**HUMAN DIGNITY AS A CONSTITUTIONAL VALUE**

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Written constitutions, in most democratic countries are of recent origin which may, at the most, go back to few hundred years. Most of these constitutions recognise and lay down specific provisions concerning human rights. Even those liberal democracies which do not have written constitutions cherish and enforce human rights. United Kingdom and Israel would be such examples. These human rights are based on human dignity. However, insofar as concept of human dignity is concerned it dates back to thousands of years. Historically, human dignity, as a concept, found its origin in different religions which is held to be an important component of their theological approach. Later, it was also influenced by the views of philosophers who developed human dignity in their contemplations.\(^1\)

After the second World War, constitutional and international legal text began to adopt the concept and in this manner human dignity has come to be recognised as a constitutional value and as a constitutional

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\(^1\) Though western thinking is that the concept of human dignity has 2500 years' history, in many eastern civilizations including India human dignity as core human value was recognised thousands of years ago.
Thus, Jurisprudentially, three types of models for determining the content of the constitutional value of human dignity are recognised. These are: (i) Theological Model, (ii) Philosophical Model, and (iii) Constitutional Model. Legal scholars were called upon to determine the theological basis of human dignity as a constitutional value and as a constitutional right. Philosophers also came out with their views justifying human dignity as core human value. Legal understanding is influenced by theological and philosophical views, though these two are not identical. Aquinas and Kant discussed the jurisprudential aspects of human dignity based on the aforesaid philosophies. Over a period of time, human dignity has found its way through constitutionalism, whether written or unwritten.

**HUMAN DIGNITY:**

(A) **THEOLOGICAL MODEL:**

*'Amritasya Putrah Vayam'* – We are all begotten of the immortal

This is how Hinduism introduces human beings.

*'Every individual soul is potentially divine'*

– proclaimed Swami Vivekananda

Hinduism doesn't recognize human beings as mere material

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3 Ibid, note 2
beings. Its understanding of human identity is more ethical-spiritual than material. That is why a sense of immortality and divinity is attributed to all human beings in Hindu classical literature.

Professor S.D. Sharma, sums up the position with following analysis:

“Consistent with the depth of Indian metaphysics, the human personality was given a metaphysical interpretation. This is not unknown to the modern occidental philosophy. The concept of human personality in Kant’s philosophy of law is metaphysical entity but Kant was not able to reach the subtler unobserved element of personality, which was the basic theme of the concept of personality in Indian legal philosophy”

It is on the principle that the soul that makes the body of all living organisms its abode is in fact an integral part of the Divine Whole – Paramaatman – that the Vedas declare unequivocally:

_AjayeshaasO Akanisthaasa Yete; Sam Bhraataro Vaavrudhuh Soubhagay_  
– RigVeda, Mandala-5, Sukta-60, Mantra-5  
“No one is superior or inferior; all are brothers; all should strive for the interest of all and progress collectively”

Even in Islam, tradition of human rights became evident in the medieval ages. Being inspired by the tenets of the Holy Koran, it preaches the universal brotherhood, equality, justice and compassion. Islam believes that man has special status before God. Because man is a creation of God, he should not be harmed. Harm to a human being is harm to a God. God, as an act of love, created man and he wishes to

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grant him recognition, dignity and authority. Thus, in Islam, human dignity stems from the belief that man is a creation of God – the creation that God loves more than any other.

The Bhakti and Sufi traditions too in their own unique ways popularized the idea of universal brotherhood. It revived and regenerated the cherished Indian values of truth, righteousness, justice and morality.

Christianity believes that the image of God is revealed in Jesus and through him to human kind. God is rational and determines his goals for himself. Man was created in the image of God, and he too is rational and determines his own goals, subject to the God as a rational creation. Man has freedom of will. This is his dignitas. He is free to choose his goals, and he himself is a goal. His supreme goal is to know God. Thus he is set apart from a slave and from all the creations under him. When a man sins, he loses his human dignity. He becomes an object.

(B) PHILOSOPHICAL MODEL:

The modern conception of human dignity was affected by the philosophy of Kant. Kant's moral theory is divided into two parts: ethics and right (jurisprudence). The discussion of human dignity took place within his doctrine of ethics and does not appear in his jurisprudence. Kant's jurisprudence features the concept of a person's right to freedom.

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5 Based on the approach of Thomas Aquinas (1225-1274) in his work Summa Theologia
6 See Toman E. Hill, 'Humanity as an End in itself' (1980) 91 Ethics 84
7 See Pfordten, 'On the Dignity of Man in Kant'
as a human being.

According to Kant, a person acts ethically when he acts by force of a duty that a rational agent self-legislates onto his own will. This self-legislated duty is not accompanied by any right or coercion, and is not correlative to the rights of others. For Kant, ethics includes duties to oneself (e.g. to develop one's talents) and to others (e.g. to contribute to their happiness). This ability is the human dignity of man. This is what makes a person different than an object. This ability makes a person into an end, and prevents her from being a mere means in the hands of another.

Professor Upendra Baxi in his First Justice H.R. Khanna Memorial Lecture\(^8\), on the topic “Protection of Dignity of Individual under the Constitution of India” has very aptly remarked that dignity notions, like the idea of human rights, are supposed to be the gifts of the West to the Rest, though, this view is based on the prescribed ignorance of the rich traditions of non-European countries. He, then, explains Eurocentric view of human dignity by pointing out that it views dignity in terms of personhood (moral agency) and autonomy (freedom of choice). Dignity here is to be treated as 'empowerment' which makes a triple demand in the name of respect for human dignity, namely:

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\(^8\) Delivered on 25\(^{th}\) February, 2010 at Indian Institute of Public Administration, New Delhi.
(i) respect for one's capacity as an agent to make one's own free choices;

(ii) respect for the choices so made; and

(iii) respect for one's need to have a context and conditions in which one can operate as a source of free and informed choice.

To the aforesaid, Professor Baxi adds: “I still need to say that the idea of dignity is a metaethical one, that is it marks and maps a difficult terrain of what it may mean to say being 'human' and remaining 'human', or put another way the relationship between 'self', 'others', and 'society'. In this formulation the word 'respect' is the keyword: dignity is respect for an individual person based on the principle of freedom and capacity to make choices and a good or just social order is one which respects dignity via assuring 'contexts' and 'conditions' as the 'source of free and informed choice'. Respect for dignity thus conceived is empowering overall and not just because it, even if importantly, sets constraints state, law, and regulations.”

Jeremy Waldron⁹ opines that dignity is a sort of status-concept: it has to do with the standing (perhaps the formal legal standing or perhaps, more informally, the moral presence) that a person has in a society and in her dealings with others. He has ventured even to define this term “dignity” in the following manner:

⁹ See Article of Jeremy Waldron: “How Law Protects Dignity”
“Dignity is the status of a person predicated on the fact that she is recognized as having the ability to control and regulate her actions in accordance with her own apprehension of norms and reasons that apply to her; it assumes she is capable of giving and entitled to give an account of herself (and of the way in which she is regulating her actions and organizing her life), an account that others are to pay attention to; and it means finally that she has the wherewithal to demand that her agency and her presence among us as human being be taken seriously and accommodated in the lives of others, in others' attitudes and actions towards her, and in social life generally”.

Kant, on the other hand, has initially used dignity as a 'value idea', though in his later work he also talks of 'respect' which a person needs to accord to other person, thereby speaking of it more as a matter of status.

(C) CONSTITUTIONAL VALUE:

The most important lesson which was learnt as a result of Second World War was the realization by the Governments of various countries about the human dignity which needed to be cherished and protected. It is for this reason that in the U.N. Charter, 1945, adopted immediately after the Second World War, dignity of the individuals was mentioned as of core value. The almost contemporaneous Universal Declaration of Human Rights (1948) echoed same sentiments.

Article 3 of the Geneva Conventions explicitly prohibits “outrages upon personal dignity”. There are provisions to this effect in International Covenant on Civil and Political Rights (Article 7) and the European Convention of Human Rights (Article 3) though implicit. However, one can
easily infer the said implicit message in these documents about human dignity. The ICCPR begins its preamble with the acknowledgment that the rights contained in the covenant “derive from the inherent dignity of the human person”. And some philosophers say the same thing. Even if this is not a connection between dignity and law as such, it certainly purports to identify a wholesale connection between dignity and the branch of law devoted to human rights. One of the key facets of twenty-first century democracies is the primary importance they give to the protection of human rights. From this perspective, dignity is the expression of a basic value accepted in a broad sense by all people, and thus constitutes the first cornerstone in the edifice of human rights. Therefore, there is a certain fundamental value to the notion of human dignity, which some would consider a pivotal right deeply rooted in any notion of justice, fairness, and a society based on basic rights.

Within two years of the adoption of the aforesaid Universal Declaration of Human Rights that all human beings are born free and equal in dignity and rights, India attained independence and immediately thereafter Members of the Constituent Assembly took up the task of framing the Constitution of this Country. It was but natural to include a Bill of Rights in the Indian Constitution and the Constitution Makers did so by incorporating a Chapter on Fundamental Rights in Part III of the Constitution. However, it would be significant to point out that there is no mention of “dignity” specifically in this Chapter on Fundamental Rights. So was the position in the American Constitution. In America, human dignity as a part of human rights was brought in as a Judge-made doctrine. Same course of action followed as the Indian Supreme Court read human dignity into Articles 14 and 21 of the Constitution.
HUMAN DIGNITY AS A HUMAN RIGHT UNDER INDIAN CONSTITUTION:

Articles 14 and 21 of the Indian Constitution read as follows:

“14. Equality before law. - The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

“21. Protection of life and personal liberty. - No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Apparently, there is no specific mention of human dignity as no such expression is used in the aforesaid Article. Yet, Indian Supreme Court introduced a judge-made doctrine of human dignity by reading the same into these articles of the Constitution, on the same lines as it was crafted by the American Supreme Court. In fact, as would be demonstrated hereinafter, in shaping and giving true meaning to the fundamental rights enshrined in Part III of the Constitution of India (which are nothing but the human rights) it is the concept of human dignity which has been in the forefront as well as at the back of the mind of the Supreme Court. For, Indian Supreme Court has read “right to life” enshrined under Article 21 as “right to live life with dignity”. And it is linked with right to grow as a human being. Likewise, human dignity is used as lodestar for equality and to counter unfair discrimination while interpreting Article 14 of the
Constitution, thereby providing a clear linkage and connection between dignity, equality and unfair discrimination under Article 14.

The basic spirit of our Constitution is to provide each and every person of the nation equal opportunity to grow as a human being, irrespective of race, caste, religion, community and social status. Granville Austin while analyzing the functioning of Indian Constitution in first 50 years has described three distinguished strands of Indian Constitution: (i) protecting national unity and integrity, (ii) establishing the institution and spirit of democracy; and (iii) fostering social reforms. The Strands are mutually dependent, and inextricably intertwined in what he elegantly describes as “a seamless web”. And there cannot be social reforms till it is ensured that each and every citizen of this country is able to exploit his/her potentials to the maximum. The Constitution, although drafted by the Constituent Assembly, was meant for the people of India and that is why it is given by the people to themselves as expressed in the opening words “We the People”. What is the most important gift to the common person given by this Constitution is “fundamental rights” which may be called Human Rights as well.

Courts in India have translated this human dignity in action, while enforcing human rights in various fields. Few such categories are
highlighted below:

(I) **PRISONERS' RIGHTS** : The Supreme Court has held that even prisoners are to be treated with human dignity and they are not deprived of their rights merely because they are in prisons as undertrials or even as convicts \([D.K. Basu v. State of West Bengal]^{10}, \ Sunil Batra v. Delhi Administration^{11}, \) etc.\.

In **D.K. Basu**, the Court laid down the procedure which is to be followed even at the time of arrest of a person to ensure that due dignity of the person arrested is maintained. Most notably among others, the Court directed that such a person shall not be handcuffed, unless he is hardened criminal and in that case also previous permission of the concerned Judicial Magistrate shall have to be taken.

In **Sunil Batra's** case, a *habeas corpus* petition based on a written complaint was made by a prisoner to a Judge of the Supreme Court informing brutal assault by a Head Warder on a co-prisoner, Justice V.R. Krishna Iyer observed as under:

> “1. The constitutional imperative which informs our perspective in this habeas corpus proceeding must first be set out. The rule of law meets with its Waterloo when the State's minions become law-breakers and so the court, as the sentinel of the nation and the voice of the Constitution, runs down

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10 (1997) 1 SCC 416  
11 (1980) 3 SCC 488
the violators with its writ and secure compliance with human rights even behind iron bars and by prison warders. This case is at once a symptom, a symbol and a signpost vis a vis human rights in prison situations. When prison trauma prevails, prison justice must invigilate and hence we broaden our 'habeas' jurisdiction. Jurisprudence cannot slumber when the very campuses of punitive justice witness torture.”

The Supreme Court has gone to the extent of protecting certain rights of even death convicts [See Shabnam v. Union of India & Ors.], holding that they cannot be executed till they exhaust all available constitutional and statutory remedies. In the process, the Court held as under:

“14. Once we recognize this aspect of dignity of human being, it does not end with the confirmation of death sentence, but goes beyond and remains valid till such a convict meets his/her destiny. Therefore, the process/procedure from confirmation of death sentence by the highest Court till the execution of the said sentence, the convict is to be treated with human dignity to the extent which is reasonable and permissible in law.

15. This right to human dignity has many elements. First and foremost, human dignity is the dignity of each human being ‘as a human being’. Another element, which needs to be highlighted, in the context of the present case, is that human dignity is infringed if a person's life, physical or mental welfare is armed. It is in this sense torture, humiliation, forced labour, etc. all infringe on human dignity. It is in this context many rights of the accused derive from his dignity as a human being. These may include the presumption that every person is innocent until proven guilty; the

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12 (2015) 6 SCC 702
right of the accused to a fair trial as well as speedy trial; right of legal aid, all part of human dignity. Even after conviction, when a person is spending prison life, allowing humane conditions in jail is part of human dignity. Prisons reforms or Jail reforms measures to make convicts a reformed person so that they are able to lead normal life and assimilate in the society, after serving the jail term, are motivated by human dignity jurisprudence.

16. In fact, this principle of human dignity has been used frequently by Courts in the context of considering the death penalty itself. Way back in the year 1972, the United States Supreme Court kept in mind this aspect in the case of Furman v. Georgia 408 US 238 (1972). The Court, speaking through Brennan, J., while considering the application of Eighth Amendment's prohibition on cruel and unusual punishments, summed up the previous jurisprudence on the Amendment as 'prohibit(ing) the infliction of uncivilized and inhuman punishments. The State, even as it punishes, must treat its members with respect for their intrinsic worth as human beings. A punishment is 'cruel and unusual', therefore, if it does not comport with human dignity'. In Gregg v. Georgia 428 US 153 (1976), that very Court, again through Brennan, J., considered that 'the fatal constitutional infirmity in the punishment of death is that it treats “members of the human race as non-humans, as objects to be toyed with and discarded. (It is), thus, inconsistent with the fundamental premise of the clause that even the vilest criminal remains a human being possessed of common human dignity'. The Canadian Supreme Court, the Hungarian Constitutional Court and the South African Supreme Court have gone to the extent of holding that capital punishment constitutes a serious impairment of human dignity and imposes a limitation on the essential content of the fundamental rights to life and human dignity and on that touchstone declaring that dignity as unconstitutional.
Further, in *Smt. Selvi & Ors. v. State of Karnataka*¹³, while dealing with the *involuntary administration of certain scientific techniques*, namely, narcoanalysis, polygraph examination and the Brain Electrical Activation Profile test for the purpose of improving investigation efforts in criminal cases, a three Judge Bench opined that the compulsory administration of the impugned techniques constitute 'cruel, inhuman or degrading treatment' in the context of Article 21.

Likewise, *custodial torture or custodial deaths and fake encounters* are deprecated by the courts as violating human dignity. Thus, even those who are accused of any offences and are subjected to investigation cannot be maltreated. The Supreme Court noted that inhuman treatment has many a facet. It fundamentally can cover such acts which have been inflicted with an intention to cause physical suffering or severe mental pain. It would also include a treatment that is inflicted that causes humiliation and compels a person to act against his will or conscience.

In *Arvinder Singh Bagga v. State of U.P. & Ors.*¹⁴, it has been opined that torture is not merely physical but may even consist of *mental and psychological torture* calculated to create fright to submit to the

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¹³ AIR 2010 SC 1974  
¹⁴ AIR 1995 SC 117
demands of the police.

It has even led to creating compensatory jurisprudence whereby exercising the powers in a writ jurisdiction, compensation is granted to those who suffered custodial torture or to the kith and kin of those who died in police custody or in fake encounters. [See Dr. Mehmood Nayyar Azam v. State of Chhattisgarh & Ors.\(^\text{15}\)]

(II) **RIGHT OF CHOICE** : It is the flavour of human dignity jurisprudence only, which has enabled the Court to give rights to the people to have individual choices, including that of self fulfilments, autonomy and self realisation. Examples are the judgments of the Supreme Court in the case of State of Maharashtra & Anr. v. Indian Hotel and Restaurants Association\(^\text{16}\) (Bar dancers case), Charu Khurana & Ors. v. Union of India & Ors.\(^\text{17}\) (Female make-up artists in Bollywood), protecting women dignity, including prostitutes when they are subjected to rape, frowning upon female foeticide and honour killings [Arumugam Servai v. State of Tamil Nadu\(^\text{18}\)].

(III) **RIGHTS OF TRANSGENDERS** : Rights of transgenders, which, \textit{inter alia}, give them right to self determination of their sex is again based

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\(^{15}\) (2012) 8 SCC 1
\(^{16}\) (2013) 8 SCC 519
\(^{17}\) (2015) 1 SCC 192
\(^{18}\) (2011) 6 SCC 405
on human dignity. Recognising this right, in *National Legal Services Authority v. Union of India & Ors.*\(^{19}\), the Court explained the contour of human dignity as under:

“106. The basic principle of the dignity and freedom of the individual is common to all nations, particularly those having democratic set up. Democracy requires us to respect and develop the free spirit of human being which is responsible for all progress in human history. Democracy is also a method by which we attempt to raise the living standard of the people and to give opportunities to every person to develop his/her personality. It is founded on peaceful co-existence and cooperative living. If democracy is based on the recognition of the individuality and dignity of man, as a fortiori we have to recognize the right of a human being to choose his sex/gender identity which is integral to his/her personality and is one of the most basic aspect of self-determination, dignity and freedom. In fact, there is a growing recognition that the true measure of development of a nation is not economic growth; it is human dignity.”

(IV) **RIGHTS OF DISABLED** : While interpreting various provisions of The Person with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short 'Disability Act'). The Indian Courts have shown due sensitivity to the needs of disabled persons so as to ensure that those with disabilities are also able to achieve their full potential free from such discrimination and harassment. Instead of burdening this presentation with various such judgments, I would like to refer to recent judgment dated 12th May, 2016 in *Jija Ghosh & Another v.*

\(^{19}\) (2014) 5 SCC 438
Union of India & Ors. (W.P. (C) No. 98/2012). In that case, the petitioner who is an Indian Citizen with cerebral palsy, is eminent activist involved in disability rights. On 19th February, 2012, she was scheduled to fly from Kolkata to Goa where she was going to attend international conference on disability issues. After being seated on the flight, she was deplaned on the pretext that due to her disability she could not allow to fly to Goa. The action of the Airlines was found to be illegal and in violation of 'Civil Aviation Requirements' dated 1st May, 2008 issued by Directorate General of Civil Aviation, as well as Aircraft Rules. The Court noted:

“35. It is not in dispute that the Pilot as well as the Crew members of the airlines are supposed to ensure the safety of all the passengers and a decision can be taken to de-board a particular passenger in the larger interest and safety of other co-passengers. The question is, whether such a situation existed when Jeeja Ghosh was de-boarded? Whether this decision was taken by the airlines after taking due deliberations and with medical advise? Unfortunately, the answer is a big ‘NO’. Jeeja Ghosh is a disabled person who suffers from cerebral palsy. But her condition was not such which required any assistive devices or aids. She had demanded assistance regarding her baggage at the time of security check-in, from the check-in counter. For boarding of the aircraft, she came of her own. This was noticed not only by the persons at the check-in counter but also by security personnel who frisked her and the attendant who assisted her in carrying her baggage up to the aircraft. Even if we assume that there was some blood or froth that was noticed to be oozing out from the sides of her mouth when she was seated in the aircraft (though vehemently denied by her), nobody even cared to interact with her and asked her the reason for the
same. No doctor was summoned to examine her condition. Abruptly and without any justification, decision was taken to de-board her without ascertaining as to whether her condition was such which prevented her from flying. This clearly amounts to violation of Rule 133-A of Rules, 1937 and the CAR, 2008 guidelines.”

The aforesaid scenario, according to the Court, violated Principal of Human Dignity as well which aspect was highlighted in the following manner:

“39. In international human rights law, equality is founded upon two complementary principles: non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation. For example, when public facilities and services are set on standards out of the reach of persons with disabilities, it leads to exclusion and denial of rights. Equality not only implies preventing discrimination (example, the protection of individuals against unfavourable treatment by introducing anti-discrimination laws), but goes beyond in remedying discrimination against groups suffering systematic discrimination in society. In concrete terms, it means embracing the notion of positive rights, affirmative action and reasonable accommodation. The move from the patronising and paternalistic approach to persons with disabilities represented by the medical model to viewing them as members of the community with equal rights has also been reflected in the evolution of international standards relating specifically to disabilities, as well as in moves to place the rights of persons with disabilities within the category of universal human rights. {See – Report of United Nations Consultative Expert Group Meeting on International Norms and Standards Relating to Disability 10-2-2001}. 
42. All these rights conferred upon such persons send an eloquent message that there is no question of sympathising with such persons and extending them medical or other help. What is to be borne in mind is that they are also human beings and they have to grow as normal persons and are to be extended all facilities in this behalf. The subject of the rights of persons with disabilities should be approached from human rights perspective, which recognised that persons with disabilities were entitled to enjoy the full range of internationally guaranteed rights and freedoms without discrimination on the ground of disability. This creates an obligation on the part of the State to take positive measures to ensure that in reality persons with disabilities get enabled to exercise those rights. There should be insistence on the full measure of general human rights guarantees in the case of persons with disabilities, as well as developing specific instruments that refine and given detailed contextual content of those general guarantees. There should be a full recognition of the fact that persons with disability were integral part of the community, equal in dignity and entitled to enjoy the same human rights and freedoms as others. It is a sad commentary that this perceptions has not sunk in the mind and souls of those who are not concerned with the enforcement of these rights. The persons suffering from mental or physical disability experience and encounter nonpareil form of discrimination. They are not looked down by people. However, they are not accepted in the main stream either even when people sympathies with them. Most common, their lives are handicapped by social, cultural and attitudinal barriers which hamper their full participation and enjoyment of equal rights and opportunities. This is the worst form of discrimination which disabled feel as their grievance is that others do not understand them.

A compensation of Rs. 1 million was awarded as damages.
(V) **REPUTATION OF INDIVIDUAL**: Right to enjoyment of private reputation is again founded on human dignity, which was so recognised in *Smt. Kiran Bedi v. Committee of Inquiry & Anr.*\(^{20}\), where this Court reproduced an observation from the decision in *D.F. Marion v. Davis*\(^{21}\):

"The right to enjoyment of a private reputation, unassailed by malicious slander is of ancient origin, and is necessary to human society. A good reputation is an element of personal security, and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property."

The Supreme Court, in a recent path-breaking judgment in *Devidas Ramachandra Tuljapurkar v. State of Maharashtra & Ors.*\(^{22}\), did not accept the defence predicated on freedom of speech, when the poem titled 'Gandhi Mala Bhetala' ('I met Gandhi') violated the dignity of Father of the Nation. The Court refused to quash the FIR lodged against the poet under Section 292 of the Indian Penal Code (i.e. Obscenity) and in the process took note of a test laid down by the European Court of Human Rights (ECHR) in *Vereinigung Bildender Kiinstler v. Austria*\(^{23}\), wherein the Court tried to balance human dignity and right of speech in the following manner (p.33):

"9. In our opinion, it was not the abstract or

\(^{20}\) (1989) 1 SCC 494  
\(^{21}\) 10 55 ALR 171  
\(^{22}\) (2015) 6 SCC 1  
\(^{23}\) Application No. 68354 of 2001, decided on 25-1-2007 (ECHR)
indeterminate concept of human dignity – a concept which can in itself be dangerous since it may be used as justification for hastily placing unacceptable limitations on fundamental rights – but the concrete concept of ‘fundamental personal dignity of others’ which was central to the debate in the present case, seeing that a photograph of Mr Meischberger was used in a pictorial montage which he felt to be profoundly humiliating and degrading.”

On that basis, the Court accepted the plea that artistic freedom outweighs personal interest and cannot and does not trump nor outweigh observance of laws for the prevention of crime or laws for the protection of health or morals; that the limits of artistic freedom are exceeded when the image of a person (renowned or otherwise) is substantially deformed by wholly imaginary elements – without it being evident from the work (in the present case from the poem) that is aimed at satire or some other form of exaggeration; that the freedom of artistic creation cannot be claimed where the work in question constitutes a debasement and debunking of a particular individual’s public standing; that the European law recognises that whosoever exercises freedom of expression undertakes in addition duties and responsibilities and their scope depends on the situation and the means used; that it is only where personal interests of an individual are said to be affected that the artistic and satirical nature of the portrayal of the person in the work would outweigh mere personal interest; that the nature, meaning and effect of any image (say, in a painting or a poem)
cannot and must not be judged on the basis of what the artist (or author) purports to convey; what counts is the effect of the image on the observer; the fact that an image has been produced by an artist does not always make the end-result artistic; likewise an image does not become satirical if the observer does not comprehend or detect any message in the work in question; that where the images depicted in the work product convey no message but “only a disgusting combination of lewd acts and words whose only effect is to debase, insult and ridicule the person portrayed” – this is neither criticism nor satire; and that the artistic freedom is not unlimited and where rights and reputation of others are involved; where there is conflict with human dignity artistic freedom must always be subordinated to personality rights.

ELEMENT OF PUBLIC INTEREST

According to Waldron, there may be many aspects of our proper moral treatment of humans that have little to do with dignity directly. He explains it by pointing out that though it is our basic duty to respect and sustain human life, the same is not really connected to dignity, as the preciousness or sacredness of human life is not really a dignitarian idea. I would like to submit that, at least in Indian context, and after seeing how 'dignity' is given a wider meaning here, that may not be entirely true.
There is one more reason for this comment. Once we accept that our basic duty is to respect and sustain human life, that becomes a part of human dignity as well, which in turn, gives to every individual/citizen in this country right to live life with dignity, and not merely an animal existence. This is highlighted by the Supreme Court while expanding the horizons of Article 21 of the Constitution of India. According to me, there is another very forceful and valid reason to treat this duty of respecting and sustaining human life as part of dignity. When we talk of human rights, it is an acknowledgment of the fact that human rights are individual and have a definite linkage with human development. Respect for human rights is the root for human development and realization of full potential of each individual, which in turn leads to the augmentation of human resources with progress of the nation. Empowerment of the people through human development is the aim of human rights, and all this has genesis in human dignity.

Once we accept that people are to be respected and treated with dignity, this conception of dignity gives them right to grow fully. In a country like India, where 1/3rd of the population is living below poverty line and human beings have no means to have adequate food, clothing, shelter and education, it not only becomes the duty of the State to provide these facilities to the citizenry, it becomes the human right of such persons
to exact such rights from the State. In fact, this in turn contributes to the socio-economic growth of the nation itself.

The development of human capital has been recognized by economists to be a key prerequisite for a country's socio-economic and political transformation. Among the generally agreed casual factors responsible for the impressive performance of the economy of most of the developed and the newly industrializing countries is an impressive commitment to human capital formation. This has been largely achieved through increased knowledge, skills and capabilities acquired through education and training by all the people of these countries.

It has been stressed that the differences in the level of socio-economic development across nations is attributed not so much to natural resources and endowments and the stock of physical capital but to the quality and quantity of human resources.

Human resources are a critical variable in the growth process and worthy of development. They are not only means but, more importantly, the ends that must be served to achieve economic progress. This is underscored by Harbinson (1973) who opined that “human resources constitute the ultimate basis for the wealth of nations. Capital and natural resources are passive factors of production; human beings are the active
agents who accumulate capital, exploit natural resources, build social, economic, and political organizations, and carry forward national development. Clearly a country which is unable to develop the skills and knowledge of its people and to utilize them effectively in the national economy will be unable to develop anything else”.

Therefore, empowerment of people through human development is the pre-requisite and it has its root in recognizing and respecting human dignity. Country develops if the human resources develop; it leads to increase in productivity; it contributes to the eradication of social and economic backwardness; enables augment of entrepreneurship; and brings about social revolution.

It has now become an accepted notion that human dignity is the true measure of development. This stands well recognized by the protagonist of human rights. It is for this reason they point out that if human beings are not treated with dignity, that leads to starvation deaths, caste atrocities, police brutality and even where there is corruption, that amounts to violation of human dignity leading to violations of human rights. Human dignity, therefore, has become fulcrum of human rights.

**CONCLUSION:**

Jurisprudentially, therefore, if some were to argue the question
‘Why are human rights valid?”, the answer would be that it has roots in human dignity which provides justification for human rights. No doubt, discussion of dignity goes back to Kant, which assumed prominence after the Second World War and in last few decades 'dignity' has received much broader meaning. Dignity, as fulcrum of human rights, is not only accepted by jurists, it is given imprimatur by courts as well. This story of human rights, from its inception, hundreds of years ago, finding its roots in 'dignity', is beautifully summed up by Professor Dr. A. Lakshminath and Dr. Mukund Sarda in their Article ‘From Human Rights to Human Dignity – An Unending Story’ published in CNLU Law Journal (2015, Volume 5), in the following words:

From exploitation to exploration
From exploration to proclamation
From proclamation to declaration
From declaration to protection
From protection to perfection

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