

**AFR**

**RESERVED**

**DELIVERED ON 29.01.2021**

**Court No. - 29**

**Case :- CRIMINAL MISC. WRIT PETITION No. - 10974 of 2020**

**Petitioner :- Jeeshan @ Jaanu And Another**

**Respondent :- State Of U P And 4 Others**

**Counsel for Petitioner :- Abou Sofian Usmani, Upendra Upadhyay**

**Counsel for Respondent :- G.A.**

***with***

**Case :- CRIMINAL MISC. WRIT PETITION No. - 13521 of 2020**

**Petitioner :- Balveer Singh Yadav**

**Respondent :- State Of U.P. And 2 Others**

**Counsel for Petitioner :- Siya Ram Verma**

**Counsel for Respondent :- G.A.**

***with***

**Case :- CRIMINAL MISC. WRIT PETITION No. - 14300 of 2020**

**Petitioner :- Doodh Nath Yadav**

**Respondent :- State of U.P. And 3 Others**

**Counsel for Petitioner :- Amit Kumar Tiwari, Shiv Bahadur Singh**

**Counsel for Respondent :- G.A.**

**Hon'ble Pankaj Naqvi, J.**

**Hon'ble Vivek Agarwal, J.**

**(PANKAJ NAQVI, J.)**

I have gone through the judgment of my learned brother with whom I am in complete agreement including the reliefs granted. However, as the issue raised is of considerable public importance involving the dignity of an individual, I have penned my thoughts, but have refrained from adverting to the factual matrix, as the same has been elaborately discussed by my esteemed brother.

Whether the State has a right to disclose the identity and criminal antecedents of an accused in the public domain is an issue involved in this petition?

1. Sri Vinod Diwakar, the learned Addl. Advocate General assisted by Sri Deepak Mishra and Ms. Manju Thakur, the learned AGA for the State justified the disclosure as need of the hour as according to them the nature of crime and criminality is constantly changing and unless the State is conferred with such a power, crime and criminals cannot be controlled putting the lives of citizens at risk.

2. Sri Upendra Upadhyay, Sri Siya Ram Verma and Sri Shiv Bahadur Singh, learned counsel for the petitioners in the respective petitions and Sri Vinay Saran, the learned Amicus assisted by Sri Saumitra Dwivedi vehemently opposed the defence of the State on the premise that the above public disclosure undermines the dignity of an accused as a human being constitutionally protected under Article 21 and the State under the garb of its police power cannot invade such a right.

3. Immanuel Kant defined dignity as “*A quality of intrinsic, absolute value, above any price and thus excluding any equivalence.*”<sup>1</sup>

Ruth Bader Ginsberg has maintained the idea of essential human dignity, that we are all people entitled to respect from our Government as persons of full human stature, and must not be treated as lesser creatures.<sup>2</sup>

According to French Philosopher Charles Renouvier- “*Republic is a state which best reconciles the interest and the dignity of each individual with the interests and dignity of everyone.*”

Neomi Rao an American Jurist in an illuminating article titled “Three Concepts of Dignity” (NOTRE DAME REVIEW (Vol- 86-

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1 Lecture on Ethics (1779)

2 Lecture delivered at CUNY School of Law, 7 NY City, LR 221, 232 (2004).

2011)) has emphasized **first** and foremost on inherent birth of each individual as an essential facet of dignity. Dignity inheres in every human being. It is not dependent on intelligence, morality or social status. *Intrinsic dignity* is a presumption of human equality, each person is born with the same quantity of dignity. **Secondly**, substantive forms of dignity may require living in a certain way, eg, self control, courage and modesty. **Substantive** conception of dignity is also associated with social welfare rights or protection by the State from poverty and violence. This dignity is not inherent in an individual as it is capable of being lost or gained. **Thirdly**, Constitutional Courts often associate dignity with recognition and respect. This recognition requires individuals to demonstrate concern for each other, which is compatible with the concept of fraternity and dignity.

5. Post World War-II the atrocities committed by the Nazi regime led to the emergence of modern Constitutional democracies, where prime importance was given to protection of basic human rights with special emphasis on dignity, in their Constitutions.

The preamble of Universal Declaration of Human Rights (UDHR), 1948 mentions dignity as under –

***“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 of UDHR***

“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.” **Article -12** thereof respects honour and reputation:

International Covenant on Civil and Political Rights (ICCPR), 1966 to which India is a signatory provides that in accordance with the principles proclaimed in the Charter of United Nations,

recognition of 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 17 provides that the obligation imposed by this Article requires the State to adopt legislative and other measures to give effect to the prohibition against such interferences and attacks as well as to the protection of the rights.

The framers of the Indian Constitution while drafting the same were conscious that justice, liberty and equality would be futile if the Constitution is unable to protect and preserve the dignity of an individual. To achieve the goals enshrined in the preamble of the Constitution, the framers gave utmost importance to the existence and enforcement of fundamental rights of the individual.

6. The concept of dignity of an individual is not endowed either on account of the Constitution or the laws rather it inheres in an individual as a human being, which commences the moment he is born and continues even after death. This is how dignity is acknowledged as a manifestation of human rights. The preamble of the Constitution contains a solemn promise to secure the dignity of the individual as its framers were aware that the Constitution is an outcome of a long arduous struggle, which must value the dignity of an individual, independent of his social status.

7. The Protection of Human Rights Act, 1993 defines “human rights” as inclusive of dignity. Section 2(1)(d) thereof reads as under--  
2(1)(d) – “ human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the international covenants and enforceable by courts in India.

8. Dignity means self-respect. It cannot be gainsaid that once self-respect is affected, dignity is compromised. Dignity of an individual is inalienable and is not dependent on the status and class of an individual as it originates from the person being a human being and continues even after death.

9. The Apex Court taking a cue from Articles 14, 19 and 21, has translated over a period of time, the concept of life and personal liberty in myriad ways, expanding its scope so as to include respect for dignity of an individual as an integral part of the Constitution. A few instances are –

- (I) Death convicts not to be kept in solitary confinements in view of Article 21 as convicts are not wholly denuded of their fundamental rights.<sup>3</sup>
- (II) For handcuffing of accused while in transit from jail to Court, reasons must be recorded by the police authorities for handcuffing.<sup>4</sup>
- (III) Right of an accused to consult his / her lawyer in jail premises in the presence of a jail officer, who is not to be present within audible distance<sup>5</sup>
- (IV) Minimum requirements for workers in order to enable them to live with dignity and no State has the right to take any action, which deprives a person of the enjoyment of basic essentials.<sup>6</sup>
- (V) Police officers should have greatest regard for the personal liberty of an individual as they are custodians of law and order, they should not flout the law as their duty is to protect the individuals.<sup>7</sup>
- (VI) Activists arrested, paraded throughout the town and beaten up by police – The Court held that it must intervene in the interest of justice, human dignity and democracy. It further held that “if dignity or honour vanishes, what remains of life.”<sup>8</sup>

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3 (1978) 4 SCC 494, *Sunil Batra v. Delhi Administration and ors*

4 (1980) 3 SCC 526, *Prem Shankar Shukla vs. Delhi Administration*; (1990) 3 SCC 119, *Sunil Gupta vs. State of M.P.*

5 (1981) 1 SCC 608, *Francis Coralie Mullin vs Administrator, Union Territory of Delhi and ors*

6 (1984) 3 SCC 161, *Bandhua Mukti Morcha Vs. Union of India.*

7 (1985) 4 SCC 677, *Bhim Singh vs. State of J & K and ors*

8 (1994) 6 SCC 260, *Khedat Mazdoor Chetna Sangath vs. State of M.P.*

- (VII) Exhaustive guidelines laid down to be followed by the police, while effecting the arrest of an accused keeping in view the dignity of the accused.<sup>9</sup>
- (VIII) Practice of custodial torture, rape and death in police custody as being in naked violation of human dignity came to be deprecated, coupled with several directions to protect the rights of accused along with vicarious liability of the State for compensation, if found to be culpable for the infringement of fundamental rights of the accused.<sup>10</sup>
- (IX) Human dignity was held to be an intrinsic value of every human being by virtue of his existence and it is the duty of the State not only to protect the human dignity but to facilitate it by taking positive steps.<sup>11</sup>
- (X) Accused during investigation cannot be subjected to Narco Analysis / Polygraph/ Brain Electrical Activation Profile (BEAP) without his consent, else it would be violative of Article 20(3) and 21 of the Constitution.<sup>12</sup>
- (XI) Many rights of accused are derived from his dignity as a human being.<sup>13</sup>
- (XII) The Constitutional value of human dignity has a central normative role. Human dignity as a constitutional value is the factor that unites the human rights into one whole.<sup>14</sup>

10. I, now proceed to deal with the case of ***Mohd Nayyar Azam Vs. State of Chhattisgarh, (2012) 8 SCC 1***, as its facts are akin to the present case.

Azam was a doctor working for the marginalised section of the society, who incurred the wrath of the local coal mafia, the police and

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9 (1994) 4 SCC 260, *Joginder Kumar vs. State of UP and ors*

10 (1997) 1 SCC 416, *D.K. Basu vs. State of West Bengal*

11 (2006) 8 SCC 212, *M. Nagraj v. Union of India*

12 (2010) 7 SCC 263, *Selvi vs. State of Kerala*

13 (2015) 6 SCC 702, *Shabnam v. Union of India*.

14 (2016)7 SCC 761, *Jeeja Ghosh v. Union of India*

persons, whose interest was affected. He came to be arrested and while he was kept in the lock up at the police station, he was not only abused and assaulted, but the SHO and ASI took his photograph compelling him to hold a photograph on which the following was written: “***Mai Dr. M.N. Azam chal-kapati, chor aur badmash hun***”, which translated in English would mean that “**I, Dr. M.N. Azam, am a cheat, fraud, thief and a rascal**”. Subsequently the said photograph was circulated at large. The Apex Court, inter alia, took the view that the conduct of the police in getting the petitioner photographed with a placard containing the malicious statement did amount to humiliation and mental trauma in police custody corroding human dignity. I derive support from the following paragraphs of ***Nayyar (supra)***—

***“38. It is imperative to state that it is the sacrosanct duty of the police authorities to remember that a citizen while in custody is not denuded of his fundamental right under Article 21 of the Constitution. The restrictions imposed have the sanction of law by which his enjoyment of fundamental right is curtailed but his basic human rights are not crippled so that the police officers can treat him in an inhuman manner. On the contrary, they are under obligation to protect his human rights and prevent all forms of atrocities.***

***We may hasten to add that a balance has to be struck and, in this context, we may fruitfully quote a passage from D.K. Basu (supra):***

***There can be no gainsaying that freedom of an individual must yield to the security of the State. The right of preventive detention of individuals in the interest of security of the State in various situations prescribed under different statutes has been upheld by the Courts. The right to interrogate the detenus, culprits or arrestees in the interest of the nation, must take precedence over an individual's right to personal liberty. .... The action of the State, however, must be "right, just and fair". Using any form of torture for extracting any kind of information would neither be 'right nor just nor fair' and, therefore, would be impermissible, being offensive to Article 21. Such a crime-suspect must be interrogated-indeed subjected to sustain and scientific interrogation-determined in accordance with the provisions of law. He cannot,***

***however, be tortured or subjected to third degree methods or eliminated with a view to elicit information, extract confession or derive knowledge about his accomplices, weapons etc. His constitutional right cannot be abridged except in the manner permitted by law, though in the very nature of things there would be qualitative difference in the method of interrogation of such a person as compared to an ordinary criminal.***

**39. ....**

**40. ....**

***41. Presently, we shall advert to the aspect of grant of compensation. The Learned Counsel for the State, as has been indicated earlier, has submitted with immense vehemence that the Appellant should sue for defamation. Our analysis would clearly show that the Appellant was tortured while he was in custody. When there is contravention of human rights, the inherent concern as envisaged in Article 21 springs to life and enables the citizen to seek relief by taking recourse to public law remedy.***

11. A welfare State is governed by rule of law. The approach of the Apex Court in respecting and upholding the dignity of an individual, whether he be an accused or a convict, is both pragmatic and sensitive.

Sensitization is an important aspect of policing as the Police being in the forefront to maintain law and order are expected to strictly uphold the rule of law. A police force sans sensitivity could play havoc with the life and liberty of an individual including his / her dignity. Dignity is neither class centric nor an elitist concept. It inheres in all individuals as human beings. Article 21 encompasses all shades of dignity as a necessary concomitant of liberty. Life without dignity would amount to mere animal existence in the opinion of the Apex Court. Fundamental rights of an accused while in custody or not are never wholly denuded, they stand abrogated only to the extent he is unable to enjoy them on account of his incarceration. The State has no right whatsoever to indulge in any act, which dents the dignity of an individual, as once dignity is lost, it cannot be retrieved.



12. The circular of D.G, Police, U.P dated 6.7.2020 envisaging a criteria to select Top-10 criminals in a district and in each police station is in exercise of power to maintain surveillance, to which no illegality could be attached. I also hold the circular dated 6.7.2020 to be lawful and valid. However, there is nothing in the circular which enables the police to disclose the identity of an accused and his criminal antecedents in public gaze. It could not be disputed by the learned Addl. Advocate General that a police station is a public place as any member of public is entitled to right of entry. The State sought to justify the disclosure with a view to alert and caution its citizens as to the activities of the accused. The State also relied on an order of the Apex Court, i.e, ***Ram Babu Singh Thakur v. Sunil Arora and Ors, 2020 SCC Online SC 178***, where it permitted the Election Commission of India to disclose the criminal antecedents of a candidate contesting elections under the Representation of People Act, 1951 in public domain.

13. I am not impressed with either of the pleas. A welfare State, governed by rule of law must adhere to all constitutional norms. All actions of the State must be prompted in public interest and not be an outcome of preconceived prejudices. It does not behove a State to dent the dignity of an individual howsoever horrific his conduct may be. All that the State is constitutionally empowered to do is to conduct fair and unbiased investigation against an accused, prosecute him in a court of law by providing adequate opportunity to defend himself. I need not reiterate that a convict too is entitled to the enforcement of at least those fundamental rights or basic human rights which affect his life and liberty including dignity as a human being under Article-21.

14. The order of the Apex Court in Election case was in the context of the power of Election Commission to hold free and fair election, to elect a democratic government, which is one of the basic structures of the Constitution. If the elector is made aware of the alleged criminal antecedents of a candidate, the voter would be in a

better position to take an informed decision to vote. Here in the present case no laudable object is achieved with the disclosure of identity of the accused and his alleged criminal antecedents in public domain.

15. The recent decision in ***K.S. Puttaswamy and Ors. vs. Union of India (UOI) and Ors, (2017) 10 SCC 1*** only reinforces the view that the privacy of an individual is inextricably linked with dignity which inheres in Article-21.

***Dr. D.Y. Chandrachud, J.***

***“ Para-119-- To live is to live with dignity. The draftsmen of the Constitution defined their vision of the society in which constitutional values would be attained by emphasising, among other freedoms, liberty and dignity. So fundamental is dignity that it permeates the core of the rights guaranteed to the individual by Part III. Dignity is the core which unites the fundamental rights because the fundamental rights seek to achieve for each individual the dignity of existence. Privacy with its attendant values assures dignity to the individual and it is only when life can be enjoyed with dignity can liberty be of true substance. Privacy ensures the fulfilment of dignity and is a core value which the protection of life and liberty is intended to achieve.”***

***Justice S.A. Bobde***

***“Para-411 – It is difficult to see how dignity - whose constitutional significance is acknowledged both by the Preamble and by this Court in its exposition of Article 21, among other rights - can be assured to the individual without privacy. Both dignity and privacy are intimately intertwined and are natural conditions for the birth and death of individuals, and for many significant events in life between these events. Necessarily, then, the right of privacy is an integral part of both 'life' and 'personal liberty' Under Article 21, and is intended to enable the rights bearer to develop her potential to the fullest extent made possible only in consonance with the constitutional values expressed in the Preamble as well as across Part III.”***

***Justice A.M. Sapre***

***“Para-542 – The keynote of the Preamble was to lay emphasis on two positive aspects - one, "the Unity of the Nation" and the second "Dignity of the individual". The expression "Dignity" carried with it moral and spiritual imports. It also implied an obligation on the part of the Union to respect the personality of every citizen and***

***create the conditions in which every citizen would be left free to find himself/herself and attain self-fulfillment.***

***543. The incorporation of expression "Dignity of the individual" in the Preamble was aimed essentially to show explicit repudiation of what people of this Country had inherited from the past. Dignity of the individual was, therefore, always considered the prime constituent of the fraternity, which assures the dignity to every individual. Both expressions are interdependent and intertwined.***

***544. In my view, unity and integrity of the Nation cannot survive unless the dignity of every individual citizen is guaranteed. It is inconceivable to think of unity and integration without the assurance to an individual to preserve his dignity. In other words, regard and respect by every individual for the dignity of the other one brings the unity and integrity of the Nation."***

16. Surveillance is expected to be secretive and discreet so that the person concerned does not know that he is under surveillance. It is an important power of police with a view to keep both criminals and crimes at bay. Once the identity of a person under surveillance is made known to public not only the purpose of surveillance stands frustrated, but the State and its officers also become vicariously liable for infringing the dignity of an individual. U.P. Police Regulations may not be having statutory support as they are only guidelines for efficient working of the police, but when Rule 250 provides that history-sheets are confidential records and the Station Officer must see that unauthorized persons do not have access to them then how can the police be permitted to violate its own rules under the garb of controlling crime by naming and shaming persons?

17. Prof. James Witman of Yale Law School has described shaming as a practice as "intuitively barbaric" when society shows its contempt or disgust towards individual wrongdoing by subjecting the perpetrator to a form of peculiar vulnerability, which can deprive him or her of dignity or personhood."<sup>15</sup>

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15 (1) James Q. Witman. "What is wrong with inflicting shame sanctions?" Yale Law Journal 107 (1988): 1055-92.

Similarly, Prof. James Carey has warned against the use of rituals of shame for they are “dangerous moments in the life of democracies, when the power of the State, public opinion or both is inscribed on the body of the targetted individuals.”<sup>16</sup>

18. Human dignity has become an inseparable part of constitutionalism and human rights. The beauty of Article-21 is that its protection is available to all persons. What could be more horrifying for our generation than to witness a psychopath terrorist, on a shooting spree in the lanes of Mumbai, ultimately nabbed by the police, put on trial, provided a counsel at State expense, resulting in conviction and sentenced to death but still buried with dignity. This is how our Constitutional Courts and Constitutional morality have extended dignity even to a dead person irrespective of his class/ caste/ religion without being swayed by the gravity of offence. The Constitutional Courts are obliged under all circumstances to uphold the dignity of an individual.

19. I, in the ultimate analysis, am of the view that the circular of DG (Police) dated 6.7.2020 cannot be faulted, but the action of its officers in disclosing the identity of petitioners in police stations in public gaze is absolutely unwarranted and uncalled for as being violative of Article 21 of the Constitution.

The writ petitions are **allowed**.

**Order Date :-** 29.01.2021  
N.S.Rathour

(Pankaj Naqvi,J.)

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<sup>16</sup> James W. Carey. “Political Ritual on Television: Episodes in the History of Shame, Degradation and Excommunication.” In *Media, Ritual and Identity*. Edited by Tamar Liebes and James Curran. London: Routledge, 1998, pp. 42-70.