

COMPARISON BETWEEN US AND INDIA IN THE INTERPRETATION OF CITIZENSHIP RIGHTS AND OBLIGATIONS

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ABSTRACT

“Citizens are made not born”. This statement is the basis on which citizenship is defined because it takes into account that citizenship is more than just being born into a country, it encompasses the notion that citizenship can be changed, made active and can be taught.¹ Citizenship is the status of a person recognized under the custom or law as being a legal member of a sovereign state or belonging to a nation. As globalization has taken over the world today it is imperative that citizenship means more than just living in a sovereign state. The citizens living in a sovereign state today should be better versed and tolerant of new cultures and must know a lot about their own culture too. Citizenship consists not merely in enjoying certain rights and guarantees, but also in discharging one's obligations conscientiously.

The rights and obligations of citizenship should be considered as a whole because they are all linked. We cannot exercise our rights if we are not aware of our obligations.

The 14th amendment of the US constitution talks about many aspects of citizenship and the rights of citizens. The 1st section says:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United

¹ Harry Brighthouse, “Citizenship”: Issues in Political Theory, ed. Catriona McKinnon (New York: Oxford University Press, 2008) 254.

*States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”*²

Lieber in his *Manual of Political Ethics* talks about “*Reciprocal Relation of Right and Obligation*”. He believed that the very condition of right is obligation; the only reasonableness of obligations consists in rights. Since, therefore, a greater degree of civil liberty implies the enjoyment of more extended acknowledged rights, man's obligations increase with man's liberty.³

Lieber tried to say that the citizen's relationship to the state is not just one of obedience to its laws, but also involves the exercise of civic virtue. According to Lieber, “a conscientious citizen is not at liberty to do all that is directly permitted by law and is not absolved of his own moral responsibility to abstain from doing "unjust, immoral, and cruel things,” even though allowed by the law.

In *Scott v. Sanford*,⁴ the Supreme Court held that African Americans were not U.S. citizens, even if they were free.

The Fourteenth Amendment, however, guaranteed that everyone born or naturalized in the United States and under its jurisdiction would be a United States citizen. It also ensured that federal citizenship was also made primary, which meant that states could not prevent freed slaves from obtaining state citizenship and thus federal citizenship. As such, the Fourteenth Amendment effectively overturned *Sanford v. Scott*.

In *Dred Scott v. Sandford* (argued 1856 -- decided 1857), the Supreme Court ruled that Americans of African descent, whether free or slave, were not American citizens and could not sue in federal court however the 14th amendment overrides this holding of *Dred Scott*. Not only did former slaves become citizens by operation of this clause, but thereafter people of African descent were eligible to become citizens.⁵

² (Nov 15, 2018, 10:04 AM) <https://www.law.cornell.edu/constitution/amendmentxiv>.

³ Francis Lieber, *Manual of Political Ethics* 383-411 (Theodore D. Woolsey ed., 2d ed. rev. 1911) (1838).

⁴ 60 U.S. 393 (1857).

⁵ *Relationship between Obligations and Rights of Citizens* by William N. Eskridge, Jr.

The 14th amendment of the constitution helps in defining national citizenship and forbidding the states to restrict the basic rights of citizens or other persons and it also helps in eliminating the discrimination between the blacks and the whites with interpretation of the Due Process Clause -- has meant state power and federal power is subject to the Bill of Rights. The clause also promises that before depriving a citizen of life, liberty or property, government must follow fair procedures. Thus, it is not always enough for the government just to act in accordance with whatever law there may happen to be. Citizens may also be entitled to have the government observe or offer fair procedures, whether or not those procedures have been provided for in the law on the basis of which it is acting. Action denying the process that is "due" would be unconstitutional. Suppose, for example, state law gives students a right to a public education, but doesn't say anything about discipline. Before the state could take that right away from a student, by expelling her for misbehaviour, it would have to provide fair procedures, i.e. "due process."⁶

The Equal Protection Clause prevents states from denying "to any person within its jurisdiction the equal protection of the laws." The clause has become most closely associated with civil rights cases, particularly for African Americans. The Equal Protection Clause prevents states from denying "to any person within its jurisdiction the equal protection of the laws." The clause has become most closely associated with civil rights cases, particularly for African Americans. In *Plessy v. Ferguson* (1898) the Supreme Court ruled that Southern states could enforce racial segregation as long as "separate but equal" facilities existed for blacks and white.⁷ In *Brown v. Board of Education* (1954) that the Supreme Court ruled that separate facilities for blacks and whites were, in fact, unconstitutional

The Slaughterhouse Cases⁸ proved to be more important as a historical snapshot than as a lasting court decision. The strong dissenting opinion by Justice Stephen J. Field, arguing that the Fourteenth Amendment protects the fundamental rights and liberties of all citizens against state interference, was later adopted by the Supreme Court's majority.⁹ the Supreme Court recognized a difference between a person's rights as a U.S. citizen and their rights under state

⁶(Nov 14, 2018, 12:00 PM) https://www.law.cornell.edu/wex/due_process.

⁷ 163 U.S. 537 (1896).

⁸ 83 U.S. 36 (1873).

⁹ The Slaughterhouse Cases of 1873 by Alex McBride.

law.¹⁰ On a series of cases in which the Court expressed its first interpretation of the privileges and immunities clause of the Fourteenth Amendment. The court interpreted this clause as protecting the rights people have by virtue of their US citizenship, not by virtue of their citizenship of a state. It then defined the rights of US citizens narrowly, excluding civil rights. It was held the privileges of national citizenship were substantive, but they came about as a result of the federal government, the Constitution, or other laws. The fundamental natural rights were not included, and thus the equality function of the Privileges and Immunities Clause was taken over by the Equal Protection Clause and the substantive functions were taken by the Due Process Clause

The U.S. Citizenship and Immigration Services gives a rundown of nine duties

- Support and defend the Constitution.
- Stay informed of the issues affecting your community.
- Participate in the democratic process.
- Respect and obey federal, state, and local laws.
- Respect the rights, beliefs, and opinions of others.
- Participate in your local community.
- Pay income and other taxes honestly, and on time, to federal, state, and local authorities.
- Serve on a jury when called upon.
- Defend the country if the need should arise

In India also, the citizens' rights and obligations are intertwined as one cannot be achieved without the other. Part II of the Constitution of India (Articles 5-11) deals with the Citizenship of India. Article 5 speaks about citizenship of India at the commencement of the Constitution. Article 11 gave powers to the Parliament of India to regulate the right of citizenship by law. Thus, Citizenship Act 1955 was enacted by the Parliament. It is an act to provide for the acquisition and termination of Indian citizenship, and the same acts speaks about citizenship of India after the commencement of the Constitution.¹¹ Citizenship in India is currently covered under two legislations: Part II of the Constitution of India, 1950 and the Citizenship Act, 1955. However, neither of these legislations have defined citizenship clearly and only provide the

¹⁰(Nov. 14, 2018, 12:18 PM) <https://www.thoughtco.com/us-constitution-14th-amendment-summary-105382>.

¹¹(Nov. 14, 2018, 2:23 PM) <https://www.clearias.com/citizenship>.

prerequisites for a “natural” person to acquire Indian citizenship. Indian nationality law largely follows the *jus sanguinis* (citizenship by right of blood) as opposed to the *jus soli* (citizenship by right of birth within the territory). Both India and Pakistan abolished *jus soli* citizenship in 2004.¹²

We have all been ensured several rights as citizens under part III of the Indian constitution which talks about the Fundamental Rights. The Fundamental Rights are defined as basic human freedoms that every Indian citizen has the right to enjoy for a proper and harmonious development of personality. These rights universally apply to all citizens, irrespective of race, place of birth, religion, caste or gender.

These 6 fundamental rights are –

- 1) Right to Equality (Article 14 – Article 18): It implies equality before the law and equal protection of the laws within the territory of India. No man is above the law of the land and this articles also prohibits discrimination.
- 2) Right to Freedom (Article 19 – Article 22): This right confers some positive rights to promote the ideal of liberty. Article-19 is the most important which guaranteed six freedoms to all citizens
- 3) Right Against Exploitation (Article 23 – Article 24): Indian Constitution recognizes dignity of the individual against any form of exploitation either by the state or by the privileged section of the society. Therefore, right against exploitation prohibited traffic in human beings and forced labour and employment of child in factories, mines or in any other ‘hazardous employment’. No child below the age of fourteen years shall be employed to work in any factory or minds or engaged in any other hazardous employment (Article 24)
- 4) Right to Religion (Article 25- Article 28): There is no state religion in India. The state will neither establish a religion of its own nor confer any special patronage upon any particular religion. Every person is guaranteed the freedom of conscience and freedom to profess, practice and propagate his own religion subject to public order, morality and health. The religious groups have also been allowed some rights.

¹²As Trump strikes at birthright citizenship, Americans – and Indians – look up 14th Amendment by Chidanand Rajghatta.

- 5) Cultural and Educational Rights (Article 29 – Article 30): The Constitution of India guarantees cultural and educational rights for all section of people irrespective of their religious, racial and cultural diversities.
- 6) Right to Constitutional Remedies (Article 32): A right without remedy is a meaningless formality. Indian Constitution enumerates various rights to its citizen and in order to make these rights effective, it includes some means or remedies in the form of the Right to Constitutional Remedies under Article 32.¹³

It is imperative to note that even though we have been ensured certain rights, it isn't to be forgotten that these rights aren't unfettered and have certain impositions and restrictions on them as it falls under our obligation to follow them with proper care and measure and not misuse them. A citizen cannot enjoy Fundamental Rights absolutely or at will. Within some Constitutional limitation citizens can enjoy their Rights and are obligated to ensure they respect the aforementioned restrictions. The Constitution of India imposes some reasonable restrictions upon enjoyment of these Rights so, that public order, morality and health remain intact.

*Minerva Mills Ltd. and Ors. v. Union Of India and Ors. And Keshavananda Bharti v. Union of India*¹⁴ are landmark decisions of the Supreme Court of India that applied and evolved the basic structure doctrine of the Constitution of India.¹⁵ The constitution empowers the Parliament and the State Legislatures to make laws within their respective jurisdiction. Bills to amend the constitution can only be introduced in the Parliament, but this power is not absolute. If the Supreme Court finds any law made by the Parliament inconsistent with the constitution, it has the power to declare that law to be invalid. Thus, to preserve the ideals and philosophy of the original constitution, the Supreme Court has laid down the basic structure doctrine. According to the doctrine, the Parliament cannot destroy or alter the basic structure of the doctrine¹⁶. Article 368 of the Constitution gives the impression that Parliament's amending powers are absolute and encompass all parts of the document. But the Supreme Court has acted as a brake to the legislative enthusiasm of Parliament ever since independence. With the intention of preserving the original ideals envisioned by the constitution-makers, the apex court pronounced

¹³(Nov. 15, 2018, 11:02 AM) http://www.kkhsou.in/main/polscience/fundamental_rights.html.

¹⁴ (1973) 4 SCC 225.

¹⁵ AIR 1980 SC 1789.

¹⁶(Nov. 15, 2018, 3:16 PM) <https://www.jagranjosh.com/general-knowledge/basic-structure-doctrine-of-the-constitution-1437127016>.

that Parliament could not distort, damage or alter the basic features of the Constitution under the pretext of amending it.¹⁷

D.A.V. College, Bhatinda v. State of Punjab,¹⁸ held that the right of the minority to establish and administer educational institutions of their choice includes the right to have a choice of medium of instruction also. In *AIIMS Students' Union v. AIIMS*¹⁹. The Supreme Court observed that article 51A does not expressly cast any fundamental duty on the State, the duty of every citizen of India is the collective duty of the State.

Similarly, along with the rights of citizens, the Constitution also governs the obligations of citizens. The 42nd Amendment Act, 1976 added a Chapter IV-A which consists of only one Article 51-A which dealt with a Code of Ten Fundamental Duties for citizens. the Fundamental Duties were increased to eleven by the 86th Amendment in 2002, which added a duty on every parent or guardian to ensure that their child or ward was provided opportunities for education between the ages of six and fourteen years. Fundamental duties are intended to serve as a constant reminder to every citizen that while the constitution specifically conferred on them certain Fundamental Rights, it also requires citizens to observe certain basic norms of democratic conduct and democratic behaviour because rights and duties are co-relative. While the fundamental rights aid in the overall growth of an individual, it isn't to be forgotten that there are certain duties every citizen has to follow to ensure that peace and tranquillity is maintained in any country. The Fundamental Duties are defined as the moral obligations of all citizens to help promote a spirit of patriotism and to uphold the unity of India.

Article 51A of the Indian Constitution states that it is every duty of the citizen to:

- 1) To oblige with the Indian Constitution and respect the National Anthem and Flag.
- 2) To cherish and follow the noble ideas that inspired the national struggle for freedom.
- 3) To protect the integrity, sovereignty and unity of India.
- 4) To defend the country and perform national services if and when the country requires.
- 5) To promote the spirit of harmony and brotherhood amongst all people of India and renounce any practices that are derogatory to women.

¹⁷ (Nov. 16, 2018, 9:18 AM) <http://www.constitutionnet.org/v1/item/basic-structure-indian-constitution>.

¹⁸ MANU/SC/0038/1971: AIR 1971 SC 1731: 1971 (Supp) SCR 677: (1971) 2 SCC 269.

¹⁹ MANU/SC/0480/2001: AIR 2001 SC 3262.

- 6) To cherish and preserve the rich national heritage of our composite culture.
- 7) To protect and improve the natural environment including lakes, wildlife, rivers, forests, etc.
- 8) To develop scientific temper, humanism and spirit of enquiry.
- 9) To safeguard all public property.
- 10) To strive towards excellence in all genres of individual and collective activities.
- 11) To provide opportunities of education to the children between 6-14 years of age and parents to ensure that such opportunities are being awarded to their child.²⁰

CONCLUSION:

Rights and obligations are two parts of the same thing. Where there is freedom, there is also subsequent responsibility. Rights are considered important for the expansion of human personality. They offer a sufficient ground to the individual for free action and help in their self-development. An individual owes to the society certain duties as he obtains rights. Even though rights are very significant in a democratic state, they become obsolete in the absence of duties and therefore it goes without saying that rights involve obligations as well because without their smooth and simultaneous functioning the entire state could be reduced to a state of chaos and anarchy. Democracy means that all government authority is derived from the people and that the handling of government authority shall be subject to monitoring by the people. If the state gives the right to life to a citizen, it also imposes an obligation on him to respect the life of others and not breach laws. One right awarded to one citizen should be recognized by all the other citizens as well.

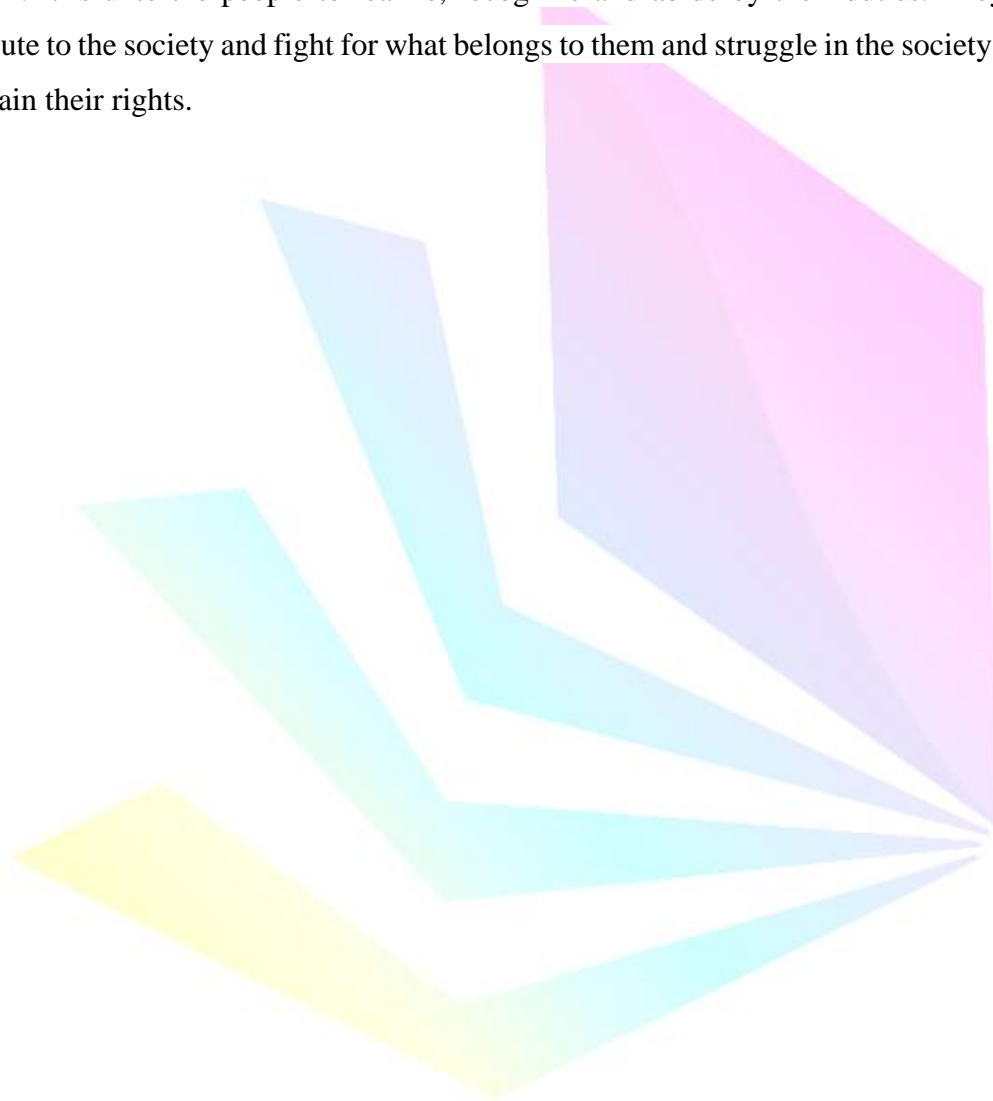
Every right or duty involves a *vinculum juris* or a of legal obligation by which two or more persons are bound together. Year Gay, a Roman jurist, defines obligation as ‘a means of personal claim brought against another in order to force him before us to give us so as to we are able to enforce our rights’²¹. There can be no duty unless there is someone to whom it is due. Likewise, there can be no right unless there is someone from whom it is claimed²². Both

²⁰ (Nov. 17, 2018, 8:37 AM) <http://www.legalserviceindia.com/legal/article-132-fundamental-duties.html>.

²¹ (Nov. 17, 2018, 1:08 AM) <https://www.abyssinialaw.com/study-on-line/item/416-the-concept-of-obligation>.

²² V.D. Mahajan’s jurisprudence & legal theory, eastern book company.

the constitutions of India and the USA have therefore recognized the importance of the same and have entrusted it to the citizens. As human beings and members of society, we have obligations both to ourselves and to others with whom we interact. Rights, on the other hand, have validity only to the extent that there is an accepted obligation in another person or institution. Thus, our rights may or may not exist; in either case, however, our obligations remain²³. It is unto the people to realize, recognize and abide by their duties. They have to contribute to the society and fight for what belongs to them and struggle in the society to ensure and retain their rights.



²³ Simone Weil, *The Need for Roots*.