
WHAT COMES FIRST-RIGHT OR DUTY?

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INTRODUCTION

Asking the question whether Right comes first or Duty, is akin to asking what came first, Chicken or Egg? Both Right and duty are two sides of the same coin. If you place one on top, the other gets covered. The beauty of it would be in having a balance like the coin in the film Sholay. According to me, Rights and duties are corresponding and correlated. Every Right or I can say most of the Rights have corresponding duties, therefore they coexist.

A 'Right' in legal parlance would mean legal entitlement to do something and at the same time 'Duty' would mean a moral or legal obligation. Both these terms will have a legal entitlement or responsibility. Rights and Duties according to me have been as old as the history of human beings.

RIGHTS

By the very word Right means something which is right and which has to be done in a particular way. It can be construed as an interest which has to be protected. Any breach of such Right will be detrimental to the very existence of human beings. For example, my right to live is a right which is natural and inherent to me. No one can violate that right and violation of such right will obviously lead to anarchy in society.

Various thinkers have written various theories relating to rights, like, Salmond, Austin, Holmes, Pollock and many others. But to generalize, we can categorize Rights into two main theories.

- 1) Will/Choice theory (Austin, Pollock and Holland)
- 2) Interest theory (Buckland, Salmond, Allen and Ihering)

Will theory or choice theory as propounded by various theorists like, Austin, Pollock and Holland generalizes or proceeds on the basis that every person has a right or will or maybe

choice to control the action of others' in respect to the right you have. In absence of such control, other person will behave in any fashion which will definitely breach exercise of your Right.

Another branch of theorists like Salmond, Buckland, Allen and Ihering define Right as an interest and therefore can be termed as Interest theory. According to Salmond, Right is an Interest recognized and protected by law. According to these theorists your right is your interest or your benefit which someone is duty bound to provide it. When someone violates your right he is also breaching his duty to do or not do something in your interest.

DUTY

The very word Duty means responsibility, or legal or moral obligation of a person to do a particular act. Salmond defines duty as, an obligatory act which if not done is a 'wrong'. According to him there cannot be any Right without a corresponding duty and so also there cannot be any duty which does not have a corresponding right. It can be inferred from definitions like these that both rights and duties are correlated.

However, Austin does not totally believe totally in corresponding theory. According to him, Duties can be of two types:-

- 1) Relative Duties- These duties refer to corresponding rights, which means every right has a corresponding duty.
- 2) Absolute Duty-These are duties which have no corresponding rights.

In light of this, let us examine 4 such Rights along with duties either corresponding or otherwise.

I-RIGHT TO PRIVACY/ CORRESPONDING DUTY

This Right though not mentioned as a Fundamental Right in chapter III of the Constitution is now a Fundamental Right by the mandate of judicial precedent in the case of *Puttuswamy vs. Union of India*. Now this right is carved out from Article 21 which is right to life and liberty. Now this Right to Privacy includes to let me be alone, whether it's the personal space of my

residence and other property or even my information/data, which for reasons enlisted maybe be entrusted with any organization, Government or otherwise.

This is a Natural Right which encompasses within its ambit various rights like right to protection of data/information, right to have my medical secrecy, i.e. not having my medical tests and reports shared with anyone without my consent, Right to privacy in my house, Right against surveillance, and various other rights.

Undoubtedly, right to life and liberty is one of the oldest rights which are required for the very existence of any human being, his need to grow and achieve the best not only for himself but also for the country and nation as contemplated in the Fundamental Duties.

CORRESPONDING DUTY

Illustrating with an example, I have a right to live freely in my house without any third party peeping into my residence. Now such right finds protection in various laws like Easement Act, I.P.C. etc. But at the same time it is my duty to see that I am not encroaching on somebody's property wherein his right to privacy is breached. I can't be erecting a window in such fashion that it peeps into somebody's home.

This duty is not only of an individual but is also cast upon the State to see that my right to privacy is not breached. A famous example we all have heard about is that of when the flyover work at Pedder Road was initiated, famous veteran singer Lata Mangeshkar objected to such construction on the ground that it would destroy the peace of residents of that area. Though these duties are not enforceable State has to strive hard to achieve them in excellence.

II-RIGHT TO VOTE/CORRESPONDING DUTY

Right to vote is not mentioned in part III of the constitution, and therefore cannot be considered as a fundamental Right. However, Article 326 of the Constitution mentions about such right and therefore it is a Constitutional Right bestowed upon any citizen of this country. It is also a legal right as it is mandated upon by Representation of Peoples Act 1951 and it lays down the criteria as to who can vote.

Now as it is also a legal right, it gives voters a right to know about the candidates who will be contesting, what happens to citizen who is in prison, whether his right to vote continues or is suspended, and many other questions which will be answered by the Representation of the People Act 1951.

CORRESPONDING DUTY

One may not find a corresponding duty in article 51A but according to me it is an intrinsic duty of every citizen to go out and vote. We have a tendency to sit and crib about any and every Government but we fail to realize that we are facing or bearing such incompetent Executives or Legislatures because we fail in our duty to go out and vote.

I strongly believe that that Legislature should delve upon this issue and amend our Constitution to see that it is incorporated as a Fundamental duty. With progress in election laws we know that there is a provision of NOTA as well in all election processes, therefore, I feel it is a prime duty of every citizen to go out and vote and save our statistics from showing such meager turnouts in voting.

III-RIGHT TO FREEDOM OF PRESS/CORRESPONDING DUTY

Freedom of Press though not directly provided in Constitution, according to judicial precedents finds place in Article 19(1) (a) of chapter III. Thus freedom of press is a species of freedom of expression. An individual's right to express is a fundamental right and media is the strongest way of expressing oneself in a democratic state. It is no wonder referred to as the Fourth Pillar of Democracy.

Emergency period is referred to as the darkest period in the history of Indian Polity as during that period no publication could be made without the consent of The Information and Broadcast Minister and this was the curb on the Fundamental rights of citizens. Various organizations like PCI (Press Council of India) and IPI (International Press Institute) are there to protect the rights of media.

CORRESPONDING DUTIES

Again this duty has a corresponding duty on the media giants to see that media is not misused at the hands of few elites or political agenda. Spreading news that will sell in the name of Breaking News, according to me is a biggest failure in the duty cast upon media under Article 19(1) (a). The purpose of spreading awareness along with awakening of the masses on social issues is according to me a prime duty of media which fall under Article 51A-c of our Constitution.

Patanjali Shashtri J, in *Romesh Thapars* case has observed that, Freedom of Speech and that of the Press lay at the very bottom or foundation of democracy. Court in this case held banning of an English journal called, “Cross Road” as violating the Fundamental Rights as envisaged in part III of the Constitution.

RIGHT TO HOIST NATIONAL FLAG/CORRESPONDING DUTIES

Hoisting a National flag is every citizen’s Fundamental Right. However, it can be done as per the set laws prescribed by The Flag code of India, 2002. Whether I can hoist my flag at any place, or any time, in what manner, is all within the rights of a citizen to hoist national flag. Take for instance, I am climbing a Mountain Peak and upon reaching the summit, I feel elated on being an Indian and want to hoist or park our Indian flag there, am I entitled to do that?

The said question was taken up before a bench headed by then Chief Justice of India, V.N.Khare who held that under Article 19 (1)(a) of the Constitution of India, citizens have the fundamental right to fly the national flag on their premises throughout the year, provided the premises do not undermine the dignity of the national flag.

CORRESPONDING DUTY

The first Fundamental Duty enlisted in chapter IV-A of Constitution and in Article 51A is that of abiding by the Constitution and respecting the ideals and institutions, the National Flag and the National Anthem. The spirit of this duty is to strengthen the integrity, patriotism and loyalty

to one's country. The Prevention of Insults to National Honour Act 1971 prohibits any kind of insult to any national symbols including National Flag.

It is duty of every citizen to see that our National flag is not demeaned by strewn around on roads on any given day and especially on national holidays like Independence day etc. A country which nurtures around 3000 castes and various cultures under one Flag, respect to that Flag undoubtedly should be the prime duty of every citizen.