



THE HINDU CENTRE

for

Politics and Public Policy

On Rights and Duties – Two Essays



[S. SUBRAMANIAN](#)



[KALPANA KANNABIRAN](#)



The statue of India's first Prime Minister, Jawaharlal Nehru, in Visakhapatnam.
File photo: K.R. Deepak / The Hindu

Views of leaders occupy prominent positions in the popular narrative in any society: they set a tone for political and social discourse and play a role in shaping—or reshaping—popular thinking. Their publicly expressed positions also provide some grist for both conversation pieces and serious debate. As the elected leader of the world's most populous democracy, the Prime Minister of India's opinion has the potential to steer the national mindset. One such view is on the issue of rights and duties in which duties are given centre-space and rights are pushed to the periphery. This view has also found expression from others holding positions of constitutional responsibility. Two social scientists, [S. Subramanian](#) and [Kalpana Kannabiran](#), individually explore the context in which this mainstreaming of duties is taking place and raise notes of caution on its perils to the founding visions of free India.

I.

On Rights and Duties

S. Subramanian

In this Essay, S. Subramanian, Economist and author of Futilitarianism, elucidates the importance of nurturing rights – natural and constitutional. Drawing from political philosophers, he argues the case for inalienable rights, brings out their centrality in modern societies, and delineates the differences between ‘positive’ and ‘negative’ freedoms and their contributions to the formation of modern liberal democracies. In the Indian context, he reminds the reader of the transformative role played by rights-based legislation in the economic and social spheres of everyday lives, and concludes with a cautionary note on a Faustian trap to the polity if this cornerstone of contemporary societies is chipped away from public consciousness.

Silence and speech are part of the universal human condition. But silence and speech acquire a particular salience when they emanate from those in positions of power (and, presumably, responsibility). In recent times, the Prime Minister of India has maintained silence (or at least is not reported to have made any public declaration) on what many have interpreted as an open call for genocide at a ‘Dharam Sansad’ held in Haridwar over December 17-20, 2021. What the Prime Minister *has* said is carried by *The Hindu* (among other publications). In a report, ‘Focus on rights made India weak, says PM’ (January 20, 2022), we have:

Mr. Modi was addressing the launch of the Brahma Kumaris' year-long programme of events as part of the government's celebration of 75 years of Independence, Azadi ka Amrit Mahotsav...

"In the last 75 years, we only kept talking about rights, fighting for rights and wasting time. The talk of rights, to some extent, for some time, may be right in a particular circumstance, but forgetting one's duties completely has played a huge role in keeping India weak," Mr. Modi said.[1]

Not that the Prime Minister's dim view of rights does not have distinguished precedence. Jeremy Bentham, the renowned 18th/19th century English philosopher and jurist had this to say about the notion of natural (or human) rights in his *Anarchical Fallacies* (1796): “Natural rights is simple nonsense: natural and imprescriptible rights, rhetorical nonsense, – nonsense upon stilts.” Bentham had no use for non-legal rights, rights that are not written into a nation's law books. This seems to miss the simple

point that what humans write into their law books is up to them. If they believe that human beings are endowed with natural rights at birth, as did Locke and Hobbes before Bentham, and Thomas Paine at the time of Bentham, then such a view of rights can be fought for as entitlements worthy of being guaranteed in their books of statute, and will find their way into them.

Paine's *Rights of Man*, published in 1791, is a passionate plea for such a view of the world. Earlier, in 1789, the National Constituent Assembly of France had passed the *Declaration of the Rights of Man and of the Citizen*. By December of 1791, most of the U.S. States had ratified the *Bill of Rights*. In December of 1948, the General Assembly of the United Nations adopted, through a Resolution, the *Universal Declaration of Human Rights*, which begins with this extraordinary preamble:

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, ...,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people, ...

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge, Now, therefore, The General Assembly, Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations,...

The *International Covenant on Economic, Social and Cultural Rights* and the *International Covenant on Civil and Political Rights*, together hailed as an *International Bill of Human Rights*, were adopted by Resolutions of the UN General Assembly in 1966, and came into force in 1976.

The Constitution of India guarantees to its citizens six fundamental rights: the right of equality; the right of freedom (of speech and expression, of assembly, of association, of movement, of residence, and of profession); the right against exploitation; the right of freedom of religion; cultural and educational rights; and the right to constitutional remedies. These fundamental rights are, for the most part, rights to 'negative freedom'—more commonly understood as 'liberty'—which are designed to ensure that citizens are not subjected to arbitrary restraints in the pursuit of matters that may be

properly regarded as residing in their respective 'personal protected spheres', to borrow the language of John Stuart Mill.

Other rights, such as the right to employment—or more specifically the 'right to work' and the 'right to public assistance in cases of unemployment'—are in the nature of rights to 'positive freedom', and are concerned not just with ensuring non-interference in the pursuit of liberty but with actual enablement in the pursuit of what Amartya Sen has called valued human functionings.

While the right to work is provided for in the Constitution's Directive Principles of State Policy, and is not in the list of Fundamental Rights, there are other rights to positive freedom, such as the Right to Education (Article 21-A), providing for free and compulsory education of all children from the ages of six to fourteen, which figure in the list of Fundamental Rights. The National Food Security Act (NFSA 2013)—commonly hailed as securing for India's citizens the 'Right to Food'—is another example of a right to positive freedom. In this case, the concern is with the ability of people to be adequately nourished. The NFSA provides for citizens' entitlement to food security under such government programmes as the Midday Meals Scheme, the Integrated Child Development Services and the Public Distribution System.

Briefly, the Constitution of India has provided, under the categories of both Fundamental Rights and Directive Principles, for the entitlement of the country's citizens to rights as they relate to aspects of

This is an achievement that would qualify for the profoundest admiration as the product of a jurisprudential architecture of the greatest moral and political splendour.

both negative and positive freedoms. For many, this is an achievement that would qualify for the profoundest admiration, as constituting the product of a jurisprudential architecture of the greatest moral and political splendour, and

one that is a moving testimony to effort, perseverance, commitment, principle, and wisdom.

And now we are told that this marvellous and bitterly-fought for achievement is, to one who happens to be the elected leader of this country, a waste of time that has weakened the nation.

To stretch the demands of fairness and patient enquiry to their uttermost limits: might there, after all, be some philosophical basis to such a perspective? Under duress, one might be led, in this context, to the commonly held (even if contentious) principle that 'rights imply duties'. More elaborately, the view is that for a right to be entertained as a practically meaningful claim, it must have a correlative duty attached to it, in the sense that it should be possible to assign a duty to some identifiable agency—the state, society, some institution, or some (collection of) individual(s)—which has an obligation to deliver the right in question. This could be seen as one version of the argument which holds that

'ought implies can.' That is, for a right to be entertained *as* a right, it must be realizable: it must not fall foul of binding resource constraints.

A major difficulty with such a proposition is, precisely, that it is often very difficult, on the ground, to tell when a constraint is indeed a genuinely binding feasibility constraint. A classic example is available in the phenomenon of famine. Amartya Sen's major work on famine suggests that starvation is often not so much a matter of there not *being* enough food to go around, as of some people not *having* access to it. The problem may not be one so much of overall food decline as of entitlement failure caused by human intervention through hoarding and the like. In a general way, the refusal to recognize certain categories of human rights as legal rights might just be an unprincipled state's refusal to undertake the effort of loosening the tightness of perceived constraints on feasibility. This would be the convenient way out for a lazy and uncaring state to avoid the messy complication of possible litigation over a justiciable right in a court of law.

The 'rights imply duties' argument is, at best (i.e. worst), a case for extinguishing rights. But in extinguishing rights one is also extinguishing the correlative duties that are required for the realisation of these rights!

In extinguishing rights one is also extinguishing the correlative duties that are required for the realisation of these rights.

Whence, then, the emphasis on the primacy of duties?! Perhaps (in the interests of intellectual charity) what is intended is the progressive principle that even though rights may imply correlative duties, duties do not necessarily imply correlative rights. This principle is often invoked in the cause of discussions relating to whether citizens of rich countries have an obligation to assist the distant needy in poor countries. In response to the proposition that the deprived populations of poor countries have no rights-based claim on the resources of rich countries, it has been pointed out that certain obligations do not require correlative rights to trigger them.

Thus, the philosopher Peter Singer has held that the rich in affluent countries have a positive duty to help the poor in deprived countries, simply because the sacrifice involved would be so small, and to refuse to undertake such sacrifice would be a monstrous moral failure. Another philosopher, Thomas Pogge, would underline the negative duty of not imposing harm on others; and to the extent that many affluent countries have inflicted harm upon, and contributed to the impoverishment of, other countries, through practices such as colonialism and unfair trade regimes, there is a case for assistance-as-reparation.

On reflection, the ‘duties do not imply correlative rights’ construction as a possible interpretation of the Prime Minister’s sentiments is less than convincing. For in the former view, the existence or otherwise of a prior rights claim is, simply, not seen as being *relevant* to the moral salience of duties: the proposition does not, and is not intended to, rubbish rights or to hold them to be a waste of time.

Perhaps, in the end, one seeks too much subtlety in the mazes of moral and political philosophy to understand what it might mean to hold rights in low esteem and duties in high esteem. The less

The less forbearing explanation is to be found in the simple notion that ‘rights’ are essentially entitlements to privilege for a small elite group of people.

forbearing and vastly more plausible explanation than the ones earlier sought is to be found in the simple notion that ‘rights’ are essentially entitlements to privilege for a small elite group of people: entitlements which dwindle their way down to non-

existence as one works one’s way through a stratified hierarchy of humans sorted out by religion, caste, gender and economic status, even as the burden of duties works in the opposite direction. What better template for such a view of the world than the edicts on *Dharma* contained in *Manusmriti*?

For consider the drift of things as the drift is presently discernible. The wealth-tax was abolished in the budget of 2016-17 and corporate tax was reduced in 2019: the only right that matters, it seems, is the inalienable right of the very rich not to be parted from their wealth; recent legislation on child labour, forest rights, land acquisition, labour ‘reform’, and agriculture is compatible with little or no respect for the social and economic rights of the asset-constrained and labouring poor; legislation on citizenship and conversion displays similar disdain for the cultural and religious rights of minorities; the prosecution of cases under draconian laws such as UAPA is a manifestation of the contempt in which the right to freedom of thought and expression is held; the list threatens to run on and on.

Meanwhile, in the wake of what has been an economic disaster wrought by the COVID-19 pandemic for most citizens of the country, the *IIFL Wealth Hurun India Rich List 2020* informs us that the wealth of those with a net worth exceeding ₹1,000 crore grew at a rate of 20 per cent over the previous year’s stock (there were 827 such entities in 2020). What weakens the nation, one is invited to believe, is any suggestion that rights may be seen to be grossly violated when MNREGA workers are not paid their wages; when frontline health workers fighting COVID-19 do not have adequate personal protective equipment; when victims of the pandemic do not have access to oxygen cylinders or hospital beds or ventilators; when voters at the time of election complain about unemployment and inflation and arbitrary arrests, detentions and encounter killings.

You have a right to do your duty, but you are not entitled to its fruit. Does this sound familiar?

It cannot be a matter of comfort that this immutable 'civilizational' template of rights and duties has had its votaries in the not too distant past, in parts of the world far removed from India. This is reflected in the histories, of less than a hundred years ago, of Spain, Italy and Germany. Thomas Mann's concluding lines in his 1947 novel *Doctor Faustus*, written in the immediate aftermath of the German cataclysm, should grip the heart of any sentient Indian at the present juncture:

Today, clung round by demons, a hand over one eye, with the other staring into horrors, down she [Germany] flings from despair to despair. When will she reach the bottom of the abyss? When, out of uttermost hopelessness — a miracle beyond the power of belief — will the light of hope dawn? A lonely man folds his hands and speaks: 'God be merciful to thy poor soul, my friend, my Fatherland!'

Endnote:

1. *The Hindu*. 2022. [Focus on rights made India weak, says PM](https://www.thehindu.com/news/national/system-being-created-where-there-is-no-place-for-any-discrimination-pm-modi/article38296828.ece), January 20. [https://www.thehindu.com/news/national/system-being-created-where-there-is-no-place-for-any-discrimination-pm-modi/article38296828.ece].

Also by the Author

1. [Pandemic-induced Poverty in India after the First Wave of COVID-19: An Elaboration of Two Earlier Estimates](#), Aug. 19, 2021.

2. [Letting the Data Speak: Consumption Spending, Rural Distress, Urban Slow-Down, and Overall Stagnation](#), Dec. 11, 2019.

[More ...](#)

[**S. Subramanian** is a former Indian Council of Social Science Research (ICSSR) National Fellow and a former professor, Madras Institute of Development Studies. He is an elected Fellow of the Human Development and Capability Association (HDCA), and was a member of the Advisory Board of the World Bank's Commission on Global Poverty over 2015-16. He can be contacted at ssubramanianecon@gmail.com].

II.

A Citizen's Duty: To Speak Truth to Power, No Less

Kalpana Kannabiran

*In the second Essay, **Kalpana Kannabiran, Legal Scholar, Sociologist and author of Law, Justice and Human Rights in India: Short Reflections**, brings out the manner in which the popular narrative is shaped towards emphasising duties over rights whenever regimes aim to suppress the latter. Drawing from the familiar past of India's Internal Emergency in 1975, she points out the dangers that lie for the ruled and the rulers if a state aims to enforce duties on its citizens, while abdicating its responsibilities as underscored by the Directive Principles of State Policy. She draws attention to the vibrant importance of the triadic ethical foundations of the Constitution – the Preamble, the Fundamental Rights and the Directive Principles – and strikes notes of caution to the country's leadership against talking down to its citizens.*

Every once in a while, we in India get into a diversionary spin with some banalities that masquerade as knowledge and intellect from high places of power and authority. Then, we set aside everything else we are preoccupied with to chase such trite remarks with the wealth of accumulated knowledge and scholarship. We are required do so as these seeming trivialities actually strike at the core of the Constitution.

Consider, for instance, the present. We are living through a pandemic of our lifetime: a raging, mutating COVID-19 with infections scarring families, neighbourhoods, communities, and workplaces; a multiplicity of survival crises, with cutbacks on livelihoods/employment and gig economies becoming proxy for 'economic wellbeing'; imperilled futures with children forced into online modes which not merely deprives, but actually ousts, the largest cohorts of our young citizens from the fundamental right to education, even while online schooling 'passes' for robust 'universal education' under Article 21A of the Constitution; other health care needs that scarcely get met, if at all, leaving us scrambling and desperate with a public health system in a shambles and care workers teetering over the edge of precarity.

Exacerbating these is the scourge of absentee governments who give to themselves the gift of impunity on every single count and ask citizens for the 'return gift' (that peculiar Indian practice) of dutifully serving 'the nation' rather than pose questions about how exactly, in what measure, governments are fulfilling their obligations under the Constitution.

The 'gift' that Indians are urged to believe today in so many different ways is the mere fact that the mighty and powerful deign to grace political office! We now have an impressive line-up of heralders of duties — an occupant of the highest judicial office (the then Hon'ble Chief Justice of India, no less, on February 23, 2020),¹ the occupant of the highest political office (the Hon'ble Prime Minister, no less, on January 21, 2022)² and the occupant of the highest constitutional office (the Hon'ble President, no less, on January 26, 2022)³, in that order.

The context in which we are now instructed to perform duties over claiming rights is important, and must never be forgotten. A backdrop of riots and state impunity. Neglect during the pandemic and the travesty of pandemic management during the first and second waves brilliantly described by Gujarati poet Parul Khakkar in her poem '*Shav Vabini Ganga*', which earned her the title of 'literary naxal'⁴. The refusal of accountability in the matter of funds collected ostensibly for pandemic care by the national government⁵. Callous governmental disregard for workers and their families who were flung on the streets during a cruel lockdown resulting in painful deaths and suffering. The criminalising and incarceration of peaceful protestors across the country — anti CAA protestors, Kashmiris protesting the abrogation of Article 370, and protesting farmers. The calls for genocide in the Dharam Sansad in Haridwar⁶ (but also earlier by elected leaders in the prelude to the violence in Northeast Delhi in 2020). The gunning down of miners in Nagaland by the Army,⁷ and many, many more.

The context in which we are now instructed to perform duties over claiming rights is important, and must never be forgotten.

What stares us in the face is the deafening silence of power in these instances and the utter disregard by the regime of its constitutional duties and obligations. Of particular concern is the impunity of the holders of political office and the untrammelled state surveillance on the people of this country.⁸

That an untamed pandemic and an already enfeebled polity provide the backdrop against which India's citizens find the need to assert their rights in the year that marks the 75 year of independence is even more tragic. But if we need to say it again, we must — and repeat it as often as it is necessary in order to be 'heard'.

Several eminent scholars have written in response about the ways in which the conflation of rights and duties reflects a flawed understanding of the constitution — the conflation is best described by Nissim Mannathukkaren's phrase, 'The barbarity of false equivalence', written in another but related context.²

Why states emphasise Duties over Rights

Article 51A - Fundamental Duties was introduced through the 42 Constitutional Amendment Act in 1976, at the peak of Emergency by then Prime Minister Indira Gandhi. The other piece of this Amendment was the introduction of the word 'Socialism' in the Preamble. It is pertinent to recall the older histories of socialism in India,¹⁰ and the fact that at the very moment this word was introduced in the Constitution, socialists across the country were either in jail or evading arrest by going underground, a notable example being George Fernandes.

In Andhra Pradesh we had revolutionary poet Cherabanda Raju, jailed during the Emergency and suspended from employment, singing '*Indiramma nee socialism saalu saalu*' in the Andhra Pradesh High Court in defence of free speech and political dissent [Indiramma, enough of your socialism]. Although unarguably, it is now an integral part of the Constitution, the moment of its inclusion is significant as also the political disjuncture between the word placed in the preamble and the political tradition of socialism in India.

There are two parts to a cursory look at Article 51A. First, civil liberties advocate K.G. Kannabiran (1929-2010), who tirelessly challenged the Emergency in courts from the day after it was proclaimed in 1975 till after it was lifted in 1977, has argued that

'if on the one hand you introduce Fundamental Duties, and on the other hand you introduce Socialism into the constitution, this adds up to National Socialism, i.e. Nazism, a slogan that Hitler used to seize power.'¹¹

He saw the introduction of these words as ominous — and deeply connected to the fact that this concern for duties came at a time when rights had shrunk rapidly and state violence and repression were at a peak as never before, authorised by law. The President at that time, Fakhruddin Ali Ahmed, acquiesced and signed the order. The then Chief Justice of India A.N. Ray and the majority of judges in the Supreme Court of India acquiesced as well and had no hesitation in ruling that fundamental rights may be lawfully suspended during Emergency with one, lone dissenting judge, Justice H.R. Khanna.¹² The Congress was voted out of power the following year, i.e., 1977.

The recitation of fundamental duties over fundamental rights, we may remind ourselves as citizens of

The recitation of fundamental duties over fundamental rights is a sign of the rumbling of the earth on which the regime of the moment stands.

this country, is a sign of the rumbling of the earth on which the regime of the moment stands. Is this the prelude to our 1977 moment? I say this in full

acknowledgement of Jawed Naqvi's insistence that 'Our autocratic state will not be reined in by NGOs, or Facebook or Twitter', and that nothing short of a second freedom struggle will get us out of this situation.¹³

Second, while holding the Nehru-Gandhi regimes responsible for 'weakening' the nation over seven decades and making a no-holds-barred effort on a war footing to blot out every possible remnant of that regime from the national memory, it is ironic that Article 51A, which is Indira Gandhi's Emergency insignia, should be worn so glowingly by Prime Minister Modi. Clearly, we are today at a moment comparable to 1975, but even more telling is the fact that the bitter foe rhetorically turns ally in the nuts and bolts of authoritarian rule that passes for 'good governance.'

Why Rights matter for Duties

Now a close look at Fundamental Duties. It is pertinent to point out that the discussion of fundamental rights comes up when there is a violation of those rights. Implicit in the enjoyment of rights is the duty to ensure the enjoyment of rights by others on equal terms. This need not be stated as a duty, nor does Article 51A state it. Notwithstanding the past political moment within which Article 51A came into being and the present one when it is being reasserted, the content of the Article bears recall.

Eleven fundamental duties are enumerated: (a) *to abide by the Constitution*; (b) to cherish the ideals of the freedom struggle; (c) to 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 and wildlife, and to have compassion for living creatures; (h) to *develop the scientific temper, humanism and the spirit of inquiry and reform*; (i) to *safeguard public property* and *to abjure violence*; (j) to strive towards excellence; (k) parental duty to provide opportunities for education to children between the age of six and fourteen years.

How would one fulfil Duty (a), without ensuring that fundamental rights in Part III are not violated by state and non-state actors alike? The right to peaceful protest is an inheritance of the freedom struggle — whether Gandhi's civil disobedience or Ambedkar's sharp ethical critique of power and dominance — speaking

The right to peaceful protest is an inheritance of the freedom struggle; speaking truth to power is a national inheritance and necessary to "cherish the ideals of the freedom struggle".

truth to power is a national inheritance and necessary to fulfil Duty (b). Impunity to armed forces, and the guarantee of non-prosecution to riotous mobs and politicians taking easy resort to genocidal speech (or even those that look the other way instead of confronting such violence and speech) violates Duty (c) and throws the unity and integrity of the country in peril. National service — Duty (d) — shall not be interpreted as service of the government in power. It shall be interpreted as the public good, even if such service in effect interrogates arbitrary government — which it must. The Dharam Sansad is a direct violation of Duty (e) and (f) — and we still do not have a clear condemnation and action against those calling for genocide of Muslims by the ruling regime. With reference to Duty (g), we would do well to remember Justice B. Sudershan Reddy's reminder that

'[t]he concept of public trust actually finds its genesis with respect to the ocean and waters...[and] that the State really is acting only in a fiduciary capacity. The message is simple: the sovereign rights of the nation-states over certain environmental resources are not proprietary, but fiduciary.'¹⁴

Does the government understand this? We have been witness to colossal expenditure from the state exchequer to finance Hindu religious rituals and temple consecrations as part of state practice on a scale hitherto unknown. The invisibilising of religious minorities, their stigmatisation by the a fawning media, and mass assault by lethally armed vigilante are the new normal. The fundamental duty enshrined in Duty (h) has been observed in its breach under the umbrella of state protection. And finally, the destruction of public property and architectural heritage by the government, visible especially in the national capital, as well as the incessant dog-whistles, genocidal speech and state violence against Muslim minorities have made a mockery of Duty (i).

And so we return to the very beginning. The 'Triadic Ethical Foundations' of the Constitution are elaborated by Justice B. Sudershan Reddy, importantly in the matter of *Reliance Natural Resources vs. Reliance Industries*¹⁵ and, therefore, bears recall for more reasons than one at the present time:

'(i) the Preamble that soars in eloquence in its articulation of collective human aspirations as national goals and sets out the *raison d'etre* for the nation itself;

(ii) the Fundamental Rights, that provide various necessary freedoms for the individuals and social groups, and places upon the State certain affirmative obligations to eliminate those institutional and socioeconomic conditions limiting such freedoms, so that all can strive towards the achievement of the goals set forth in the Preamble; and

(iii) the Directive Principles of State Policy, fundamental to governance and necessary for the achievement of all round socio-economic development so that the goals of the Preamble can be secured, and the effective exercise of the Fundamental Rights by all can be ensured' (para 97).'

To reiterate our constitutional commitment, fraternity is the core value, and the elimination of discrimination and Untouchability (not Swachh Bharat Abhiyan, but *untouchability and its attendant oppressions*), exploitation, and the insistence on *substantive and enduring equality*, dignity, and freedoms, our national interest. In speaking of dignity and fundamental freedoms, it is pertinent to contextualise the issue of marital rape currently under review in the Delhi High Court. The Draft Constitution, in its setting out of the Directive Principles of State Policy, originally included an Article 42:

'The State shall endeavour to secure that marriage shall be based only on the mutual consent of both sexes and shall be maintained through mutual cooperation, with the equal rights of husband and wife as a basis. The State shall also recognise that motherhood has a special claim upon its care and protection.'¹⁶

Of course, in speaking of the duty of care with respect to 'motherhood', the Drafters were not speaking of Bharat Mata but of the cohort of people of this country who are (or would be) mothers. That this was dropped from the final draft is not material. What is relevant is *the existence of this sensibility in the founding moments*, which challenges the arguments of the Centre that 'just because other countries, mostly western, have criminalised marital rape does not necessarily mean India should follow them blindly.'¹⁷ The national government is advised that the idea of mutual consent in marriage has an older, 'non-western', 'Indian' provenance, so to speak.

The state and its responsibilities

Alongside state responsibility in exercising due diligence in the elimination of horizontal derogations, and the elimination of state arbitrariness (of which deliberate distortions of constitutional

In this climate of tiresome monologic instructions on 'duties' over rights, it is apt to end with Dr. Ambedkar's sage warning..

commitments is just one part), the Directive Principles of State Policy are the most easily forgotten by governments once in power. So, in this climate of tiresome monologic instructions on 'duties' over rights, it is apt to end with Dr. Ambedkar's sage warning. Merely because the Directive Principles did not have 'legal force', he said, did not imply that they had no sort of binding force, nor was he prepared to concede that they were "useless" simply because they had no binding force in law¹⁸. To quote Dr. Ambedkar:

'The Draft Constitution as framed only provides a machinery for the government of the country. It is not a contrivance to install any particular party in power...Who should be in power is left to be determined by the people as it must be, if the system is to satisfy the tests of democracy. *But whoever captures power will not be free to do what he likes with it. In the exercise of it, he will have to respect these Instruments of Instructions which are called Directive Principles. He cannot ignore them.* He may not have to answer for their breach in a Court of Law. But he will certainly have to answer for them before the electorate at election time. *What great value these directive principles possess will be realized better when the forces of right contrive to capture power.'* (Emphasis added)¹⁹

It is necessary to reinstate the focus on the Triadic Ethical Foundations of the Constitution and demonstrate another way of reading Fundamental Duties. A lesson in the history of the entry of Fundamental Duties is instructive, as also the relevance of the Directive Principles for an understanding of the duties of holders of political office in a democratic republic. But most important of all are words of caution to ruling dispensations that they should neither talk down to their citizenry nor abandon their duties that constitutionally underline the making of state policies.

[**Kalpana Kannabiran** is a legal scholar and sociologist, currently Distinguished Professor, Council for Social Development, India. She has published extensively on the constitution, law and human rights. Her most recent book is *Law Justice and Human Rights in India: Short Reflections* (Orient BlackSwan 2021). She can be contacted at kalpana@csdindia.org]

Endnotes:

[All URLs were last accessed on February 2, 2022]

1. **Hindustan Times**. 2020. [Rule of law fundamental feature of Constitution: CJI Bobde](https://www.hindustantimes.com/india-news/rule-of-law-fundamental-feature-of-constitution-cji-bobde/story-WoBllxIpqhx4691FKyAAAbK.html), February 23. [https://www.hindustantimes.com/india-news/rule-of-law-fundamental-feature-of-constitution-cji-bobde/story-WoBllxIpqhx4691FKyAAAbK.html].
2. **Sen, J. and Mukunth, V.** 2022. [Narendra Modi Says Focus on Duties and Forget Rights, But He's Let India Down on All 11 Duties](https://thewire.in/government/narendra-modi-says-focus-on-duties-and-forget-rights-but-hes-let-india-down-on-all-11-duties), *The Wire*, January 21. [https://thewire.in/government/narendra-modi-says-focus-on-duties-and-forget-rights-but-hes-let-india-down-on-all-11-duties].
3. **Mathew, L.** 2022. [Rights, duties two sides of same coin: President Ram Nath Kovind](https://indianexpress.com/article/india/rights-duties-two-sides-of-same-coin-president-ram-nath-kovind-republic-day-eve-speech-7741723/), *The Indian Express*, January 26. [https://indianexpress.com/article/india/rights-duties-two-sides-of-same-coin-president-ram-nath-kovind-republic-day-eve-speech-7741723/].
4. **The Wire**. 2021. ['Pointless Angst' by 'Literary Naxals': Gujarat Sahitya Akademi Hits out at Poem on Ganga Corpses](https://thewire.in/books/literary-naxals-ganga-covid19-corpses-gujarat-sahitya-akademi-parul-khakhar-vishnu-pandya), June 10. [https://thewire.in/books/literary-naxals-ganga-covid19-corpses-gujarat-sahitya-akademi-parul-khakhar-vishnu-pandya].
5. **The Wire**. 2021. [Lack of Transparency in PM-CARES Fund 'Disturbing': Ex Civil Servants to Narendra Modi](https://thewire.in/government/lack-of-transparency-in-pm-cares-fund-disturbing-ex-civil-servants-to-narendra-modi), January 19. [https://thewire.in/government/lack-of-transparency-in-pm-cares-fund-disturbing-ex-civil-servants-to-narendra-modi].
6. **PTI**. 2022. [Haridwar Dharma Sansad hate speech case | Jitendra Narayan Tyagi arrested](https://www.thehindu.com/news/national/dharma-sansad-hate-speech-case-jitendra-narayan-tyagi-arrested/article38267522.ece), *The Hindu*, January 13. [https://www.thehindu.com/news/national/dharma-sansad-hate-speech-case-jitendra-narayan-tyagi-arrested/article38267522.ece].
7. **The Hindu**. 2021. [End the impunity: On Nagaland killing](https://www.thehindu.com/opinion/editorial/end-the-impunity-on-nagaland-killing/article37874510.ece), December 7. [https://www.thehindu.com/opinion/editorial/end-the-impunity-on-nagaland-killing/article37874510.ece].
8. **The Wire**. 2022. [Elgar Parishad Accused, Their Lawyers Write to SC's Committee on Pegasus Spyware Targeting](https://thewire.in/rights/elgar-parishad-accused-their-lawyers-write-to-scs-committee-on-pegasus-spyware-targeting), January 10. [https://thewire.in/rights/elgar-parishad-accused-their-lawyers-write-to-scs-committee-on-pegasus-spyware-targeting].
9. **Mannathukkaren, N.** 2020. [The Barbarity of False Equivalence](https://thewire.in/communalism/delhi-riots-communalism-false-equivalence), *The Wire*, March 8. [https://thewire.in/communalism/delhi-riots-communalism-false-equivalence].
10. See for instance **Geetha, V.** 2021. *Bhimrao Ramji Ambedkar and the Question of Socialism in India*, Palgrave Macmillan.

11. **Kannabiran, K. G. 2009.** *24 Gantalu: Atmakadhamaka Samajika Chitram* [24 Hours: a personalized social history] (as told to and recorded by N. Venugopal). Hyderabad: Devulapalli Publications, p. 36.
12. *ADM Jabalpur vs. Shivkant Shukla* 1976 SCR 172.
13. Jawed Naqvi, 2022. *Dawn*, January 25.
14. Justice B. Sudershan Reddy in *Reliance Natural Resources vs. Reliance Industries*, 2010) 156 Comp Cas 455 (SC) para 191.
15. *Reliance Natural Resources vs. Reliance Industries* (2010) 156 Comp Cas 455 (SC).
16. Shiva Rao, B. 1968. *Framing of India's Constitution: A Study*. New Delhi: IIPA, p. 323.
17. **Hindustan Times. 2022.** [Shouldn't blindly follow foreign countries on marital rape: Centre to Delhi HC](https://www.hindustantimes.com/india-news/shouldnt-blindly-follow-foreign-countries-on-marital-rape-centre-to-delhi-hc-101643455567504.html), January 29. [https://www.hindustantimes.com/india-news/shouldnt-blindly-follow-foreign-countries-on-marital-rape-centre-to-delhi-hc-101643455567504.html].
18. **Shiva Rao, B. 1968.** *Framing of India's Constitution: A Study*. New Delhi: IIPA, p. 329.
19. Quoted in Shiva Rao, B. 1968. *Framing of India's Constitution: A Study*. New Delhi: IIPA, p. 329.