A. F. R.
Reserved

Court No. 27

Case :- WRIT - C No. - 13214 of 2019
Petitioner :- Anant Narayan Mishra
Respondent :- The Union Of India And 4 Others
Counsel for Petitioner :- Girijesh Kumar Mishra,Ratnakar Upadhyay,Sri Radha Kant Ojha (Senior Advocate)
Counsel for Respondent :- A.S.G.I.,Ajeet Kumar Singh,Ishan Shishu,K.R. Singh,Krishna Raj Singh Jadaun,Rijwan Ali Akhtar,Vikram D. Chauhan

Hon'ble Ajay Bhanot,J.

This judgment has been structured by dividing it into various sections to facilitate analysis and for easy read. They are:

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J.	Statutory Regime of Punishments in light of Article 21 & Doctrine of Proportionality
K.	Punishments & Article 21 *(i).* Right to human dignity *(ii).* Supreme Court on human dignity *(iii).* Comparative International Jurisprudence *(iv).* Constitutionality of punishments under the statutes *(v).* Systemic responses : Responsibilities of the State and the universities
L.	Reform, Self Development & Rehabilitation: *(i).* Role of universities in achieving behavioural change *(ii).* Imbibing constitutional values and purging communal hatred *(iii).* Present discontents of students and solutions *(iv).* Creation of reform, self development, rehabilitation programmes *(v).* Concerns of universities regarding discipline & restraints during the reformation, self development & rehabilitation programme
M.	Proportionality and Punishment
N.	Conclusions & Reliefs
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A. *Reliefs sought*

1. The petitioner has assailed the order dated 30.03.2019, passed by the Registrar, Banaras Hindu University, Varanasi, suspending the petitioner from all privileges and activities of the University.

2. The petitioner has also prayed for a writ in the nature of mandamus to command the authorities and permit the petitioner to pursue his Integrated Rural Development and Management (IRDM) course as well as Ph.D. course and permit the petitioner to participate in the activities of the University.

B. *Arguments of the learned counsel for parties*

3. Sri R.K.Ojha, learned Senior Counsel assisted by Sri Ratnakar Upadhyay, learned counsel for the petitioner submits that the impugned order was passed in violation of the statutes

of the university. The punishment imposed upon the petitioner is disproportionate. There is no provision for reform and rehabilitation of delinquent students in the statutes, which has resulted in violation of the fundamental right of the petitioner guaranteed under Article 21 of the Constitution of India.

4. Sri Anish Kumar, and Sri Pankaj Misra and Sri Gaurav Pundir, learned counsels for the petitioner in connected writ petitions adopt the aforesaid arguments of the learned Senior Counsel, apart from raising factual issues peculiar to the respective writ petitions in which they appear.

5. Sri V.K. Upadhyaya, learned Senior Counsel assisted by Sri V.D. Chauhan, learned counsel for the BHU submits that the BHU has taken action as per law.

6. The learned Senior Counsel relied on the affidavits filed by the B.H.U., on creation of a reform and rehabilitation programme for delinquent students.

7. Sri Ajit Kumar Singh, learned Senior Counsel assisted by Sri V. D. Chauhan, learned counsel for the IIT BHU, contends that the IIT BHU, as a matter of policy accepts and is willing to adopt a professionally designed reform and rehabilitation programme for delinquent students. However, good order and discipline have to be maintained in the university, at all costs. In fact IIT BHU is currently even running a reform programme. Though he fairly conceded that the programme is not fully developed, and does not have a supporting statutory/legal frame work.

8. Sri Shashank Shekhar Singh, learned counsel for the

respondent-AMU, submits that the AMU fully accepts the idea of a reform and rehabilitation programme for delinquent students on an institutional basis. He also contends that no compromise with the good order, discipline, and the stability of the academic atmosphere can be made in any manner.

9. Sri Rizwan Akhtar, learned counsel for the UGC, Sri Rakesh Srivastava, and Sri Abrar Ahmed, learned counsels for the Union of India, have also been heard.

C. *Facts*

(i) Background

10. The petitioner completed his master's degree in Social Works (MSW) from the Banaras Hindu University in the year 2017. Thereafter he enrolled in the Post Graduate Degree Course in Integrated Rural Development and Management (IRDM) for the academic sessions 2017-19. The petitioner qualified the National Eligibility Test in December, 2018. The petitioner had qualified for admission to the Ph.D. course, standing second in Ph.D. admission merit list, of the Department of the Sociology, Faculty of Social Sciences, Banaras Hindu University, Varanasi. Before the petitioner could start the Ph.D. programme in the BHU, the order dated 30.03.2019 was passed.

(ii) Suspension order : Consequences

11. The petitioner was suspended from all privileges and activities of the University and hostel by order dated 30.03.2019, purportedly passed under ECR No. 264 of 1979 as contained in Chapter VIII of the BHU Calender Part I Volume II, providing for ordinances governing maintenance of discipline and

grievances procedure.

12. Consequent to the order dated 30.03.2019, the petitioner shall remain suspended, till his acquittal by the court in the criminal case. No terminal date can be set for conclusion of the criminal trial. Hence the suspension is for an indefinite period. The suspension order bars the petitioner, from entering the university campus, or accessing any facilities therein. All further academic pursuits are denied to the petitioner during the suspension. The effect of the order of suspension is punitive.

(iii) Suspension order : Validity

13. The validity of the impugned suspension order on its merits shall be considered in the following sequence. The material before the authority passing the order will be examined, followed by the consideration of scope of the provisions. Finally adherence to the procedure prescribed by law will be tested.

14. The impugned suspension order dated 30.03.2019 records that an F.I.R. No. 0115 dated 28.01.2019 under Sections 147, 323, 120-B and 3(1)(da) of SC/ST, (Prevention of Atrocities) Act, 1989 (amendment 2015), was filed against various persons including the petitioner at Police Station Lanka, by Professor X (names are being anonymized for the purpose of writ petition). The case in the F.I.R. is briefly set forth hereafter. The petitioner and other accused had physically assaulted, and made derogatory caste remarks against the complainant when the latter was going to take a class in the faculty of Social Science on 28.01.2019. The petitioner was arrested by the police.

15. The order dated 30.03.2019 references a fact finding

enquiry into the incident of manhandling of Professor X and finds a prima facie involvement of the petitioner in the said incident. The order dated 30.03.2019 recommends appropriate disciplinary action as per University Rules against the petitioner.

16. The impugned order dated 30.03.2019 also notices the order of the Vice Chancellor dated 27.03.2019 for a detailed enquiry into the aforesaid incident.

17. On the foot of the aforesaid reasoning and material, the impugned order dated 30.03.2019 suspends the petitioner from all privileges and activities of the University.

18. Contents of the enquiry report in brief shall be set forth.

19. The enquiry committee in its report, records that Professor X had posted “undesirable photographs” of girls students on his facebook account. This had created “profuse reactions in student community”. Professor X had admitted to the aforesaid post, and apologized for the same.

20. A written complaint, before the enquiry committee stated that Professor X had complained the he was beaten, humiliated, and forcibly made to wear a garland of shoes, and his caste was also denigrated. Professor Y, was named as the instigator and the petitioner was identified in the said complaint.

21. The enquiry committee, prima facie, concluded that the complaints against Professor X, were fabricated only to smear his reputation and character. Many girls students who had alleged harassment at the hands of Professor X, did not appear

before the enquiry committee. However, some girls students had appeared before the enquiry committee and testified to the indecent behaviour of Professor X towards them.

22. The committee found that the incident was pre-planned and a result of the rivalry and strained relations between Professor X and Professor Y. The committee also pointed out, the shortcomings of the teachers which led to the incident. The committee recommended that the teachers should remain above reproach in their character and conduct.

23. From the fact finding committee report, it is clear that the physical assault of Professor X was undisputed. The material in the record which identified the petitioner, as one of the assaulters also cannot be seriously disputed, on the limited yardsticks of judicial review. Material in the record also points, to the strained relationship between Professor X and Professor Y. The incident was not spontaneous but a result of instigation of the students. Conduct of Professor X too, in some respects was not above board.

24. The Court need not restate the obvious, that violence in the University campus against a teacher cannot be justified under any circumstances.

25. The provision for suspension empowers the competent authority of the University to suspend a student from all privileges and activities of the University, when such student is "accused of, or involved in, an offence involving moral turpitude or heinous crime (including those involving violence or intimidation) and is wanted by the police or has been released on

bail in connection with any such offence, or detained under any provision, or against whom Police investigation or criminal prosecution for any such offence is pending, of enquiry under U.P. Goonda Act is initiated;"

26. Lodgement of an F.I.R. for any criminal offence, does not automatically lead to a suspension under the aforesaid provision.

27. The intention of the legislature is not far to seek. Lodgement of false criminal cases is not uncommon in the country. Further criminal trials take an inordinately long time to conclude. No terminal date can be set once criminal proceedings are set in motion.

28. Mechanical exercise of power of suspension, upon mere lodgement of a criminal case, will lead to unintended consequences. On many occasions it would lead to an indefinite suspension and denial of opportunities of education. At times causing a stigma, without any enquiry.

29. The provision obligates the authority, to record its satisfaction whether the FIR is in respect of an offence involving moral turpitude, or a heinous crime (including those involving violence and intimidation). This condition precedent has to be followed before an order of suspension is passed.

30. Moral turpitude is a phrase of wide ambit. Some definitions of moral turpitude, from good authority will be extracted, to take the discussion forward. The Black's Law Dictionary defines "moral turpitude" as under:

> *"An act of baseness, vileness or depravity in the private and*

> *social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man."*

31. According to Bouvier's Law Dictionary, meaning of "moral turpitude" is under:

> *"Bad faith, bad repute, corruption, defilement, delinquency, discredit, dishonor, shame, guilt, knavery, misdoing, perversion, shame, ice, wrong."*

32. The mere commission of a criminal offence, will not lead to an inference, that the act is one of moral turpitude. Offences which can be categorised, as those involving "moral turpitude", will be depend on the facts of each case.

33. The scope and terms of such enquiry, were elaborated by the Hon'ble Supreme Court, in the case of **State Bank of India and Others Vs. P. Soupramaniane,** reported at **2019 SCC OnLine SC 608,** by holding that:

> ***"10.*** *There is no doubt that there is an obligation on the Management of the Bank to discontinue the services of an employee who has been convicted by a criminal court for an offence involving moral turpitude.Though every offence is a crime against the society, discontinuance from service according to the Banking Regulation Act can be only for committing an offence involving moral turpitude. Acts which disclose depravity and wickedness of character can be categorized as offences involving moral turpitude. Whether an offence involves moral turpitude or not depends upon the facts and the circumstances of the case. Ordinarily, the tests that can be applied for judging an offence involving moral turpitude are:*
>
> *a) Whether the act leading to a conviction was such as could shock the moral conscience or society in general;*
>
> *b) Whether the motive which led to the act was a base one, and*
>
> *c) Whether on account of the act having been committed the perpetrators could be considered to be of a depraved character or a person who was to be looked down upon by the society.*
>
> *11. The other important factors that are to be kept in mind to conclude that an offence involves moral turpitude are :- the person who commits the offence; the person against whom it is committed; the manner and circumstances in which it is alleged to have been committed; and the values of the society. According to the National*

> *Incident - Based Reporting System (NIBRS), a crime data collection system used in the United States of America, each offence belongs to one of the three categories which are: crimes against persons, crimes against property, and crimes against society. Crimes against persons include murder, rape, and assault where the victims are always individuals. The object of crimes against property, for example, robbery and burglary is to obtain money, property, or some other benefits. Crimes against society for example gambling, prostitution, and drug violations, represent society's prohibition against engaging in certain types of activities. Conviction of any alien of a crime involving moral turpitude is a ground for deportation under the Immigration Law in the United States of America. To qualify as a crime involving moral turpitude for such purpose, it requires both reprehensible conduct and scienter, whether with specific intent, deliberateness, willfulness or recklessness."*

34. A similar fact based enquiry, will determine if the offending act, was a "heinous crime (including those involving violence & intimidation)".

35. Satisfaction of these jurisdictional prerequisites, is not recorded in the impugned order. No enquiry in that regard was conducted. The issue whether the offending act attributed to the petitioner, fell in the categories of "heinous crime (including violence and intimidation) or was an act of moral turpitude", is wholly absent from consideration. The impugned order suffers from non application of mind, and was passed mechanically.

36. In light of the preceding discussion, this Court finds that the order dated 30.03.2019 was passed in violation of ECR No. 264 of 1979, as contained in Chapter VIII of the BHU Calender Part I, Volume II, providing for ordinances, governing maintenance of discipline and grievances procedure, and is arbitrary.

D. *Legal Issues common in all writ petitions*

37. Absence of any reform and rehabilitative measures, in

the administrative and legal frameworks of the universities, has serious legal and constitutional implications.

38. The impugned action and the statutory regime, of imposing punishments, will also be judged in such constitutional and legal perspectives. The discussion on these issues, shall be common in all the companion writ petitions.

39. Calling attention to the statutes of the universities namely, BHU, IIT BHU and AMU, the learned counsels for the petitioners; contended that the said statutes do not contain provisions for reform and rehabilitation of delinquent students. The action against delinquent students, is governed and regulated, solely by the penal provisions, of the statutes of the respective universities. The punitive scheme is a common thread, in the statutes of all the three universities.

40. In response, all the counsels for the various respondents universities', in fact conceded, that as on date no structured and professionally designed programmes for reform, self development and rehabilitation of delinquent students, backed by a proper legal frame work, exist in the respective universities.

41. Accordingly, various orders were passed by this Court, from time to time, requiring the respective universities namely, Banaras Hindu University, Indian Institute of Technology Banaras Hindu University, and Aligarh Muslim University, as well as the University Grants Commission and the Union of India through the Ministry of Human Resource Development, New Delhi, to submit their responses in regard to creation of a

reform and rehabilitation frame work, for delinquent students in universities and institutions of higher learning. The respondents were also required to indicate, whether they had any opposition or even reservation, in regard to the creation of the reform and rehabilitative programme for delinquent students in the universities.

42. All the respondents namely Banaras Hindu University (hereinafter referred to as BHU), Indian Institute of Technology, Banaras Hindu University (hereinafter referred to as IIT BHU), Aligarh Muslim University (hereinafter referred to as the AMU) as well as Union of India through Ministry of HRD and University Grants Commission (hereinafter referred to as UGC) have submitted their responses to the aforesaid issues.

E. *Stands of respective respondents on affidavits*

(i) *Response of IIT BHU*

43. The IIT BHU in its affidavit has recorded its full agreement with a reform oriented approach, to deal with deviant behaviour in students. Thus IIT, B.H.U., has made a ringing endorsement, of the need to adopt a reform and rehabilitation programme for delinquent students. However, it has also underscored the need for punitive action, to maintain a peaceful environment in the campus. The relevant paras of the affidavit are quoted hereinunder:

> *"2. That the present affidavit is being filed in compliance of the order dated 19.9.2019 passed by this Hon'ble Court.*
>
> ***4.*** *That the Institute as indicated in the foregoing paragraph, is in full agreement with a reform oriented approach. However, in cases where reformative steps do not yield the desired corrections in behavior and actions of erring students, the Institute has to resort to punitive action in order to maintain the peaceful environment in the*

campus."

44. By categorically stating its commitment to reform of delinquent students, the IIT BHU has been true to its founding principles, and has faithfully discharged its obligations, under law and to the society.

(ii) Response of AMU

45. Upon orders being passed by this Court, the AMU to its credit, constituted an expert committee. The report of the expert committee has been submitted, and is made part of the record of the Court. The relevant parts of the Committee Report are extracted hereinbelow:

> ***"In the light of the above the committee observes as under:***
> *1. Our criminal justice system envisages two type of laws: one for Juveniles and second for other than Juveniles. There is a separate law for Juveniles known as Juvenile Justice Act, 2015 whereas others are covered under Code of Criminal Procedure, 1. 1976 and Indian Penal Code, 1860. The application of AMU Discipline and Conduct Rules, 1985 does not come primarily under the definition of Juvenile therefore the protection available to Juveniles are not available to the Students of the university in general. It becomes more relevant in view of the fact that at the time of admission every the disciplinary jurisdiction of the Vice Chancellor and the other authorities of the University is required to sign a declaration to the effect that he submits himself to the disciplinary jurisdiction of the Vice Chancellor and the other authorities of the University.*
> ***2.*** *That it is also pertinent to mention here that Aligarh Muslim University is primarily a RESIDENTIAL UNIVERSITY and there are approximately 36,665 Students [22.593 University Students and departments/courses/Schools in the Aligarh Muslim University. Among these students 12,158 students reside in 56 Hostels (22 for girls) in the campus within the radius of 10 KM. Therefore, the future career of thousands of the students cannot be allowed to be jeopardized for the sake of handful of students who are involved in the indiscipline act and are destroying the whole atmosphere of the University.*
>
> ***3.*** *In principle that criminal activity has no role to play in our education system therefore the students who are involved in the criminal activity have also no role to play in our education system. The students who are indulged in the criminal activity have different mind-set and have nothing to do with their studies. They are not at all interested to pursue their studies and their presence only*

hampers the study of the other students who are interested to pursue their study. It is the duty of the University to marginalize such type of students so that the students at large, who are more interested to pursue their studies, may pursue their studies in cordial and peaceful/ atmosphere.

4. *That as per existing rules of the University, there is no compulsory/ mandated counselling available to students against whom the discipline and conduct rules are invoked. These rules are also not invoked in a routine way but being a residential University there are day-today interactions/counselling with the Wardens, Provost Tutors, Teachers and Senior Students holding positions of Senior Hall/Food etc.*

5. *That the extreme punishments as provided in the 1985 rules are invoked when there is an extreme situation and continuance/presence of the students became a threat to the academic environment and campus life of the University.*

6. *At the same time the observations of the Hon'ble Mr. Justice Ajay Bhanot in this matter are highly appreciable in the context to infuse a reformative approach that the solution lies in engaging with the students, and harnessing their energies creatively. Errant behavior has to be reformed and not condemned. Erring students have to be transformed and not judged. The purpose of education is to unlock the immense potentiality in the human resource of the nation. This is possible by bringing about a conceptual shift in the concept of enforcing discipline, in the portals of the University. Indiscipline unchecked is indiscipline unleashed. But it is equally true. that expelling students from the University is a short term, if not a myopic view of the issue. A balance has to be drawn by the University authorities. The University has to create an ecosystem, with qualified staff and detailed programs of engaging with such students, with a view to give them an opportunity to reform themselves. Expulsion of students would abandon them to their own devices, close the doors of reformation to them, and shut them out from the redeeming light of knowledge. Leaving children accused of misconduct or deviant behavior, to fend for themselves would create issues for the society at large. In case Universities decline to shoulder the responsibilities of bringing such children back to the correct path, and do not provide the frame work for mainstreaming this class of students, the consequences would be detrimental to the society at large. There is no better institution in our democratic frame work, to embrace the young and questing spirits who have strayed from their path of morally upright and correct conduct. The Universities are uniquely equipped to deal with the challenge on an institutional basis. The Universities are repositories of knowledge, resources and experience to meet the challenge at hand. What is at stake, is not merely the future of an individual, but stability of the society The concerns of the society have to be handled by the University. The magnitude of the challenge is large, but it is imperative for the Universities to accept it and provide the adequate response.*

> *After detailed deliberations and in the backdrop of above the committee proposes that:*
>
> *1. Structural reformative approach may be included in the AMU Students Conduct and Discipline Rules of 1985 as this committee has identified some areas (not all inclusive) for counselling by a psychologist as enumerated above.*
>
> *2. As the misconduct offences/crimes related to internet and cyberspace were not available when the Discipline Rules were framed, the same needs to be identified and appropriately included in the AMU Students Conduct and Discipline Rules of 1985 as it is growing among young and youth.*
>
> *3. Outside campuses were not established when these rules were framed, hence, there is also need to amend these rules to include a structure for those centres.*
>
> ***The committee therefore recommends to the Vice-Chancellor as follows:***
>
> *AMU Students Conduct and Discipline Rules 1985 were framed almost 30 years back and in the light of the observations given above, a detailed and exhaustive exercise may be undertaken by a committee to be appointed by the Vice-Chancellor under the convenorship of the Proctor of the University to formulate and propose a draft of revised AMU Students Conduct and Discipline Rules, inclusive of reformative approach, after exploring similar rules already enforced by sister universities and institutions in India and abroad for further consideration of the Vice-Chancellor and Academic Council of the University."*

46. The AMU has thus in principle, recognized the need for a reform and rehabilitation programme for delinquent students in some areas in the university. The AMU too has accorded top priority, to the maintenance of discipline in the campus, and is rightly unwilling to compromise with the same.

(iii) Response of BHU

47. The initial affidavit filed by the BHU, in regard to their stand on a reformative and rehabilitation programme for delinquent students, stated in effect that the reformation of the students indulging deviant behaviour is achieved, by providing for various categories of punishments, depending upon the nature of indiscipline. It further asserted, that in the name of

reformation, the University cannot give a "go by", to the objectives of the university. The relevant paras 17 and 18 of the affidavit dated 17.09.2019 are extracted hereunder:

> *"17. In the present case no such conditions exist and as such the continuance of the order of suspension of the petitioner from the privileges of the University and Hostel is in accordance with law. That 17. it is the University humbly that submitted administration and the Vice-Chancellor in particular is the custodian of the interests of all the students involved in various academic pursuits in the University. In the case of Banaras Hindu University the number of all the students at various levels runs into more than 30 thousand. For the smooth functioning of the University and maintenance of an environment conducive to academic pursuits the interest of an individual student must give way to the larger interests of all the students as a whole. This is not only in the interest of the students themselves but also in public interest. In the of reformation of the students the University name administration cannot give a go by to the objectives of the University nor can it take an action which may have the potential of destroying the smooth functioning of the University embroiling the University in large scale unrest both in the student as well as in the teaching community. If the University such situation is brought about a administration would be failing in its duty. The fact that Banaras Hindu University is the largest residential University in the country if not the world cannot be lost sight of. Even small spark has the potential of turning into a conflagration which may become difficult to contain.*
>
> *18. That the facility and provisions aimed at reformation of the erring students found indulging in deviant behavior is inherent in the Ordinances of the University dealing with students' indiscipline by providing for various categories of punishments depending upon the nature of indiscipline."*

48. However, subsequently, the BHU filed an affidavit on 26th September, 2019, easing its reservations, against a reform and rehabilitation programme. The affidavit exhibited a shift in stand, indicating a willingness to consider a reformative approach. The para 7 of the affidavit is extracted hereunder:

> *"7. That all the aforesaid mechanisms and provisions exist in the University for creation and preservation of an academic ambience conducive to teaching and learning and vibrant and peaceful community life. However, there exist no provision in the Rules of the University for any formal reformative mechanism or process for such students as are found involved in an offence involving*

> *moral turpitude or heinous crime and hence are suspended from the privileges of the University. However, the University is not averse to considering this aspect, if it is found appropriate by the University through Constitution of a Committee of stakeholders which may look into as to whether such a mechanism is desirable in principle in the context of maintenance of academic ambience of the University or it may be detrimental to it, particularly, to the interest of larger group of the students, teachers and employees."*

49. In substance the BHU was open to the concept of a structured reformative programme. It has however, desisted from taking a categorical position, on this most critical issue. While openness to new ideas is appreciated, failure to take a specific stand is also noticed. The Court will go no further.

(iv) Response of UGC

50. Sri Rizwan Ali Akhtar, learned counsel for the UGC has relied on the affidavit filed by the UGC. The UGC in its affidavit, stated that the universities are autonomous institutions. The academic and administrative decisions, are to be taken by the universities concerned, as per law. It was also stated that "the UGC has no role to play on day to day function of the Central Universities".

(v) Response of UoI

51. The Ministry of Human Resource Development, Government of India has chosen not to file any affidavit, despite orders passed by the Court and opportunities granted by the Court. The Court has to proceed, with the hearing in the interests of justice.

52. It was informed that the Ministry of Human Resource Development, Government of India, on its part had sent communications to the AMU and BHU, to protect its interests.

The Court finds that the interests of the Union of India, are in no manner adversely affected. In these cases the interests of the Union of India, are not converse to the universities.

"The best lack all conviction."

~WB Yeats

53. Present discontents cannot be addressed by rote responses. Contemporary problems cannot be resolved by jejune formulae.

54. The universities cannot avoid a stand at the decision point. By prevarication at the decision point, the university may postpone the reckoning, but cannot escape responsibility.

55. Law has to hold institutions accountable to their obligations, to the founding purposes, to the students and to the society at large.

56. Universities of eminence cannot justify present inertia on the foot of past glory. Universities have to be aware of the risks, of basking in the reflected glory of the past. Eminence is achieved by past glory, however, reputation is retained by present endeavours.

57. Universities at certain critical decision points, would be true to their founding purposes and extant obligations by making clear and creative interventions. The universities as well as other authorities cannot show ineptitude in the face of crises, and equivocation in the face of solutions. In these critical situations the universities as well as other authorities, have to stand up and intervene and not stand by and equivocate.

F. *Evolution of Fundamental Rights by courts*

58. The fundamental rights of citizens are stated in Part III of the Constitution of India. But as in all cases, text of the rights can never be the exhaustive description of all rights. Rights have to be interpreted from the text of the Constitution. The process of interpretation of the text, often results in the evolution of rights. The Constitution is the textual origin of fundamental rights. Constitutional law defines the substance of fundamental rights.

(i) *Legislative lag, executive inertia and fundamental rights*

59. The fast pace of life in modern times often, outstrips the capacity of the legislature, to cope with the consequences of social change. There is a limit to human foresight, but the possibilities of life are limitless. The limits of legislation are the constraints of human foresight. The legislative process is complex and even time taking. Human affairs do not wait on the legislative process. These facts frequently create a legislative lag. It is almost inevitable in the nature of things.

60. The first intersection of life with law, at times happens in courts, even before the legislature grapples with the problems. The courts are often seized, of various emerging issues in social and individual lives, before the legislatures are cognizant of them.

61. A legislative hiatus or executive lethargy, cannot cause a constitutional stasis. The enforcement of fundamental rights,

cannot be forestalled by a legislative lag or executive inertia. Constitutional guarantees and Fundamental Rights, have to be enforced on demand. Constitutional overhang is perpetual. Law is always in motion, and never on a holiday.

62. The text of the Constitution, is a conceptual philosophy of fundamental rights, and not an exhaustive guide to fundamental rights. The text of the Constitution is fixed, fundamental rights are always evolving. This is the essence of constitutional law jurisprudence. There is a method in the evolution of constitutional law jurisprudence.

63. Evolution of constitutional law rights are guided and controlled by the text of the constitution, long settled judicial principles of interpretation of the constitution, and judicial precedents in point. The march of law is also assisted by consensus of values, in the comity of civilized nations. These universal values are often manifested in International Conventions and Treaties. Another source of such values is comparative international jurisprudence. The felt needs of the times are also factored in by the courts. Development of constitutional law happens on these sure foundations. Constitutional rights are distilled from this process. In this process, the courts discharge their constitutional obligations. This is not judicial activism by courts. It is judging.

64. The Hon'ble Supreme Court in the case of ***Vishaka Vs. State of Rajasthan,*** reported at ***1997 (6) SCC 241***, issued various guidelines for the safety of women at working places. The guidelines held the field, till the Parliament enacted the

legislation in that regard. Judicial directions in that case preceded, the legislative enactment. Infact the legislature was alerted, to the need of a legislation to cover the field, by the judgment of the Hon'ble Supreme Court.

65. This narrative will profit from the observations of the Hon'ble Supreme Court, in the case of ***Rattan Chand Hira Chand v. Askar Nawaz Jung***, reported at ***(1991) 3 SCC 67:***

> *"The legislature often fails to keep pace with the changing needs and values nor is it realistic to expect that it will have provided for all contingencies and eventualities. It is, therefore, not only necessary but obligatory on the courts to step in to fill the lacuna. When courts perform this function undoubtedly they legislate judicially. But that is a kind of legislation which stands implicitly delegated to them to further the object of the legislation and to promote the goals of the society. Or to put it negatively, to prevent the frustration of the legislation or perversion of the goals and values of the society. So long as the courts keep themselves tethered to the ethos of the society and do not travel off its course, so long as they attempt to furnish the felt necessities of the time and do not refurbish them, their role in this respect has to be welcomed.*
>
> *All courts have at one time or the other felt the need to bridge the gap between what is and what is intended to be. The courts cannot in such circumstances shirk from their duty and refuse to fill the gap. In performing this duty they do not foist upon the society their value judgments. They respect and accept the prevailing values, and do what is expected of them. The courts will, on the other hand, fail in their duty if they do not rise to the occasion but approve helplessly of an interpretation of a statute or a document or of an action of an individual which is certain to subvert the societal goals and endanger the public good."*

G. *Process of law and the courts : Current State & Contemporary Challenges*

66. The pace of technological, social and economic developments, often pose a challenge to the courts. Courts of today often have to deal with complex issues ranging from science, technology, economics, archaeology, medicine, social sciences and across other fields of highly specialized knowledge.

67. Lawyers on occasions lack the expertise, to grasp and simplify issues of varying complexity, from fields unrelated to law. Judges do not fare any better. Parties have their interests to protect.

68. The intellectual capital created by traditional resources of the judicial process, may not be adequate to manage such contemporary challenges. The judicial process would have to evolve, to meet the felt needs of the time. The rising tides of human knowledge, cannot pass the courts by. This shall require change in procedures, and development of infrastructure.

69. The intellectual resource base has to be widened. The debate has to be broadbased, to include direct inputs from experts as well. This would also entail well equipped libraries, which are staffed by qualified personnel and research assistants, and may be even experts. Institutional arrangements for interface of the courts with experts, have to be in place to ensure procedural propriety.

70. Debate on these issues will pave the way for the most important change, i.e. change in mindset. For the process to be credible and efficacious, a change has to come from within the judicial system. But change is inevitable, if judicial adjudication is to be just and remain relevant. In this regard, the High Court has a responsibility to fulfill, if not an obligation to discharge.

H. *Education*

(i) Importance and scope

"Where the mind is without fear
and the head is held high,
Where knowledge is free".

~Tagore

71. In education mankind discovered the message of unquenchable optimism, that humans could be separated from the cycle of repetitive thought and action. Learning was the key to the uninterrupted progress of any society. Knowledge instilled the belief that human life could be improved. Through knowledge alone, the hope is realized that humans can be reformed, and humanity can be transformed. Education is the supreme act of nation building, which essentially means nurturing of constitutional values, realization of constitutional goals, and strengthening the rule of law.

72. The idea of the Indian nation is founded, on the ideals of the Indian civilization. Many of these ideals are manifested in the Constitution, and find expression in constitutional law.

73. The quest for knowledge defines the Indian civilization. A salient feature in the search for learning, distinguishes the Indian civilization. Knowledge in Hellenic civilization was founded on reason. The human thirst for knowledge was also quenched by revelation. The distinctive feature of learning in Indian civilization, is that India's search for knowledge, while always embracing reason as a method and never denying revelation as a source, insists on realization as its goal.

74. The diversity of thought is reflected in the plurality of discourse in India. The enduring values which define India, have been preserved and propagated by the tradition of civilized debate. The unity of our nation is protected by respect and affirmation of a multi hued cultural heritage and embracement

of varied traditions of thought.

(ii) Role and obligation of universities

"Where the mind is led forward by thee
Into ever widening thought and action."

~Tagore

75. The universities are the custodians of the old values, even as they ceaselessly push the boundaries of modern knowledge.

76. In universities students of diverse backgrounds, and different beliefs, congregate in a common pursuit of knowledge. Through knowledge they will learn, that humanity unites more than diversity differentiates. With learning they will understand, that diversity enriches human life, and does not divide humankind. University experience will help them, cultivate constitutional values, and transcend violent and other aberrational tendencies.

77. Universities are not teaching shops, nor are they mere examining body. Universities nurture the intellect and develop the character of the young citizens in a wholesome manner. Students gain knowledge and imbibe values in universities. These dual pursuits constitute the founding purpose of a university, in fact its raison detre.

78. A unifocal approach promoting scholastic achievements, to the exclusion of character building, would undermine the founding principles of a university. A failure of character or deficit of values in students, may impel action

against the delinquent student, but should also cause introspection in university authorities.

79. University education is not an arm's length transaction, between the teachers and the taught. Nor is university education an exact contractual relation, in the likeness of a consumer and a service provider.

I. *Discipline in Universities: Concept, Need & Challenges*

(i) Violence, intimidation and moral turpitude

"Where the clear stream of reason has not lost its way into the dreary desert sand of dead habit"

~Rabindranath Tagore

80. Violence degrades human life. Intimidation stifles human thought. Moral turpitude is the low ebb of human conduct. These are the scourges and yet inescapable facts of human life. Our society faces these issues, and our varsities grapple with them.

81. Violence, intimidation, and acts of moral turpitude, are not conducive to the academic atmosphere of a varsity, and pose a mortal threat to the values of a university. They retard the growth of free thought and reasoned debate. These evils have no place in our universities. The universities can prosper only when such evils are got rid of.

(ii) *Communal disturbances in universities*

"Where the world has not been broken up into fragments by narrow domestic walls".

~Rabindranath Tagore

82. In Writ C No. 32955 of 2019, (Ajay Singh Vs. Union of India and Others), the petitioner is charged with disturbing the communal harmony in the university.

83. Stoking communal hatred not only disrupts peace and order in a university, but can roil the foundations of law and harmony in our society. The problem cannot be tackled as a "discipline" issue alone. A composite and a conceptual approach has to be adopted. The roots of communal hate have to be analyzed and addressed. Communal hatred is a narrative, which stands in direct opposition, to our civilizational ethos and constitutional values. Communal hatred holds a threat, to the rule of law. Communal hatred cannot be countenanced in our universities, nor can be given any space in our society.

(iii) *Discipline in universities*

84. Discipline is the bedrock of any organization. In a university, discipline does not mean conformity of thought, or creation of a regimented class of people. In a varsity discipline is not the residue, after dissent is stifled and dissenters purged.

85. Discipline in a university is the consensus among all stakeholders, to live by the universal values which define the academic world. Discipline in a varsity is common allegiance and unshakable adherence, to values which nurture free thought, respect dissentient opinions, and create an environment of unimpeded academic pursuits. Hate and true debate cannot co-exist. Violence and true learning cannot cohabit.

86. Discipline has to be preserved at all costs, if the raison detre of the University is to be protected at all times. Indiscipline

unchecked is indiscipline unleashed. However in our constitutional scheme, the means of ensuring discipline, is as important as the end of keeping discipline.

(iv) *Statutory approach to maintaining discipline*

87. The universities have created legal frameworks, to deal with acts of indiscipline, and to maintain discipline and order.

88. The power to take disciplinary action, and impose punishment upon delinquent students, is vested in the competent authorities, by the statutes of the concerned university. The following statutes govern and regulate, the process of initiating disciplinary action against delinquent students, and imposition of penalty for misconduct.

BHU –The Banaras Hindu University Act No. XVI of 1915 {Section 60}

ii. Chapter VIII, Ordinances Governing Maintenance of Discipline and Grievances Procedure.

iii. Notification, New Delhi, 31st July, 2017, BHU

AMU- The Aligarh Muslim University (Act No. XL of 1920), [Amendment] Act, 1981 (62 of 1981)

ii. Section 35 (5) of the AMU

iii. The Statutes of the University (as adapted under Section 28 of the Act) amended upto December, 2012).

IIT BHU – i The Institutes of Technology Act, 1961

ii. The Institutes of Technology Amendment Act, 2012.

iii. Section 17(2) of the Act, 1961 (already quoted)

(The relevant extracts of the statutes are appended as appendix 1 to the writ petition.)

J. *Statutory Regime of Punishments in light of Article 21 & Doctrine of Proportionality*

89. The statutes of all the three universities contemplate only penal action, to deal with all forms of indiscipline or deviant conduct. The penal action may lead to suspension, and can even extend to expulsion and debarment.

90. The punitive provisions of the Statutes of the respective universities, manifest the deterrent intent of the law. A reformist approach to the problem is absent in the statutes. The makers of statutes have solely adopted a punitive or deterrent approach to the exclusion of other methods of dealing with issues of indiscipline or deviant conduct.

91. The aforesaid ordinances of the universities and the affidavits of the respondents have been perused. Submissions of the learned counsel for the universities have been considered. This Court finds that there is no structured, professionally designed reform, self development and rehabilitation programme, or therapeutic support system backed by a legal frame work, to deal with the delinquent students and like issues in the universities.

92. The statutory monopoly of a punitive approach, to deviant behaviour, and the exclusion of all other responses, often creates a lack of balance in the actions of the concerned

University. In such cases, the punishment becomes disproportionate, not because the decision maker was incapable of measured action, but because the ordinances/statutes preclude a proportional response.

93. It is clarified, that the requirement of punitive provisions in the statutes is a given. The need to empower the authority, to take disciplinary action in law is undisputed. There is no infirmity in the statutory provisions. The inadequacy is in the reach of the statutory provisions.

94. The decision maker is constrained in his choices, by the absolute dominance of punitive provisions, and complete omission of reformative measures in the ordinances.

95. The impact of absence of reformative provisions and the presence of a statutory bias in favour of a punitive approach, on the fundamental rights of the petitioners, shall also be assessed in the next part of the judgment.

K. *Punishments and Article 21*

(i) *Right to human dignity*

96. A life without dignity is robbed of its meaning. Absent self worth, life is devoid of content.

97. Human dignity as a concept, was created by an international consensus, on universal human values. “Human dignity” and “self worth” are used, in close proxmity in international instruments, reflecting the affinity between the concepts.

98. The comity of nations, first pledged commitment to

protecting the “dignity and worth” of the human person, in the charter of the United Nations. These eternal values were reiterated, in subsequent international instruments and conventions including the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1951); the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956); the Convention on the Elimination of All Forms of Discrimination against Women (1979); the Convention on the Rights of the Child (1989); and the Convention on the Rights of Persons with Disabilities (2006).

99. Human dignity and self worth, were increasingly incorporated in the jurisprudence of all liberty loving nations in the post World War II era.

100. The complexity of the concept of human dignity, never diluted the usefulness of the theory of human dignity in enhancing the worth of the human person. Human dignity made a decisive contribution in the development of the rights of life and liberty, in jurisprudential systems of free societies across the world.

101. However, the Court would do well to observe the caution, that a sweeping judicial definition of human dignity, would make an abstract theory, unintelligible. An unduly wide judicial construct of human dignity, would create unworkable judicial tests.

102. Likewise if the courts adopt too narrow a view of human dignity, a concept which has made stellar contribution to

the advancement of human rights will be lost.

103. Keeping these pitfalls in mind, a balance has to be maintained, between attempting too much and recoiling from the task altogether.

104. The applicability of human dignity, would be determined in this case, by evolving a workable test or construct of human dignity and self worth applicable to these cases.

105. Human dignity is not inserted in the text of the fundamental rights under the Constitution of India. Human dignity occurs in the Preamble to the Constitution of India.

106. The Preamble to the Constitution, reflects the resolve of the People of India, to secure to all its citizens

"Justice social, economic and political;
Liberty of thought, expression, belief, faith and worship;
Equality of status and of opportunity;
and to promote among them all and
Fraternity assuring the dignity of the individual and the unity of the Nation."

The Preamble to the Constitution is not analogous, to a preamble to any legislative enactment.

107. The unique place of the Preamble, in the Constitution came to be noticed very early, in ***Sajjan Singh v. State of Rajasthan***, reported at ***AIR 1965 SC 845.*** The Hon'ble Supreme Court found that the Preamble to our Constitution is "not of the common run". Further the Preamble bore the "stamp of deep deliberation" and precision.

108. This feature shines light on the special significance,

attached to the Preamble by the framers of the Constitution. The Preamble was held to be a part of the Constitution, by the Hon'ble Supreme Court in ***Kesavananda Bharati v. State of Kerala,*** reported at ***(1973) 4 SCC 225.***

109. The words 'life, law and liberty' in Article 21 of the Constitution of India, were freed from the confines of narrow and literal interpretation by the Courts. (*See* ***Maneka Gandhi v. Union of India, (1978) 1 SCC 248****)*

110. A defining moment came when the Hon'ble Supreme Court, liberated “life” from the fetters of mere physical existence. (see **Olga Tellis v. Bombay Municipal Corpn. Reported at (1985) 3 SCC 545).**

111. Over the years human dignity, has been read into the meaning of life and liberty, under Article 21 of the Constitution of India, by consistent pronouncements of the courts.

112. A broad overview of some of the leading pronouncements of the Hon'ble Supreme Court, elevating human dignity to the status of a fundamental right, are discussed in the succeeding paragraphs.

(ii) Supreme Court on human dignity

113. The concept of human dignity forming a part of Article 21, was introduced in ***Prem Shankar Shukla v. UT of Delhi***, reported at ***(1980) 3 SCC 526.*** While construing the constitutional rights of prisoners, in ***Prem Shankar Shukla (supra)***, Krishna Iyer, J. speaking for a three-Judge Bench of the Hon'ble Supreme Court held:

> *"1. … the guarantee of human dignity, which forms part of our constitutional culture, and the positive provisions of Articles 14, 19 and 21 spring into action when we realise that to manacle man is more than to mortify him; it is to dehumanise him and, therefore, to violate his very personhood, too often using the mask of "dangerousness" and security.*
>
> *21. The Preamble sets the humane tone and temper of the Founding Document and highlights justice, equality and the dignity of the individual."*

114. Undermining the human dignity of a detenue, under the Conservation of Foreign Exchange and Prevention of Smuggling Activities (COFEPOSA) Act, 1974 was not countenanced by the Hon'ble Supreme Court in ***Francis Coralie Mullin v. UT of Delhi***, reported at ***(1981) 1 SCC 608*** by ruling thus:

> *"6. … The fundamental right to life which is the most precious human right and which forms the ark of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person.*
>
> ***7.*** *… the right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival."*

115. The right to live with human dignity flowing from Article 21, was employed by the Hon'ble Supreme Court to unlock the fetters of those living in bondage and setting them free in ***Bandhua Mukti Morcha v. Union of India***, reported at ***(1984) 3 SCC 161***. The Hon'ble Supreme Court in ***Bandhua Mukti Morcha (supra)*** observed that:

> *"10. …This right to live with human dignity enshrined in Article 21 derives its life breath from the directive principles of State policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of the workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and*

> *maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity, and no State — neither the Central Government nor any State Government — has the right to take any action which will deprive a person of the enjoyment of these basic essentials."*

116. Dehumanizing treatment given to the arrested activists of an organization by the police authorities was called out by the Hon'ble Supreme court, in ***Khedat Mazdoor Chetna Sangath v. State of M.P***., reported at ***(1994) 6 SCC 260,*** wherein it was recognized:

> *"10. … It is, therefore, absolutely essential in the interest of justice, human dignity and democracy that this Court must intervene; order an investigation, determine the correct facts and take strongest possible action against the respondents who are responsible for these atrocities."*

117. The right of human dignity was also construed by the Hon'ble Supreme Court in ***M.Nagaraj v. Union of India***, reported at ***(2006) 8 SCC 212***. In that case the right was held to be intrinsic to and inseparable from human existence:

> *"26. … The rights, liberties and freedoms of the individual are not only to be protected against the State, they should be facilitated by it. … It is the duty of the State not only to protect the human dignity but to facilitate it by taking positive steps in that direction. No exact definition of human dignity exists. It refers to the intrinsic value of every human being, which is to be respected. It cannot be taken away. It cannot give (sic be given). It simply is. Every human being has dignity by virtue of his existence.*
>
> ***42.*** *India is constituted into a sovereign, democratic republic to secure to all its citizens, fraternity assuring the dignity of the individual and the unity of the nation. The sovereign, democratic republic exists to promote fraternity and the dignity of the individual citizen and to secure to the citizens certain rights. This is because the objectives of the State can be realised only in and through the individuals. Therefore, rights conferred on citizens and non-citizens are not merely individual or personal rights. They have a large social and political content, because the objectives of the Constitution cannot be otherwise realised."*

118. The Hon'ble Supreme Court in **Shabnam v. Union of India,** reported at **(2015) 6 SCC 702** elaborated the following elements of the human dignity;

> *"14. This right to human dignity has many elements. First and foremost, human dignity is the dignity of each human being "as a human being". Another element, which needs to be highlighted, in the context of the present case, is that human dignity is infringed if a person's life, physical or mental welfare is harmed. It is in this sense torture, humiliation, forced labour, etc. all infringe on human dignity. It is in this context many rights of the accused derive from his dignity as a human being."*
>
> *(emphasis in original)*

119. Aharon Barak (former Chief Justice of the Supreme Court of Israel), discussed the constitutional value of human dignity, in the following celebrated passage:

> *"The constitutional value of human dignity has a central normative role. Human dignity as a constitutional value is the factor that unites the human rights into one whole. It ensures the normative unity of human rights. This normative unity is expressed in the three ways: first, the value of human dignity serves as a normative basis for constitutional rights set out in the constitution; second, it serves as an interpretative principle for determining the scope of constitutional rights, including the right to human dignity; third, the value of human dignity has an important role in determining the proportionality of a statute limiting a constitutional right. "*

120. The views of the Judge Aharon Barak, were approved and incorporated in the corpus of human dignity jurisprudence, in our country by the Hon'ble Supreme court in ***Jeeja Ghosh v. Union of India***, reported at ***(2016) 7 SCC 761.***

121. The consequences of loss of human dignity in an individual's life, were noted by the Hon'ble Supreme Court in ***Mehmood Nayyar Azam v. State of Chhattisgarh***, reported at ***(2012) 8 SCC 1.***

122. Similar sentiments were expressed on human dignity, by the Hon'ble Supreme Court in ***National Legal Services Authority v. Union of India***, reported at ***(2014) 5 SCC 438***.

123. In ***Maharasthra University of Health Sciences v. Satchikitsa Prasarak Mandal*** reported at ***(2010) 3 SCC 786***, the

Hon'ble Supreme court upon consideration of good authority, reiterated the dignity of the individual as a core constitutional concept.

124. While in ***Selvi v. State of Karnataka*** reported at ***(2010) 7 SCC 263***, the Hon'ble Supreme Court ruled thus:

> *"244.....we must recognize that a forcible intrusion into a person's mental processes is also an affront to human dignity and liberty, often with grave and long-lasting consequences."*

125. Even prisoners have been found entitled to the fundamental rights while in custody by the Hon'ble Supreme Court (see ***Sunil Batra (II) Vs. Delhi Administration,*** reported at ***1980 (3) SCC 488).***

126. The importance of therapeutic approach in dealing with the criminal tendencies of prisoners and the necessity for reform, was considered by the Hon'ble Supreme Court in ***T.K. Gopal v. State of Karnataka,*** reported at ***(2000) 6 SCC 168,*** by holding that:

> *"15. The therapeutic approach aims at curing the criminal tendencies which were the product of a diseased psychology. There may be many factors, including family problems. We are not concerned with those factors as therapeutic approach has since been treated as an effective method of punishment which not only satisfies the requirements of law that a criminal should be punished and the punishment prescribed must be meted out to him, but also reforms the criminal through various processes, the most fundamental of which is that in spite of having committed a crime, maybe a heinous crime, he should be treated as a human being entitled to all the basic human rights, human dignity and human sympathy. It was under this theory that this Court in a stream of decisions, projected the need for prison reforms, the need to acknowledge the vital fact that the prisoner, after being lodged in jail, does not lose his fundamental rights or basic human rights and that he must be treated with compassion and sympathy."*

127. In **Asfaq v. State of Rajasthan and Others,** *reported at* ***(2017) 15 SCC 55,*** the Hon'ble Supreme Court emphasizing the need for reform of a convict held that

"redemption and rehabilitation of such prisoners for good of societies must receive due wightage while they are undergoing sentence of imprisonment."

128. The judicial authorities can be multiplied, reiterating the above holdings. However, the same will add volume, but not value to the narrative.

129. Consistent and high authority have thus entrenched human dignity as fundamental to right to life, which flows from Article 21 of the Constitution of India.

130. The narrative would not be complete without reference to the most authoritative pronouncement, of the Hon'ble Supreme Court in the case of ***K.S. Puttaswamy v. Union of India*** reported at ***(2017) 10 SCC 1***

131. Dr. D. Y. Chandrachud, J. speaking for the Constitution Bench, firmly and irrevocably, reiterated that human dignity is a fundamental right under Article 21 of the Indian Constitution, with customary eloquence, in ***K.S. Puttaswamy (supra).*** Dr. D. Y. Chandrachud, J., upon consideration of the judicial precedents in point distilled the concept of human dignity and its place in part III of the Constitution:

> "***Jurisprudence on dignity***
>
> ***"108.*** *Over the last four decades, our constitutional jurisprudence has recognised the inseparable relationship between protection of life and liberty with dignity. Dignity as a constitutional value finds expression in the Preamble. The constitutional vision seeks the realisation of justice (social, economic and political); liberty (of thought, expression, belief, faith and worship); equality (as a guarantee against arbitrary treatment of individuals) and fraternity (which assures a life of dignity to every individual). These constitutional precepts exist in unity to facilitate a humane and*

compassionate society. The individual is the focal point of the Constitution because it is in the realisation of individual rights that the collective well-being of the community is determined. Human dignity is an integral part of the Constitution. Reflections of dignity are found in the guarantee against arbitrariness (Article 14), the lamps of freedom (Article 19) and in the right to life and personal liberty (Article 21).

118. Life is precious intself. But life is worth living because of the freedoms which enable each individual to live life as it should be lived. The best decisions on how life should be lived are entrusted to the individual. They are continuously shaped by the social milieu in which individuals exist. The duty of the State is to safeguard the ability to take decisions. "Life" within the meaning of Article 21 is not confined to the integrity of the physical body. The right comprehends one's being in its fullest sense. That which facilitates the fulfillment of life is as much within the protection of the guarantee of life.

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

(iii) Comparative International Jurisprudence

132. A survey of comparative international jurisprudence, on the point of human dignity and the rights flowing therefrom, shows convergence in the values of human dignity across the free world.

133. The foreign authorities can be cited to show that human dignity is an accepted universal value in the comity of nations.

134. In ***Rosenblatt v. P Baer*, reported at 1966 SCC OnLine US SC 22 : 383 US 75 (1966),** the US Supreme Court found that "The essential dignity and worth of every human being" was at the root of any system of "ordered liberty".

"The right of a man to the protection of his own reputation from unjustified invasion and wrongful hurt reflects no more than our basic concept of the essential dignity and worth of every human being- a concept at the root of any decent system of ordered liberty."

135. In the case of ***Armoniene v. Lithuania,*** reported at ***(2009) EMLR 7***, the European Court of Human Rights set its face against an act of disclosure of a person's state of health, causing "exclusion from social life", and found it violative of the right to privacy by holding thus:

"The Court takes particular note of the fact that the family lived not in a city but in a village, which increased the impact of the publication on the possibility that the husband's illness would be known by his neighbours and his immediate family, thereby causing public humiliation and exclusion from village social life."

136. The human dignity rights of prisoners included rehabilitation, in the opinion of the US Supreme Court in ***Procunier, Corrections Director, ET AL. Vs. Martinez ET AL.*** reported at ***416 U.S. 396 (1974):***

"The Court today agrees that "the weight of professional opinion seems to be that inmate freedom to correspond with outsiders advances rather than retards the goal of rehabilitation."

Balanced against the State's asserted interests are the values that are generally associated with freedom of speech in a free society - values which "do not turn to dross in an unfree one." Sostre v. McGinnis, supra, at 199. First Amendment guarantees protect the free and uninterrupted interchange of ideas upon which a democratic society thrives. Perhaps the most obvious victim of the indirect censorship effected by a policy of allowing prison authorities to read inmate mail is criticism of prison administration. The threat of identification and reprisal inherent in allowing correctional authorities to read prisoner mail is not lost on inmates who might otherwise criticize their jailors. The mails are one of the few vehicles prisoners have for informing the community about their existence and, in these days of strife in our correctional institutions, the plight of prisoners is a matter of urgent public concern. To sustain a policy which chills the communication necessary to inform the public on this issue is at odds with the most basic tenets of the guarantee of freedom of speech.

The First Amendment serves not only the needs of the polity but also those of the human spirit - a spirit that demands self-expression. Such

expression is an integral part of the development of ideas and a sense of identity. To suppress expression is to reject the basic human desire for recognition and affront the individual's worth and dignity. 14 Cf. Stanley v. Georgia, 394 U.S. [416 U.S. 396, 428]557 (1969). Such restraint may be "the greatest displeasure and indignity to a free and knowing spirit that can be put upon him." J. Milton, Aeropagitica 21 (Everyman's ed. 1927). When the prison gates slam behind an inmate, he does not lose his human quality; his mind does not become closed to ideas; his intellect does not cease to feed on a free and open interchange of opinions; his yearning for self-respect does not end; nor is his quest for self-realization concluded. If anything, the needs for identity and self-respect are more compelling in the dehumanizing prison environment. Whether an O. Henry writing his short stories in a jail cell or a frightened young inmate writing his family, a prisoner needs a medium for self-expression. It is the role of the First Amendment and this Court to protect those precious personal rights by which we satisfy such basic yearnings of the human spirit."

137. The validity of a punishment causing loss of nationality, for an act of desertion in military service, was in issue before the US Supreme Court, in ***Trop Vs. Dulles,*** reported at ***356 US* 86 (1958).** The US Supreme Court in **Trop (supra)** reiterated the importance and role of rehabilitation in a penal system, while dealing with the validity of the punishment. The principle holding of the US Supreme Court on these points is as under:

"Expatriation, in this respect, constitutes an especially demoralizing sanction. The uncertainty, and the consequent psychological hurt, which must accompany one who becomes an outcast in his own land must be reckoned a substantial factor in the ultimate judgment.

The novelty of expatriation as punishment does not alone demonstrate its inefficiency. In recent years we have seen such devices as indeterminate sentences and parole added to the traditional term of imprisonment. Such penal methods seek to achieve the end, at once more humane and effective, that society should make every effort to rehabilitate the offender and restore him as a useful member of that society as society's own best protection. Of course, rehabilitation is but one of the several purposes of the penal law. Among other purposes are deterrents of the wrongful act by the threat of punishment and insulation of society from dangerous individuals by imprisonment or execution. What then is the relationship of the punishment of expatriation to these ends of the penal law? It is perfectly obvious that it constitutes the very antithesis of rehabilitation, for instead of guiding the offender back into the useful

paths of society it excommunicates him and makes him, literally, an outcast. I can think of no more certain way in which to make a man in whom, perhaps, rest the seeds of serious antisocial behavior more likely to pursue further a career of unlawful activity than to place on him the stigma of the derelict, uncertain of many of his basic rights. Similarly, it must be questioned whether expatriation can really achieve the other effects sought by society in punitive devices. Certainly it will not insulate society from the deserter, for unless coupled with banishment the sanction leaves the offender at large. And as a deterrent device this sanction would appear of little effect, for the offender, if not deterred by thought of the specific penalties of long imprisonment or even death, is not very likely to be swayed from his course by the prospect of expatriation. However insidious and demoralizing may be the actual experience of statelessness, its contemplation in advance seems unlikely to invoke serious misgiving, for none of us yet knows its ramifications."

(iv) Constitutionality of punishments under the statutes

"Universities are made by love, love of beauty and learning."

~ Annie Besant

138. The engagement of human dignity and Article 21 will now be examined in the context of punishment, imposed on a delinquent student.

139. The statutory scheme of enforcing discipline by imposition of punishments and suspension has a salutary purpose, but it needs to be compliant with the requirements of fundamental rights.

140. Punishment has to be effective to serve its purpose; however, it cannot be purblind to human dignity, if it is to retain its constitutionality.

141. Severity of a punishment is not sufficient basis for holding it unconstitutional. The enquiry into the constitutionality of a punishment, will examine the relationship between the

punishment and its purpose, and whether the penalty can achieve the purpose. The enquiry will also determine whether the punishment degrades the human person, and whether it devalues human dignity against established norms of decency, or has a dehumanizing effect.

142. Degree of injuries to self esteem, extent of degradation of human worth, depth of humiliation caused by the punishment, are facts to be probed in an enquiry into the validity of the punishment.

143. Experience teaches the fact of human fallibility, but knowledge holds the hope of human redemption. If error is part of human nature, reform is an element of human spirit. The capacity of human beings to introspect on erring ways and the power of human will to reform deviant conduct are building blocks of the concept of human dignity. “Every sinner has a future, many a saint had a past.”

144. Punishment for deviant conduct, cannot be so severe as to degrade human life. Every form of punishment should protect the essential sanctity of human life and comport with fundamental norms of decency evolved by a civilized society. Any act which dehumanizes life cannot be countenanced by societies and courts which value life and liberty. The degrading or dehumanizing elements of the punishment have to be eliminated to bring it in conformity with requirement of human dignity, contemplated by Article 21 of the Constitution of India.

145. Failure to consider susceptibility to reform, while denying the right to access privileges and activities of the

university, negates the possibility of rehabilitation. Absence of an environment of reform, self development and rehabilitation in a university, denies the opportunity of redeeming one's reputation. Termination of dialogue with the delinquent student, without offering an opportunity to reform, makes him an outcaste. The individual is permanently discarded by the institution, and loss of human self worth is total. This system of punishment is destructive of fundamental elements of human dignity, and violative of Article 21 of the Constitution of India.

146. Another aspect of the punishment which needs consideration, is the consequence exclusion from higher education.

147. Education is a most credible and effective mode of restoring self esteem and enhancing self worth. By denying opportunities of education to a delinquent student, without looking at the possibility of reform, the power to redeem one's errors and enhance self worth is taken away from an individual. In these cases, closure of avenues of education, extinguishes the hope for a better tomorrow. Loss of hope and its sequitor perpetual condemnation are fatal blows to the human spirit and self esteem.

148. Acts of deviant conduct, violence or intimidation, do not cease the need for social engagement or knowledge. Such needs are more acutely felt and require satisfaction in these cases.

149. Order may be enforced by punishments. Causes of deviant conduct can be addressed only by engagement.

Punishments deal with the offence, reform deals with the offender.

150. Public interest however demands that the claim for further education, and engagement with delinquent students, should be guided and controlled by the authorities.

151. Statutory regimes in universities, dealing with delinquent behaviour and university environments, which are bereft of therapeutic and reform based support systems, are incompatible with the constitutional mandate to uphold human dignity. The violations of human dignity, in such cases, are summed up hereinunder:

152. Dignity violations occur when a punishment meted out to a student, does not consider his susceptibility to reform, and degrades his person by exclusion to the point where his diminished self worth cannot be reinstated due to systemic inadequacies or institutional shortcomings.

153. By denying further education, and neglecting to create an institutional system of reform, self development and rehabilitation, the university in effect tells the delinquent student, that it does not recognize the student's need to re-establish his self esteem. In other words, the student is not only impervious to reform, but incapable of enhancing his self esteem.

154. Dignity of an individual/student is injured, when it is found that the punishment precludes reform by rehabilitative measures, and prevents self enhancement by further education.

155. The punitive consequences of the action, cannot go beyond the requirements of the case. In this case they do.

An institutional reform, self development and rehabilitation programme, will enable a delinquent student to introspect on errors, express remorse and correct course.

156. Neglect by the universities to create an institutional reform, self development and rehabilitation programme thus places substantial obstacles in the enjoyment of the fundamental right of human dignity under Article 21.

157. The result of the preceding narrative is as follows:-

(i) The impugned action taken by the university, against the petitioner is violative of the fundamental right of human dignity of the petitioner, guaranteed under Article 21 of the Constitution of India, as it fails to consider his susceptibility to reform, and does not enable the petitioner to undergo a reform and self development process to redeem himself.

(ii) The statutory omission of reform measures, is an inadequacy which renders the university incapable of rectifying the violation made by it. The systemic fault-line is contrary to the mandate of Article 21 of the Constitution of India.

(v) Systemic responses : Responsibilities of the State and universities

158. Exercise of judicial power is the prerogative of the courts; but upholding the Constitution is not the monopoly of the courts.

159. To realize the fundamental rights guaranteed under

the Constitution and to achieve the goals contemplated under the Preamble, all stakeholders have to play their part and all organs of governance have to perform their obligations. Constitutional ideals will become meaningful only if constitutional values animate the functioning of all institutions of governance. Universities have a special role to play.

160. The State and in this case the universities too, have the obligation to create an ***enabling environment***, (*emphasis supplied*) where life and life enhancing attributes under Article 21 of the Constitution of India flourish and where constitutional ideals become a reality.

161. The importance of "therapeutic approach" in solving social dysfunctions, the growth in role of the State to give away public recognition in the way they treat their citizens, the evolution of law on the subject, and the contribution of universities were analyzed by **Francis Fukuyama** in his book "**Identity**". Some of the instructive passages are extracted below:

"The therapeutic turn in the popular culture of advanced liberal democracies such as the United States was inevitably reflected in its politics, and in an evolving understanding of the role of the state. In the classical liberalism of the nineteenth century, the state was held responsible for protecting basic rights such as freedom speech and association, for upholding a rule of law, and for providing essential public services such as police, roads, and education. The government "recognized" its citizens by granting them individual rights, but the state was not seen as

responsible for making each individual feel better about himself or herself.”

“Under the therapeutic method, however, an individual's happiness depends on his or her self-esteem, and self-esteem is a by-product of public recognition. Governments are readily able to give away public recognition in the way that they talk about and treat their citizens, so modern liberal societies naturally and perhaps inevitably began to take on the responsibility for raising the self-esteem of each and every one of their citizens”.

“Therapeutic services came to be deeply embedded in social policy, not just in California but throughout the United States and in other liberal democracies. States began to offer psychological counseling and other mental health services, and schools began to incorporate therapeutic insights into the way that they taught children.”

“In the early twentieth century, social dysfunctions such as delinquency or teen pregnancy were seen as deviant behaviour that needed to be dealt with punitively, often through the criminal justice system”.

“But with the rise of therapeutic approaches by mid century, they were increasingly seen as social pathologies that needed to be treated through counseling and psychiatric intervention”.

“The 1956 amendments to the Social Security Act allowed for federal reimbursements of a range of therapeutic services to strengthen family life and self-support.”

"The therapeutic state metastasized across a wide number of institutions, including a large non-profit sector that by the 1990s had become the delivery vehicle for state-funded social services".

"**Universities found themselves at the forefront of the therapeutic revolution.**"

(emphasis supplied)

162. These special needs of citizens have to be addressed by State action, and also through judicial interventions in a nuanced manner, and in a larger perspective. Exclusive reliance on coercive powers of the law, shall be inadequate and an unsatisfactory way of dealing with the problem. The therapeutic jurisprudence draws heavily from concept of human dignity and self worth for its philosophical underpinning.

163. Disciplinary action should also be supported by reformative philosophy. Reformative philosophy does not undermine the deterrent approach.

164. The statutory regime imposes punishment for delinquent acts. The reform programme will address the cause of delinquency itself. Framing the approach to discipline as a choice between punishment or reform is misleading. A just corrective system needs both. Both approaches complement each other and can be pursued simultaneously. Deterrent aspect may also be reinforced, by making grant of the degree contingent upon successful completion of the reform programme.

165. The ordinances providing for punishments for deviant conduct need to be duly supported by a legal framework for structured reform, self development and rehabilitation programmes. This environment will accord social recognition to the need for reform of delinquent students. The degrading effect of punishment will be ameliorated. Dialogue will end isolation, reform will reinstate self worth and education will enhance self esteem.

166. Structured reform, self development and rehabilitation programmes and therapeutic support, within a legal framework, will create an ***enabling environment*** *(emphasis supplied)* in the universities, to realize the fundamental right of human dignity, flowing from Article 21 of the Constitution of India.

L. *Reform, Self Development & Rehabilitation*

(i) *Role of universities in achieving behavioral change*

"You must be the change you wish to see in the world"

~Mahatma Gandhi

167. Non violence as a philosophy of thought, and a creed of conduct, was developed in India on a scale wider than elsewhere. From the Buddha to Ashoka and the Mahatma, behavioral change in adopting non violence as a way of life, at the national scale was greatly accomplished in India.

168. The response of the Indian civilization, to the challenges of communal hatred and communal otherness, was profound and without parallel. The unique response of the Indian society was fashioned by the universal philosophy of the

Indian civilization; of affirming the unity of the human race, of embracing diversity, of respecting dissent, and creating a harmonious dialogue of faiths. The lives and teachings of saints and thinkers like Guru Nanak, Kabir, Vivekananda, Tagore and Mahatma Gandhi, bear testimony to this composite culture.

169. For each generation to produce such individuals of excellence is an exorbitant demand. Today behavioral change is achieved in a different manner, albeit more incrementally and less dramatically. Institutions like universities have a critical role to play. Universities have an obligation to the society and the individual. The universities have an irrevocable compact, and an organic connect with the society.

170. University is a paternal institution. By the act of suspension or debarment of a delinquent student, the university abandons its ward. The university has solved its problem, but the society has one at its hands. The downstream effects of the punishments, have not been considered by the respondents. Clearly there are direct costs to the society as well. There are no other institutions of equal standing, to engage with the youth, deal with the discontent or aberration, and channelize youthful energies.

171. The role of the University does not end in punishing perpetrators of violence. It begins with the identification of the causes of violence, communal hatred, and other forms of deviant conduct. Thereafter the responsibility to achieve behavioral change commences. The fruit of knowledge imparted by the universities lies in the manifestation of human values in the

human personality and expression of humanity in human conduct. Knowledge which does not change human behaviour in this manner is futile.

(ii) Imbibing Constitutional values and purging communal hatred

172. The Indian civilizational ethos and the Indian constitutional values are congruent. The Supreme Court distilled the essence of Indian values, when it emphasised "our tradition teaches tolerance, our philosophy preaches tolerance and our Constitution practises tolerance; let us not dilute it" while upholding the religious rights of Jehovah's witnesses in ***Bijoe Emmanuel and others vs. State of Kerala and others***, reported at ***(1986) 3 SCC 615.***

173. Universities have to protect the space for open dialogue, respectful engagement and reasoned debate. Universities need to ensure that the space for constitutional values, is not encroached by communal hatred.

174. The universities have the responsibility, to preserve this heritage, and the obligation to nurture these constitutional values. University experience has to inculcate these values in the students.

175. The universities may consider holding seminars, workshops, heritage festivals, cultural festivals, literature festivals, and encourage other activities to achieve this end. This has to be a part of the larger programme of value creation and self development.

(iii) Present discontents of students and solutions

176. The preceding discussion shows how a reform, self development and rehabilitation programme, will create an enabling environment, for realization of the fundamental rights of the individual under Article 21. How such programme, will yield tangible benefits for the society, will now be examined.

177. The paradox of the digital age is a plethora of devices and a dilution of dialogue, the substitution of conversation by chatter. There is the ever present danger of growth of knowledge and diminution of thought. The young are empowered by technology, but made restless by the void in values, and lack of direction.

178. The dilemmas of the digital age were acutely summed up by Yuval Noah Harari in his profound and acclaimed work “Homo Deus”:

“Today our knowledge is increasing at breakneck speed, and theoretically we should understand the world better and better. But the very opposite is happening. Our new-found knowledge leads to faster economic, social and political changes; in an attempt to understand what is happening, we accelerate the accumulation of knowledge, which leads only to faster and greater upheavals. Consequently we are less and less able to make sense of the present or forecast the future.”

179. In this situation lack of avenues of engagement, absence of a structured reform, self development and therapeutic support system, leaves the students with little options. The choices available in the society, to satisfy their need for

belonging, to recover self esteem, and to channelize youthful energies are not very encouraging.

180. Re-establishing meaningful dialogue, recreating an environment of fruitful conversation, and making empathetic engagement are some of the present challenges. The responsibility of reaching out and engaging with the students, and increasing quality interface with them, lies with the universities and the teachers.

181. These obligations can be accomplished by a meticulously created reform/self development programme and high quality of academic leadership within a comprehensive legal framework.

182. Universities are a microcosm of the society. They are laboratories of social change, and also agents of social transformation.

183. The manner in which the universities deal, with aberrations of violence other forms of deviant conduct, and deficit of values in students, has repercussions for the society at large. The divergent pulls of primordial instincts of hate and violence, against a citizen's duties in a nation ruled by law can best be managed by universities.

184. The universities are uniquely placed to deal with these issues. The universities have the intellectual capital, institutional framework and moral leadership, which puts them in the front rank of institutions to effect such change. The environment in the University should encourage and engender reflective actions instead of automatic choices.

185. The reform/self development and rehabilitation programme, will give an individual student correct direction in life, and prevent one from drifting away. The student will be anchored in constitutional values, and will not be led astray by social evils. The support and aid by the university will give one a sense of ownership and belonging. No harvest is richer for a nation, than citizens empowered by a constitutional value system.

186. The high pedestal at which teachers are placed in Indian traditions and thoughts, was recalled to explain the current role of teachers in Indian society, by the Hon'ble Supreme Court in the case of **Avinash Nagra Vs. Navodaya Vidyalaya Samiti and Others,** reported at (**1997) 2 SCC 534.** The relevant extracts were succinctly summed up by a Division Bench of this Court, in the case of **Devarsh Nath Gupta Vs. State of U.P. and Others**, reported at **2019(6) ADJ 296 (DB):**

> *"22. Special status of teacher has been reminded by Court in Avinash Nagra vs. Navodaya Vidyalaya Samiti and others (1997) 2 SCC 534. Quoting Father of the Nation, Court said that a teacher cannot be without character. If he lacks it, he will be like salt without its savour. A teacher must touch the hearts of his students. Boys imbibe more from the teacher's own life than they do from books. If teachers impart all the knowledge in the world to their students but do not inculcate truth and purity amongst them, they will have betrayed them. Quoting Shri Aurobindo, Court said that it is the teacher's province to hold aloft the torch, to insist at all times and at all places that this nation of ours was founded on idealism and that whatever may be the prevailing tendencies of the times, our children shall learn to live among the sun-lit peaks. Court also referred Dr. S. Radhakrishanan saying that we, in our country, look upon teacher as gurus or, as acharyas. An Acharya is one whose achar or conduct is exemplary. He must be an example of Sadachar or good conduct. He must inspire the pupils who are entrusted to his care with love of virtue and goodness. The ideal of a true teacher is "andhakaraniridhata gurur itya bhidhiyate" (Andhakar is not merely intellectual ignorance, but is also spiritual blindness). He, who is able to remove that kind of spiritual blindness, is called a 'guru'. Swami Vivekananda was also quoted saying that student should live from his very boyhood with one whose character is*

a blazing fire and should have before him a living example of the highest teaching. In our country, the imparting of knowledge has always been through men of renunciation. The charge of imparting knowledge should again fall upon the shoulder of Tyagis."

187. In ***Avinash Nagra (supra),*** the obligations of teachers to transform students into responsible citizens, and inculcate the value system of the Indian Constitution, was stated thus:

"...The State has taken care of service conditions of the teacher and he owed dual fundamental duties to himself and to the society. As a member of the noble teaching profession and a citizen of India he should always be willing, self-disciplined, dedicated with integrity to remain ever a learner of knowledge, intelligently to articulate and communicate and imbibe in his students, as social duty, to impart education, to bring them up with discipline, inculcate to abjure violence and to develop scientific temper with a spirit of enquiry and reform constantly to rise to higher levels in any walk of life nurturing Constitutional ideals enshrined in Article 51A so as to make the students responsible citizens of the country. Thus the teacher either individually or collectively as a community of teachers, should regenerate this dedication with a bent of spiritualism in broader perspective of the Constitutionalism with secular ideologies enshrined in the Constitution as an arm of the State to establish egalitarian social order under the rule of law. Therefore, when the society has given such a pedestal, the conduct, character, ability and disposition of a teacher should be to transform the student into a disciplined citizen, inquisitive to learn, intellectual to pursue in any walk of life with dedication, discipline and devotion with an inquiring mind but not with blind customary beliefs....."

188. The students entering universities embark on a new phase in their lives. Many are often removed from their comfort zone, and the secure environment of their homes, to face the challenges of independent life. At times these new challenges can be intimidating, and the uncertainties can create apprehensions, in the minds of the young adults.

189. Some students are unmoored in this trying phase of life and change of circumstances. Ragging of juniors in institutions of higher learning and other evils make the situations worse for freshers. Such students especially girls students in our country, need full institutional support to face these challenges.

190. It is the responsibility of the universities and the institutions of higher learning to create requisite environment of sensitizing the senior students and supporting the freshers in every possible manner.

191. A programme for self development implemented in a proactive manner shall foster constitutional values among students. Students need to realize the value of dissent in a democracy, but also have to understand the manner of dissent in a society ruled by law.

192. This process also requires initiation of engagement with the students and improving the quality of interface between the teachers and the taught. Educating the educators in this regard has to be a part of any such programme. Workshops have to be held and other methods have to be explored, to cultivate constitutional values in students and achieve behavioral change.

193. These are the preventive measures to address the issues of indiscipline, deficit in values and deviant behaviour in all institutions of higher learning.

194. The preventive measures preclude the occurrence of deviant behaviour. The post facto rehabilitation measures prevent recurrence of deviant behaviour. Both have to be integrated into one conjoint system of value creation, in the universities and institutions of higher learning.

195. Structured reform/self development programmes run by universities, can be catalysts for inducing behavioral change, and inculcating a constitutional value system in students. A successful reform, self-development & rehabilitation programme,

can convert a possible danger into a real asset for the society.

(iv) Creation of reform, self development & rehabilitation programmes

196. Many branches of knowledge in modern times are devoted to the study of human psychology, social behaviour and behavioural change. Psychology, Psychiatry, Sociology, Anthropology and Behavioral Economics, are some fields dedicated to gaining insights into human behaviour and inducing behavioural change.

197. Works of the Nobel prize winning economist Richard Thaler deserve special mention. The methodology of “nudges”, in creating behavioral change has been gaining acceptability. The organization “Nudge” in Lebanon, has done noteworthy work with refugee children, and on environmental protection.

198. The Behavioral Insights Teams sometimes called “Nudge Units”, are also existing in many nations including Australia, Canada, Germany, Qatar, the United Arab Emirates, Japan, the United States, and the United Kingdom. The Economic Survey released by India's Finance Ministry in July, 2019 has concluded with the clear recommendations that “the proposal to set up a behavioral economics unit in the NITI Ayog must be immediately activated”. The report further noticed that the unit should work with State Governments, helping them to make their programme more effective, and informing them of the potential value of Behavioural Insights.

199. Ancient branches of knowledge and wellness like yoga, meditation, vipassana and so on may prove to be rich

resources to benefit from.

200. Many scientific researches have confirmed the efficacy of these ancient systems of human wellness. These branches of knowledge have to be approached with a scientific and an open academic mindset. Personal beliefs have to be respected at all times. There can be no imposition of any system, which is resisted on grounds of faith or beliefs; in which cases other options may be given.

201. Socially useful work like planting and taking care of trees, and flora may be a part of the programme. Sports and sporting activities also go a long way in creating integrating social values, and enhancing emotional intelligence. Teaching needy children, serving the sick, and other forms of service to the society are options which may be explored. Counselling sessions with experts and psychologists could prove useful.

202. Therapeutic solutions to social problems, are being increasingly recognized by social scientists, medical experts, psychologists, and jurists alike.

203. Creation of course content of the reform or self development programme, and manner of its implementation has to be decided by the respondents. This requires wide consultations, deliberations and workshops with academia, varsities, institutions of research, student counsellors, psychologists, psychiatrists, students and other stakeholders.

204. The UGC is a statutory body, and cannot abdicate its responsibilities in this scenario. The functions of the UGC are enumerated in the University Grants Commission Act, 1956.

The UGC will play an important role, in the creation and standardization of the course, for reformation and self development, and aid its implementation on an institutional basis.

205. The Government of India in particular, the Ministry of Human Resource Development, also has a contribution to make in the process. The Ministry of Human Resource Development, Government of India, New Delhi, has to provide the necessary support to the University as may be required under law to create and implement the reform, self development and rehabilitation programme. This support would include the creation of necessary infrastructure for implementing the programmes.

206. Both the University Grants Commission and the Ministry of Human Resource Development, Government of India, are required to support the universities in their endeavours to create and implement the programmes of reform, self development and rehabilitation.

207. Law enforcement agencies the world over are engaging with the youth, to draw them away from the appeal of extreme ideologies.

208. The prestige enjoyed by universities and the teachers in society, will make the programme credible to concerned individuals, and acceptable to the student community. The key to the efficacy of any structured reform programme, is empathetic engagement and a supportive environment.

209. An impersonal approach and institutional prejudice,

can make the programme a non starter. Due sensitization of all stakeholders is required, before implementing the programme.

210. The founding purpose of universities to supply intellectual and moral leadership to the society, and to be at the vanguard of social transformation, will be eminently achieved by effective reformation/therapeutic/self development programmes.

(v) Concerns of universities regarding discipline & restraints during the reformation, self development & rehabilitation programme:

211. The Court is cognizant of concerns of the universities, that a reform programme should not derail university administration, nor should it have a detrimental effect on discipline and good order in the campus. A reform and rehabilitation programme, is not intended to allow a wrongdoer to escape justice.

212. Apprehensions of the universities need to be addressed. The reform programme has to be created and structured and implemented in a manner that it does not adversely impact the good order and discipline in the university campus.

213. The start of reform programme does not inevitably mean a free access to, or unconditional reinstatement of a delinquent student into the university campus. In cases of indiscipline where presence of individuals poses a threat of breakdown of order in the university campus, a decision can be made only by the university. Even when such students undergo a

reform programme, and the students are pursuing their academic studies, the university may impose restraints it deems fit.

214. To obviate possibilities of disruption in the academic atmosphere, various measures of graduated restrictions may be imposed on a case to case basis. These restraints may include minute monitoring of movements in campus, restricting movements and contact, an employee escort till the student is in the campus, alteration of class schedules and timings. Such lighter restrictions could continue, while undergoing reform programmes along with the academic course.

215. More stringent measures in aggravated cases, may include a campus ban, with on-line classes and home schooling. Transfer to constituent colleges or other universities from a pool of universities, or setting up separate premises are among the options. In these cases entry to the specific university campus may be barred, even as the reform programme is underway, and the student is prosecuting his academic course.

216. These are some illustrative instances, of restraints which may be imposed by the universities.

M. *Proportionality & Punishment*

217. The controversy has to be seen from another critical legal perspective. The doctrine of proportionality is an established ground of judicial review in the Indian Constitutional jurisprudence.

218. Aharon Barak, former President of Supreme Court of Israel in his book “Proportionality” thus defines the rules of the doctrine of proportionality, “According to the four components of proportionality a limitation of constitutional right will be

permissible if, (1) It is designated for a proper purpose, (2) The measures undertaken to effectuate such a limitation are rationally connected to the fulfillment of that purpose, (3) The measures undertaken are necessary and in that there are alternative measures that may similarly achieve that same purpose with a lesser degree of limitation and finally; (4) Their needs to be a proper relation “proportionality strict senso and balance” between the importance of achieving the proper purpose and social importance of preventing the limitation on the constitutional right.”

219. The concept of proportionality essentially visualizes, a graduated response to the nature of the misconduct by a delinquent student. The purpose of the institution, its role in the society and its obligations to the nation, provide the setting for adjudication of the issue of proportionality.

220. Proportionality first came to be applied in the context of punishments imposed for misconduct in service jurisprudence. The necessity of proportional punishment, in cases of misconduct by students is more strongly needed. Hence action of the respondent-University, is liable to be tested on the anvil of disproportionality.

221. The "doctrine of proportionality" was introduced, and embedded in the administrative law of our country, by the Hon'ble Supreme Court in the case of ***Ranjit Thakur Versus Union of India***, reported at ***(1987) 4 SCC 611***. The Hon'ble Supreme Court in Ranjit Thakur held thus:

> *"Judicial review generally speaking, is not directed against a decision, but is directed against the "decision making process". The question of the choice and quantum of punishment is within the jurisdiction and discretion of the Court-Martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and*

> *amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the Court-Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review. "*

222. The essence of proportionality is that, the competent authority while imposing a punishment upon a delinquent student, has to co-relate and balance the imperatives of institutional discipline with the demands of individual rights. Too light a punishment will not be conducive to institutional discipline. Too harsh a punishment will not be consistent with norms of justice.

223. The enquiry into the four components of proportionality, as elucidated by Justice Aharon Barak in his book “Proportionality” has been made in the preceding part of the judgment. The purpose and obligations of universities, have also received consideration, in the earlier part of the narrative.

224. The suspension of the petitioner from the university, for an undefined or indefinite period, is an action of extreme severity. It is a de-facto expulsion from the university. These actions carry drastic penal consequences for the students. Denial of education to a soul, in quest of knowledge is the severest form of restriction. Moreover, the instigatory role of the Professor Y in causing the incident, has not been factored into the decision.

225. The measures undertaken against the petitioner, are not rationally connected to the fulfillment of the purpose sought to be achieved. The proper and designated purpose of a punishment in a university, has to include reform of the student, not mere imposition of penalty. Clearly there are alternative reformative measures, that can achieve the same purpose, with a lesser degree of curtailment of

the students rights.

226. The impugned action fails the test of proportionality. The action taken against the petitioner, does not achieve the purpose, and social importance of the reform and rehabilitation of the delinquent student. The impugned order is liable to be set aside on this ground as well.

N. *Conclusions & Reliefs*

227. The past record of the petitioner is unblemished. The incident was an isolated act of violence by the petitioner. It was a one off. The petitioner has tendered a contrite apology, to the Court through his counsel, (this is without prejudice to the defence to the petitioner in criminal case), and seeks an opportunity to evolve into a law abiding and responsible citizen of the country.

228. From the facts in the record, it appears that the petitioner does not have a criminal history (prior to this case), nor can it be said that the petitioner has a depraved criminal mindset. The academic background also shows promise. In these facts, this Court feels that the petitioner is capable of reforming himself, and evolving into a law abiding citizen.

229. The acts of violence if proved, may warrant disciplinary action to maintain discipline in the campus. But the facts of the case, also require reformative measures to protect the future of the petitioner.

230. In the wake of the preceding discussion, this Court finds that the order dated 30.03.2019 passed by the Registrar, Banaras Hindu University, Varanasi, is arbitrary and illegal and

of no effect.

231. The order dated 30.03.2019, passed by the Registrar, Banaras Hindu University, Varanasi is quashed.

232. The quashment of the impugned order, does not in any manner exonerate the petitioner of his guilt. Nor does it preempt the regular enquiry into the misconduct. The law shall take its course, unhindered by any observation made in this judgement.

233. In the facts of the instant case and the material in the record, the reinstatement of the petitioner in the Ph.D. Course, shall happen in the manner and the time frame provided in the final directions.

234. The matter is remitted to the respondents.

235. A writ in the nature of mandamus is issued commanding the respective respondents to execute the following directions in the light of this judgment:

I. The University shall create a reform, self development and rehabilitation programme, for students accused of misconduct and against whom disciplinary action or any action to deny facilities of the university is proposed or taken;

II. The reform, self development and rehabilitation programme should be created after wide consultations and workshops with institutions of higher learning and research, universities, experts, student counsellors/psychologists, psychiatrists, students and other stakeholders;

III. University Grants Commission will aid the above process by providing the necessary support to the University to

create, standardize and effectuate the reform, self development and rehabilitation programme in the University.

IV. The Secretary, Ministry of Human Resource Development, Government of India, New Delhi (respondent no.1 herein), shall also provide necessary support to create infrastructure in the University to effectuate the reform, self development and rehabilitation programme in the University, in light of this judgment and as per law.

V. The reform, self development and rehabilitation programmes shall be processed as per law, and integrated into the existing legal/statutory framework of the University dealing with deviant conduct and punishments.

VI. The petitioner shall be given the benefit of the reform, self development and rehabilitation programme. After the creation of the reform, self development and rehabilitation programme, the petitioner shall be reinstated as a student and permitted to continue the Ph.D. course or any other course along with the said programme.

VII. Attendance of the petitioner in the said programme shall be compulsory. An evaluation sheet of the petitioner's performance in the programme shall also be prepared.

VIII. It shall be open to the BHU to impose necessary restraints, as it deems fit, upon the petitioner even as he pursues his academic course along with the reform, self development and rehabilitation programme. These restraints may include a campus entry ban upon the petitioner, if the University deems it necessary.

IX. The exercise shall be completed, preferably, within six months, but not later than 12 months. At all times the respondents, keeping in mind the best interests of the students and the society, shall make all efforts to expedite the compliance of the directions.

X. It shall be open to the respondents to create a scheme for reform, self development and rehabilitation for convicts in criminal cases who wish to pursue further higher studies in the respondent University.

XI. The counsels for the respondents shall provide certified copy of this judgment to the Vice Chancellor, Banaras Hindu University, Varanasi (respondent no. 2 herein), the Secretary, Ministry of Human Resource Development, Union of India, New Delhi (respondent no.1 herein) and the Chairman, University Grants Commission, New Delhi (respondent no. 6 herein), for necessary compliances.

236. The writ petition is allowed to the extent and manner indicated above.

Order Date :- 02.12.2019
Dhananjai Sharma