

Right to Live with Dignity: Constitutional Provision and Judicial Interpretation

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Abstract

Right to live with dignity is an important part of right to life and personal liberty. Apex court of India has recognised its many dimensions through various judgments. Recently on 9th March 2018, the Supreme Court gave legal sanctity to the living will and euthanasia for people suffering from terminal diseases and reduced to a permanent vegetative state, by ruling that every individual has the right to “die with dignity”. The object of this research shall be to analyze the right to live with dignity and to touch the various dimensions of the right. The research shall provide a brief overview of the right provided by the Indian constitution and its various derivative rights derived by the judiciary.

Keywords: Right, dignity, reputation, privacy, liberty, jurisprudence, Rule of Law

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INTRODUCTION

Indian democracy devoted to Rule of law as it aims to protect fundamental rights of its citizens and to establish an egalitarian order. As an important weapon of social engineering, law obliges the judiciary to carry out the process established by it [1].

In recent years, there has been a veritable explosion in the number of constitutional texts explicitly recognizing the right to dignity and in constitutional court cases vindicating that right in a variety of settings. The number and range of cases in which courts enforce or refer to the right to dignity raises questions about what dignity is doing in all these cases: why it seems useful in so many cases to litigants and judges alike, and what role is it playing in all these diverse factual situations even though another right might be more particular and equally, if not more, effective.

In the view of Lord Chancellor Sankey, amidst the cross currents and shifting sands of public life, the law is like a great ark upon which a man may set his foot and be safe [2]. He has emphasized on the importance of law, in this remark. It is well established that, life of an individual in a society would become a continuing disaster if not regulated.

International Provisions of Right to Live with Dignity

The universal declaration of human rights states in following words:

“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”.

Article 1 provides that, all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. According to *Article 3*, everyone has the right to life, liberty and security of person. *Article 4* pertains that, no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. And no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment as per the provisions of the *Article 5*.

Jurisprudence of Dignity

Human dignity is associated with the life of the human being as fundamental rights which have Constitutional and jurisprudential values. The term “dignity” denotes the honour and personal merits of an individual. The idea of human dignity is related with the protection against the exploitation and violation of

inalienable rights. Normally, human dignity is used for protection of the status and honour of the person, which is the most important asset for a person. It is well recognised that, "When wealth is lost, nothing is lost; when health is lost, something is lost; when character is lost, everything is lost". Every person has his own status and respect and he lives for that only. Human dignity is attached with the behaviour and role of the person in the society.

The word *dignity* originates from two Latin words, '*dignitus*' (merit) and '*dignus*' (worth). The International Council for Nurses Code of Ethics 2012 instructs that the observance of dignity should not be limited by the individual's age, colour, creed, culture, gender, sex, nationality, race, social status, or health status. However, while dignity is accepted as a universal need which is fundamental to the well-being of every individual in all societies, the actual 'practical' meaning of dignity remains complex and unclear because it is a multidimensional concept [3].

Considering the importance of the term, the Constitution of India used the term 'dignity' in its preamble; which reads as 'assuring the dignity of the individual and the unity and integrity of the nation.' Dignity is attached to the identity of a human being as a person, when a human being does not enjoy the right to a person's dignity, the person does not exist at all. In simpler terms, it can be said that dignity can be ensured when every member of the society has a feeling that he or she is a respectable member, and no one can humiliate, harass, exploit and insult him or her on the basis of caste, creed, sex and stats etc. [4].

There are so many constitutional cases involving the right to dignity that it is impossible to count or review them all. Courts around the world have ruled on the right to dignity, although some courts, including *Germany*, *India*, *Canada*, *South Africa*, *Hungary*, and *Israel* have been more deliberate in their development of a jurisprudence of dignity than others. But the cases defy easy categorization because they arise from such a broad range of factual settings. Moreover, there is no clear connection between the status

of dignity as a textually protected right and its prominence in the country's jurisprudence. *Canada's Charter* does not mention dignity at all, India mentions it several times but primarily in the section on unenforceable directive principles; *Hungary's constitution* mentions it as one of many rights; *Israel's* evolving *Basic Law* emphasizes it, as does South Africa's 1996 post-apartheid constitution which calls it a founding principle, while in Germany, it is fundamental and non-derogable. Many other countries whose constitutions protect dignity have not developed jurisprudence about it. There is no clear correlation between constitutional text and case law. Nonetheless, some patterns present themselves. Many of the cases from around the world fall into three broad categories. One category, conceptually the most interesting, treats dignity as a mechanism for protecting individuality. This individuation principle starts from the premise (most prominently articulated in the Universal Declaration of Human Rights), that each individual human being is unique and, in that uniqueness, lies dignity.

The individuation principle has varied applications. In some cases, the court will find that the state's objectification of individuals violates their individual dignity. For instance, in a notable *German case*, the *Federal Constitutional Court* invalidated the Air Transport Security Act because in empowering the government to shoot down a passenger plane upon a showing that the aircraft would be used against the life of others, it violated the passengers' right to dignity insofar as the government would be sacrificing their lives to achieve another goal [5]. In other instances, courts will rely on the right to dignity to protect the individual decisions a person makes, such as the choice of intimate partner and lifestyle, selection of names, religious choices, occupational opportunities, and decisions relating to reproduction (Dignity has been used to support both the fatal right to life and the woman's right to choose). Courts have also found that the right to protect one's reputation rests on the right to dignity, as does the right to travel.

HUMAN DIGNITY AND ITS FACETS UNDER INDIAN CONSTITUTION

As fundamental right, human dignity has Constitutional and jurisprudential value. The term human dignity is generally used for the protection, the status and honour of the person. Everyone has his own status and respect in the society. Human dignity attaches with their own behaviour and role of the person in the society. The Constitution has not given any specific provision about human dignity. The framers of our Constitution used the term 'dignity' in its preamble by using the phrase 'assuring the dignity of the individual and the unity and integrity of the nation' [6]. In fact, dignity is attached to the identity of a human being as a person, when a human being does not enjoy the dignity, the right to a person's dignity does not exist at all. *Article 21* of Constitution of India, the right to life; it has wider meaning which includes the right to life with human dignity. It is fundamental right without which we cannot live as human being and includes all those aspects of life which go to make a man's life meaningful worth of life. Life is not simply a physical act of breathing, it does not mean merely animal existence it has a much wider meaning which includes right to live with human dignity. According to *Justice Krishna Iyer*, depriving a person of his right is nothing but a murder. If state or anybody violates or deprives rights of any person of his constitutional rights, it also commits murder. He also observed that life is not vegetable existence. The Supreme Court quoted with approval *Field, J.*, in a very landmark case, *Munn vs. Illinois* [7], *Field, J.* spoke of the right to life as: "by the term 'Life' something more is meant than mere animal existence. The inhibition against the deprivation of life extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body by the amputation of the arm or leg or putting out of an eye or the destruction of any other organ of the body through which the soul communicates with the outer world" [8].

In the case of *Bandhua Mukti Morcha vs. Union of India & Ors.*, where the question of bondage and rehabilitation of some labour was involved [9], *Bhagwati, J.* observed that, "it is the fundamental right of every one in this

country to live with human dignity, free from exploitation; this right enshrined in *Article 21* derives its life breath from the *Directive Principles of State Policy* and particularly clause (e) & (f) of *Article-39* and *Article-41* and *42* and at least, and it must include protection of the health and strengths of workers, men and woman and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and conditions of freedom and dignity, educational facilities just and human conditions of work and maternity relief; these are minimum requirements which must exist in order to enable a person to live with human dignity, and no state has the right to take any action which will deprive a person from the enjoyment of these basic essentials [10]. Right to comfort may also enshrine the *right to shelter*, right to pollution free environment, right to health and medical aid which *Hon'ble Supreme Court* has pronounced as fundamental right in different cases. Chief justice of India, *J. S. Verma* absolutely expressed views about right to life with human dignity, as "the right to life is a recognised as a fundamental right under *Article 21* of the *Constitution of India* [11]. It is a basic human right inherent in human existence which is not gift of any law. The law merely recognised an inherent right and is not its source. Human rights are those rights derived from the natural law which have evolved out of natural rights, rights inherent to people by virtue of their being human and being a moral and rational nature and having a common capacity of reason. This comprises a core base of basic guarantees, including the right to life, freedom from torture or inhuman or degrading treatment or punishment, freedom from slavery, servitude and forced labour, the right to free movement and the right to food and shelter".

In the landmark case *Maneka Gandhi vs. Union of India* [12] (which leads to the widening of the concept of *Article 21* of Indian Constitution); it was observed that, the word "personal liberty" covers variety of many more fundamental rights, [13] i.e., right to speedy trial, right to bail, right to against torture, right to live with human dignity etc., and has made it obligatory on part of the state

to fulfil on many aspects, the term life and personal liberty was elaborated in expensive meaning to move beyond mere animal existence. Thus, life is not confined to a certain limit. Therefore no one can deprive the life without just and fair process of law. This case gave a new dimension to the Article 21 and the apex court held that right to live is not merely confined to physical existence, but it includes within its ambit, the right to live with human dignity. Hence, the right to dignity has very wide scope. The *Supreme Court of India* has widened the scope of article 21 and has provided with the rights article 21 embraces within itself. They are:

❖ **Right to Comfort**

The right to live with comfort is an important phenomenon of right to live with dignity, the right to live with comfort may be derived from Article(s) 21, 39 (e) & (f), 41 and 42 of Indian constitution. 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. The Article forbids the deprivation of the right to life and liberty 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.

❖ **Right to Reputation**

The Apex court of India has shown broad view about right to life includes right to reputation. In *State of Bihar vs. Lal Krishna Advani* [14], the Supreme court observed that right to reputation is a facet of the right to life of a citizen under Article 21. It takes within its sweep right to reputation, right to breathe, personal liberty, and right to privacy. It has been reiterated that since right to reputation is a person’s asset and is a facet of his right under Article 21. In addition to above, many more rights have been derived from Article 21

of the *Indian Constitution*, against delayed execution, right against custodial violence, right against public hanging, hand cuffing, are some important ones among them; and various issues like child welfare, corruption, poverty and starvation for weaker sections, religious freedom, freedom of speech, expression, welfare of women etc., also have been very widely discussed and brought within the ambit of fundamental rights guaranteed by the Indian Constitution [15].

International Covenant on civil and Political Rights, 1965 recognizes right to have opinion and the right to freedom of expression subject to right to reputation and others. Right to reputation is an important part of one’s dignity *Smt. Kiran Bedi v. Committee of Enquiry* [16]; the Supreme Court had held that a good reputation was an element of personal security and was protected by the Constitution of India, equally with the right to enjoyment of life liberty and property.

❖ **Right to Privacy**

Right to privacy is recognised as fundamental right. Every citizen has a right to privacy; besides this, every person has right to safeguard his family, marriage, procreation, motherhood, child-bearing and education among other matters. No one can interfere anything concerning the above matters without the consent whether truthful or otherwise and whether laudatory or critical, contravention would be violating the fundamental rights which are ensured by Article 21 of Constitution of India. Supreme Court has expressed in case of *R. Rajagopal vs. State of T.N* [17] that right to privacy or the right to be alone is guaranteed by Article 21 of Constitution of India. In *R.M. Malkani vs. State of Maharashtra* [18], the Supreme Court held that, the telephonic conversation of an innocent citizens will be protected by Courts against wrongful or high-handed interference by tapping the conversation. The protection is not for the guilty citizens against the efforts of the police to vindicate the law and prevent corruption of public servants [19]. In case of *State of Maharashtra vs. Madulkar Narain* [20]. Supreme Court has held that Right to privacy is available even to a woman of easy virtue and no one can invade her privacy. In another case, *Sujit Singh Thind vs. Kanwaljit Kaur* [21] allowing medical examination of a

woman for her virginity amounts to violation of her right to privacy and personal liberty enshrined under Article 21 of Constitution of India. Similarly, number of cases recognised as a part of right to life enshrined in Article 21 of the Constitution. In *Vishaka vs. State of Rajasthan* [22], apex court held that, sexual harassment of women at work place was found to be against human dignity and violation of Article 21 of the Constitution. In *Bodhisattwa Gautam vs. Subhra Chakraborty* [23], the court held that rape is a crime against the basic human right and violation of the right to life enshrined in Article 21 of the Constitution and provided certain guidelines for awarding compensation to the rape victim.

❖ **Right Against Honour Killing**

A division bench of Allahabad high court, in *Surjit Kumar vs. State of U.P.* [24] took serious note on harassment, in ill treatment and killing of a person who was a major, for wanting to get married to a person of another caste or community, for bringing dishonour to family; since inter-caste or inter-community marriage was not prohibited in law, the court said that such practice of “honour killing” was a blot on society. The court, therefore, directed the police to take strong measures, against those who committed such ‘honour killing’.

❖ **Right to Social Security and Protection of Family**

Right to life covers within its ambit the right to social security and protection of family. K. Ramaswamy J., in *Calcutta Electricity Supply Corporation (India) Ltd. vs. Subhash Chandra Bose* [25], held that right to social and economic justice is a fundamental right under Art. 21. The learned judge explained that right to life and dignity of a person and status without means, were cosmetic rights. Socio-economic rights were, therefore, basic aspirations for meaning right to life and that right to social security and protection of family were integral part of right to life.

❖ **Death with Dignity**

In a historic decision, a Constitution Bench of the Supreme Court, led by Chief Justice of India Dipak Misra, in three concurring opinions, upheld that the fundamental right to life and dignity includes right to refuse treatment and die with dignity. It was held that the fundamental right to a “meaningful

existence” includes a person’s choice to die without suffering [26].

The Honourable Court, on 9th March 2018 declared passive euthanasia and the right of persons, including the terminally ill, to give advance directives to refuse medical treatment permissible. The apex court by its order on 7 March 2014, in *Aruna Shanbaug* case had permitted passive euthanasia under certain circumstances, provided it was backed by the permission of the high court.

CONCLUSION

To achieve the goal of development for democratic country, basic necessities of life are very important as *Bhagwati J.* in *Francis Coralie* case viewed that right to life includes right to live with human dignity and all that goes along with bare necessities of life such as adequate nutrition, clothing and shelter, facilities of reading, writing and expressing oneself in diverse forms, freely moving about, mixing and commingle with human beings.

As in case of *Sunil vs. Delhi administration* [27], (first) it was held that right to live means something more than mere animal existence and includes right to live with human dignity and decency even in rescue home or prison; and in *Gian Kaur vs. State of Punjab* [28], it was held that right to live does not include right to die or commit suicide but in some exceptional cases when a person is suffering from incurable disease and he is in a persistent vegetative state (PVS) and his chance of living further are very little; then euthanasia should be permitted but it is not so because state has an interest in preservation of life not to take it. In 1981, Supreme Court gave expansion of the right to life, which was carried forward in subsequent cases. In *Francis Coralie Mullin vs. Administrator, Union Territory of Delhi* [29], the court held that, ‘the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter etc’. Apex court in *Oliga Tellis vs. Bombay Municipal Corporation* [30] held that, the inhibition against deprivation of life extends to those limits and faculties by which life is enjoyed. In the case of *Maneka Gandhi vs.*

Union of India [31], it was held that any law that deprives the life and liberty must be just and fair. *Krishna Iyer J* rightly said that “procedure” in *Article 21* means fair, not formal procedure law is reasonable law not any enacted pieces” Now it is settled that *Article 21* confers positive rights to life and liberty. The word life in *Article 21* means a life of dignity and not just mere animal survival (this was also upheld in the case of Francis Caralie) [32]. The procedure of depriving a person of his life and liberty must be reasonable, fair and just.

In 1978, the 44th amendment of the constitution took place, *Article 359* was amended, and it stated that *Article 20* and *21* could not be suspended even during declaration of an emergency. In the case of *P. Rathinam* [33], case held that right to live includes right not to live. Physical as well as mental health both are treated as integral part of right to live, upholding that without good health, neither civil nor political rights which constitution confers can be enjoyed. Judiciary has played a vital role in the interpretation and correct use of *Article 21*.

In Case of *C Masilamani Mudaliar vs. Idol of Sri Swami Nathaswami Thrukoll* [34], it was observed that, *Article 21* of the Indian constitution reinforces “right to life”. Equity, dignity of a person and the right to development are the inherent rights of every human being. Life in its expanded horizon includes everything that gives meaning to a person’s life including culture, heritage and tradition with dignity of a person.

At this point of juncture, it can be analysed that Indian judiciary has acknowledged many facets of ‘right to dignity’, i.e. *comfort, reputation, privacy, Social Security and Protection of Family, right against honour killing* etc. Most importantly, the honourable Supreme Court has included the ‘*right to die with dignity*’ and upheld that, the fundamental right to life and dignity includes right to refuse treatment and die with dignity. So, for development of a democratic country, bare necessities of human life must be provided; the magnitude and content of the component of this right would depend upon the extent of

economic development of the country that it must in any matter include the right to basic necessities of life and right to carry on such functions and activities and constitute the base minimum expression of human self.

The courts in these cases, then, may be using dignity not simply as a right that may be enforced in specific circumstances as against overreaching state authority, like the right to equality or religion or housing. Rather, dignity is being used to demarcate the line between individual autonomy and state rule in contemporary society. The right to dignity denotes the area that the individual controls, i.e., the areas where the self rules. Where the claim of dignity fails, or the court concludes that the right to dignity does not prevail, the state (in the name of most of the other citizens) may impose its own rule. In these cases, the right to dignity has become the sphere in which individuals enjoy self-rule, at the limits of the law.

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