

Dignity and Urbanization in Bhutan

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Questions Presented

1. How has dignity been defined in a legal context throughout the world?
2. What particular dignity rights are vulnerable in the context of growing Bhutanese urbanization?

Brief Answer

1. Dignity has been defined essentially as a basic human right to live autonomously. Some nations give a specific right to it in their constitution, and others have developed the right through case law. While it can be “the umbrella that all human rights fall under” dignity can also be used to connect to specific rights such as a clean environment and the right to food. As a result of this, people around the world can bring legal challenges on the basis that certain things infringe on their dignity.
2. An increasingly urbanized country like Bhutan is vulnerable to a polluted environment, and to an increase in poverty. Large groups of people living together means that if even a small urban area becomes polluted, many people are at risk. A person who cannot breathe clean air has lost at least some of their right to dignity. Urban areas also tend to be vulnerable to large amounts of people living in poverty. As mentioned by Stephan, Bhutan is currently wrestling with developing slums in their capital city, Thimphu. Poverty is dignity infringing and governments should have a duty to help it to the best of their abilities.

Introduction

This paper examines environmental and poverty issues regarding dignity and urbanization in the context of Bhutan. Bhutan is becoming an increasingly urbanized nation as people move from the less developed rural areas to larger cities in search of work and prosperity. This trend is in line with the rest of the world as more than half of the world’s population lives in urban areas. According to the United Nations, “Today more than half of the world’s population

lives in urban areas, and by 2030 this is expected to rise to 60 percent. In the same period 90 percent of the world's population growth will take place in cities, particularly in Africa and Asia.”¹ Bhutan is an Asian country that has seen rapid urbanization over the past decade and will likely see more as the country develops. With that increase in urbanization, it is helpful to understand how urbanization can result in the deterioration of human dignity. Some of these pitfalls include harming the urban environment along with developing slums that tend to emerge as urban areas get larger.

First, this paper will attempt to define dignity as an emerging legalized right throughout the world. Dignity has its roots in philosophy, although there has been a recent trend of courts around the world that have recognized dignity as a basic human right. Nations like Columbia have attempted to constitutionalize dignity. Recently, the United States Supreme Court noted the importance of dignity in *Obergefell v. Hodges*², which held that denial of same sex marriage violated human dignity. Because dignity is an emerging human right, investigating how courts have defined the term will be useful in the context of Bhutan.

After examining the legal definition of dignity in a broad sense, this paper will then assess what dignity means in the context of urbanization. The main points of reference will be four statements regarding urbanization and human rights by the United Nations Office of the High Commissioner. Those points were made in the face of the Habitat III conference which aimed to promote human rights in the context of urbanizing areas. Those areas of focus are:

- **The free, active and meaningful participation of all inhabitants.**
- **That duty-bearers are accountable for respecting and promoting the rights of all inhabitants.**

¹ <http://www.ohchr.org/EN/Issues/Urbanization/Pages/UrbanizationHRIndex.aspx>

² 135 S. Ct. 2584

- **That the root causes of violations of the principles of non-discrimination and equality are addressed.**
- **That all urban development activities embrace strategies for the political, social and economic empowerment of people.**

In order to successfully promote dignity in the context of urbanization, Bhutan must keep these values in mind and address them when violations occur. This paper will explore dignity through the filter of these four points of focus.

Next, this paper will explore one of the main issues that threaten dignity throughout the world, and in particular within the context of urbanized societies, the environment. Climate change will affect everyone on the planet but has the ability to affect urbanized societies at an even greater rate. As we become more and more conscious of the harmful environmental effects caused by fossil fuels, we must be aware of these effects on the dignity of city residents. It is difficult for a person to fully realize their dignity when the air they breathe is toxic or when children cannot play in particular city areas because of hurtful toxins created by companies. There is a recent trend among domestic courts that recognize that a harmful environment is harmful to human rights and dignity. For example, in *Gbemre v Shell Petroleum Development Company Nigeria*, the Nigerian high court recognized that adverse environmental affects created by Shell Petroleum infringed on a constitutional right to dignity.³ Looking at how international courts dealt with environmental harms infringing on the right to dignity could be useful as Bhutan attempts to develop their urban areas. Urban areas tend to be vulnerable to environmental infringements because of the high concentration of businesses and people.

³ *Gbemre v. Shell Petroleum Dev. Co. Nigeria Ltd.*, (2005) EHC/B/CS/53/05 FHCNLR (Nigeria)

Next, this paper will look into another dignity infringing issue that is common in urbanized areas, poverty. The paper will argue that increased urbanization in Bhutan could lead to an increase in poverty which is dignity infringing. I will look at how courts, specifically the Supreme Court of India, have wrestled with the relationship between poverty and dignity. India has a right to dignity and Indian case law has held the government legally responsible for not feeding its citizens in certain scenarios. As Bhutan gains wealth, cities will grow, but the threat of poverty can also grow within those cities. The government of Bhutan must be conscious of growing poverty in urban areas and work to provide solutions. One solution could be through dignity as a legally enforceable right.

Finally, this paper will apply these lessons regarding urbanization in the context of Bhutan. Bhutan is in a unique situation because it has been relatively secluded from the rest of the world until recently. Bhutan should aim to have modern solutions to dignity infringements while keeping its unique identity that has lasted for over a thousand years. Looking at how the courts of other nations have dealt with the idea of dignity in an urban environment is helpful, but the unique nature of Bhutan means their solutions may be substantially different to other nations.

I. Defining Dignity in a Legal Context

As mentioned before, the term “dignity” has its roots in philosophical arguments and is currently being codified as a legal human right, in line with the terms life, liberty, and the pursuit of happiness. The term can be a little tricky to properly define and history suggests that it is open to multiple interpretations. Because of the historical ambiguity, examining how various domestic courts have defined the term can give the meaning of dignity a proper context.

Dignity is mentioned in the preamble to the Charter of the United Nations (1945) which states, “We the people of the United Nations Determined...to reaffirm faith in fundamental

human rights, in the *dignity* and worth of the human person, in the equal rights of men and women and of nations large and small⁴” (emphasis added). Before it was mentioned in the Charter, dignity in the law was relatively rare outside of being mentioned in a few constitutions. The term dignity has been around for thousands of years and in the last few hundred years has been used as a tool for philosophers. It wasn’t until after it was mentioned in the Charter, the Universal Declaration of Human Rights (1948) and the two International Covenants that domestic courts took notice and attempted to make it a codified human right in line with other sought after ideals such as liberty and a person’s ability to thrive socially and economically. Fortunately, the prevalence of the idea of dignity in laws and constitutions of international court gives us the means to give true, legal meaning to the word. Countries like Colombia have specifically mentioned dignity in their Constitution while places like the United States and Nigeria have mentioned dignity in cases where certain human rights, like the right to same sex marriage and the right to a clean environment, have been at risk.

II. Defining Dignity in National Constitutions

The number of countries that included the term “dignity” in their constitutions increased rapidly after World War II. Perhaps it was the tragedies of the two World Wars that influenced the adoption of the term or it could have been influenced from being mentioned in United Nations documents. Either way, over one hundred countries today mention the term dignity in their Constitutions. This clearly shows a global intent to codify dignity as a basic and essential human right.

“The first countries to mention human dignity in their constitutional documents following WWII were Japan, Italy, and West Germany, the defeated coalition known as the axis

⁴ <http://www.un.org/en/sections/un-charter/preamble/>

powers.”⁵ Nation states were trying to recognize dignity as a tool to make sure recent tragedies never occurred again. For instance, Article I Section I of the German Basic Law states that, "Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.”⁶ The term “dignity” is only mentioned three times throughout the Basic Law but its position within the document shows how revered the writers of the document considered the term to be. The literal first term after the preamble is “Human Dignity.” The title of Article I is “Human dignity-Human Rights-Legally Binding Force of Basic Rights.” The rest of this article mentions basic human rights along with peace and justice throughout communities. Dignity is never mentioned after Article I but it is important that the writers decided to put the terms “Human Rights” and “Human dignity” right next to each other. This implies that there is a difference between the two and that dignity is not just the umbrella that all basic human rights fall under. Dignity is something different altogether. Unfortunately, the German Constitution does not mention dignity at any point other than Article I Section I. They put dignity at the very beginning of the document but failed to expand exactly on what it means. It is obviously a major ideal for a developing country but for a more precise definition, it is useful to look to other nations along with judicial case law interpretations of the term.

In a similar way to Germany, the Constitution of South Africa mentions dignity at the very beginning of the document. In its first chapter, entitled “Founding Provisions” the document states that “The Republic of South Africa is one, sovereign, democratic state founded on the following values: *human dignity*, the achievement of quality and the advancement of human

⁵ Shultziner and Carmi: Human Dignity in National Constitutions: Functions, Promises and Dangers

⁶ Germany: Basic Law for the Federal Republic of Germany Art I Sec I

rights and freedoms.”⁷ The writers of the South African Constitution included dignity in a section immediately followed by a section denouncing racism and sexism. This placement gives further proof of the idea of dignity as the umbrella that all human rights fall under. This particular constitution is South Africa’s fifth and was adopted in 1996, shortly after apartheid was ended in that nation. Racial equality was at the forefront of concern for writers of this particular document and the fact that they put dignity first shows how strongly they felt about the term.

Other constitutions attempt to give dignity more precise content. They do so by using the term to actually apply it to specific individual rights. Dignity as the umbrella that all human rights fall under is a nice start, but with that definition it is difficult to give the term any type of concrete legal meaning. By connecting dignity with specific rights, such as the right to vote and the right to healthcare, the term becomes much more meaningful in a legal sense.

The Colombian Constitution is similar to many countries in that it mentions dignity right at the beginning of the document. Article I of the document states that “Colombia is a legal social state organized in the form of a unitary republic, decentralized, with the autonomy of its territorial units, democratic, participatory and pluralistic, *based on respect of human dignity*, on the work and solidarity of the individuals who belong to it, and the predominance of the general interest” (emphasis added.)⁸ This particular section of the document is very similar to that of Germany and South Africa in that it stays with the theme of using dignity at the beginning of the document before mentioning specific rights. However, the Colombian Constitution differs, in that it goes on to mention dignity several more times in the document, actually connecting the term with specific rights.

⁷ <http://www.gov.za/documents/constitution/chapter-1-founding-provisions>

⁸ http://confinder.richmond.edu/admin/docs/colombia_const2.pdf, 4.

The term dignity is mentioned eight different times throughout the Colombian Constitution. Looking into a few of those mentions can shed light on a few issues that Colombians thought were important enough to connect with dignity. Chapter two of the document states that “The state and society guarantee the integral protection of the family. The law may determine the inalienable and unseizable family patrimony. The family’s honor, dignity, and intimacy are inviolable.”⁹ By connecting the protection of the family with dignity, this document goes beyond just using dignity as an umbrella that all rights fall under, thus giving the term a more concrete legal meaning.

Article 51 of the Colombian Constitution gives further examples of issues that relate to dignity. The article states that “All Colombian citizens are entitled to live in dignity. The state will determine the conditions necessary to give effect to this right and will promote plans for public housing, appropriate systems of long-term financing, and community plans for the execution of these housing programs.”¹⁰ The article starts with a broad definition of dignity but goes on to mention how being entitled to live in dignity means the right to public housing and long-term financing. Here, the document is expanding on specific rights that make up the more general right to dignity. By defining the term with specific rights, this provides a clearer path for judges to enforce the very broad right to dignity. The document goes on to mention dignity in relation to forming contracts, professionalism in teaching, and the right to diverse and equal cultures.¹¹ It is crucial to define the right to dignity with specific rights so it is easier to enforce in courts, and easier to be wary of when possible dignity infringements may arise.

III. Dignity Defined In Case Law

⁹ Id. at 11.

¹⁰ Id. at 14.

¹¹ Id.

When an ambiguous term or right is mentioned in a legal document such as a national constitution, it is often up to courts to define those terms. Dignity is no different and various courts across the world have expanded on what a right to dignity exactly means.

The United States does not give an explicit right to dignity in its constitution but recent decisions may imply that dignity is part of 14th Amendment due process rights. In 2015, *Obergefell v. Hodges* gave the right to same sex marriage throughout the country. The rationale for the decision was based in due process and equal protection under the 14th Amendment and dignity was an essential theme throughout Justice Kennedy's opinion, using the term thirty times.¹² Kennedy brilliantly shows how dignity relates to the sanctity of marriage and how denying same sex marriage had resulted in a gross infringement on the dignity of those who wish to engage in same sex marriage. He talks about how the idea of dignity has helped shaped American laws relating to women's rights, mentioning that "As women gained legal, political, and property rights, and as society began to understand that women have their own equal dignity, the law of coverture was abandoned."¹³ This sentence is saying that as American society recognized dignity in women, the draconian laws (coverture is how he phrases it) were removed in favor of equality and dignity. Kennedy goes on to apply this to the idea of same sex marriage when he writes that "In addition these liberties extend to certain personal choices central to individual dignity and autonomy, including intimate choices that define personal identity and beliefs."¹⁴ The use of dignity throughout the opinion shows how important the term can be in the context of basic human rights. Although it isn't an explicit right in the United States

¹² *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

¹³ *Id.*

¹⁴ *Id.*

Constitution, it is still able to influence American jurisprudence and help to advance human rights.

The Supreme Court of India has referenced the right to dignity in deciding cases. Like the United States, a specific right to dignity is not mentioned in the Indian Constitution but has been incorporated as a basic human right through case law. In *D. K. Basu v. State of W.B.*¹⁵ the Supreme Court of India used dignity in ruling custodial torture to be a violation of basic human rights. The Court used strong language that suggested how crucial dignity can be in ruling on violations of human rights. "Custodial torture" is a naked violation of human dignity and degradation with destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilization takes a step backward-flag of humanity must on each such occasion fly half-mast."¹⁶ By defining constitutional rights to include the right to dignity, India can then expand on that through judicially made law and effectively expand human rights. The Indian Supreme Court used dignity in the area of criminal procedure and this gives an example of how dignity can go well beyond the vagueness of just being the umbrella that all rights fall under.

India seems to be part of a growing trend of using legal rights to protect the environment. Recently, the high court of the northern state of Uttarakhand, India, granted legal rights to two of the country's sacred rivers, the Ganga and Yamuna.¹⁷ By recognizing the rivers as entities with the ability to make legal challenges, the Court is showing an increased consciousness of threats to the environment. Dignity can be a tool to further enforce environmental rights in courts throughout the world. An increasing number of domestic courts are recognizing that having a

¹⁵ AIR 1997

¹⁶ Id.

¹⁷ ***Cite Needed

clean environment should be a basic human rights. It is natural that dignity be used as a tool to help gain these environmental rights.

IV. The Right to a Clean Environment

Recognizing natural bodies as entities with legally enforceable rights is risky but regardless of the result, judicial opinions that make an effort to improve the environment are crucial. Looking at how countries and the United Nations have embraced environmental rights throughout the world can be illuminating for developing countries trying to help improve or protect their air. Bhutan, as an increasingly urbanized society, must recognize that a potentially polluted urban environment can be dignity infringing for generations. If adults and children cannot breathe clean air, they lose some or all of their dignity.

The 1972 Declaration of the United Nations Conference¹⁸ on the Human Environment declared that “man is both creature and molder of his development.” The document goes on to state that “the protection and improvement of the human environment is a major issue which affects the well-being of peoples and economic development throughout the world; *it is the urgent desire of the peoples of the whole world and the duty of all Governments* (emphasis added).”¹⁹ This declaration makes clear that not only is climate change a major issue, the duty is on Governments to make sure its people aren’t negatively affected by it, and to provide solutions when people are affected. The document also makes a connection to dignity stating that “Man has the fundamental right to freedom, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.”²⁰ These quotes show a connection between dignity and a

¹⁸ <http://www.un-documents.net/unchedec.htm>

¹⁹ Id.

²⁰ Id.

healthy environment and implies that an unclean environment infringes on dignity. As humanity better understands the effects of climate change, governments must lead the charge in protecting its citizens. A developing country like Bhutan has certain advantages because we have much more knowledge about the negative effects of industrialization. This information was not available when many countries, like the United States, were entering the industrialized world. Declarations like this from the United Nations are crucial, but it will always be the burden of individual nations to concern themselves with environmental issues. Countries must attempt to keep their environment clean through constitutional measures or through case law.

Several countries have included a right to a clean and healthy environment in their constitutions. Ecuador has an entire section concerning a “healthy environment.”²¹ The section talks about how government and private entities have a duty to use clean technologies. Curiously, dignity is not reflected in this particular section although it is connected to other basic human rights throughout the document. Even if the Ecuadorian Constitution does not explicitly state it, there is a strong argument to be made that an unclean environment negatively affects dignity. Ecuador, as a developing country, is showing a pragmatic approach to a clean environment, one that Bhutan would do well to mimic. Additionally, a country that doesn’t have a right to a clean environment in its constitution would do well to establish that right through a constitutional amendment or through case law.

V. Poverty in Indian Supreme Court Jurisprudence and the Dignity Connection

As mentioned earlier, India has used case law to establish a right to dignity. Additionally, while not codifying a specific right to dignity in the Indian Constitution, the document mentions

²¹ Government of Ecuador, 2008. Full text of the document gotten from <http://pdba.georgetown.edu/Constitutions/Ecuador/english08.html>

dignity three separate times. The first instance concerns “dignity of the individual”²² The second instance of the use of dignity concerns the rights of children saying “(If) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.”²³ The third use of dignity in the Indian Constitution addresses the rights of women saying that a fundamental duty exists “to renounce practices derogatory to the dignity of women.”²⁴ The common theme among these uses of dignity is that they involve basic human rights for groups that tend to be marginalized in that society, children and women. These mentions of dignity, combined with Indian case law that establishes a right to dignity, gives a great example of how dignity can be used as a legally enforceable right to help marginalized groups across society.

Courts in India using its constitution and case law to affirm dignity rights for its citizens is consistent with how dignity has been applied throughout the world. Additionally, the Indian Supreme Court has used case law to help its poverty problem that persists throughout the country.

India is one of the largest countries in the world in terms of population and its caste system has resulted in millions and millions of people living below the international poverty line. The World Bank estimates that approximately 300 million people, or around twenty five percent of the population, in India live in poverty.²⁵ The number of people living below the poverty line has decreased in India over the last few decades. As of 1995, over 400 million people in India

²² Government of India, 1950. Full text of the document gotten from <http://lawmin.nic.in/olwing/coi/coi-english/coi-4March2016.pdf>, 29.

²³ Id. at 50.

²⁴ Id. at 53.

²⁵ <http://povertydata.worldbank.org/poverty/country/IND>

were living in poverty.²⁶ One of the reasons for the decrease in poverty over the last couple decades could be through Indian courts. Courts seem to have put the burden on the government to at least help with alleviating the extreme poverty problem in the country. A right to live above the poverty is not a right contained in the Indian Constitution but the Indian Supreme Court has not been hesitant to hold the government legally liable when they have not taken the correct steps to help its underprivileged citizens. The way they have done this is by using their Constitution to establish that all Indians, including the poor, have a right to personal liberty, which in some situations has been interpreted as the right to food and other basic necessities. Through much of its history, India has struggled with sanitation and access to food, and the court system, and the idea of dignity, can be used to effectively help with those major issues.

A perfect example of how the Indian Supreme Court used its power to help alleviate poverty came in *PUCL vs. Union of India & Others*. This case was revolutionary in the sense that it established a basic floor concerning the right to food and nutrition.

The basic facts of *PUCL vs. Union of India & Others* are as follows. Numerous people in the Western Indian province of Rajasthan were living below the poverty line in a situation similar to that of the rest of the country. It was discovered that the section of Food Corporation of India in that area was overflowing with grains to the point that it was fermenting and rotting.²⁷ While this was going on, people in the Rajasthan region were eating on a rotation basis. This means that a certain group of people would eat one day, then the next day a different set of group were eating. People in the region were starving to death and only eating meals every few days. On the basis of this, the People's Union for Civil Liberties (PUCL) brought suit. The basis of

²⁶ Id.

²⁷ All factual references from this case were found on <http://www.hrln.org/hrln/right-to-food/pils-a-cases/255-pucl-vs-union-of-india-a-others-.html>

their suit was a violation of Article 21 of the Indian Constitution. Article 21 states that “No person shall be deprived of his life or personal liberty except according to procedure established by law.”²⁸ This article reads a little bit like the United States due process clause and works in a similar way in that it is a short article that has been read to encompass numerous basic human rights.

In *PUCL v. Union of India & Others*, the Indian Supreme Court reasoned that the right to food was necessary to uphold Article 21 of the Constitution. A report by the Supreme Court of India provided the rationale and also laid the groundwork for better distribution of food throughout regions in India.²⁹ The groundwork was laid by making short term recommendations such as increased storage capacity and better transportation of grains.³⁰ This case puts the burden on regional governments to ensure not only that their citizens have food, but that steps are taken to ensure responsible storage and distribution of that food.

The term “dignity” is not used often in the rationale for this decision but the right to food is clearly crucial if a person is to live a dignified life. People living below the poverty line struggle to eat. If the government does not act on its own citizens starving, their dignity is obsolete. As will be argued later, an urbanized environment becomes vulnerable to poverty. A large amount of poverty is a sign that the government has not adequately ensured its citizens a right to dignity and must be addressed. This particular case was kind of a perfect storm to allow a legal right to food. The connection between food rotting in government compounds and starving citizens was easy and obvious to make here. Other solutions will not be as clear as in this case. For example, if a nation-wide drought occurs and food becomes scarce, is the government still

²⁸ Article 21 of the Constitution of India.

²⁹ http://supremecourtfindia.nic.in/ottoday/report_cvc17092012.pdf, 16.

³⁰ *Id.* at 19.

responsible for not feeding its citizens. The answers are not clear and generally need to be decided on a case by case basis. Either way, the government must do everything within its means to ensure its citizens have food and do not lose their dignity in this particular way. A lack of food will always be connected to poverty. The country of Bhutan will have to address its own unique challenges in alleviating food shortages and poverty in general, as situations will not always be as clear as they were in the *PUCL* case.

Conclusion

To conclude, it is helpful to look back at the four statements from the UN about effective urban development. These were mentioned in bold at the beginning of the paper.

First, **the free, active and meaningful participation of all inhabitants**. When people cannot participate in the legal process, dignity is infringed. This means that when an environmental infringement is alleged by a marginalized group, such as the poor, they must still be able to make challenges in courts. If large companies are the only ones that can participate in government and the legal process, the environment will be particularly vulnerable which could result in dignity infringes.

Second, **that duty-bearers are accountable for respecting and promoting the rights of all inhabitants**. This comment puts a duty squarely on governments to uphold dignity in urban environments. A government that ignores the cries of dignity infringes from its members is in violation of the rights to dignity. Non-government duty bearers share responsibility as well. Wealthy individuals that employ many people must be conscious of when their workers have their dignity infringed upon.

Third, **that the root causes of violations of the principles of non-discrimination and equality are addressed**. This point argues that everyone must be on equal footing when it comes

to equality in an urban environment. People living in extreme poverty tend not to be given equality and arguing that this infringes on dignity can be a useful tool for these people to get help from their government.

Finally **that all urban development activities embrace strategies for the political, social and economic empowerment of people.** These four ideals have similar themes. The phrase “economic empowerment of people” is clearly alluding to the fact that large groups of people in poverty cannot be fully autonomous and thus have lost their right to dignity. It is the burden of the government, and perhaps wealthy individuals as well, to make sure that everyone at least has the opportunity to become economically empowered.

The final part of this paper will address the two major dignity threats discussed, an unclean environment and poverty.

An increasingly urban society usually involves very large groups of people living close together. As a result of this, even seemingly minor pollution can have catastrophic effects on these individuals. A government must be sensitive to this and work to regulate entities that may produce an unclean environment. As Bhutan grows economically, more and more companies will sprout up. These companies must work to provide a clean environment. If they don't, the right to dignity has been infringed upon.

Urban societies also tend to be susceptible to an increase in poverty. Bhutan is seeing great urban migration, and those who migrate to cities and they do not find jobs tend to turn to crime or end up in poverty. This violates dignity. The solution could be complex but a solution that is tailored to the unique culture of Bhutan is necessary.

