

THE FUNDAMENTAL RIGHT AGAINST HUMILIATION

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ABSTRACT

To humiliate someone is to negate the personhood of another and negatively impact their self-respect and self-esteem. The act of humiliation has far-reaching consequences and results in the creation of a deleterious pattern that establishes oppressive structures of power. This article attempts to shed light on how the State humiliates its subjects with particular emphasis on the role played by the judiciary in this regard. To avoid this humiliation, this article advocates for recognising the fundamental right against Humiliation under the Indian Constitution. In doing so, it engages with the jurisprudence inherent in the said right. It is argued that this right shall enable the people to live a good life without making themselves vulnerable to unfair impediments created by the State based on stereotypes and prejudices.

Keywords: Rights, Humiliation, Self-Respect, Self Esteem, Human dignity

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I. Introduction

MERRIAM WEBSTER'S dictionary defines Humiliation as "reduce (someone) to a lower position in one's own eyes or others' eyes: to make (someone) ashamed or embarrassed."¹ This dictionary meaning conveys that humiliation, in simple terms, is an attack on human beings' self-respect or self-esteem. Avishai Margalit² has defined self-respect as being that what one attributes to oneself. This is opposed to self-esteem, for which we seek validation from external sources. An attack on self-respect and self-esteem can be for several reasons and can be intentional/unintentional; it can have several consequences, which may either be entirely innocuous or highly deleterious. The consequences of any act depend upon varying external

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¹ "Humiliate", *MerriamWebster.com*, available at: <https://www.merriam-webster.com/dictionary/humiliation> (last visited on January 10, 2020).

² Avishai Margalit, *The Decent Society* 28 (Harvard University Press, Cambridge, Mass, 1996).

circumstances and any society's prevailing social constructs and conditions.³ An example of these circumstances is the number of people in whose presence the victim has been humiliated⁴, the social position of the person being attacked, or the kind of society one lives in (for example, in a patriarchal society, women are more vulnerable to attacks on their dignity than men).

Thus, any act can have varying consequences when combined with external elements and contingencies. The critical question then emerges: Which consequences are innocuous and which ones are deleterious enough to warrant prevention? To answer this question, one must carefully consider the social history of a society, its dominant viewpoints, and the amount of freedom available to people to pursue their capabilities.

Part one of this paper considers the meaning of humiliation. This paper argues that humiliation is an unjustified attack on people's self-worth and self-esteem and such attacks lead to the perpetuation of oppressive structures of power. To rebut the said position, some have argued that human beings are invulnerable to all external factors. In other words, they can never be humiliated.⁵ This argument must be explored further, and its merits need to be assessed. In doing so, this paper engages with Aristotle's idea of *eudaimonia*, which relates to elements that constitute a good life.

Part two of this paper foregrounds the Right Against Humiliation (herein after termed as 'RAH') into two theories – first, the Social capabilities approach as advanced by Martha Nussbaum; second, the idea of the Harm in hate speech advocated by Jeremy Waldron. As per the former approach, all persons must be allowed to pursue their capabilities by ridding their path of any unfair hindrances in the interest of social justice. This paper argues that humiliation is tantamount to hindering people's path in such a way that it prevents them from availing opportunities that are otherwise generated for all; and does not allow them to exercise their agency.

Jeremy Waldron states that hate speech impacts the dignity of individuals because it affects their social standing. When the dignity of persons is attacked, their sense of security is

³ Bhiku Parekh, 'Logic of Humiliation' in Gopal Guru (ed), *Humiliation: Claims and Context* (Oxford University Press, 2009).

⁴ Humiliation however does not necessarily require the presence of a third party. See *supra* note 3.

⁵ Ludwig Edelstein, *Meaning of Stoicism* (Harvard University Press, Cambridge, 1966).

threatened. The assurance of equal respect and safety for all persons in society is unfairly jeopardised through hate speech. Therefore, he advances reasons for enacting legislations to curb hate speech in all jurisdictions. This idea has been relied upon to make a case for recognizing the RAH.

Part three of this paper examines the scope of the RAH in the context of Indian society. This section analyses the jurisprudence inherent in the RAH as laid out in the preceding sections in light of the provisions of the Indian Constitution. The focus herein is on the specific role played by the judiciary in humiliating persons bearing in mind gendered stereotypes. In this section, it has been argued that the judiciary, in its institutional capacity, violates the RAH of the people of India in some instances. It is pertinent to mention that the scope of the RAH goes beyond gendered social constructs. For this paper, however, the examples that have been cited in this section of the paper ought to be understood in the context of gendered stereotypes only. This paper advocates establishing a decent society, *i.e.* a society whose institutions do not humiliate its subjects.⁶ The need to establish such a decent society is at the heart of this paper.

II. Part One: Meaning and Limits of Humiliation

A. What is Humiliation?

Humiliation's working definition for this paper is - An unjustified attack on an individual's self-respect and self-esteem. Avishai Margalit has defined self-respect as being that one attributes to oneself. In other words, self-respect pertains to the regard and value one gives to themselves. It is one's worth in one's own eyes. Self-respect is opposed to self-esteem, which finds validation from external sources and circumstances.⁷ Self-esteem relates to the respect held for someone in the eye of another. While self-esteem may exist independently of self-respect, the latter concept is not as secure.⁸ The central thesis of this paper is that self-esteem paves the path for self-respect.

When people are humiliated, they find that their sense of self-worth has been eroded. This argument is based on the idea of the social construction of self-respect. People's sense of self-

⁶ *Supra* note 2 at 12.

⁷ *Id.* at 18.

⁸ *Id.* at 43-44.

worth is highly susceptible to the social structures of any given society. Social structures are constituted and perpetuated through institutions and shared ideas and practices in any given society. One of the institutions that help perpetuate such structures is the state by legitimising and contributing to their furtherance directly and indirectly.⁹ The said structures are then further cemented and profoundly impact an individual's self-respect and self-esteem in myriad ways.¹⁰ This is especially true of social constructs related to gender, class, race, and caste. The attributes of any society are decided by the dominant “social, political and economic institutions and practices”¹¹ of the concerned society.

The social constructs we refer to are deeply embedded in each society and are constantly reinforced through affirmative acts and speeches, both formally and informally. Those who do not conform to the dominant ideas and practices and seek to challenge them are labelled as deviants or outcasts and are frowned upon. The social standing of deviants is prejudiced because of their non-conformity to the said structures, no matter how discriminatory and unfavorable these practices and structures might be to an individual or community.¹² As a result of constant reinforcement, social hierarchies and power dynamics emerge, which are then passed on from generation to generation. It is argued that individuals determine their self-worth by keeping the said social constructs in the backdrop.

Studies¹³ indicate that the role of social structures and past discrimination on people's sense of self-worth is significant. The impact of slavery and widespread discrimination in society on the present generation of black children has been studied, and it has been concluded that self-respect is socially constructed. Individuals will only be able to respect themselves if their abilities and traits find acceptance in society. Suppose the characteristics that one possesses are constantly undermined and rejected due to the prevailing traditions and practices or have been rejected in the past. In that case, such rejections act as a hindrance in developing self-respect.¹⁴

⁹ *Supra* note 3, at 33.

¹⁰ Michele M. Moody-Adams, “Race, Class and the Social Construction of Self Respect” in Robin S. Dillon (ed), *Dignity, Character and Self-Respect* (Routledge, 1995).

¹¹ *Id.* at 275-276.

¹² *Ibid.*

¹³ *Id.* at 279.

¹⁴ *Ibid.*

It is noteworthy that studies¹⁵ also show that abolishment of discriminatory practices or rectification of past wrongdoings does not reverse the belief and attitudes automatically that led to those wrongdoings in the first place. The feelings and ideas associated with the past oppression continue to linger on and reverberate for generations and are not reversed automatically once the legal support is withdrawn.¹⁶ Positive steps and affirmative action ought to be taken through social reforms to alter the people's perspective.¹⁷

The social position of individuals in the era of globalisation is shaped through recognition. Charles Taylor¹⁸ states that there is a crucial link between identity and recognition. Recognition plays a huge role in shaping our identity and is a 'vital human need.'¹⁹ It especially plays a significant role in developing 'individualised identity.' The individualised identity is essential for understanding why there is an indispensable link between recognition and identity.

Taylor argues that a crucial aspect of human life is its 'dialogical character.'²⁰ This means that human lives are shaped through interactions. One molds their identity as per their interactions with others. Even a solitary artist's life is shaped through interaction because their work shall also be addressed to an audience at some point in time.²¹ This brings out the crucial link between identity and recognition. This link renders human beings highly susceptible to outside circumstances and impacts the self-respect of persons. Thus, the self-respect of a person is highly dependent on their self-esteem. Without the latter, the former cannot be secured. Humiliation impairs the said achievement and interferes with aspired security.

The elements of humiliation explained in this paper also have close nexus with dignity as an expressive norm. Tarunabh Khaitan has employed this idea of dignity as an expressive norm. According to this idea, the focus is not on the consequence of an act but its meaning.²² The said meaning entails an expression that could be derogatory and insulting. Hence, the meaning

¹⁵ *Id.* at 279.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Charles Taylor, "The Politics of Recognition" in Amy Gutmann (ed.) *Multiculturalism: Examining the Politics of Recognition* (Princeton University Press, 1994).

¹⁹ *Id.* at 26.

²⁰ *Id.* at 32.

²¹ *Id.* at 34.

²² Tarunabh Khaitan, "Dignity as an expressive norm: Neither Vacuous nor a Panacea", 32 *Oxford Journal of Legal Studies* 4 (2012).

assumes great significance, mainly because the consequence of such an act may not be explicitly harmful.

Expressive wrongs are those wrongs whose meaning can be understood objectively; they are morally unacceptable and must be regulated or prohibited by law; they exist independent of their consequences.²³ Each action must be viewed in its cultural context to objectively understand the meaning of expressive wrongs. The said cultural context should rightfully include the history of a society, its past practices, traditions, prejudices, etc. Khaitan acknowledges that this cultural context may be 'contingent and arbitrary.' However, answers may be found by employing a reasonable person standard and keeping the victim's circumstances in mind.²⁴

Dignity as an expressive norm can help understand the relationship between individuals' self-respect and self-esteem. When people's self-esteem is lowered due to expressive wrongs, they see themselves insulted and degraded. Moreover, if the lowering of self-esteem occurs repeatedly, the degrading meaning is emphasised consistently, leading to diminished self-respect. Thus, the law as an instrument must be used in such a way that it protects the dignity of persons from expressive wrongs.

Another characteristic of Humiliation is that it has been regarded as a form of power.²⁵ The communication of humiliation takes place through a shared language of the masses of society. This language consists of shared norms and ideas that are prevalent in each society. Since this paper focuses on humiliation's deleterious consequences, the argument advanced is that when it is communicated in a shared contextual understanding, it tends to reinforce oppressive structures of power.

It is pertinent to mention that many have argued that social constructs cannot impact an individual's self-respect. This argument is made because self-respect is what we give ourselves, and any external factor can have no bearing on it. Margalit has observed that this line of

²³ *Ibid.*

²⁴ *Id.* at 12-13.

²⁵ Sanjay Palshikar, "Understanding Humiliation" in Gopal Guru (ed), *Humiliation: Claims and Context* (Oxford University Press, 2009).

argumentation is reflected in the Stoic Philosophy.²⁶ Thus, before moving forward, this philosophy's merits must be analysed in the context of the RAH.

B. Stoicism and its Limitations The Inherent Vulnerability of Human Beings

Stoicism is a philosophical thought that originated in Athens, Greece, that argues that human beings are invulnerable to external factors. This school of thought's basic underlying principle is the need for self-mastery and control over the mind of oneself.²⁷ The Stoics suggest that there is no such thing as a humiliating society. A reasonable person cannot have sound reasons for feeling humiliated. Humiliation implies injury to self-respect, and self-respect is what one ascribes to themselves. An external circumstance cannot have any effect whatsoever on a person's self-respect. Accordingly, there cannot be a link between self-respect and self-esteem. If one feels humiliated by the actions of another, it means the victim lacks self-control.²⁸

Stoicism's ideology is well placed; however, it is not without its limitations, especially in the context in which the RAH ought to be enforced. The Stoics overlook the influence of any external circumstance/contingencies on an individual's life entirely. Martha Nussbaum²⁹ has analysed this Stoic insistence on detaching oneself from external circumstances and the role of moral luck in our lives. She sheds light on the arguments advanced by Aristotle on the role of contingencies in one's life. Aristotle has suggested that *eudaimonia*³⁰ or living well does not only require feeling well and freedom of mind. It demands that one should lead an excellent life that comprises actual activity not impeded by external circumstances.³¹ Human life is fulfilled only when there is an actual activity through which the freedom of mind and good state of character is actualised, leading to fulfilment. Without actual activity, freedom of mind is rendered pointless.³²

Aristotle argues that life is not invulnerable in the way the Stoa would suggest. Since *eudaimonia* comprises both feeling well and being able to do well, if the latter is impeded in any way, *eudaimonia* is threatened. A person in a vegetative state may be able to exercise self-

²⁶ *Supra* note 2, at 18.

²⁷ Ludwig Edelstein, *Meaning of Stoicism* 97 (Harvard University Press, Cambridge, 1966).

²⁸ *Supra* note 2, at 27.

²⁹ Martha C. Nussbaum, *The Fragility of Goodness* (Cambridge University Press, Cambridge, 2001).

³⁰ *Id.* at xiii.

³¹ *Id.* at 318-343.

³² *Id.* at 324.

control and possess freedom of mind of the highest degree. However, since this person cannot undertake any actual activity, they cannot be regarded as living a good life.³³ The second element of *eudaimonia* is highly vulnerable to moral luck and other external contingencies.³⁴ Actual activity requires external conditions – “of the body, of social context, of resources.”³⁵

If individuals face disadvantages by factors such as their social position, they may lose out on many opportunities necessary to lead a fulfilled life. Many persons face this kind of hindrance over a “prolonged period of time,” considering the many hierarchies and power structures in societies. Such contingencies are therefore not rare instances but, in fact, quite common. In such instances, *eudaimonia* can only be regained through affirmative external happenings.³⁶ This argument reaffirms the suggestion that external circumstances affect both our ability to feel and to be able to act well, thus rendering the good life extremely fragile and vulnerable.³⁷

Thus, the Stoic philosophy falls short considering the argument that a good life requires not just feeling well but also being able to do well. The RAH aims to protect individuals' self-worth and self-esteem and give them a fair chance to pursue their capabilities and lead a fulfilled life. Their ability to pursue ‘actual activity’ must not be threatened or impeded by the state unjustifiably. The RAH is premised on this thesis.

Thus, it is evident that external happenings can have a substantial impact on people's lives. Hence, it can be asserted that it is impossible to snap the link between self-respect and self-esteem in RAH's context. This link becomes clearer after considering the social capability approach and the idea of the harm in hate speech. These theories are used for foregrounding the RAH.

III. Part Two: Foregrounding the Right against Humiliation

A. The Social Capability Approach

³³*Id.* at 323.

³⁴*Id.* at 325.

³⁵*Ibid.*

³⁶*Id.* at 340.

³⁷*Id.* at 337.

The social capabilities approach (the Approach) has been designed to enhance people's quality of life. It is aimed at increasing the opportunities available to everyone to create capabilities for them. The objective is to create ‘an enabling environment’³⁸ for the people and to ensure that the policy frameworks in each jurisdiction support such an environment. The said enabling environment is a necessary condition for social justice.³⁹ The critical question that this approach grapples with is “what is each person able to do and to be?”⁴⁰ Consequently, the approach's focal point is to understand how much agency/freedom persons have on face value and whether exercise their own volition.

The Approach attempts to rid the path of all persons of hindrances introduced by institutionalised inequalities that lead to social injustices.⁴¹ It provides a framework of specific abstract capabilities that should be used in accordance with each Constitution’s basic structure.⁴² Martha Nussbaum, a distinguished legal philosopher, argues that each person possesses specific ‘internal capabilities.’ These pertain to persons' characteristics such as their “personality traits, intellectual and emotional capacities”, etc.⁴³ The internal capabilities of a person are not fixed but are instead fluid. Additionally, Nussbaum calls the second category of capabilities ‘innate equipment.’ Innate equipment refers to the abilities and skills acquired and developed under an individual's social, political, and economic environment.⁴⁴ It is the enabling environment for the development of internal capabilities. It is argued that existence of the requisite innate equipment is a necessary precondition for the development of internal capabilities.⁴⁵ Both these capabilities together are called combined capabilities, which can be defined as the internal capabilities accompanied by the social, political, legal and economic conditions required for effective functioning. They are “defined as internal capabilities plus the social/political/economic conditions in which functioning can actually be chosen...”⁴⁶

³⁸ Martha C. Nussbaum, *Creating Capabilities: The Human Development Approach* 19 (Belknap Press, Cambridge, Mass 2011).

³⁹ *Id.* at 18.

⁴⁰ *Ibid.*

⁴¹ *Id.* at 19.

⁴² *Id.* at 166.

⁴³ *Id.* at 21.

⁴⁴ *Id.* at 22.

⁴⁵ *Ibid.*

⁴⁶ *Id.* at 22.

Nussbaum has emphasized that the capabilities that allow a person to lead a life of dignity are the most valuable ones.⁴⁷ The approach demands that all persons be treated with equal respect. Equal respect entails equal (in a substantive sense) opportunities generated for all so that combined capabilities can be pursued.⁴⁸ This means that the innate equipment referred to above should be molded in such a manner that no person faces an unfair advantage to develop their internal capabilities. Each person ought to be offered a level playing field through affirmative action. In furtherance of the same, she has listed ten basic capabilities that must be secured to all citizens. For this paper, only the seventh of these ten listed shall be focused on. The same pertains to affiliation:⁴⁹

7(B) Having the social bases of self-respect and non-humiliation; being able to be treated as a dignified being whose worth is equal to that of others. This entails provisions of non-discrimination on the basis of race, sex, sexual orientation, ethnicity, caste, religion, national origin.

The above-mentioned capability “7(B)” stipulates that a government must provide an environment conducive to evaluating people's self-worth. If the same is denied to the people, it hinders their ability to pursue their combined capabilities. Restriction on the innate equipment results in a corresponding restriction on the internal capabilities of a person.

B. Impact of hate speech on self-respect and self-esteem

Hate speech refers to inflammatory speech that targets a particular community or a group of people. If left unchecked, Jeremy Waldron, a legal philosopher has argued that hate speech has the potential of causing immense harm to persons. He creates a distinction between the concepts of ‘dignity’ and ‘offense.’ The former pertains to the social standing of an individual, and the latter relates to subjective feelings of shock and anger.⁵⁰ Waldron has argued that hate speech laws ought to protect the dignity of an individual. In doing so, hate speech laws permit individuals to have their basic entitlements be safeguarded from any attack by others.

In a civil society, each person needs to have an assurance that they will not be unfairly treated because of deep-seated prejudices of others owing to their position in the social structure of a

⁴⁷ *Id.* at 78.

⁴⁸ *Id.* at 24.

⁴⁹ *Id.* at 34.

⁵⁰ Jeremy Waldron, *Harm in Hate Speech* 106 (Harvard University Press, Cambridge, Mass, 2012).

society. These deep-seated prejudices can result from the longstanding history of discrimination, such as slavery in America and caste system in India. This assurance is often denied to those who are vulnerable minorities and other like groups through hate speech.⁵¹ Thus, the long-term consequence of hate speech is a reinforcement of the prejudices that were once an outcome of institutionalised discrimination.⁵² To ascertain when an attack on a person's dignity makes them more susceptible to future attacks, Waldron argues that we must look at each society's history and dominant traditions. What needs to be considered are the areas in which our experience suggests a threat to the negation of people's fundamental personhood.⁵³ Waldron argues that when an individual's dignity is attacked, it lowers the victim's self-esteem in society's eyes.⁵⁴ This makes them more susceptible to being victims of violent acts and demeaning behavior in the future. This is made evident with the help of the following passage:⁵⁵

Considering that you were going to kill them all . . . what was the point of humiliation, the cruelties?" the writer asks Stangl, imprisoned for life in the Dusseldorf goal, and he replies: "To condition those who were to be the material executors of the operations. To make it possible for them to do what they were doing." In other words: before dying the victim must be degraded, so that the murderer will be less burdened by guilt. This is an explanation not devoid of logic, but which shouts to heaven: it is the sole usefulness of useless violence.

Waldron's understanding of the harm that hate speech causes is that it attempts to undermine each person's assurance in a civil society. The said assurance relates to the guarantee that society is committed to treating every person respectfully and equally. No person will be subjected to discrimination and humiliating behavior based on caste, class, race, gender, etc.⁵⁶ This is the very intent that motivates hate speech. The said assurance is implicit, and through hate speech, it is negated in a clear sense.⁵⁷

⁵¹ *Id.* at 4.

⁵² *Id.* at 5.

⁵³ *Supra* note 42, at 103.

⁵⁴ *Id.* at 108.

⁵⁵ Sophie Oliver, "Dehumanisation: Perceiving the Body as (In)Human" in Paulus Kaufmann *et.al.* (eds.), *Humiliation, Degradation, Dehumanisation: Human Dignity Violated* 89 (Springer, 2011).

⁵⁶ *Id.* at 70.

⁵⁷ *Id.* at 92-93.

Waldron has contended that by curbing hate speech, the good secured is a ‘public good’ – an assurance that all society members will be treated equally and with respect.⁵⁸ This assurance is focused on the need for security that persons require while co-existing in society.⁵⁹ This security allows persons to lead their lives peacefully without having any fears or inhibitions in their minds regarding the kind of treatment they will be subjected to.⁶⁰ Additionally, people’s self-esteem and ‘individual self-worth’ will also be protected through the said public good. This protection is critical because people’s diverse cultures and traditions are accommodated, and they are not forced to blend in as per the dominant traditions.⁶¹

Humiliation as an attack on self-respect and self-esteem can be regarded as a type of hate speech that must be curbed. We must contain this Hate Speech to protect people’s dignity and allow them to pursue their combined capabilities.

IV. Part Three: The Indian Legal Framework

A. The Constitution of India

Article 21 of the Constitution of India stipulates that “No person shall be deprived of his life or personal liberty except according to the procedure established by law.”⁶² The Right to Life has paved the path for numerous socio-economic rights under the Indian Constitution by placing reliance on different constitutional values. One of the most prominent values in the Indian Constitutional jurisprudence is human dignity. It is argued that the RAH is an intrinsic part of the Right to Life and Liberty, of which human dignity is a critical component.⁶³ In several cases, the Apex Court of India has explicitly recognised that the value of dignity lays a foundation for all other fundamental rights guaranteed in Part III of the constitution. While the meaning of human dignity in the constitutional law jurisprudence continues to attract great scrutiny worldwide, some essential understandings and consensus have emerged in the Indian legal framework.⁶⁴

⁵⁸ *Id.* at 81.

⁵⁹ *Id.* at 82.

⁶⁰ *Id.* at 83.

⁶¹ *Id.* at 84-85.

⁶² The Constitution of India, art. 21.

⁶³ *KS. Puttaswamy v. Union of India* (2017) 10 SCC 1.

⁶⁴ Pritam Baruah, “Human Dignity in Indian Constitutional Adjudication” in Jimmy Chia-Shin Hsu (ed.), *Human Dignity in Asia: A Dialogue between Law and Culture* (In Press, 2022).

In a number of judgments, the Indian Supreme Court has held that dignity must be understood according to the Kantian intrinsic self-worth sense, where every person ought to be respected equally.⁶⁵ Kant argues that all persons are to be treated as ends in themselves, instead of a means to an end.⁶⁶ In other words, human beings must not be treated according to their utility value or their status. Persons are not to be regarded as assets or objects of the State that may be used to fulfil the State's or any third person's objectives. All persons are to be treated equally, irrespective of their *material* utility value and what objectives they can fulfil.⁶⁷ According to Kant, persons are rational beings and are entitled to dignity simply by virtue of their humanity. In addition to the Kantian meaning, the Apex Court has also recognised the meaning ascribed to dignity by Ronald Dworkin.⁶⁸ The said meaning of dignity has been summed up to encompass – (i) respecting one's agency for self-determination; (ii) respecting the choices made through self-determination and the ability to control one's life; and (iii) respecting the need for one to exist in an environment where they can exercise their agency freely.⁶⁹ At the heart of the Dworkinian meaning of dignity lies the need to create a just social order that respects the principle of freedom.⁷⁰

Considering that human dignity is a constitutional value that lays a foundation for all the fundamental rights contained in Part III of the constitution, the Kantian and Dworkinian meanings of dignity can be interpreted as casting twin duties on the State. The first duty is to ensure that persons are not treated as objects (a means to an end) and all are treated equally. Second, a duty to ensure a just social order (conducive conditions) which allows for self-determination and for persons to flourish and “grow physically, mentally, intellectually and spiritually.”⁷¹ This just social order includes opportunities for all persons to develop themselves into cultured beings and scope for individual autonomy. Individual autonomy pertains to the exercise of one's agency in the presence of actual available alternatives and choices in an environment devoid of coercion and manipulation.⁷² The value of human dignity is actualised

⁶⁵ *Supra* note 64, at para 140, 309. See also, Immanuel Kant, *Groundwork of the Metaphysics of Morals* (Cambridge University Press, 1998)

⁶⁶ *Ibid.* See also, Pritam Baruah, “Human Dignity in Indian Constitutional Adjudication” in Jimmy Chia-Shin Hsu (ed.), *Human Dignity in Asia: A Dialogue between Law and Culture* (In Press, 2022).

⁶⁷ Emphasis supplied.

⁶⁸ *Supra* note 69.

⁶⁹ *Id.* at para 136, 307.

⁷⁰ *Id.* at para 137, 307.

⁷¹ *Chameli Singh v. State of U.P.* (1996) 2 SCC 549.

⁷² *Common Cause v. Union of India* (2018) 5 SCC 1.

only when the state fulfils the above-mentioned duties. It is noteworthy that fulfilling the aforementioned duties has been regarded as ensuring that all persons are provided with the bare minimum necessities of life, i.e., something more than mere animal existence.⁷³ This is the minimum requirements view of human dignity, which enshrines that the State is under an obligation to guarantee a minimum standard of living to all people.⁷⁴ Thus, the realisation of the Right to Life is hinged on the State providing the bare minimum to its people i.e., respecting all persons equally and guaranteeing favourable conditions for development and self-determination.

Recalling from Part I of the paper, the concept of *eudaimonia* also captures the idea of a just social order. The said concept is premised on the idea of the good life comprising feeling well and being able to do well. In turn, the latter concept is rooted in the existence of a just social order, which makes it possible for persons to flourish and thrive in their lives. Additionally, the social capabilities theory discussed in Part II of the paper also reiterates the necessity of having opportunities in life and the means and the social capital to avail of those opportunities. In Nussbaum's words, the idea of a just social order is called 'an enabling environment', which carves the path for social justice. Lastly, the discussion of the harm caused by hate speech to people's self-worth and safety also resonates with the minimum requirements view of human dignity. This means that all persons are entitled to a minimum level of assurance that society is committed to treating each person with equal respect. All persons ought to be shielded from unfair treatment that perpetuates stereotypes and prejudices. Therefore, the state must be committed to protecting human dignity by fulfilling its goals. It must guarantee the said minimum level of assurance by curbing such speech and acts that threaten the assurance of respect and dignified treatment.

It is thus clear that the jurisprudence of RAH enumerated in this paper is consistent with the value of human dignity as recognised by the Apex Court. Considering that dignity has been recognised as an essential facet of the Right to Life, this paper proposes the validation of the RAH under Article 21 of the Constitution of India. The respective intertwining jurisprudence of the RAH and the constitutional value of human dignity must be kept in the backdrop to understand the application of the RAH.

⁷³*Francis Coralie Mullin v. Administrator, Union Territory of Delhi* (1981) 1 SCC 608.

⁷⁴*Supra* note 70.

To illustrate the examples of humiliation and explain the application of the RAH, this paper focuses on humiliation committed by the judiciary in the Indian context. The reason for emphasising the judiciary is to highlight how the public discourse of a nation-state is formulated and consequently the so called just social order adversely impacted. Judicial pronouncements, formally, possess binding and persuasive value, depending upon the court pronouncing the concerning judgement. The reasoning offered and the verdict given based on the reasoning, are reflective of social structures of society. Both formally (from a legal standpoint) and informally (when judgments are considered by laymen), judicial decisions significantly contribute towards the shattering or reinforcement of prejudices and stereotypes. When delivered in the public domain, the meanings conveyed through judgments are mirrored in the private domain through acts and speeches of the people. It is noteworthy that the Apex Court itself has acknowledged that judges are social scientists who must act as constitutional invigilators.⁷⁵ It is also noteworthy that it is difficult to test the acts of judges against public or private law as acts of judges enjoy a greater degree of impunity than the executive and the legislature. The available remedies are complex and do not come easy to persons as opposed to testing the acts of the executive or the legislature, especially when constitutional values have been disregarded.

For these reasons, this paper looks to the judiciary as a starting point for understanding the application of the RAH. However, it is clarified that the emphasis laid herein on humiliation by the Judiciary in no way forecloses the possibility of the application of the RAH in the state's respect (as recognised under Article 12 of the Constitution). The following sub-section focuses on the acts of humiliation committed by the judiciary in India in discharging its official role. All the said instances must be understood, keeping in mind gendered stereotypes prevalent in Indian society.

B. Humiliation by the Judiciary

Several judicial decisions can be cited that show glaringly obvious and explicit acts of humiliation. These acts of humiliation have been committed in the pronouncement of judicial decisions by different courts in India.

⁷⁵*State of Karnataka v. Shri Ranganatha Reddy*, (1977) 4 SCC 471.

In *Rakesh B. v. State of Karnataka*,⁷⁶ the High Court of Karnataka allowed the Bail Application of a rape accused because the Complainant fell asleep after being 'ravished' and noted that such behaviour was unbecoming of an Indian woman. According to the Court, a reasonable and prudent Indian woman would not fall asleep after being ravished.⁷⁷ The Court questioned the Complainant for her lack of justification for going to her office at 11.00 p.m. and consuming alcohol with the accused. This line of questioning suggests the casting of doubt on the 'virtuousness' of the Complainant. The Court opined that because the Complainant consumed alcohol with the accused and went to her office late at night, her actions rendered her complaint questionable.

At this stage, it is necessary to highlight that the Court has made this observation while considering a bail application. Such observation amounts to venturing into the merits of a case even though such venturing is contrary to the stipulations contained in the Code of Criminal Procedure.⁷⁸ The Code provides that Judges are required only cursorily to glance at the merits of the case. In the interest of justice, Judges must restrict themselves to adjudicating upon bail applications only in accordance with the legislative intent expressed clearly in the specific provisions.

In *Vikas Garg v. State of Haryana*⁷⁹ the Punjab & Haryana High Court opined that the complainant in the said case exhibited promiscuous behaviour and further stated that her mind was perverse. This was because she was forced by one of the accused persons to buy a sex toy. Owing to her acceptance of the same, her virtuousness was questionable. The Court, in this case, went on to comment on the worldview of the parties, calling it a "reflection of a degenerative mindset of the youth breeding denigrating relationships mired in drugs, alcohol, casual sex escapades and a promiscuous and voyeuristic world."⁸⁰ Such observation, too, was recorded while allowing a bail application filed by three accused persons.

⁷⁶ Savyasachi Rawat, "The 'Ideal' Rape Victim in the Eyes of the Courts," *The Law Review Anthology*, July 9 2020, available at: <https://lawanthology.com/2020/07/09/the-ideal-rape-victim-in-the-eyes-of-the-courts/> (last visited on September 1, 2020).

⁷⁷ *Ibid.*

⁷⁸ Code of Criminal Procedure, 1973, ch. XXXIII.

⁷⁹ (2017) SCC Online 2806.

⁸⁰ *Ibid.*

It is pertinent to mention that two out of three bail applicants in the said case had *inter alia* been convicted for gang rape, and the third accused was convicted of rape by the lower Court. However, the High Court allowed the bail application of all the three accused amidst a pending appeal against the lower Court decision. This was so even though the Applicants were in possession of pictures of the prosecutrix, which they used to blackmail her and force her to engage in sexual activities with them. The High Court decision also ought to be scrutinised, considering the Criminal Procedure Code's stipulations.

In *Mahmood Farooqui v. State (GNCTD)*⁸¹ the Delhi High Court considered the history of intimacy shared by the prosecutrix and the accused to question the prosecutrix's credibility. Further, the court held that sometimes a no could mean yes, and therefore a no does not necessarily mean a no in all situations. Such decisions can be seen as contributing to the public discourse in an extremely precarious manner and setting dangerous precedents for society.⁸²

In another case, a man accused of outraging a woman's modesty was granted bail by the Madhya Pradesh High Court. The court granted bail on the condition that on the day of *Rakhi*, a traditional festival celebrated in India, the accused would visit the complainant's house with his wife and request her to tie her a *rakhi* (thread/band).⁸³ In *Utsav Kadam v. State of Assam*⁸⁴, the Guwahati High Court granted bail to a rape accused even though it expressly noted that a *prima facie* case had been made out against the accused. The court observed that since the accused was a student of IIT Guwahati, he was a talented student and the state's future asset.

In the instances that have been cited above, the judiciary is giving precedence to a specific type of behavior that is expected of victims of harassment/sexual abuse over the actual personal experiences and circumstances of the victims. Doing so, it sends a message to society that owning a sex toy is shameful and unacceptable. Further, it states that an Indian woman ought

⁸¹ (2017) 243 DLT 310.

⁸² Nishita Jha, "Is it rape only when the victim screams and fights back? A Supreme Court verdict calls for a debate," *Scroll.in*, October 14, 2016, available at: <https://scroll.in/article/818991/is-it-rape-only-when-the-victim-screams-and-fights-back-a-supreme-court-verdict-calls-for-a-debatt> (last visited on September 5, 2020).

⁸³ Press Trust of India, "Madhya Pradesh HC asks man to get rakhi tied by woman he had molested, pay Rs 5,000 to her son," *Firstpost.in*, August 3, 2020, available at: <https://www.firstpost.com/india/madhya-pradesh-hc-asks-man-to-get-rakhi-tied-by-woman-he-had-molested-pay-rs-5000-to-her-son-8666771.html> (last visited on September 15, 2020).

⁸⁴ Sparsh Upadhyay, "Victim girl & Accused are State's Future Assets, Talented": Gauhati High Court Grants Bail to Student in IIT Rape Case," *Livelaw.in*, August 23, 2021, available at: <https://www.livelaw.in/news-updates/victim-girl-accused-state-future-assets-talented-gauhati-high-court-bail-student-iit-rape-case-180069> (last visited on August 28, 2021).

not to fall asleep after being ‘ravished’, and if she does, it would mean that she has not been raped, irrespective of the personal facts of any case. The said statements and implied messages communicate to the society that anyone who indulges in the behavior that the judiciary has shunned needs to be rejected.

It must be recapitulated that not just self-esteem but also self-respect is socially constructed. If one is constantly shunned in society, it hinders their ability to develop self-respect. Given the interconnectedness of our society, human lives are increasingly shaped through interactions and by recognition. Hence, human beings are highly vulnerable to external circumstances and contingencies. It is impossible to flourish and thrive in a society that continually dehumanises someone unfairly. Reiterating Aristotle's point of view from Part One, when misfortune befalls people repeatedly, it impedes eudaimonia over a prolonged period. In the Indian context, the *eudaimonia* of women has been impeded over a prolonged period given the longstanding discrimination and patriarchal ideations that permeate Indian Society.

Reiterating Khaitan's idea of dignity from Part One, one may argue that the humiliation instances cited in this paper convey a larger meaning to the general public. This meaning entails expressions that are derogatory and insulting to women, and judges must refrain from pronouncing decisions that have such negative connotations. The kind of instances cited in this paper can be regarded as ‘expressive wrongs’ which warrant prevention, as suggested by Khaitan. These expressive wrongs have a detrimental impact on victims' self-worth and strike at their dignity. To safeguard the self-worth of all persons, judges must be cautious while rendering judicial decisions. They must factor in their decisions' potential meaning and consequences on the sociological sphere.

Recalling from Part Two, on the same spectrum as self-respect and self-esteem, lie the concepts of internal capabilities and innate equipment, leading one to combined capabilities. The innate equipment refers to the social and political environment that the victims are surrounded by. This environment is extremely hostile towards the victims and contributes to the social and legal public discourse due to judicial decisions' persuasive and precedential value. Decisions of the higher courts are law because of their binding value for the lower courts.⁸⁵ When decisions such as those cited in this section are regarded as the law of society, they create, in

⁸⁵ The Constitution of India, art 141.

Nussbaum's terms, a 'disabling innate equipment,' which hinders the development of internal capabilities.⁸⁶

How can persons who have faced longstanding discrimination and violence be expected to survive in such a society? When a person's internal capabilities are jeopardised, they face an undue disadvantage when availing opportunities that are otherwise available for all. Therefore, even though these opportunities exist for people at face value, the sociological factors and the prevailing circumstances in society nullify the opportunities. The disabling innate equipment impairs the agency that women can *actually* exercise in society instead of the degree of agency available at face value.⁸⁷ The victims of humiliation face a corrosive disadvantage in the form of deep-seated prejudices and discriminatory attitudes due to the acts of humiliation committed against them repeatedly. The decisions cited in this paper hinder the realisation of capability '7B' enumerated in Part Two. This capability pertains to "having the social bases of self-respect and non-humiliation and being able to be treated as a dignified being..."⁸⁸ The environment surrounding the victims of such judicial decisions cannot be arguably considered as conducive for having the social base of self-respect and non-humiliation.

Further recalling from Part Two of this paper, acts of humiliation threaten the dignity of persons as defined by Waldron. This means that their social standing is unfairly jeopardised, and victims of humiliation become vulnerable to violent attacks and may be subjected to demeaning behavior in society. The examples of Humiliation cited in this paper show how the judiciary acts based on deep-rooted prejudices in society and continuously reinforces them. Article 51A of the Constitution of India states that "it shall be the duty of every citizen...to renounce practices that are derogatory to the dignity of women."⁸⁹ The examples cited in this section, show how the Judiciary itself, is far away from fulfilling the Directive Principles of State Policy enshrined in the constitution.

As a result of the humiliation done by the judiciary, the minority and vulnerable sections, after first being victimised by institutions of the State, are then victimised by members of society. By humiliating certain members, the Judiciary upholds the prevailing stereotypes in society

⁸⁶ *Supra* note 29, at 21.

⁸⁷ (emphasis supplied)

⁸⁸ *Supra* note 29, at 34.

⁸⁹ The Constitution of India, Art. 51A.

and thereby lowers victims' self-esteem. Owing to repeated acts of humiliation, it is implied to the society that victims are not entitled to any respect or safety and security. The safety of persons is threatened even further because of the discriminatory and oppressive practices of the past. Indian society has witnessed longstanding discrimination against women and rising crimes against women.

When the aforementioned judicial decisions are tested against the constitutional value of human dignity, it becomes clear that the State fails to fulfil its objectives highlighted in the preceding sub-section. The state is duty-bound to treat persons as ends in themselves and provide a conducive environment to develop and thrive. The decisions cited in this sub-section have the consequence of creating a hostile environment for a particular section of society and treating them as objects to ends. A condition precedent to bail that demands that an accused not only contact their victim whom they have allegedly raped but also be in their physical vicinity mocks the victim's plight. Compelling a victim to celebrate religious festivals with their oppressor is tantamount to negating her need for safety and strikes at the core of her self-respect and self-esteem. Furthermore, considering the existing judicial literature, the society will not hesitate to frown upon a woman who consumes alcohol with a man or consensually enters into a sexual relationship with a man who is not her husband; people will easily justify its decision of attacking such a woman and rely on the reasoning enumerated by courts themselves. If a court notes that a *prima facie* case has been made out as a rape accused and yet puts the accused person on a pedestal by stating that they are an asset to the State, then all such assets of the State must be given a free ride to attack other persons and get away with it.

All the humiliation instances cited in this paper relate to humiliation committed by the judiciary in its decision-making capacity. One may argue that the RAH is not enforceable against the judiciary as state. This is because the judiciary is not regarded as a state in India under Article 12 of the Constitution of India. While the full scope of the arguments pertaining to Article 12 is beyond this paper's ambit, for the sake of legal grounding, this paper shall briefly state a counter legal position. However, before addressing this argument, it is essential to reiterate that this paper aims to engage with the jurisprudence inherent in the RAH and illustrate instances in which it may be invoked. The examples cited in this paper constitute only a tiny part of the scope of the RAH, and it is possible to cite many other instances of humiliation committed by other institutes of the State. These have not been cited for the sake of brevity.

The following sub-sections shall briefly address the merits of the current legal position relating to the Judiciary not being considered state under Article 12 of the Constitution of India and provide a contrary perspective. The forthcoming sub-sections rebut the current legal position by offering a counter legal argument and further, a theoretical and moral argument. The theoretical and moral viewpoint tests the limits of the RAH for the purposes of the restrictions envisaged by Article 21 of the Constitution. It provides a framework within which the Judiciary must operate in the absence of legal accountability.

(i) *Counter legal argument*

The legal argument is premised on the need for the Judiciary to be recognised as State under the Constitution in its judicial capacity. Such an approach would permit the staking of an actionable claim against the judiciary for violation of Fundamental Rights. Article 13 of the Constitution of India provides that those laws inconsistent with or in derogation of the fundamental rights are void. Article 13(2) stipulates that “*the State* shall not make any law which takes away or abridges the rights conferred by this part and any law made in contravention of this clause shall, to the extent of the contravention, be void.”⁹⁰ Article 12 of the constitution states that:⁹¹

In this part, unless the context otherwise requires, “*the State*” includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

Article 141 of the Constitution provides that “the law declared by the Supreme Court *shall be binding* on all courts within the territory of India.”⁹² Similarly, the decisions of the High Courts are also binding on all lower courts. Since the lower judiciary must mandatorily follow the decisions rendered by the higher judiciary, it is evident that it plays a vital role in creating the law. These decisions act as precedents and are always taken recourse to in the event of similar facts and circumstances. It is therefore clear that earlier judicial decisions have a considerable bearing on future ones. By rendering judicial decisions, the adjudicating authorities are in the

⁹⁰ The Constitution of India, art 13(2). (emphasis supplied)

⁹¹ The Constitution of India, art 12. (emphasis supplied)

⁹² The Constitution of India, art 141. (emphasis supplied)

process of the creation of law. Article 13(2) forbids the creation of any law which infringes upon rights guaranteed by Part III of the Constitution.

Further in *State of Kerala v. NM. Thomas*, the Court held that:⁹³

Not only is the directive principle...binding on the *law-maker* as ordinarily understood, but it should equally inform and illuminate the approach of the Court when it makes a decision as the Court also is “State” within the meaning of Article 12 and makes law even though interstitially, from the molar to the molecular.

In *Common Cause v. Union of India*, the Supreme Court held that, “part IV of the Constitution is as much a guiding light for the Judicial organ of the State as the Executive and the Legislative arms, all three being integral parts of the “State” within the meaning of Article 12 of the Constitution.”⁹⁴

In *Riju Prasad Sarma v. State of Assam*, the Supreme Court observed that the judiciary is “essentially one of the three arms of the state and as such it must also be aware of its responsibilities flowing from the Preamble and Article 38 of the constitution.”⁹⁵ The approach so far adopted by the Apex Court in India has been to accept the judiciary as state for the purposes of Part IV of the Constitution of India but not Part III. Article 38 pertains to the need for the “State to secure a social order for the promotion of welfare of the people.”⁹⁶ Further, Article 51A of Constitution of India states that “it shall be the duty of every citizen...to renounce practices that are derogatory to the dignity of women.”⁹⁷ Thus, from a legal standpoint, even Part IV has stipulations that warrant the need for Judges to desist from humiliating persons.

Albeit the need for the Judiciary to be recognised as a State even for the purposes of Part III has been reiterated several times, the matter remains ambiguous.⁹⁸ Even so, this ambiguity

⁹³ (1976) 2 SCC 310. (emphasis supplied)

⁹⁴ (2015) 7 SCC 1.

⁹⁵ (2015) 9 SCC 461.

⁹⁶ The Constitution of India, art. 38.

⁹⁷ The Constitution of India, art. 51A.

⁹⁸ Uzair Ahmed Khan, “Judiciary as a ‘State’ under Article 12,” *Ipleaders.in*, October 15, 2019, available at: https://blog.ipleaders.in/judiciary-state-article-12/#_ftn25 (last visited on September 15, 2020).

exists, the courts must exercise their jurisdiction following the provisions of the constitution. Therefore, they cannot render decisions that are contrary to the fundamental rights and other constitutional commitments.⁹⁹ Such decisions would be subject to appeal/review for incorrect application or interpretation of the law. Furthermore, persons also have the right to ask the court to exercise its writ jurisdiction in case of violation of fundamental rights; or a curative petition can also be filed in certain limited cases.

Further, recalling again from part one the idea of dignity as an expressive norm, one may contend that judges at the time of adjudication and expression of their decisions must not compromise on the citizens' dignity. In the Indian Constitution, dignity explicitly features in the Preamble – “We, the people of India, having solemnly resolved to constitute India...and to secure to all its citizens...Fraternity *assuring the dignity of the individual...*”¹⁰⁰ The preamble has been held to constitute the Basic Structure of the Constitution which is unalterable and non-derogable. The basic structure of the constitution cannot be amended or waived off under any circumstance.¹⁰¹ In line with *Rijju Prasad Sarma v. State of Assam*¹⁰², dignity as an expressive norm must be borrowed from the Preamble and employed as a foundational value for the purpose of adjudication and expression.

This paper acknowledges that all rights are subject to certain restrictions. Even the right to life is not an absolute one and can be subjected to the restrictions of ‘procedure established by law’ or ‘due process of law.’¹⁰³ However, even the said restrictions have a metric and cannot be envisaged unfairly and unreasonably. The following sub-section sheds light on a theoretical and moral framework that may be employed to test the limits of the RAH.

(ii) *The Theoretical and Moral Framework*

The theoretical and moral framework is foregrounded on the need for judges to desist from invoking their personal morality in their judicial capacity. This is because such invocation is unwarranted and unmerited.

⁹⁹ Bani Mahajan, “Article 12 and 13 of the Constitution of India,” *Lawctopus.com*, December 7, 2014, available at: <https://www.lawctopus.com/academike/article-12-and-13-of-the-constitution-of-india/> (last visited on September 15, 2020).

¹⁰⁰ The Constitution of India, Preamble (emphasis supplied).

¹⁰¹ *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225.

¹⁰² *Supra* note 95.

¹⁰³ *Maneka Gandhi v. Union of India* (1978) 1 SCC 248.

Judges are bound by the moral reasoning and legislative intent that resonates in the existing legal sources. The said moral reasoning and legislative intent have carefully considered each society's cherished values and shared standards.¹⁰⁴ Hence, the judge's role is limited to determining whether such moral reasoning and intent are consistent with the principles of justice and whether they have been correctly applied.

Some have argued that judges may be compelled to act as legislators and invoke their own morality during adjudication. Such situations may arise when judges employ reasoning that pertains to Constitutional standards or the rights of minorities.¹⁰⁵ Such a compulsion can be for reasons such as lack of clarity in the existing legal resources, deficiency in quality and quantity in the existing legal resources, etc. There is a second line of argument as per which judges are moral reasoners. Proponents of this position argue that it is impossible for Judges to completely isolate their reasoning and decisions from their values and moral ideas.¹⁰⁶ Legal reasoning and moral reasoning are not disjunctive and go hand in hand.¹⁰⁷

Jeremy Waldron has rejected both these positions and argued that legal reasoning might entail some moral reasoning on the judges' part. However, the same is not moral reasoning in a substantial sense. Judges are guided by what Waldron refers to as a “hybrid of moral and legal sensibility.”¹⁰⁸ It is imperative that moral reasoning in a substantial sense only occurs in an environment where pure legal reasoning does not overshadow it. This environment ensures that moral reasoning is not compromised in any manner whatsoever.¹⁰⁹ Thus, the legislators should be vested with the responsibility to engage in moral reasoning simply because their environment is more conducive.¹¹⁰

Moral reasoning must be employed in the name of the entire society and not on an individual basis. Only the legislators must undertake such reasoning given that (at least in some instances) they are elected representatives who represent the majority views of society. While this argument has its limitations in terms of the fact that it is not necessary that the majority view

¹⁰⁴ Jeremy Waldron, “Judges as Moral Reasoners”, 7 *International Journal of Constitutional Law* 9 (2009).

¹⁰⁵ *Id.* at 11.

¹⁰⁶ *Id.* at 14.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Id.* at 13.

¹⁰⁹ *Id.* at 14.

¹¹⁰ *Id.* at 15.

is morally sound and may simply be a product of ‘adaptive preferences’¹¹¹, it must be borne in mind that legislative power is not unchecked and unfettered. If the legislature's moral view cannot be countenanced, it may be subject to judicial review. While employing legal reasoning, the judges have the power to examine whether the impugned legislations align with the constitutional commitments of any society. The adjudication of judges is in turn governed by the hybrid model of moral and legal reasoning. There also exist additional fetters on judges’ decision-making freedom.

These exist in the domain of human rights adjudication. An expert of human rights and anti-discrimination law, Sandra Fredman has argued that human rights adjudication must be confined by a concept called ‘bounded deliberation.’ Judges must ensure that a full-fledged deliberative process precedes their decisions.¹¹² Bounded deliberation pertains to operating within the confines of the ‘human rights network’, which a ‘prior consensus’ has established.¹¹³ The prior consensus pertains to an already established normative idea about the “fundamentals of being human in a political society.”¹¹⁴ This means that there are enough fetters on the judges’ power when employing moral reasoning because the existing framework acts as a constraint on the limits to the judges’ autonomous moral reasoning.

Thus, the enumerated moral and theoretical framework envisions sustainable fetters on the legislature's and the judiciary's powers and provides enough safeguards. Any situation that warrants a violation of the RAH ought to be adjudicated within the confines of this theoretical and moral framework. Only then the perils of humiliation can be prevented, and people's self-worth can be secured from deep-rooted prejudices and stereotypes.

V. Conclusion

This paper has emphasised the need for the validation of a right against humiliation as a fundamental right. This right calls upon the state to desist from humiliating its subjects to secure their self-respect and self-worth. The State is duty bound to tread cautiously while encroaching upon or restricting fundamental rights. In other words, fundamental rights are

¹¹¹ *Supra* note 29, at 66.

¹¹² Sandra Fredman, “Adjudication as Accountability” in Nicholas Bamforth, Peter Leyland (eds.), *Accountability in the Contemporary Constitution* 22 (Oxford University Press, 2013).

¹¹³ *Ibid.*

¹¹⁴ *Id.* at 24.

justiciable against the state, and an infringement may lead to an actionable claim. It is a legal necessity that every act of the State be in consonance with the rights contained in Part III. Since these rights capture the basic spirit of the constitution, the state must be committed to providing all those rights to its people without which persons will be unable to thrive adequately. The RAH is one such right. This right calls upon the state to desist from humiliating its subjects to secure their self-respect and self-worth. The good life of *eudaimonia* comprises two components – living well and being able to do well. A person cannot lead a fulfilled life if either of the two is jeopardised or impeded in any way.

It is possible to cite several instances of humiliation that occur due to acts committed by the state's different organs. These may include the gender-specific criminalisation of rape in a society where male rape is not considered a criminal offence.¹¹⁵ One could also argue that the refusal to criminalise marital rape¹¹⁶ also results in Humiliation as it prioritises the institution of marriage over the bodily autonomy and agency of victims. These would amount to humiliation perpetrated on account of the legislature. Additionally, this right's relevance can also be understood in instances of wrongful prosecution by the state's machinery. In such instances, those the State has wrongfully prosecuted may argue that their RAH has been violated due to prevailing stereotypes such as those associated with religious minorities or lower-caste identities. After having endured wrongful incarceration for decades and suffering from a long-drawn battle, persons are simply spat back into the society without any attempts at reintegration or rehabilitation by the State. In most instances, most persons are not even provided with any financial compensation for the wrongs caused to them and for the malicious prosecution.¹¹⁷ On the other hand, the police personnel and other officials who wrongfully prosecute these persons, enjoy a long and honourable service period, without being held accountable in any way whatsoever.¹¹⁸ There is a dire need for accountability and the state to assume responsibility to provide opportunities to those who are wrongfully prosecuted. Accordingly, a remedy to right all the wrongs must be provided.

¹¹⁵ The Indian Penal Code, 1860, s. 375.

¹¹⁶ *Id.* exception 2.

¹¹⁷ Law Commission of India, “277th Report on Wrongful Prosecution (Miscarriage of Justice): Legal Remedies: (August, 2018).

¹¹⁸ Mohammad Aamir Khan and Nandita Haksar, *Framed as a Terrorist: My 14 year Struggle to Prove My Innocence* (Speaking Tiger Books, 2016).

The focus of this paper has been restricted to acts committed by the judiciary, considering gendered stereotypes. However, as is evident, the scope of the RAH goes well beyond the judiciary and must be understood, keeping in mind other prejudices and other social structures. The RAH must be understood concerning the vertical relationship between the State and the citizens instead of the horizontal relationship between citizens and citizens.¹¹⁹ Humiliation exists both in public and in the private domain, however, this paper has chosen to focus only on the public domain. Every society must strive to weed out prejudicial acts with severe consequences such as humiliation from both these domains.

The prevailing societal stereotypes obstruct social justice delivery and then carry those stereotypes to reinforce them and strengthen them further. The consequence of such reinforcement is the hindering of the pursuing of capabilities by victims of humiliation. The victims lose their dignity in terms of their social standing and cannot avail opportunities created for all. Humiliation erodes the concept of a level playing field for all because it creates undue disadvantages based on stereotypical attitudes and prejudices. The RAH strives to alter these prejudices and is an intrinsic part of the Right to Life. To stop the acceleration of social injustice and mitigate the negative consequences, the RAH is a necessity. The Apex Court has acknowledged the obligation to provide a minimum standard of living to all persons. The minimum standard requirement has a very close nexus with the need for having the social base for development of self-respect. Perhaps, the first step towards envisaging the RAH in the Indian legal framework, is expanding the understanding of how the minimum standard is to be achieved, and how institutions of the State interfere with the achievement of this minimum standard.

¹¹⁹ *Supra* note 22, at 16.