dharam", which means non-violence is the supreme duty.

D). Our Constitution provides the following self regulating duties: "to develop scientific temper, humanism and the spirit of enquiry and reform, "as mentioned in Art.51 A(h); and "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 {Art.51A(j)}.

Some of the corresponding excerpts from the ancient literature in this regard are:
1). "Yukti Yuktam vacho grahyam, Arbhakenāppi Bhāshitam", i.e. Reasonable utterances told even by the child should be accepted. (2). "Muhurtam jwalitam shreyah, na cha dhoomayitam chiram". In other words: fire blazing even for a moment is better than the smouldering one for a long period; (3). "Yāsmin deshe na sammāno na vṛtirna cha bandhavah. Na cha vidyāgamah kashcit tam desham parivarjayet". This, in other words, means that one should leave that place (country) where there is neither respect nor any profession, nor relatives, nor any pursuit of knowledge.

**Indigenous Character of Fundamental Duties.**

Thus, it is clear that the duties incorporated into the Constitution are not a blind imitation of the duties in other Constitutions of the world. These duties have an indigenous character. As a matter of fact, right from the vedic times, a code of conduct had been evolved which revolved around the concept of duties.
In other words, one can say that in India the concept of duties is as old as its civilization. These duties are intimately linked with India's rich cultural heritage. Many of the fundamental duties can also be found in the Edicts of Ashoka, the teachings of Bhagwad Gita, and in the teachings of great saints and kings. As such, they very much reflect the tradition and aspiration of the Indian nation.

Our religious texts underlined the importance of the observance of these duties by pointing out that if one failed to perform these duties, he would commit 'sin' for which he would be punished in the other world. In other words, observance of these duties was looked upon as a sacred task. The observance of fundamental duties provided in the Constitution is no less sacred. The observance of these duties will, no doubt, bring about a qualitative change in our life. As pointed out by late Mrs. Indira Gandhi, the then Prime Minister of India, incorporation of fundamental duties in the Constitution will help in bringing about "a healthy change in the attitudes and thinking of the people and bring about a peaceful revolution."^{25}

Thus, we can safely assume without any reservation that the concept of Fundamental Duties, instead of being exotic, is very much indigenous to our
Indian culture.

**Similarities between Fundamental Duties and duties in other Constitutions.**

Having identified similarities between the fundamental duties and ancient Indian attitude towards duties, it would also be worthwhile to find out similarities between the fundamental duties prescribed in Art. 51A of the Indian Constitution, and the duties prescribed in some of the other Constitutions in the world.

A). Art.9(1) of the Nepalese Constitution states: "Devotion to the nation and loyalty to the State are the fundamental duties of every citizen".

Art. 63 of the Constitution of Yugoslavia says: "Everyone shall abide by the Constitution and law".

Provisions shall be made in law determining the conditions under which failure to discharge duties determined by the Constitution shall be punishable".

According to Art.4 of German Democratic Republic, "......every citizen is duty bound to act in accordance with 'the Constitution and to defend it from its enemies".

Similarly, Article 130 of the erstwhile U.S.S.R stated, "It is the duty of every citizen of the U.S.S.R stated, "It is the duty of every citizen of the U.S.S.R
to abide by the Constitution of the Union of Soviet Socialist Republics, to observe the law, to maintain labour discipline, honestly to perform public duties and to respect the rules of socialist intercourse.

All these articles are quite similar to the duty prescribed in Art 51(a) of our Indian Constitution, viz "to abide by the Constitution and respect its ideals and institutions, the National Flag and National Anthem".

B). Art. 34 of the Constitution of Czechoslovakia provides: "Citizens shall be in duty bound to uphold Constitution and other laws and in all their acts to pay heed to the interests of the Socialist State and the society of the working people". This is quite akin to the fundamental duty "to uphold and protect the sovereignty, unity and integrity of India", prescribed in Art.51A(c) of the Indian Constitution.

C). Similarly, like Art 51A(d) prescribing the duty "to defend the country and render national service when called upon to do," the Constitutions of other nations also make similar provisions. For example, Art. 35 of erstwhile Czechoslovakian Constitution stipulates : "Citizens shall be in duty bound to protect and strengthen socialist social order and the source of the welfare of the working people, the wealth and the strength of the country".
Further, Art. 37(1) of this Constitution says: "the defence of the country and its socialist social order shall be supreme duty and a matter of honour of every citizen."

Art. 60 of the Constitution of Yugoslavia makes a provision that "the defence of the country is the right and the supreme duty and honour of every citizen".

Art 5 of German Democratic Republic says: ".......The service for the defence of the Fatherland and the achievement of the toilers is an honourable duty of the citizens of G.D.R".

Art. 133 of the erstwhile USSR stated that "to defend the country is the sacred duty of every citizen of the USSR. Treason to the Motherland, violation of the oath of allegiance, desertion to the enemy, impairing the military power of the State, espionage - is punishable with all the severity of the law as the most heinous of crimes".

D). Art 51 A(e) of the Indian Constitution enjoins upon every citizen "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". One comes across similar provisions in other Constitutions. For example, Art.38 of
Czechoslovakian Constitution states: "An essential part of the duty of every citizen shall be respect for rights of his fellow citizens and the careful observance of the rules of Socialist Conduct".

Respecting the rights of fellow citizens will indirectly promote the spirit of common brotherhood. Similarly Art. 19 of the Yugoslavian Constitution proclaims: "the relations among people shall be based on mutual co-operation and on respect for man and for his freedoms and rights: "It shall be the duty of every person to come to the assistance and help of any person in danger".

E). The duty in Art. 51 A(i) of the Indian Constitution, namely, "to safeguard public property and to abjure violence", was also stated though in different words in Art 131 of the erstwhile Constitution of the USSR. As stipulated in it, "it is the duty of every citizen of the USSR to safeguard and fortify public Socialist property as the sacred and inviolable foundation of Soviet system, as the source of the prosperity and culture of all the working people".

F). Art. 14(3) of the Polish Constitution provides: "The Polish People's Republic puts into practice, to an increasingly degree, the principle, "From each according to his ability, to each according to his work". Thus,
the Indian Constitution goes beyond this when it states that a citizen's duty is not only to work but also "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".

Thus, one finds that some of the duties prescribed in our Constitution are similar to the duties enumerated in other Constitutions. However, it can be safely asserted that the Fundamental Duties prescribed in our Constitution in Part IV-A of the Constitution are not a blind copy of the duties in the Constitution of other countries. On the contrary, they are very much indigenous.

Fundamental Duties - a blending of Sādhārana dharma and Varnāshrama dharma.

In ancient India, the indigenous duties have been of two types - Varnāshrama and Sādhārana. A careful study of Fundamental Duties reveals that these duties are a fine blending of the two types of Indian Dharmas - Varnāshrama dharma and Sādhārana dharma. For example, the ancient Varnāshrama dharma laid down a duty for each kshatriya to defend his country till his last breath. One of the Fundamental duties provided in Art. 51 A(d) enjoins upon every citizen "to defend the country and
render national service when called upon to do so”. This
duty is similar to the duty of kṣatriya under the
varnāshrama dharma, the only difference being that this
duty has been prescribed for each citizen instead of a
particular class of people.

Similarly, the ancient Sādhārana dharma casts an
obligation to abjure violence and to show compassion for
all living creatures; it also casts an obligation to
strive towards excellence in the sphere of one's
activity. This is now a duty of every citizen of India
just as it was in the past.

Thus, fundamental duties blend some of the
finest principles of Sādhārṇa and Varnāshrama dharma by
enlarging their ambit in order that these may get
dovetailed into democratic framework which the Indian
Constitution has hammered out for the Indian citizens.
NOTES

1. The Mahābhārata XII. 58.12.
3. Ādipurana, III, 30-ff.
4. J.S. Mill, on Liberty; Edited with an introduction by Currin V. Shield, Forum books. The Liberal Arts Press.
8. अध्याप्तवालः दया सर्वभूतार्थ यात्तिरस्यार्थ भोचमनायासो मंगलसु कार्यपुम सङग्हेति । गी. प. यू. viii, pp 23-24.
9. सर्वां सत्ययक्षो दानमहिंसा प्रजननं च। Vasistha IV.4
10. अक्रोधः सत्ययक्षं सविभागः कश्मा तथा । प्रजनं स्वेषु दारेषु शोभम्ब्रोहे एव च। आर्जेन्व भुज्यभरणे नैनते सार्वभौतिकाः।। शास्ति प 60 pp 7-8.
11. अहिंसा सत्यस्तं दानं आन्तिर्देवम् शान्। अकार्पण्यं च शौचं च तपस्यं रजनीचर ।
12. अहिंसा सत्यस्तं शौचे प्रविद्धितमः। एत सामसिकं धर्मं चालुक्येयं भ्रमणम्।। (Manu X-63)

14. श्रम सत्यं दमः शौचं दानमिनिन्द्रयंश्वमः। अहिःसा वुहःथ्युषां तैरावानसरणं दया।
आर्जं लोभशुन्यत्वं देवःर्मणपुजनः। अचर्य्योया य तथा धर्मः सामान्य उच्यते।
Vishnudharmasutra II. pp 16-17.

15. Yajnavalkyasmrti, 9.4, p. 96.

16. ibid, p. 85.

17. ibid, p. 85.

18. Manu X. 63.


23. ibid, p. 86.
