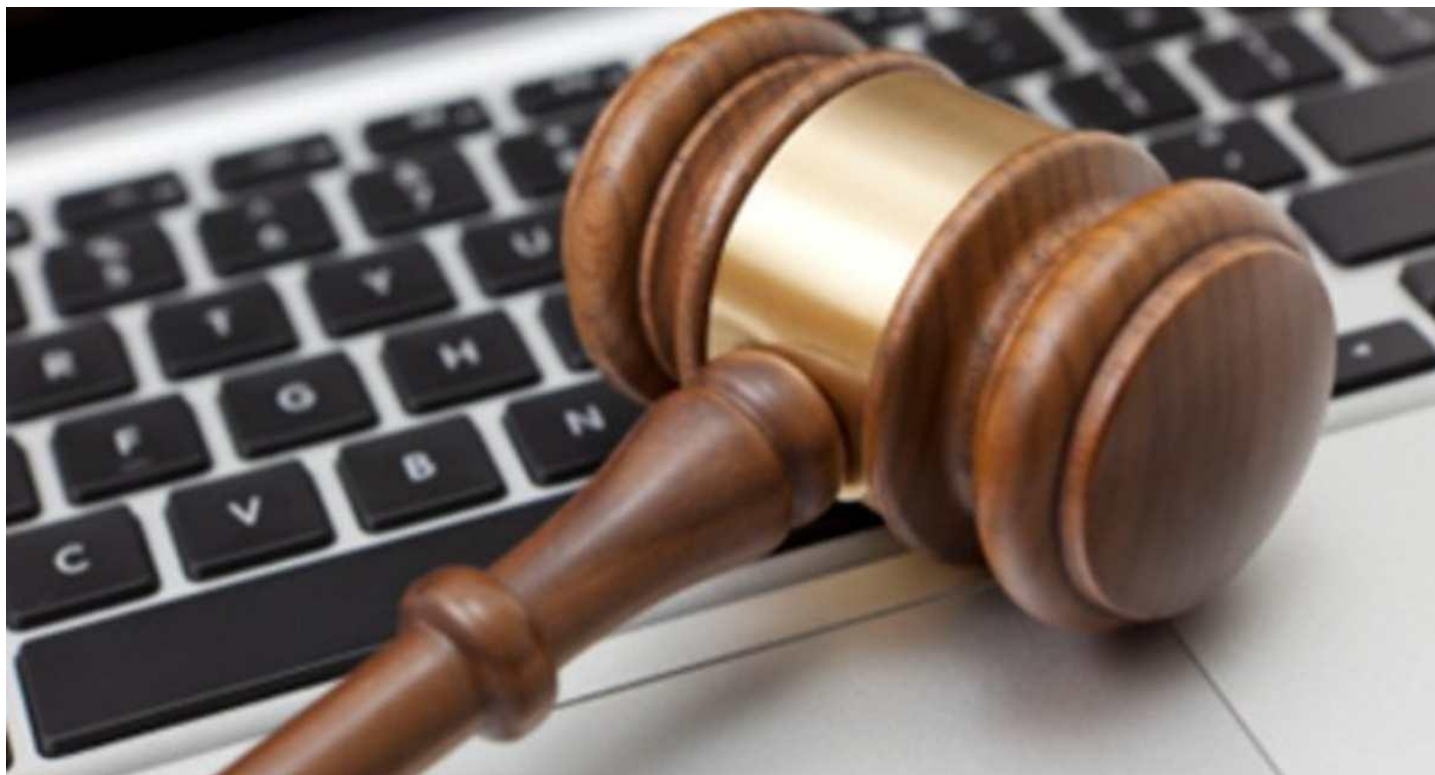


Theorising 'group dignity' as a constitutional value

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By

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The Sabarimala courtroom tussle is yet to unravel. In an order dated 10.02.2020 in *Kantaru Rajeevaru v. Indian Young Lawyers Association*, Review Petition (Civil) No. 3358 of 2018, a Nine-Judge Constitution Bench of the Supreme Court framed seven issues to be addressed by the court, one of them being examination of the “inter-play between the rights of persons under Article 25 of the Constitution of India and rights of religious denomination under Article 26 of the Constitution of India”. With the retirements of Chief Justice of India, Justice S.A. Bobde and Justice Banumathi, the Nine-Judge bench shall have to be reconstituted by the incumbent Chief Justice of India, Justice N.V. Ramana on the administrative side. The petition has opened up possibilities for the legal fraternity at large to rethink the availability of the constitutional value of ‘dignity’ in a different language, so as to re-imagine it in terms of not just individuals but groups as well. This article, through a reading of the *Aadhaar Judgment* ((2019) 1 SCC 1), contemplates the scope for one such experiment that could be conducted during the petition hearings.

THEORETICAL UNDERPINNINGS OF COMMUNITARIAN DIGNITY IN AADHAAR

I have previously argued elsewhere (NLU Jodhpur’s *Indian Journal of Legal Theory*, 2020), on similar lines that the *Aadhaar judgment* lays a solid jurisprudential foundation for group dignity. The majority judgment delivered by Justice Sikri delves into a detailed discussion on a fresh dimension of human dignity visualized in the form of common good or public good. (¶¶ 109-116). This dimension of dignity locates its roots in the idea of communitarianism. Drawing on the Universal Declaration of Human Rights (UDHR), the court observed that a substantive/communitarian conception of dignity has been recognized as an ‘essential human right’ required for realizing the ‘intrinsic worth’ of every human being. This conception of dignity was chalked out in the context of socio-economic rights read into Part III of the Indian Constitution by the court, and was meant to be extended to the Indian society at large.

While constructing the community approach to human dignity, the court identified three pillars – intrinsic value, autonomy, and community value – which may be considered as the core values of human dignity. Then the court moved on to provide content to the above-mentioned elements. The court

argued that intrinsic value as a facet of human dignity may very well be regarded as the fundamental basis and the origin of a given set of fundamental rights. Acknowledging the intrinsic value at the level of the individual, translates into the right to recognition and respect towards cultural, linguistic or religious diversity at the level of the community. Moreover, the element of autonomy has a specific aspect of public autonomy or group autonomy to it, at the heart of which lies the right to self-determination. Since the court was elaborating upon this aspect in the context of socio-economic rights as mentioned earlier, it observed that public autonomy and participation of people, as political beings in a society, isn't possible without them having an existential minimum, i.e., the individuals should be free from want and their essential needs and utilities such as food, water, clothing, et. al. should be met. Moving on, the court stated that the last pillar, i.e., community value, should be regarded as dignity's social dimension. The judgment stated that dignity in the form of community value emphasizes the role played by both the state and community in the establishing of collective goals and setting up of restrictions on individual freedoms and rights based on a certain idea of what constitutes as a good life.

The Aadhaar judgment gives us a beautiful apparatus for the constituting of community dignity. The sum and substance of the jurisprudence laid out provides us with a triad of values – uniqueness, identity and group autonomy. These values put together pave the way for plurality and help preserve the social and cultural diversity of our kaleidoscopic society.

GROUP DIGNITY VS INDIVIDUAL DIGNITY: A QUESTION OF PRIMACY

Striking a proper balance between group dignity vis-à-vis individual rights, on the touchstone of 'public morality', demarcates the limits of both the constitutional imperatives. In a case before the Supreme Court in *Mr. X v. Hospital 'Z'* ((1998) 8 SCC 296), the appellant's right to privacy as a facet of his right to life was pitted against Ms. Y's right to lead a healthy life as her fundamental right under Article 21 of the Indian Constitution. The court held that whenever there might be a clash of two fundamental rights, the court would enforce that right alone which would mean an advancement of the public morality or public interest. This was because the court believed that neither could moral considerations be regarded as irrelevant nor could it shirk away from its duties to pay a keen attention to the accepted morality of the given period and in such a scenario the judges could not be expected to sit as mute spectators of clay in their courtrooms. (¶ 44) The above-mentioned decision has two serious implications – first, it holds that the balancing of conflicting individual rights has to be resolved on the touchstone of public morality; and second, that the court is supposed to not only have a grip on the understanding of public morality of the day but also use it as a constitutional tool to decide the validity of fundamental rights.

Given, that the court clearly placed public morality and public interest above individual rights, it can be easily inferred those individual rights would have to make way for public morality in situations when they're pitted against the latter. This accepted constitutional principle should be applicable for individual dignity and group dignity as well, such that group dignity may be given priority and due weightage over and above individual dignity. As expected, the prescient observation of the Supreme Court was later quoted and affirmed by it in a recent judgment delivered in *Association of Medical Superspeciality Aspirants & Residents & Ors. v. Union of India & Ors.* ((2019) 8 SCC 607), wherein the court explicitly held in no uncertain terms as such: "Communitarian dignity has been recognized by this Court. While balancing communitarian dignity vis-à-vis the dignity of private individuals, the scales must tilt in favour of communitarian dignity." (¶ 33)

GROUP DIGNITY OF RELIGIOUS DENOMINATIONS: THE WAY FORWARD FOR SABARIMALA

At the risk of perhaps indulging myself in a failed experiment, I would like to think a bit loud here. The preliminary objections that could be raised against the use of Aadhaar judgment as a precedent for framing an argument in favor of group dignity of religious denominations would be that the judgment deals only with 'socio-economic' rights, and that the 'communitarian dignity' formulated by it was specifically for the larger, downtrodden sections of Indian society. However, I would like to submit that these objections don't seem to hold water as there wasn't any explicit prohibition on postulating group

dignity in terms of political and cultural rights. There isn't any plausible reason why group dignity shouldn't be framed in the language of religious liberty and be extended to religious groups and denominations. The multiple 'religious denominations' existing throughout our nation are what make Bharat a civilizational mosaic. Each denomination is unique in its own sense, each has its own identity. All of these cultural spaces put together make us a truly plural society.

'Group dignity' (i.e., communitarian dignity) as a constitutional value should be available to religious denominations under Article 26 of the Indian constitution. Religious denominations should have their right to group autonomy and self-determination, without which they're deprived of their identity, dignity and religious liberty. The right of religious denominations to practice their religion freely without any external interference has previously been upheld by the landmark Shirur Mutt judgment (AIR 1954 SC 282). As far as the religious practices, rites and rituals are concerned, the denominations have been given complete autonomy to determine their importance in accordance with their belief systems and doctrines. Although the jurisprudence around essential practices test under both Article 25 and Article 26 has turned a bit murky over decades, and should hopefully be reconsidered during the pending review petition, the claim that religious denominations have been assured a large amount of internal autonomy with minimal state interference can be stated justifiably in light of the Shirur Mutt judgment.

The invocation of the constitutional value of group dignity in the Sabarimala issue would be a three-fold argument. First, that Ayyappans should be considered as a religious denomination, and that the devotees of Sabarimala temple are a section thereof. The courts have often tended to decide for the religious denominations whether they must be regarded as such or not. This, I submit, may be argued as a breach of their autonomy as a group to decide for themselves their religious identity. Second, that the ban on entry of a given section of women is a part of the essential religious practices of the denomination. Third, that lifting of the ban would result in an undue and excessive breach of the religious practice of the denomination and would amount to a violation of their group dignity, which is linked to their deity's dignity as a celibate. Such a state interference would not only wipe out the peculiar identity of the deity and devotees associated with the temple, including women devotees who respect the religious practices associated with the temple, but would also be destructive of the diversity of traditions within the denomination.

We must also realize that religious liberty and the right to religious assertion, play a vital role in constituting the dignity of individuals. It is religion that gives individuals their first group identity, a sense of cultural rootedness and a sense of worthy being. One may even argue that religious liberty should be considered as a part of our existential minimum. Consequently, maintaining and respecting the freedom of religious denominations is crucial not just for the dignity of the denominations as a whole, but also for the dignity of the individuals who are its basic units. It is in this sense that one may attempt to link the dignity of the deities whom the denominations worship, to that of their own, and further to that of the individual worshippers, all of them being inviolable subject to minimal restrictions.

CONCLUDING REMARKS

It would be a really interesting exercise to witness how these arguments play out in the courtroom, and what the judges' approach to entertaining them would be, if the legal counsels develop their submissions on the grounds as specified above. Ideally, using Aadhaar as a precedent, the Supreme Court should utilize this golden opportunity to expand the jurisprudence on group dignity extending it to religious denominations and help them exercise their religious liberty with dignity.