

THE RIGHT TO DIGNITY: AN ENIGMA FOR THE MIGRANT WORKER?

*PEARL MONTEIRO¹

Human rights are often defined as entitlements that human beings possess just by virtue of their inherent dignity.² The Universal Declaration of Human Rights,³ mentions the word, "dignity" at least five times, it recognizes the inherent dignity of all members of the human family,⁴ reaffirms its faith in the dignity of the human person,⁵ states that all have equal dignity,⁶ all individuals are entitled to rights indispensable to dignity,⁷ and are entitled to remuneration which entitles them to lead a dignified life.⁸ The Constitution of India, does not directly mention the word dignity, but has been interpreted by the Supreme Court and read into articles 14 and 21.⁹ In *National Legal Services Authority v. Union of India*, it held, "In fact, there is a growing recognition that the true measure of development of a nation is not economic growth; it is human dignity."¹⁰

Pandemics demonstrate that much of a nation's resilience is left to chance and good luck rather than planned, concentrated efforts.¹¹ The havoc wrecked by the current Covid 19 pandemic is unprecedented and took most of the countries by surprise.¹² The crisis has caused most States to shift their focus back to domestic policies.¹³ Initial response of most countries around the world were large scale lockdowns, mostly with little or no prior warning. During this period, not much focus was there on anything other than staying at home. However, in due course, the lockdown was lifted in phases, perhaps the hope was life would go back to

¹ Pearl Monteiro, Assistant Professor, V.M. Salgaocar College of Law

² Laura Valentini, Dignity and Human Rights: A Reconceptualisation, *Oxford Journal of Legal Studies*, Volume 37, Issue 4, Winter 2017, Pages 862–885, <https://doi.org/10.1093/ojls/gqx011>

³ Proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A)

⁴ Preamble

⁵ Preamble

⁶ Article 1

⁷ Article 22

⁸ Article 23.

⁹ 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.

¹⁰ (2014) 5 SCC 438

¹¹ Coyne, John, and Peter Jennings, eds. *After Covid-19: Australia and the World Rebuild* (Volume 1). Report. Australian Strategic Policy Institute, 2020. 2. Accessed August 13, 2020. doi:10.2307/resrep25138.4.

¹² Van De Pas, Remco. *Globalization Paradox and the Coronavirus Pandemic*. Report. Clingendael Institute, 2020. 4-5. Accessed August 13, 2020. doi:10.2307/resrep24671.5.

¹³ Tardy, Thierry, ed. *COVID-19: NATO in the Age of Pandemics*. Report. NATO Defense College, 2020. 13-20. Accessed August 13, 2020. doi:10.2307/resrep25148.8.

normal, but the damage was done, the economic losses were colossal, workers were retrenched, wages not paid and even basic needs not met. In this situation most of the migrant workers decided to literally walk back to their State of origin,

On the long trudge back home many migrants lost their lives due to accidents, illness and sheer exhaustion¹⁴ The estimated loss of life could be conservatively placed at around two hundred.¹⁵ This sudden decision to walk hundreds of kilometers without proper planning, backing, or facilities, was not understandable for many, specially the elite, salaried persons sitting comfortably in their homes, with no thought or fear as to the next meal.

Perceptibly, the migrants preferred to "die at home of the virus, than on the road of starvation".¹⁶ Enduring narratives of migrants crossing the Yamuna, fatally resting their tired bodies on railway tracks, overcrowded vehicles meeting with accidents, scrabbling for food, hosed with disinfectants, collapsing and dying out of starvation and exhaustion, children trying to wake up their dead parents. The list is endless and merciless. This is probably one of the darkest phases in India's history, when we did too little and too late. Perhaps as said by Nani Palkhivala, "large republics and small hearts go ill together."

The COVID-19 crisis for India has thus, also become a humanitarian one involving inter-State migrants on return journeys home racked by pain and suffering and no surety of any income going ahead.¹⁷ Initially even the Supreme Court turned a Nelson's Eye to their suffering, A few public spirited individuals brought the plight of the migrants before various high courts, as well as the Supreme court.¹⁸ However, the honorable court initially declined to interfere with the mass movement of the migrant workers.¹⁹ Finally the Supreme Court took

¹⁴ Arfa Javaid, *What is the Inter-State Migrant Workmen Act of 1979?*, MAY 12, 2020, <https://www.jagranjosh.com/general-knowledge/migrant-workers-protection-law-1589300556-1>, accessed on 1 June 2020

¹⁵ Chetan Chauhan, *Migrant Workers' Law In Focus As Crisis Intensifies*, May 28, 2020, <https://www.hindustantimes.com/india-news/migrant-workers-law-in-focus-as-crisis-intensifies/story-JdasIACACTryx1008KVyrN.html>, accessed on 1 June 2020

¹⁶ Rishika Baruah, *Coronavirus India - "We'll Die Of Hunger Before Virus Can Kill Us": Migrant Workers* 14 April 2020 <https://www.ndtv.com/india-news/coronavirus-india-lockdown-migrant-workers-well-die-of-hunger-before-virus-can-kill-us-2211539>, accessed on 1 June 2020

¹⁷ Nistula Hebar, *Migrant Labourers Are The Most Disenfranchised Invisible Citizens: Political Scientist Ashwani Kumar*, MAY 31, 2020 <https://www.thehindu.com/news/national/migrant-labourers-are-the-most-disenfranchised-invisible-citizens/article31717502.ece>, accessed on 1 June 2020

¹⁸ Edited by Ashutosh Tripathi, *'How Can We Stop It?': Supreme Court On Plea To Halt Migrant Workers' Movement On Roads*, May 15 2020, <https://www.hindustantimes.com/india-news/how-can-we-stop-it-supreme-court-on-plea-to-halt-migrant-workers-movement-on-roads/story-d1AVlxr6CrsMXRSHWx2luJ.html>, accessed on 1 June 2020

¹⁹ The Wire, *'Can't Monitor' Movement of Migrant Workers, States Should Take Action: Supreme Court*, 15 May 2020, <https://thewire.in/law/migrant-workers-movement-supreme-court>, accessed on 1 June 2020

note of migrant workers' problems, asked governments to respond on steps taken. The apex court has issued notices to the Centre, states and Union Territories, seeking replies on steps taken to "redeem the miseries of migrant laborers."²⁰

Most of the current literature focuses on the migrants right to livelihood, as denial of livelihood is denial of life. As observed in *Olga Tellis v. Bombay Municipal Corporation*²¹:

An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to live, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live.

While it is not denied that the right to life includes the right to livelihood, it is submitted that we have perhaps overlooked an equally important facet of the right to life, that is, the right to dignity. We have not recognized nor respected the dignity inherent in every human being in our treatment of the migrant during the pandemic. As observed in *Kesavananda Bharati v, State of Kerala*²², the provisions of the Constitution including Fundamental Rights are alterable but the result thereof should be consistent with the basic foundation and the basic structure of the Constitution. Republican and democratic form of Government, secular character of the Constitution, separation of powers, ***dignity and freedom to the individual are basic features*** and foundations easily discernible, not only from the Preamble but the whole scheme of the Constitution.

Article 21 of the Constitution guarantees the right to life. Right to life enshrined in Article 21 means something more than survival or animal existence. It would include the right to live with human dignity²³ Right to means of livelihood and the right to dignity, right to health, right to potable water, right to pollution free environment and right to life. Social justice has been held to be Fundamental right in *Consumer Education And Research Centre*

²⁰ The Wire, *Supreme Court Takes Note of Migrant Workers' Problems, Asks Govts to Respond on Steps Taken*, 26 May 2020, <https://thewire.in/law/supreme-court-migrants-suo-motu-centre>, accessed on 1 June 2020

²¹ 1986 AIR SC 180

²² 1973 Supp. SCR 1

²³ Francis Coralie Mullin v The Administrator, Union Territory of Delhi AIR 1981 SC 746

*v. Union Of India*²⁴ the Court had held that the jurisprudence of personhood or philosophy of the right to life envisaged under, Article 21 enlarges its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman to earn his livelihood, to sustain the dignity of person and to live a life with dignity and equality. The expression "life" assured in, Article 21, does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the workplace and leisure.²⁵

Right to health and medical care to protect health and vigor, while in service or after retirement, was held a fundamental right of a worker under Article 21, read with, Articles 39 (e), 41,43,48 - A and all related constitutional provisions and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person. The right to health of a worker is an integral facet of meaningful right to life, to have not only a meaningful existence but also robust health and vigor without which the worker would lead a life of misery. Lack of health denudes him of his livelihood. Compelling economic necessity to work in an industry exposed to health hazards, due to indigence for bread-winning for himself and his dependents, should not be at the cost of the health and vigor of the workman.²⁶

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

²⁴ [(1995) 3 SCC 42

²⁵ *ibid*

²⁶ *ibid*

and to elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor etc. From handicaps, penury to ward off distress and to make their life livable, for greater good of the society at large. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation and constitutional goal. Social security, just and humane conditions of work and leisure to workman are part of his meaningful right to life and to achieve self-expression of his personality and to enjoy the life with dignity. The State should provide facility and opportunities to enable them to reach at least minimum standard of health, economic security and civilized living while sharing according to their capacity, social and cultural heritage.²⁷

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 emphasizing, 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.²⁸

In *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi*²⁹ the Court held:

We think 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 and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self. Every act which offends against or impairs human dignity would constitute deprivation protanto of this right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of other fundamental rights. Now obviously, any form of torture or

²⁷ Air India Statutory Corporation v United Labour Union LNIND 1996 SC 2076

²⁸ Common Cause A Regd Society v Union Of India LNIND 2018 SC 87

²⁹ (1981) 1 SCC 608

cruel, inhuman or degrading treatment would be offensive to human dignity and constitute an inroad into this right to live and it would, on this view, be prohibited by Article 21 unless it is in accordance with procedure prescribed by law, but no law which authorises and no procedure which leads to such torture or cruel, inhuman or degrading treatment can ever stand the test of reasonableness and non-arbitrariness: it would plainly be unconstitutional and void as being violative of, Articles 14 and 21 . It would thus be seen that there is implicit in , Article 21 the right to protection against torture or cruel, inhuman or degrading treatment which is enunciated in , Article 5 of the Universal Declaration of Human Rights and guaranteed by , Article 7 of the International Covenant on Civil and Political Rights.

In *National Legal Services Authority v. Union of India*³⁰, the Apex Court has held that there is a growing recognition that the true measure of development of a nation is not economic growth; it is human dignity.

In *Shabnam v. Union of India*³¹, it has been further held that:-

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 harmed. It is in this sense torture, humiliation, forced labour, etc. all infringe on human dignity.

In *Gian Kaur v State of Punjab*³² the Constitution Bench in no uncertain terms expounded that the word life in, Article 21 has been construed as life with human dignity and it takes within its ambit the right to die with dignity being part of the right to live with dignity. Further, the right to live with human dignity would mean existence of such a right upto the end of natural life which would include the right to live a dignified life upto the point of death including the dignified procedure of death.

In *K.S. Puttaswamy v. Union of India*³³ Dr. Chandrachud J. while speaking about life and dignity, has observed:- Life is precious in itself. But life is worth living because of the freedoms which enable each individual to live life as it should be lived. The best decisions on

³⁰

(2014) 5 SCC 438

³¹ (2015) 6 SCC 702

³² (1996) 2 SCC 648

³³ (2017) 10 SCC 1

how life should be lived are entrusted to the individual. They are continuously shaped by the social milieu in which individuals exist. The duty of the State is to safeguard the ability to take decisions the autonomy of the individual and not to dictate those decisions. Life within the meaning of Article 21 is not confined to the integrity of the physical body. The right comprehends ones being in its fullest sense. That which facilitates the fulfilment of life is as much within the protection of the guarantee of life.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families³⁴ deals with workers who migrate to foreign countries. It strictly speaking does not apply to intra country migrant workers, but it is instructive to note some of its provisions. First of all in its preamble, it recognizes the situation of vulnerability in which migrant workers and members of their families frequently-find themselves owing, among other things, to their absence from their State of origin and to the difficulties they may encounter arising from their presence in the State of employment. It states that, the right to life of migrant workers and members of their families shall be protected by law.³⁵ Further, No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.³⁶ Closer to home, we have The Inter-State Migrant Workmen (Regulation Of Employment And Conditions Of Service) Act, 1979 which has not proved very useful in this pandemic crisis.

The current crisis vis a vis the migrant worker, it is submitted, is but a tip of the iceberg. It is far deeper and cancerous than it first appears. It is not a transient or one off occurrence. It is but a symptomatic manifestation of a deeper disease. The disease of great and grave economic disparity in society. The differences between the haves and the have nots. We in India, have thrived on distinction, be it the difference between the castes, the religions, the communities, or the rich and poor. It appears as if the country is only for those who have a voice, be it due to their numbers, or their wealth. While the migrant worker is definitely large in number, he has no voice, his voice has been silenced due to deprivation, starvation, fear or perhaps, "The Indian's inner strength and capacity for patient endurance are almost unbelievable. The nation is able to take in its stride situations which would cause a revolution in other countries. We endure injustice and unfairness with feudalistic servility and

³⁴ Adopted by General Assembly resolution 45/158 of 18 December 1990

³⁵ Article 9

³⁶ Article 10

fatalistic resignation".³⁷ Whatever be the reason for this endurance and silence, it is high time, that we, who have a voice, raise it on behalf of our brethren.

The Directive Principles in our , Constitution are fore-runners of the U.N. Convention on Right to Development as inalienable human right and every persons and all people are entitled to participate in, contribute to and enjoy economic, social cultural and political development in which all human right, fundamental freedoms would be fully realized. It is the responsibility of the State as well as the individuals, singly and collectively, for the development taking into account the need for fuller responsibility for the human rights, fundamental freedoms as well as the duties to the community which alone can ensure free and complete fulfillment of the human being. They promote and protect an appropriate social and economic order in democracy for development. The State should provide facilities and opportunities to ensure development and to eliminate all obstacles to development by appropriate economic and social reforms so as to eradicate all social injustice. These principles are imbedded, as integral part of our, Constitution in the Directive Principles. Therefore, the Directive Principles now stand elevated to inalienable fundamental human rights. Even they are justiciable by themselves. Social and economic democracy is the foundation for stable political democracy. To make them a way of life in the Indian polity, law as a social engineer, is to create just social order, remove the inequalities in social and economic life and socio-economic disabilities with which people are languishing; and to require positive opportunities and facilities as individuals and groups of persons for development of human personality in our civilized democratic set up so that every individual would strive constantly to rise to higher levels.³⁸

Dr. Ambedkar, in his closing speech in the Constituent Assembly on November 25, 1949, had lucidly elucidated the meaning of social and political democracy. He stated that it means a way of life which recognized liberty, equality and fraternity as the principles of life. They form an integral union. One cannot divorce from the other; otherwise it would defeat the very purpose of democracy. Without equality, liberty would produce supremacy of the few over the many equality without liberty would kill the initiative to improve the

³⁷Jignesh R. Shah, *The Wit and Wisom of Nani A. Palkhivala*

³⁸ *AirIndia Statutory Corporation v. United Labour Union*, AIR 1997 SC 645.

individual's excellence, political equality without socio-economic equality would run the risk of democratic institutions to suffer a set back.³⁹

What does social democracy mean? It means a way of life which recognizes liberty, equality and fraternity as the principles of life. These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy. Liberty cannot be divorced from equality, equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty would kill individual initiative. Without fraternity, liberty and equality could not become a natural course of things. It would require a constable to enforce them. We must begin by acknowledging the fact that there is complete absence of two things in Indian Society. One of these is equality. On the social plane, we have in India a society based on the principle of graded inequality which means elevation for some and degradation for others. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty. On the 26th of January 1950, we are going to enter into a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In Politics we will be recognising the principle of one man one vote and one vote one value. In our social and economic life, we shall, by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to live this life of contradictions? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which this Assembly has so laboriously built up.⁴⁰

³⁹ Ibid

⁴⁰ The Wire, *Lessons for Today in Ambedkar's Last Address to the Constituent Assembly* 14 April 2019 <https://thewire.in/government/ambedkar-constitution-assembly-democracy>, accessed on 1 June 2020

In *D.S. Nakara v. Union of India*⁴¹ A Constitution Bench had held that the democratic socialism achieves socio- economic revolution to end poverty, ignorance, disease and inequality of opportunity. The basic framework of socialism was held to provide security from cradle to grave. The less equipped person shall be assured to decent minimum standard of life to prevent exploitation in any form, equitable distribution of national cake and to push the disadvantaged to the upper ladder of life. It was further held that the Preamble directs the centers of power, the Legislative, Executive and Judiciary, to strive to shift up from a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society which is a long march; but during the journey to the fulfilment of goal, every State action, whenever taken, must be directed and must be so interpreted as to take the society towards that goal.

Dr. V.K.R.V Rao, one of the eminent economists of India in his "Indian Socialism - retrospect and prospect" has stated that equitable distribution of the income and maximization of the production is the object of socialism under the, Constitution to solve the problems of unemployment, low income and mass poverty and to bring about a significant improvement in the national standard of living. he also stated that to bring about socialism, deliberate and purposive action on the part of the State, in regard to production as well as distribution and the necessary savings, investment, use of human skills and use of science and technology should be brought about. Changes in property relations, taxation, public expenditure, education and the social services are necessary to make a socialist State under the, Constitution, a reality. It must also bring about, apart from distribution of income, full employment as also increase in the production.⁴²

In *State of Karnataka v. Shri Ranganatha Reddy*⁴³ a Bench of nine judges of Supreme Court, considering the nationalization of the contract carriages, had held that the aim of socialism is the distribution of the material resources of the community in such a way as to subserve the common good. The principle embodied in, Article 39(b) of the Constitution is one of the essential directives to bring about the distribution of the material resources. It would give full play to the distributive justice. It fulfills the basic purpose of re- structuring the economic order. , Article 39 (b), therefore, has a social mission. it embraces the entire material resources of the community. Its task is to distribute such resources. Its goal is to undertake distribution as best to subserve the common good.

⁴¹ (1983) 2 SCR 165

⁴² Air India Statutory Corporation v. United Labour Union 1997 AIR (SC) 645

⁴³ (1978) 1 SCR 641

In *Sanjeev Coke Manufacturing Co. v. Bharat Cooking Coal*⁴⁴ a Constitution Bench interpreted the word "socialism" and, Article 39(b) of the Constitution and had held that the broad egalitarian principle of economic justice was implicit in every Directive Principle. The law was designed to promote broader egalitarian social goals to do economic justice for all. The object of nationalisation of mining was to distribute nation's resources.

In *State of Tamil Nadu v. L. Abu Kavur Bai*⁴⁵ the same interpretation was given by another, Constitution Bench upholding nationalisation of State Carriages and Contract Carriages (Acquisition) Act. Therefore, all State actions should be such to make socio-economic democracy with liberty, equality and fraternity, a reality to all the people through democratic socialism under the rule of law.

Finally to bolster the said arguments, reliance has again been placed upon *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* and *Common Cause (A Registered Society) v. Union of India* wherein it was held that the right to life and liberty, as envisaged under Article 21, is meaningless unless it encompasses within its sphere individual dignity.

"Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly." — Martin Luther King Jr., Letter from the Birmingham Jail

⁴⁴ (1983) 1 SCR 1000

⁴⁵ (1984) 1 SCR 725