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“ERODING HUMAN DIGNITY IN CONSTITUTIONAL PRACTICE: A CRITICAL STUDY OF GAPS IN DOMESTIC IMPLEMENTATION OF INTERNATIONAL HUMAN RIGHTS NORMS IN DEMOCRACIES”

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ABSTRACT:

This research paper explores the intersection of human dignity and government accountability, focusing on how contemporary democracies, including the United States, European states, and India, violate or uphold international human rights standards. Using a doctrinal methodology and grounded in international frameworks like the UDHR, ICCPR, ICESCR, and the ECHR, the paper critically analyses policies and practices that undermine human dignity through examples such as custodial violence, migrant deportations, and asylum restrictions. Particular attention is given to India's treatment of foreign nationals, including Rohingya refugees and undocumented migrants, revealing systemic gaps between constitutional ideals and ground realities. Comparative insights from the U.S. under the Trump administration and European countries such as Hungary and the UK demonstrate how legal obligations are frequently bypassed under the guise of national interest. The study concludes that while international and domestic legal frameworks recognize human dignity as a foundational value, meaningful implementation remains inconsistent and often politically compromised. The paper calls for stronger domestic incorporation of international human rights obligations, institutional accountability, and legal reforms to ensure the protection of human dignity across borders.

KEYWORDS:

Human dignity, government accountability, Amnesty International organization, European Convention on Human Rights (ECHR), ICCPR, UDHR, ICESCR

INTRODUCTION

Human dignity plays a crucial role in our lives. Human dignity is a very important aspect in our living document, like the Constitution. It appears in the preambles of ICCPR, UDHR, ICESCR, the Indian Constitution, etc. It plays a crucial role in establishing fundamental rights and protects them by giving humans a centric place in international human rights. Recently, the administration of Trump has been vulnerable to

the people, and it violates the international human rights norms, which not only affects the US people but also those around the world. The five oldest written sources, including the Hindu Vedas, the Babylonian Code of Hammurabi, the Bible, the Quran, and the Analects of Confucius, address the answers to questions arising from people's duties, rights, and responsibilities. Human rights are a fundamental right that stabilizes and develops countries all around the world. There was a great emphasis on the

universal standard of acceptance of this concept, which was placed in international conventions and their implementations. All human being are born to be free and equal with dignity and rights. The literal meaning of dignities hominis for the classical Roman philosopher was "status." People should be treated with respect and kindness if they merit it due to their special status. Consequently, the appointment to some government positions required dignity.⁸⁸⁴

RESEARCH PROBLEM:

The dilemmas associated with human dignity, which is violated by the orders and policies laid down by governments for governing their countries. Some are not even asking for the opinion of the public, which violates international norms like the UDHR. For eg, Trump's order to implement massive deportation of immigrants. The role of the government is to safeguard the human rights of a person, which should not be violated.

OBJECTIVES:

- ❖ to scrutinize the written constitution's claim to follow the human rights, but failed to strengthen dignity in practice.
- ❖ To study and analyze the international legal framework on human dignity, as reiterated in many reviews by the ICJ, and whether the aligns with national constitutions.
- ❖ to focus the study on the disconnection between constitutional provisions and actual practice.

RESEARCH METHODOLOGY:

This doctrinal study's data was gathered using an exploratory research technique using government papers, scholarly publications, the internet, and other secondary sources. Using a survey of current literature to give academic insights, and there will be a case analysis, such as the US's handcuffed deportation, India's

custodial violence, and European states' migrants' ill-treatment.

REVIEW OF LITERATURE:

1. One of the most comprehensive analyses of human dignity within international human rights scholarship is presented by Ilias Bantekas and Lutz Oette in their seminal text *International Human Rights Law and Practice* (4th ed., 2024). The authors merge theory and real-world practice to illustrate how dignity functions across varied legal regimes and institutional settings. Their evolving editions trace dignity's role across critical domains including the rights of vulnerable groups, reparations for victims, and intersections with trade, counter-terrorism, and development policy. Their work contributes a foundational framework for understanding how dignity can underpin both constraints on state action and claims for redress across jurisdictions.⁸⁸⁵
2. Justice P. N. Bhagwati's *Domestic Application of Human Rights Norms* highlights the judiciary's role in integrating international human rights into domestic law. Drawing on the Bangalore Principles, he illustrates how the Indian Supreme Court expanded Article 21 to include fairness, speedy trial, legal aid, and dignity, aligning national jurisprudence with ICCPR standards even without formal ratification. The work underscores judicial creativity as a tool for advancing rights in developing democracies.⁸⁸⁶
3. Janet E. Lord and Michael Ashley Stein, in *The Domestic Incorporation of Human Rights Law and the United Nations Convention on the Rights of Persons with Disabilities*, examine how international human rights norms are integrated into

⁸⁸⁴ [Human Dignity and Judicial Interpretation of Human Rights | European Journal of International Law | Oxford Academic](#)

⁸⁸⁵ *Human Dignity in Human Rights Law*, Published online by Cambridge University Press: 12 May 2022

⁸⁸⁶ *Domestic Application of Human Rights Norms* by Hon Justice P N Bhagwati 5477

domestic law following treaty ratification. Using the CRPD as a model, they highlight its transformative potential for shaping national disability laws and policies, while addressing the challenges and opportunities of this process. The authors argue that effective implementation requires not only legal reform and court advocacy but also broader strategies that foster deep internalisation of human rights norms within societies.⁸⁸⁷

4. Christopher McCrudden's *Dignity, Rights, and the Comparative Method* explores the interrelationship between domestic constitutional rights and international human rights, the growing reliance on comparative legal reasoning, and the centrality of human dignity as a meta-principle in modern rights discourse. By analysing judicial borrowing and cross-jurisdictional dialogue, McCrudden highlights how these practices help reconcile tensions between universality and localism, fostering a more integrated and reflective global human rights framework.⁸⁸⁸
5. Serge Gutwirth and Paul De Hert, in *Human Rights: A Secular Religion with Legal Crowbars*, explore the paradox of democratic states upholding human rights while allowing persistent injustices like war, racism, and poverty. They describe human rights as the "gospel" of a secular religion, sustained by an entrenched narrative, but call for a pragmatic engagement with rights as judicial tools. Using the metaphor of "legal crowbars," they argue that, in certain contexts, rights can be leveraged effectively in courts, while also advocating alternative frameworks that may better achieve the aspirations linked to human rights.⁸⁸⁹

6. Mohammad Rasikh Wasiq's *Role of India for Enforcement of International Human Rights* examines how Indian courts engage with international human rights law in domestic adjudication. The study notes India's significant contributions in fields such as human rights, environmental law, and arbitration, while also highlighting its cautious approach toward treaties perceived to limit sovereignty. Using a doctrinal method, the work evaluates India's dual stance—supporting the creation and application of international norms while seeking to maintain domestic control over enforcement—thus reflecting both commitment and hesitation in aligning with global human rights instruments.⁸⁹⁰
7. Umang Banaudhia's *Upholding Human Dignity: Addressing Custodial Violence and Police Brutality in Contemporary India* investigates the persistent problem of custodial violence, including physical and psychological abuse, as a serious human rights issue. Drawing on international human rights standards and the UN Charter, the paper analyses systemic flaws in India's policing framework and calls for comprehensive reforms to align law enforcement with democratic and rights-based principles. It highlights the role of the National Human Rights Commission and Human Rights Cells in ensuring accountability, while stressing the need for coordinated governmental, societal, and institutional action to prevent abuse and safeguard human dignity.⁸⁹¹

ANALYSIS:

UNITED STATES:

The US president, after his first term of presidency, started his second presidency by promising the people to be safeguarded from many things, like policies, etc., after his win time

⁸⁸⁷ 2008 by Washington Law Review Association

⁸⁸⁸ McCrudden, C. (2020). Dignity, rights and the comparative method. In R. M. Smith, & R. R. Beeman (Eds.), *Modern constitutions* (pp. 111-132)

⁸⁸⁹ volume 33, issue 2, article 9, 2021

⁸⁹⁰ June 2022

⁸⁹¹ November 2023, Volume 10, Issue 11

it became a turning point for people who believed him. On his first campaign, he emphasized the national interest in human rights expenses, but it was all in vain. He started to violate human rights both nationally and internationally. These are the evidence which more clearly defined in debates. Over the last few decades, the people in the US have been suffering from the demotion of values such as those associated with religious belief or social institutions like families, churches, schools, local communities, etc. This shift was a backlash moment in America that they didn't expect.

The Amnesty International organization has given the highlights of Trump's first 100 days in office, which marked a turning point in the US. His administration was like authoritarian practices with barbaric things such as discriminatory, racist policies and dangerous rhetoric. There was much chaos and cruelty when it came to asylum, also. The treatment of immigrants is more cunning in the US, which leads to handcuffs and leg shackling the illegal immigrants to deport them elsewhere. He also sent the children who don't have parents or who are with expired immigrant parents has been sent to other countries which is cruel.

They have created a climate of fear and division and undermining of rule of law. "One hundred days into his second term, President Trump has led with cruelty and chaos, creating a human rights emergency that has affected millions of people by suppressing dissent, undermining the rule of law, and eroding norms and institutions essential to the protection of human rights," said Paul O'Brien, Executive Director of Amnesty International USA.⁸⁹²

The opinion given by human rights experts had been included in the international perspective.
UN Special Rapporteur on Freedom of Opinion and Expression David A. Kaye – issued a

statement condemning "the most extensive assault on human rights and accountability by any U.S. administration in modern history."⁸⁹³

The statement deliberately tells about the multiple violations by Trump's administration in both domestic and international in sort of legal obligations. They have also reiterated that the US has been helping to the international systems for protecting human rights, which is historical, but the Trump administration will destroy the name gained in the records.

The current administration, they argue, is forsaking the US global rule of law legacy:

*"The Trump administration betrays that history and those values in ways that promote the interests of authoritarians and demagogues worldwide and will strip Americans and others of fundamental human rights. Its assault on the rule of law fails to advance any conceivable American national interest, which lies in a worldwide system founded on principles of human rights, the non-use of force, collaboration to solve global problems, and the sovereign equality of states. The administration's actions betray each of these well-established international principles."*⁸⁹⁴

There was an interview done by Amy Braunschweiger, who spoke with the Human Rights Watch's United States program director, Tanya Greene, who led the research, which was within the United States, as well as Washington director Sarah Yager, who was an investigator with the US government on global issues. In the interview, the Human Rights Watch has reiterated that the executive orders by Trump often reverse the actions of Obama and Biden. For example, the denial of birthright citizenship has been challenged in the courts of law. Their orders of them has been associated with fear and confusion among the people, mainly among immigrants and marginalised communities.

⁸⁹² <https://amnesty.ca/human-rights-news/president-trump-100-days-attacks-human-rights/>

⁸⁹³ <https://globalfreedomofexpression.columbia.edu/updates/2025/02/trump-administrations-attacks-on-international-law-and-institutions-public-statement-of-american-human-rights-experts/>

⁸⁹⁴ <https://globalfreedomofexpression.columbia.edu/updates/2025/02/trump-administrations-attacks-on-international-law-and-institutions-public-statement-of-american-human-rights-experts/>

They have also said that the white Africans have been settled down in the US, but the refugee admissions were shut globally. He has also given Elon Musk the authority by giving power to him power through the Department of Government efficiency. He eliminated jobs, public data, and services that helped the public.

The order also violated personal rights like reproductive rights and abortion rights in both manners. Some of the people who are in marginalized communities, despite fear, avoided the schools, hospitals, and churches, etc. The foreign aid has been cut by the trump including in Russia and Belarus. The support has been curtailed for independent media and civil society which leads to authoritarianism. The watch has responded to this by focusing in areas like immigration, racial justice, education censor, democracy, etc. it also encourages bipartisan collaboration and international solidarity to uphold human rights.

The National Archives describes it this way:

“The core mission of OMB is to serve the President of the United States in implementing his vision across the Executive Branch. OMB is the largest component of the Executive Office of the President. It reports directly to the President and helps a wide range of executive departments and agencies across the Federal Government to implement the commitments and priorities of the President.”⁸⁹⁵

“The world needs the United States to reaffirm, not abandon, its commitment to humanity. Human survival rests on governments vastly scaling up their efforts to tackle the climate crisis; not running away from or even exacerbating the problem. And at a time when tech companies wield more power than ever before, it’s vital that the Trump administration does not enable them to commit or facilitate human rights violations around the world. Instead, the U.S. government must work hand in

hand with the international community to put in place robust regulations and hold tech companies accountable,” – said by Agnes Callamard.⁸⁹⁶

EUROPEAN STATES:

Human rights are constantly changing throughout Europe. The individual liberty protected by the European instrument on Human Rights is not established by the wording of the instrument or the intentions of its drafters. Instead, the Convention is regularly interpreted incorrectly by the 47 judges of the European Court of Human Rights (ECtHR or the Court). Using its well-known dynamic and evolutive interpretation methodology, the Court has determined that domestic laws and practices that previously raised no human rights concerns violate the Convention after reevaluating them in light of progressive regional developments in law, policy, and public opinion. Most importantly, in an attempt to broaden the range of rights protected, the ECtHR has not refrained from explicitly rejecting its previous decisions.

As Jeffrey Brauch has noted:

As the world grows smaller and technology advances, terrorism poses a greater and more imminent threat. Nations are responding more forcefully and aggressively to that threat. As they do, tomorrow’s ‘consensus’ on what is needed to counter international terrorism may embrace stronger measures and more infringements on individual privacy – perhaps those measures and infringements we consider to be human rights violations today. But under a consensus standard they may not be violations tomorrow.⁸⁹⁷

The ‘one-way ratchet’ view was most forcefully defended by Judge Casadevall in a dissenting opinion in *Gorou v. Greece*:

once [the Court] has decided to extend individuals’ rights . . . it should not . . . reverse its

⁸⁹⁵ <https://truthout.org/articles/our-fight-against-trumpism-must-center-respect-for-human-dignity/>

⁸⁹⁶ <https://www.amnesty.org/en/latest/news/2025/01/usa-president-trump-must-respect-human-rights-second-term/>

⁸⁹⁷ Brauch, ‘The Margin of Appreciation and the Jurisprudence of the European Court of Human Rights: Threat to the Rule of Law’, 11 Columbia Journal of European Law (2005) 113, at 146

decision. Acquired rights in the cause of human rights are at least as precious as acquired rights in other branches of the law and therefore the principle of non-regression must prevail.⁸⁹⁸

A 2009 study provides additional information to assess the jurisprudential division between ECtHR judges:

[A]proximately 25 percent of Strasbourg judgments on the merits are unanimous, 15 percent contain at least one dissenting opinion, and 60 percent contain at least one separate concurring opinion. This means that eighty-five cases out of every hundred are unanimous as to the outcome even if the reasoning for that outcome is not the same in the minds of all the judges.⁸⁹⁹



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In recent years, several European democracies have faced increasing criticism for policies and practices that undermine the principle of human dignity, despite their constitutional and international obligations. Countries like Hungary and Poland have adopted restrictive measures on civil liberties and judicial independence, often invoking national sovereignty as a shield against international scrutiny. These developments reflect a troubling divergence from the

commitments enshrined in the European Convention on Human Rights (ECHR), especially in the context of the treatment of migrants, ethnic minorities, and political dissenters.

One of the most concerning trends is the treatment of migrants and asylum seekers. Reports from Amnesty International and Human Rights Watch highlight the continued use of detention, pushbacks at borders, and denial of access to asylum procedures, especially along the Balkan route. In Hungary, for instance, the government's construction of border fences and criminalisation of "illegal entry" has resulted in mass detentions and summary expulsions. The ECtHR, in *Ilias and Ahmed v. Hungary* (2019), found Hungary guilty of violating Articles 3 and 5 of the Convention, due to the inhuman conditions in transit zones and arbitrary detention without proper legal review.⁹⁰¹

Similarly, in Greece and Italy, overcrowded refugee camps on islands such as Lesbos have been described as inhumane and degrading, with lack of sanitation, medical care, and legal aid. The failure of European solidarity during the refugee crisis has shifted the burden onto border states, exacerbating conditions that amount to dignity violations under international human rights standards.

Roma communities continue to face systemic discrimination across Central and Eastern Europe. In Slovakia and Bulgaria, segregated housing, denial of access to quality education, and forced evictions persist despite multiple ECtHR rulings recognising such acts as discriminatory. The repeated non-implementation of these judgments reflects a deep gap between legal commitments and actual practices.

In Western democracies like France and the UK, the expansion of surveillance laws, police powers, and restrictions on protest have raised

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⁸⁹⁹ White and Boussiakou, supra note 56, at 53.

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⁹⁰¹ <https://www.statista.com/chart/24455/europe-worst-human-rights-violators/>

⁹⁰¹ 47287/15

alarms. In France, the use of emergency powers and police brutality during public demonstrations such as the Yellow Vest protests were widely documented and criticised by UN rapporteurs. In the UK, the *Illegal Migration Act 2023* introduced harsh restrictions on the right to seek asylum, in direct conflict with the UK's obligations under the ECHR and the Refugee Convention. Such laws have been described by rights groups as an attempt to bypass international human rights commitments, undermining the universal principle of dignity and protection.⁹⁰²

LGBTQ+ communities across Europe also continue to face challenges, particularly in countries like Poland, where several municipalities declared themselves "LGBT-free zones." The European Commission and the ECtHR have condemned these actions, but enforcement remains inconsistent. The lack of meaningful state intervention to protect vulnerable minorities further highlights the erosion of dignity, even in legal systems that outwardly claim to uphold human rights. These recent examples across democratic European states reveal a recurring pattern: constitutional and legal frameworks exist, but the practical implementation of human rights protections remains insufficient. The failure to comply with ECtHR judgments, the misuse of national security narratives, and political resistance to accountability mechanisms all contribute to the deterioration of human dignity across the region.

INDIA:

While India constitutionally upholds human dignity under Article 21 and is a party to multiple international human rights instruments, violations continue to persist not only against Indian citizens but also against foreigners, asylum-seekers, and undocumented immigrants. Much like the U.S. administration under Trump, which was criticised for its inhumane treatment of migrants and asylum

seekers, India too has come under international scrutiny for its treatment of foreign nationals especially refugees, Rohingya Muslims, Bangladeshi migrants, and foreign prisoners held in detention.⁹⁰³

The Indian state has, on multiple occasions, treated foreigners in ways that raise serious questions about its commitment to human dignity. One major area of concern is the detention and deportation of Rohingya refugees. Despite the United Nations High Commissioner for Refugees (UNHCR) recognising many of them as persons of concern, the Indian government has detained hundreds of Rohingyas in substandard detention centres and proceeded with deportation without due legal process. These actions contravene international norms such as non-refoulement, a principle under the 1951 Refugee Convention (which India is not a signatory to, but is still bound by under customary international law). The Supreme Court of India, in *Mohammad Salimullah v. Union of India*, upheld the deportation of Rohingya refugees, citing national security concerns, but failed to adequately address the right to life and dignity of those facing persecution in Myanmar.⁹⁰⁴

In states like Assam, the Foreigners' Tribunals and the implementation of the National Register of Citizens (NRC) have led to the exclusion of nearly two million people, many of whom have lived in India for decades. Some of these individuals, labelled as "illegal foreigners," have been sent to detention centres where living conditions have been widely reported as inhumane. Several people have died in detention, including elderly detainees, due to lack of access to proper healthcare and poor infrastructure. This administrative handling of undocumented migrants often without clear legal recourse undermines the principles of natural justice and dignity guaranteed both

⁹⁰² Illegal Migration Act 2023, c 28

⁹⁰³ times news

⁹⁰⁴ AIR 2021 SUPREME COURT 1789, AIRONLINE 2021 SC 182

under the Indian Constitution and international human rights law.

Another instance of indignity is the arbitrary arrest and prolonged detention of foreign nationals, especially those from neighbouring countries like Pakistan and Bangladesh, who often overstay their visas due to poverty, illiteracy, or emergencies. These individuals, some of whom are mentally ill or minors, are frequently jailed without timely legal aid or proper representation. In many cases, foreigners who have completed their sentence remain imprisoned for years due to bureaucratic delays in diplomatic communication. Such prolonged, purposeless detention constitutes a clear violation of human dignity, as recognised under the ICCPR (International Covenant on Civil and Political Rights), to which India is a party.

India's treatment of asylum-seekers from Afghanistan, Iran, and African countries has also drawn concern. Racism, xenophobia, and physical attacks against African students and workers have made headlines multiple times, prompting international diplomatic concern. Despite these incidents, state action to prevent racial discrimination and ensure dignified treatment remains inadequate. Victims of such violence often face difficulty in filing police complaints or receiving legal support, compounding their marginalisation and exposing the weakness in India's commitment to upholding international human rights standards for all individuals, regardless of nationality.

Despite the existing shortcomings, it is important to recognise that India has also taken several positive steps to uphold the dignity of foreign nationals and asylum seekers. India has historically provided refuge to persecuted communities such as Tibetan refugees, Sri Lankan Tamils, and Afghan minorities, offering them shelter and access to education and livelihoods even in the absence of a formal refugee law. The Tibetan refugee community enjoys significant cultural and religious autonomy, and India has facilitated the

functioning of the Tibetan government-in-exile. Similarly, thousands of Sri Lankan Tamil refugees were housed in Tamil Nadu for decades with access to basic services and support systems, demonstrating a commitment to humanitarian principles. India has also cooperated with the UNHCR in New Delhi, allowing refugee status determination and providing basic legal protections to certain groups. These efforts reflect a long-standing ethos of compassion and non-refoulement, grounded in both constitutional values and India's civilisational legacy. However, to truly align with international human rights standards, these humanitarian practices must be transformed into codified rights through legislation and implemented consistently across all regions and refugee groups.

FINDINGS AND SUGGESTIONS:

This study highlights that although constitutional democracies like India, the United States, and many European nations proclaim strong commitments to human dignity and international human rights norms, there remains a significant gap in their domestic implementation. In India, while the Constitution guarantees the right to life and dignity under Article 21, violations continue through acts of custodial violence, arbitrary detention of foreign nationals, and selective deportation of asylum seekers. Foreigners, particularly those without legal documentation, often face institutional neglect, harsh conditions, and a lack of legal remedies. Similar patterns were seen in the U.S. under the Trump administration, where migrants and asylum seekers were subjected to inhumane policies and deportation practices. In European countries, despite the progressive approach of the European Court of Human Rights, state practices often fall short in treating migrants and foreigners with dignity, particularly during border control operations and in detention facilities. These examples reveal a broader trend among democracies of failing to uphold the dignity of non-citizens, especially

when national interests are prioritized over international human rights obligations.

To bridge this gap, the study suggests that countries like India should enact a comprehensive refugee and asylum law that ensures transparent procedures and fair treatment for all foreign nationals in line with international commitments. There is an urgent need to strengthen institutional accountability, particularly in police and custodial institutions, by implementing independent monitoring mechanisms, prompt investigation of abuses, and human rights-based training programs. The judiciary should play a proactive role by interpreting constitutional provisions in the light of international human rights jurisprudence. At the same time, positive steps taken by India—such as its humanitarian approach toward Tibetan refugees and Sri Lankan Tamils should be recognized and further expanded into codified policy to prevent arbitrariness in future situations. In the global context, democracies must reject selective application of human rights and commit to consistent, inclusive policies that protect every individual's dignity, regardless of citizenship or legal status. Upholding dignity in practice is not only a constitutional obligation but also the moral foundation of any democratic society.

CONCLUSION:

We conclude that upholding dignity in practice is not only a constitutional obligation but also the moral foundation of any democratic society. We recommend that the government implement the laws to strengthen them, which would be a drastic turning point for the country that ensures transparent procedures and fair treatment for all foreign nationals in line with international commitments. Human dignity places a key role in today's world. Everyone needs the dignity in the place to live a life and work. They should get be treated with some dignity and The judiciary should play a proactive role by interpreting constitutional provisions in

the light of international human rights jurisprudence.

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