

“Human Dignity and Justice: Special reference to Indian Context”

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Abstract:-

Every person has inalienable dignity, duties, and rights. Whatever social class one belong to, every person is endowed not only with a living body but with an intelligent free and immortal soul which God created. Having come from God, this soul should serve God and return to God. Whether this soul lives in the body of a worker at the bottom of a dark coal mine, or in the body of a well-fed financier living in the lap of luxury, it doesn't matter: in reality both of them have the same value. They have equal personal dignity, equal moral responsibility, the same eternal destiny, and both of them have been given earthly existence so that through truth, morality and religion they may strive for eternal life. - - Father Leo John Dehon, Founder of the Priests of the Sacred Heart.

The language of “human dignity” plays a key role in discussions of justice and human rights. And yet, the concept of human dignity presents significant challenges that often go unacknowledged in the realm of public discourse. What do we mean when we say that humans have dignity? And what kind of claim is it? Is it a claim based on some kind of comprehensive worldview or set of worldviews? Is it simply a pragmatic assertion—one that, hopefully, leads to less violence and a more just world?

Keywords:- Human dignity, Justice, Indian Constitution, International conventions, Universal Declaration.

Of central concern here is the status of human rights and global justice. The language of human rights appears again and again in the pages of this issue, not surprisingly since numerous human rights documents—in particular, The Universal Declaration of Human Rights—refer to humans as having dignity and to this dignity as being the basis for human rights. What is the relationship between this triad of terms: “human rights,” “human dignity,” and “justice”? And what are the implicit assumptions in these terms that need to be explored?

Contemporary scepticism regarding universal accounts of human nature raises doubts about the idea of human dignity. For some, a universal human nature is a myth and what it is to be a human person is exclusively shaped by our local and social contexts; transcendent accounts of why the lives of all persons should be valued do not make sense. Against this backdrop, one might ask whether a rhetoric of human dignity can be sustained and whether calls to honour the dignity of every individual can gain traction.

The questions concerning human dignity are not limited to the conflict between universal and particular understandings of the human. The bare facts of human history—the long list of atrocities for which humanity must answer—raise some serious questions about why or if we think humans have dignity. Would another intelligent species, viewing the range of human actions throughout history (or, even, currently occurring), arrive at the idea that humans have dignity? If dignity is associated with goodness and innocence, then it seems to weaken in the face of human behaviour.

Dignity’ Interpreted By Various International Intuitions:

International Human Rights Instruments and the Right to Life, Liberty and Security or Personal Dignity. The rights guaranteed under Part III of the Constitution are in conformity with international human rights instruments. However, some of the guarantees provided by such instruments have been left untouched. Without being exhaustive we will pick up a few provisions relating to the right to life, liberty and security guaranteed by such international human rights instruments.

The Universal Declaration of Human Rights 1948[18] (henceforth UDHR) provides a series of rights including the right to life, liberty and security. Article 3 stipulates, Everyone has the right to life, liberty and security of person. Article 4 provides a right against slavery or servitude and Article 5 has guaranteed a right against torture, or cruel, inhuman or degrading treatment or punishment.

Article 6 of ICCPR [19] provides every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life. Article 9 of the Covenant has conferred the right to personal liberty and says, Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are prescribed by law. It also provides within the scope of right to liberty the right to be informed of charges and reasons for arrest, right to be produced before judicial authority, right to speedy trial and right to compensation for unlawful arrest or detention . Article 14 of ICCPR deals with a number of rules essential for fair trial. The rights and principles of justice stipulated in the Covenant provide a modern standard for justice and human rights jurisprudence.

There are some other international human rights instruments dealing with the right to life, liberty and security. The International Covenant on Economic, Social and Cultural Rights, 1966 (henceforth ICESCR) also provides a right of self-determination and social security. The ICESCR has recognized the right to work, right to livelihood and adequate living conditions. The Convention on the Elimination of All Forms of Discrimination Against Women 1981 (henceforth CEDAW)[20] provides a right to women for their dignified life. The Declaration On the Elimination of Violence Against Women again reaffirmed the importance of the right to life, liberty and security and mentioned provisions so as to fill up the gaps left by CEDAW.

The constitution of India, Article 21

Article 21 reads as:

No person shall be deprived of his life or personal liberty except according to a procedure established by law.

According to Bhagwati, J., Article 21 embodies a constitutional value of supreme importance in a democratic society. Iyer, J., has characterized Article 21 as the procedural Magna Carta protective of life and liberty.

This right has been held to be the heart of the Constitution, the most organic and progressive provision in our living constitution, the foundation of our laws.

Article 21 can only be claimed when a person is deprived of his life or personal liberty by the State as defined in Article 12. Violation of the right by private individuals is not within the preview of Article 21.

Article 21 secures two rights

Right to life, and Right to personal liberty.

The article prohibits the deprivation of the above rights except according to a procedure established by law. Article 21 corresponds to the Magna Carta of 1215, the Fifth Amendment to the American Constitution, Article 40(4) of the Constitution of Eire 1937, and Article XXXI of the Constitution of Japan, 1946.

Article 21 applies to natural persons. The right is available to every person, citizen, or alien. Thus, even a foreigner can claim this right. It, however, does not entitle a foreigner the right to reside and settle in India, as mentioned in Article 19 (1) €.

Individual Dignity V/S Social Dignity:

In terms of the individual or the collective it assigns equal worth to all, without any distinction of colour, race, caste, gender, ethnicity or language. It has intrinsic value and hence is non-negotiable. For, the individual's participation in a community should by no means deny that person of his or her sense of dignity or intrinsic value, which is a fundamental and inalienable attribute he or she possesses as a human being. However, it is obviously recognized that the community also has rights, rights to honor and rights to worthiness, values and qualities that results from the sum of those rights of the individuals that compose that society. [4]Individuals should never consider themselves self-sufficient, for, in isolation, no one can function adequately within the Haitian or Vodoun social context.[5]

The differences I am bringing to light here by no means aim at emphasizing ethnic divisions within our societies. They are geared, rather, at inducing, if at all possible, a new consciousness, a new awareness that alone may allow a novel Ethical Code of pluralistic and democratic socio-economic and cultural relationship.

Evolution And Development of The Rights And The Role of Dignity:

Some moral and political theories[6] hold that the only right is right to freedom which requires only duties of non-interference. Rights as freedoms or liberties connects closely to the will theory of rights. The will theory presupposes correlativity of rights (claims, liberties, power, immunities) and treats rights as a power of waiver over someone else's duty. H.L.A. Hart who is the contemporary exponent of will theory shares the view that all rights are derived from a basic right of equal liberty.[7] According to this view, rights make sense only in a system where people are left free to lead their own lives and be responsible for their own actions and decisions. The basic moral requirement is to act respect for the persons. Only when a person's actions interferes with the equal liberty of other, that a person can be restrained by law.

Susan Moller Okin defines human rights as a claim to something of crucial importance for human life. And, also the description of human rights includes both the value of freedom and welfare. But what is meant by 'dignity'? Certainly dignity[8] is not an empirical characteristic as feeling of pain or suffering which can be empirically ascertainable. For the Indian SC however, 'human dignity' can be empirically ascertained by reference to whether a person has adequate nutrition, shelter, clothing and other bare necessities of life and lack of these things will result in denial of dignity to people.

Interpretation of 'Personal Dignity' By The Supreme Court of India:

The Indian Supreme Court has derived a catalogue of human rights in both the senses from the notion of 'human dignity' implied by a right to life. People of India have fundamental right to food, shelter, hygiene, clean air, health care, education and so on as aspects of their right to live with human dignity. In *Kartar Singh v. State of Punjab*, the SC had ruled that liberty aims at freedom not only from arbitrary restraint but also a right to secure such conditions which are essential for full development of personality. In various cases supreme court interpreted 'personal dignity' in various ways, some of them are following:-

Air 1997 Supreme Court 645[9] *Air India Statutory Corporation v. United Labour Union*

The Preamble and Article 38 of the Constitution envision social justice as the arch to ensure life to be meaningful and livable with human dignity. Jurisprudence is the eye of law giving an insight into the environment of which it is the expression. It relates the law to the spirit of the time and makes it richer. Law is the ultimate aim of every civilized society, as a key system in a given era, to meet the needs and demands of its time. Justice, according to law, comprehends social urge and commitment. The Constitution commands justice, liberty, equality and fraternity as supreme values to usher in the egalitarian social, economic and political democracy. Social justice, equality and dignity of person are cornerstones of social democracy. The concept of social justice which the Constitution of India engrafted, consists of diverse principles essential for the orderly growth and development of personality of every citizen.

Air 1997 Supreme Court 610[12] D. K. Basu v. State of W.B.

Custodial torture is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward – flag of humanity must on each such occasion fly half-mast.

Air 2004 Supreme Court 561 [13]Guruvayur Devaswom Managing Committee v. C. K. Rajan

The Courts exercising their power of judicial review found to its dismay that the poorest of the poor, depraved, the illiterate, the urban and rural unorganized labour sector, women, children, handicapped by 'ignorance, indigence and illiteracy' and other down-trodden have either no access to justice or had been denied justice. A new branch of proceedings known as 'Social Interest Litigation' or 'Public Interest Litigation' was evolved with a view to render complete justice to the aforementioned classes of persons. It expanded its wings in course of time. The Courts in pro bono publico granted relief to the inmates of the prisons, provided legal aid, directed speedy trial, maintenance of human dignity and covered several other areas. Representative actions, pro bono publico and test litigations were entertained in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to by-pass the real issues on the merits by suspect reliance on peripheral procedural shortcomings.

Air 1981 Supreme Court 625 [14]Kishor Singh Ravinder Dev v. State of Rajasthan

Human dignity is a dear value of our Constitution not to be bartered away for mere apprehensions entertained by jail officials.

Bhagwati, J.:- It is obvious that poverty is a curse inflicted on large masses of people by our malfunctioning socio-economic structure and it has the disastrous effect of corroding the soul and sapping the moral fibre of a human being by robbing him of all basic human dignity and destroying in him the higher values and the finer susceptibilities which go to make up this wonderful creation of God upon earth, namely, man.

The Bonded Labour System (Abolition) Act, 1976 has been enacted pursuant to the Directive Principles of State Policy with a view to ensuring basic human dignity to the bonded labourers and any failure of action on the part of the State Government in implementing the provisions of this legislation would be the clearest violation of Article 21 apart from Article 23 of the Constitution.

Air 1978 Supreme Court 1675 [15]Sunil Batra v. Delhi Administration

The treatment of a human being which offends human dignity, imposes avoidable torture and reduces the man to the level of a beast would certainly be arbitrary and can be questioned under Art. 14.

Air 1993 Supreme Court 2178 [16]Unni Krishnan, J.P. v. State of A.P.

Article 21 has been interpreted by this Court to include the right to live with human dignity and all that goes along with it. The 'right to education' flows directly from right to life. In other words, 'right to education' is concomitant to the fundamental rights enshrined in part

III of the Constitution. The State is under a constitutional mandate to provide educational institutions at all levels for the benefit of citizens. The benefit of education cannot be confined to richer classes.

Air 2000 Supreme Court 1669 [17] T. K. Gopal v. State of Karnataka

It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault – it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity.

Conclusion:

Author would like to conclude by stating that if human dignity has to be protected, than its only judiciary who by being active in interpreting the term 'dignity' or by inculcating various international conventions and declarations which talks about protecting human dignity, as they have done in many cases. Its only judiciary who can protect it because dignity is something which can't be codified. And, also as long as the concept of respect personal and human dignity is limited to freedom from pain, torture, neglect, exploitation, repression and suffering or from other forms tyrannical or sadistic uses of power there would be no difficulty in advocating a legal or political morality to act with respect for persons. Some philosophical problems might, however arise, when respect for persons is interpreted for embodying claims to positive social goods and services such food, clean air, an efficient transport and economic system, medical potable water, means of livelihood, adequate nutrition and so on. As we have seen above that many of the claims can simply be promoted.

Reference

<http://www.sintunum.org/frdehonprayer/dignityofall.html>

[2] http://www.boell.de/de/04_thema/2287.html

[3] <http://plato.stanford.edu/>

[4]

<http://research.arc2.ucla.edu/pmts/Germline/Psychosocial%20Dangers/pdcdhvid1.htm>

[5] This means that the human person cannot, and should not, live in isolation from other persons. Social life is considered natural to the human being because every human being is born into a pre-existing human society. This yields rights to the community that precede individual rights.

[6] A recent work on theory of rights is of J.Waldron, THEORIES OF RIGHTS (1984)

[7] H.L.A. Hart says: ' If there are any natural rights at all, it follows that there is one natural right, the equal right of man to be free', 64 PHILOSOPHICAL REVIEW 175, 189-91 (1955)

[8] The United Declaration of Human Rights (1948) in the first Articles provides :All human beings are born free and equality in dignity and rights.

[9] AIR 1997 SUPREME COURT 645

[10] Air 1995 Supreme Court 922

[11] Air 1981 Supreme Court 746

[12] Air 1997 Supreme Court 610

[13] Air 2004 Supreme Court 561

[14] Air 1981 Supreme Court 625

[15] Air 1978 Supreme Court 1675

[16] Air 1993 Supreme Court 2178

[17] Air 2000 Supreme Court 1669

[18] <http://gujarathighcourt.nic.in/Articles/custodialdignity.htm>

[19] International covenant on civil and political right (1969)

[20] Convention on elimination of all forms of discrimination, 1981