

Prisoner's Right to human Dignity under Criminal justice system in India: An Overview.

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ABSTRACT: *Human Dignity is the core and foundation of Human Rights. It can be achieved and protected through the proper implementation of Human Rights. It is understood and accepted that Civil and Political Rights as well as Economic, Social and Cultural Rights are indispensable and interdependent. The term 'Dignity' is used in moral, ethical and political discussions to signify that a individual has an innate right to respect an ethical treatment.*

Custodial Dignity signify the idea that when a person is in the custody, should be respected and must not be humiliated and maul his dignity by any law enforcement officials. The very idea of human being in custody, save for protection and nurturing, is an anathema to human existence. Custodial violence is aggravated when it is committed by person who are supposed to be the Protector of Citizens. It is Committed under the Shield of uniform and within four walls of police station or lock-up, ultimately the victim being totally helpless.

Custodial violence including torture and death in lock ups strikes a blow at the Rule of Law of the country. It is the fundamental Right of every one in this country whether he is in the police custody or not, to live with dignity and free from exploitation which is recognized by Supreme Court in Francis Cora lie Mullin's Case. In D.K.Basu v. State of West Bengal, the Supreme Court observed that Custodial Torture is the naked violation of Human Dignity and degradation which destroys to a very large extent individual personality.

Hence, there is an urgent need to examine the issue in depth to develop Criminal Jurisprudence for Protecting Dignity of the accused and also to make police officials accountable for their acts and omission.

Key Words:

All human beings have the right to live with dignity at all times, regardless of their legal, social or political status. Human rights are not gifts to be resorted at the whims and fancies of anyone, nor a privilege, an act of grace and charity. Equity and Justice are the heart of all human rights. Living with dignity and without fears are basic human needs. It includes adequate decent food, water and health, freedom from slavery, fair treatment under law etc. these basic human needs and values are the foundations of Universal ideas of human rights.

Meaning and Concept of Dignity

The term dignity is used in moral, ethical and political discussions to signify that a being has an innate right to respect and ethical treatment. It is an extension of enlightened-era belief that individual have god given, inviolable right, and this is closely related to concepts like virtue, respect, self respect, autonomy, human rights and enlightened reasons.¹

The word dignity has been derived from the Latin word 'dignitas' which denotes a quality of being worthy or honorable. It suggests a high rank or position of distinction in the community, Human dignity consists in man's ability to experience, self awareness and to their rationality. When one loses the ability to exercise his rational function, he has lost his humanness i.e. his dignity. The epic Mahabharata defines maryada as the dignity which lies in righteous conduct and its characteristic is to control or to limit or restrain. Bhababhuti in his Uttar Ramcharitam has used the word; Binnamaryada signifying unrestrained action and Durmaryada which means wicked. In Panchatantra the word Amaryada has been used in the sense of not keeping ones action within the right way. The morality of Islam is based on concept of Haya which aims at inculcating a feeling of shyness in human nature and tries to develop it as a part of mans mental makeup so that it may serve as a strong mental deterrent against all civil inclinations.²

¹ . Gopal Subhramaniam, 'Contribution of Indian Judiciary to social justice principles Underlying the Universal Declaration of Human Rights', J.I.L.I. oct-Dec. 2008. Vol.50. P. 593

² . Palok Basu, Law relating to Protection of Human Rights, [First Edition 2002], Published by Modern Law Publications, New Delhi, P. 330

Human dignity is quintessence of human rights, this statement is easy to comprehend, even by a common man, and yet it is comprehensive enough to encompass all aspect of human dignity, which is essential for a life with dignity, the real purpose of recognizing human rights.

Concept of Custodial Dignity

Custodial dignity signifies the idea that when a person is in custody either in police or judicial custody, should be respected and must not be humiliate and maul his dignity by any law enforcement officials. The very idea of a human being in custody, save for protection and nurturing, is an anathema to human existence.³ The word custody implies guardianship and protective care. Even when applied indicate to arrest or incarceration, it does not carry any sinister symptoms of violence during custody. No civilized law postulates custodial cruelty-an inhumane trait that springs out of a perverse desire to cause suffering when there is no possibility of any retaliation, a sinister exhibition superiority and physical owner over the one who is empowered or a collective wrath of Hippocratic thinking. Dignity is an inalienable right of human being. A custodial dignity that precedes every human born-a dignity infused in the human system that must revolt against its non recognition.

The attack on human dignity can assume any form or manifest itself at any level. It is not merely the negative privileges of a crude merciless display of physical power by those who are cast in a role play of police functioning, but also a move mentally lethal abuse of position when springing from high pedestals of power in the form of uncalled of insinuate, unjustified accusations, unjust remarks, menacingly displayed potential harm and which brook no opposition.⁴

Dignity is Universal concern. Its moral agenda is to attempt double kind of evaluation of the individual community on the one hand and the entire social formation on the other. Today's various forces challenge the basic dignity of the people all over the world Dignity has critical relationship with caste, class, race, religious and gender divisions. Women are objectified after all, in order to maintain dignity of a patriarchal society. A perspective from the point of subalterns and the marginal is also important for ensuring minimum condition for dignity even in custody.

Human dignity is the core foundation of human rights; It is through the implementation of human rights that human dignity is protected. It is now widely accepted and understood that civil and political rights as well as economic social and cultural rights are in dispensable and interdependent.

The right to human dignity of prisoners including convicts imposes a duty of state to ensure that living conditions in every prison and allied institutions and compatible with human dignity in all respect such as accommodation, hygiene, sanitation, food, clothing, medical facilities etc. It is a matter of deep anguish that conditions in Indian Prison are chaotic and deplorable.

The concept of Custodial dignity has been originated keeping in view the increasing incident of police brutality, torture and inhuman degrading treatment. Moreover, deplorable prison conditions compelled us to rethink the dignity of detainee and prisoners. There are numerous cases where the police officer have misused their powers on the people and toyed with their lives. The police officers, who are regarded as custodian and guardian of Law, have acted in just the contrary manner and have failed to protect the basis right to life guaranteed by the Constitution. Custodial violence is aggravated and the fact that it is committed by persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and within four walls of a police station or lock-up, ultimately the victim being totally helpless.

Whenever human dignity is wounded, civilization takes a step backward. It is a calculated assault on human dignity community Custodial violence and abuse of police power is not international community because the problem is universal and the challenge is almost global.

Provision of Dignity under International Law and its Implementation in India:

The last decade has witnessed a worldwide movement for the protection of fundamental human rights, however, the idea of inalienable human rights are not new and its origin can be traced to the concept of Natural Law and Natural Rights. In the time frame of Universe measured in millennium, the systematic proclamation of Declaration of human rights is recent; its beginning can be traced to Magna Carta(1215), the

³ . J.S.Verma, Human Rights and the Judiciary,"The new Universe of Human Rights,[2004 Edition] Universal Law Publishing Co.Pvt. New Delhi, P. 71

⁴ . R.K Abichandani," Custodial Dignity", [http// gujrat high court.nic.in](http://gujrat high court.nic.in) visited on 10.03.09.

English Bill of Rights(1688), only peculiar to this country but it is also widespread. It has been a concern of the American Declaration of Independence (1776), and the French Declaration of Rights of Man(1789).

The legal process towards the universalization of human rights started in the mid Twentieth century after the Second World War. The world was witnessed of the horror of two world war and its impact compelled the Nation Representative to assembled and met at San Francisco on 20th June, 1945 and adopted United Nations Charter which inter alia is declaration of faith” in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women of nations, large and small. The preamble as well as Article 1,55,56,62,68 and 76 of the U.N.Charter provide the basis for elaboration of the content of Standards.⁵

On 10th December 1948,⁶ the general Assembly of the United Nations adopted Universal Declaration of Human Rights. This was the first positive manifestation of internationalizing of human rights values though it was not binding rather than an authoritative guide. The Preamble of Universal Declaration of Human Rights, 1948 declares that “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.”⁷ It comprises a broad range of rights, has inspired more than 60 human rights instruments which together constitute an international standard of human rights. Article 1 form the basis of the Declaration which says: All human being are born free and equal in dignity and rights. A group of Articles 3 to

21 contain civil and political rights. Out of these Articles 3 is of the fundamental importance which says that everyone has the right to life, liberty and security of persons. This right is further by the freedom from torture or cruel, inhuman or degrading treatment or punishment. The Indian Constitution bears the impact of the Universal Declaration. Drafted around the same time as the Universal Declaration of Human Rights in its preamble and

Articles on Fundamental Rights and the Directive Principles of State policy. International Covenant on civil and political Rights 1966 recognized the inherent right to life of a human being. Article 10⁸ of the Covenant declares all persons deprived of their liberty shall be treated with humanity and with respect for inherent dignity of the human person and the accused person shall, save in exceptional circumstances, be segregated from convicted persons and shall be subjected to separate treatment appropriate to their status as un-convicted persons.

The provisions of International Covenant on civil and political rights are reflected in our Constitution in Part III as fundamental rights. The International Covenant on Economic , Social and Cultural Rights includes right to health, right to adequate food, the right to adequate standard of living. It may be mentioned here that under the International Covenant on Economic, Social and cultural rights the states parties undertake “to take steps”, progressively for the full realization of the rights recognized in the present Covenant. It may be compared with their obligation under the International Covenant on Civil and Political rights under which the state parties undertake “to respect and ensure” to all individuals within its territory the right recognized in the said Covenant. Thus, state parties under the International Covenant on Economic social and cultural rights are not under an obligation “to respect and ensure, rather they are under an obligation “to take steps towards the realization of those rights incorporated therein.

India has signed and ratified the International Covenant on Economic Social and cultural Rights.⁹ The Economic Social and Cultural Rights include the right to free legal aid, to education, to health, minimum wages for workers are to be found under the description of Directive Principles of State Policy contained in Part IV of the Indian Constitution, which according to Article 37 “shall not be enforceable by any court but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply those principles in making law.

Standard minimum Rules for the Treatment of Prisoners were adopted by the United Nations Congress on the prevention of Crime and treatment of offenders at Geneva in 1955 and it was approved by the economic and social council by its resolution 663(XXIV) of 31st july 1957 and 2076 (CXII) of 13th May 1977. Article 3 of the Geneva Conventions explicitly prohibits “outrages upon personal dignity “.¹⁰ There are provisions to this

⁵ . The Charter of United Nations.

⁶ . The Universal Declaration on Human Rights,1948.

⁷ The Preamble of the Universal Declaration on Human Rights, 1948.

⁸ . Article 10 of International Covenant on Civil and Political Rights,1966.

⁹ . The Covenant on Economic Social and Cultural Rights,1966.

¹⁰ .Article 3 of Geneva Convention, 1995.

effect in International Covenant on Civil and Political Rights (Article 7) and the European Convention of Human Rights (Article 3).

Provision under In Indian Constitution:

The Preamble of the Indian Constitution conveys the philosophy of the free nation, The Preamble provides that India would be “ Sovereign Socialist Secular Democratic Republic.”The Preamble emphasized on the unity and integrity of the nation and also on the dignity of the individual. “ Right to life” enshrined under Article 21 is to be read as “ right to life with dignity” and it is linked with right to grow as a human being. Likewise, human dignity is used as loadstar for equality and to counter unfair discrimination while interpreting Article 14 of the Indian Constitution, thereby providing a clear linkage and connection between dignity, equality and unfair discrimination under Article 14.

Judicial activism to protect Dignity:

India has strong and independent Judiciary which is ordained to be the custodian of the fundamental rights of the people. The development of public interest litigation in the Indian legal system has generated considerable jurisprudence around human rights to the advantaged of the weaker and exploited sections of society. The doors of the Apex Court and High Courts have been thrown open through this device by dispensing with traditional rules of locus-standi. This has definitely taken the cause of human rights further and specially helped those persons who were unable to approach the Courts themselves on account of poverty disability and others social or economic impediments.¹¹

By playing a pivotal role in the task of protecting human rights, the Supreme Court has made a positive contribution in sub fertile field. In pre Maneka era the Judiciary assumed rather passive role. The turning point came in 1978 in Maneka Gandhi’s case,¹² when the Supreme Court held that any state action affecting life and liberty of a person has to be right just, fair and reasonable and not arbitrary, fanciful and oppressive. In the post Maneka period Court’s activism blossomed and flourished a new trend was set in Maneka Gandhi’s¹³ case. The Supreme Court of India under Article 21 has developed a whole character of Human Dignity and right Jurisprudence of Prisoners. Right to human dignity belongs to all human beings inside and outside the Prison.

In Asiad Workers case,¹⁴ Justice Bhagwati, observed that workers human dignity is guaranteed by Article 21 as Article 21 guaranteed the right to life and personal liberty is not confined not only to right to physical existence but also includes within its scope and ambit the right to live with basic human dignity, and the state could not deprive anyone of this right as no procedure regarded as fair, just and reasonable. In other words in Supreme Court’s opinion right to life is right to dignity.

In Sunil Batra v. Delhi Administration,¹⁵ a habeas corpus 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:

“ 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 states minions become Law Breakers and so the Court, as the sentinel of the nation and the voice of the Constitution, runs down 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 can not slumber when the very campuses of punitive justice witness torture.”

In Smt. Selvi & Ors. V. State of Karnataka,¹⁶ the apex Court observed that the compulsory administration of the impugned techniques constitute ‘cruel inhuman or degrading treatment’ in the context of Article 21.

In Arvinder singh Bagga v. State of U.P. & Ors,¹⁷ the Apex Court opined that torture is not merely physical but may even consist of mental and psychological torture calculated to create fright to submit to the demands of the Police.

¹¹ . H.R.Bhardwaj,” Evolving Human Rights Jurisprudence”, I.B.R. IIIX(1)1993,P.53.

¹² . Maneka Gandhi v. Union of India, AIR 1978 SC 597.

¹³ . AIR 1978 SC 597.

¹⁴ .

¹⁵ . Sunil Batra v. Delhi Administration,(1) (1978) 4SCC 494.

¹⁶ . AIR 2010 SC 1974.

¹⁷ . AIR 1995 SC 117.

In *Dr. Mehmood Nayyar v. State of Chhattisgarh & Ors.*¹⁸, the Court created 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.

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 under trials or even as convicts.¹⁹

In this case 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, unless he is a hardened criminal and in that case also previous permission of the concerned Judicial Magistrate shall have to be taken.

In *Shabnam v. Union of India & Ors.*,²⁰ the Supreme Court has gone to the extent of protecting certain rights of even death convicts, holding that they cannot be executed till

they exhaust all available Constitutional and Statutory remedies. In the process, the Court has held “once we recognize this aspect of dignity of human being, it does not end with 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.”

¹⁸ . (2012) 8SCC 1

¹⁹ . *D,K Basu v.State of West Bengal*(1997) 1 SCC 416.

²⁰ .*Shabnam v. Union of India & Ors.*(2015) 6SCC 702.