



LEGALITY OF PUBLIC SHAMING AS A SENTENCING TOOL IN INDIAN COURTS: A CONSTITUTIONAL AND COMPARATIVE ANALYSIS

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ABSTRACT

Public shaming as a sentence by Indian courts has been examined critically in this article on its constitutional merit and legal propriety. Even as such punishments have occasionally entered into judicial practice at infrequent moments, sometimes under the guise of deterrence or moral reform, these are not supported by statute and raise fundamental questions about their compatibility with India's constitutional heritage and international human rights norms. In a critical examination of Articles 14, 19, and 21 of the Indian Constitution in this paper, it is argued that public shaming goes against rights assured to equality, dignity, personal liberty, and freedom of speech. Dependence on Indian judicial precedents, comparative United States and United Kingdom jurisprudence, and international human rights instruments such as the ICCPR and UDHR, the article demonstrates that public shaming is a technique of cruel, inhuman, and degrading punishment that is constitutionally and morally unsustainable. It also critiques the psychological and sociological harms of shame-driven punishment, especially their discriminatory effect on subordinated social formations, and contends that such actions maximise social stigma and structural violence as opposed to rehabilitating. By contrast, the article is issuing an appeal to a paradigm shift towards restorative justice—a practice based on dialogue, accountability, and restitution; a shift both in keeping with global legal currents and India's constitutional vision of humane criminal justice.

Keywords: Public Shaming, Constitution of India, Human Dignity, Article 21, Article 14, Article 19, ICCPR, UDHR, Judicial Sentencing, Restorative Justice, Comparative Jurisprudence.

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REVIEW OF LITERATURE

The practice of public shaming as a weapon of punishment has gained considerable interest in legal, psychological, and sociological scholarship, although its judicial application in India is under-theorised. Existing literature provides incomplete inputs, which require a comprehensive integration to assess their constitutional legitimacy and socio-legal effectiveness.

1. Public Shaming in Punitive Jurisprudence

James Q. Whitman (2005) outlines the family history of shame punishments in European and US law, warning against their revival in contemporary legal systems because they tend to devolve into state-directed humiliation instead of producing true accountability. Dan Markel's writing (2001) on "shaming punishments" contends that they contravene liberal legal philosophy by employing state authority to demean persons, thus violating the constitutional foundations of democratic societies.

In India, though direct academic interaction with judicially enforced public shaming is rare, mention is made in critical criminal law scholarship. Extra-legal or culturally authorised shaming processes, particularly those involving the intersectionality of caste and gender, have been criticised by Rajeev Dhavan and Kalpana Kannabiran, but judicial shaming remains the focus of specific scholarly attention.

2. Constitutional Morality and Fundamental Rights

The extension of Article 21 by the Supreme Court, particularly in the cases of *Maneka Gandhi v Union of India*, *Francis Coralie Mullin*, and *K.S. Puttaswamy*, has cemented the foundations of human dignity as an immovable constitutional value. Baxi (1999) and Austin (1999) have highlighted both the transformation potential of the Indian Constitution and warned against retributive populism decaying constitutional morality. However few works of scholarship specifically examine how these wider understandings of dignity and liberty apply to unorthodox sanctions such as public shaming.

3. Psychological and Social Consequences of Shame-Based Punishment

The psychological research of June Tangney and Ronda Dearing (2002) recognises shame as a corrosive emotion with a lasting effect that includes social isolation, depression, and violence. Their work identifies that punishment premised on shame discredits the process of rehabilitation by generating internalised stigma. Indian sociologists such as Upendra Baxi and

Pratiksha Baxi have applied this thinking to socio-legal domains, specifically highlighting how punitive instruments tend to disproportionately burden the poor, lower castes, and women.

4. Comparative Jurisprudence and International Norms

In *United States v. Gementera*, public shaming raised a jurisprudential conflict between deterrence and dignity, with critical scholarship (e.g., Dan Kahan and Martha Nussbaum) being strongly polarised on whether such practices can ever pass constitutional tests. British courts, on the other hand, led by the Human Rights Act 1998 and ECHR jurisprudence, have generally eschewed shaming punishments as incompatible with Article 3 of the ECHR (prohibition of degrading treatment), as in *Tyrer v United Kingdom*. International legal literature across the board discourages shame-based punishments. The UN Human Rights Committee, in General Comment No. 20 to the ICCPR, clearly disapproves of any punishment that is humiliating or that denigrates dignity. This feeling resonates in UDHR and other human rights literature, which constructs penal dignity as an integral part of the international human rights regime.

5. Restorative Justice and Penal Reform

Indian scholarship on restorative justice is picking up momentum, with the Malimath Committee Report (2003) calling for reformatory rather than retributive paradigms. Researchers such as Nandini Sundar and Mrinal Satish have led calls for a systemic shift toward non-custodial, conversation-based modes of justice, particularly in the cases of juvenile or non-violent offenders. The Juvenile Justice (Care and Protection of Children) Act, 2015, is referred to as an effective instance of restorative justice in Indian criminal jurisprudence.

INTRODUCTION

Public shaming as a tool of punishment has reappeared in Indian judicial sentencing, particularly where traditional penalties such as imprisonment or fines are felt to be insufficient. While unsupported by statute, judges have sometimes used discretion to mete out such punishments, supposedly for deterrence or reform. But this tendency does raise compelling constitutional issues, especially under the aegis of Articles 14 (equality), 19 (right to freedom of speech), and 21 (life and personal liberty) of the Constitution of India. This article attempts to present an exhaustive legal analysis of the practice of public shaming as a method of sentencing, including constitutional scrutiny, jurisprudence, and psychological and sociological insights. In addition, this paper responds to the call for a principled framework

that reconciles penal goals with basic rights, echoing the vision of a rehabilitative criminal justice system in a democratic constitutional order.

CONSTITUTIONAL FRAMEWORK

Article 21: Right to Life and Personal Liberty. Article 21 has been viewed liberally to encompass the right to live with dignity. The Supreme Court in *Maneka Gandhi v Union of India* ruled that any procedure stipulated by law should be just, fair and reasonable.¹ Public shaming, in reducing individuals to items of public disdain, abridges the right to live with dignity.

In *Francis Coralie Mullin v Administrator, Union Territory of Delhi*, the Court held that the right to life encompasses the right to live with human dignity, including all the elements of life that go to make a man's life meaningful.² Judicially approved public humiliation can deprive a person of dignity, leading to permanent psychological damage.

The Supreme Court in *K.S. Puttaswamy v Union of India* reasserted the sanctity of dignity, privacy, and autonomy as central elements of Article 21³. In imposing a state or judicial practice that leads to humiliation or ostracism of an individual, the foundation of personal liberty and dignity is undermined.

Article 14: Right to Equality Article 14 principle of equality requires that the state cannot deny anyone equality before the law. In *E.P. Royappa v State of Tamil Nadu*, the Court has held that arbitrariness is contrary to equality.⁴ Because public shaming is not based on unambiguous legislative provisions and is used in an irregular manner, it is an arbitrary punishment.

In addition, in *Shayara Bano v Union of India*, the Court ruled that a practice has to be tried on the anvil of constitutional morality and the right to equality.⁵ Public shaming cannot pass this test since it targets people disproportionately based on caste, class, and gender. Women, for example, can experience compounded social stigma through public shaming than their male counterparts.

¹ *Maneka Gandhi v Union of India* AIR 1978 SC 597.

² *Francis Coralie Mullin v Administrator, Union Territory of Delhi* (1981) 1 SCC 608.

³ *K.S. Puttaswamy v Union of India* (2017) 10 SCC 1.

⁴ *E.P. Royappa v State of Tamil Nadu* (1974) 4 SCC 3.

⁵ *Shayara Bano v Union of India* (2017) 9 SCC 1.

Article 19: Freedom of Speech and Expression Article 19(1)(a) ensures the freedom of speech and expression. Forcing a public apology or confession may violate this freedom. The Supreme Court in *Bennett Coleman & Co. v Union of India* has stressed the axiomatic nature of free expression to democracy.⁶ Public confessions or apologies under judicial compulsion are against this right.

In addition, Article 20(3) shields persons from self-incrimination. Public shaming, especially where it entails coerced confessions, is likely to offend this safeguard. It is problematic under the doctrine of substantive due process and the principle that a person accused should not be forced to contribute towards his debasement.

JUDICIAL PRECEDENTS

Babloo Chauhan v State of NCT of Delhi (2011). The Delhi High Court ordered the offender to do community sanitation work while wearing a placard indicating his crime.⁷ Though meant as a deterrent, this type of punishment was universally condemned for denying human dignity and being devoid of rehabilitative intent. The ruling obfuscated the distinction between reformatory and retributive justice, with the mode of implementation tending toward societal revenge instead of restorative correction.

Vikram Singh v Union of India (2015). In this case, the Supreme Court reinforced that punishment has to be commensurate with the dignity of the person and should not be degrading or disproportionate.⁸ The ruling highlighted the importance of proportionality and constitutional faithfulness in sentencing. The Court reiterated that judicial creativity has to work within the parameters established by constitutional norms, especially regarding the modes of penal enforcement.

State of U.P. v Mohammad Sharif (1987) The Supreme Court held that inhuman and degrading punishments are against constitutional norms. It held that any punishment demeaning human dignity is not permissible under the Constitution.⁹ The court relied on the changing standards of decency in a civilised society and reaffirmed that the ends of justice cannot be done by means which undermine constitutional values.

⁶ *Bennett Coleman & Co. v Union of India* (1973) 2 SCC 788.

⁷ *Babloo Chauhan v State of NCT of Delhi* (2011) ILR 6 Delhi 211.

⁸ *Vikram Singh v Union of India* (2015) 9 SCC 502.

⁹ *State of U.P. v Mohammad Sharif* (1987) 3 SCC 435.

INTERNATIONAL HUMAN RIGHTS NORMS

Universal Declaration of Human Rights (UDHR) Article 5 of the UDHR states that "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment."¹⁰ Public shaming usually involves emotional and psychological suffering and hence comes within the purview of degrading treatment.

International Covenant on Civil and Political Rights (ICCPR) India, being a signatory to the ICCPR, is under Article 7 obligated to ban cruel, inhuman, or degrading treatment or punishment.¹¹ The UN Human Rights Committee has emphasised the importance of upholding personal dignity in penal measures. General Comment No. 20 highlights that the state must ensure that methods of punishment, even though they are culturally rooted, do not humiliate the offender nor dehumanise him.

European Convention on Human Rights (ECHR). In *Tyrer v United Kingdom*, the European Court of Human Rights highlighted that punishment should be consistent with human dignity and not humiliating.¹² While not enforceable in India, such jurisprudence is a persuasive authority for interpreting constitutional protection. The Court established the concept of living instruments; the laws that have to adapt themselves to societal advancement—a concept which appeals very strongly to Indian constitutional interpretation.

PSYCHOLOGICAL AND SOCIOLOGICAL IMPACT

Public shaming has been found to inflict extreme psychological pain, such as anxiety, depression, and withdrawal from society. June Tangney and Ronda Dearing have reported the negative mental health outcomes of shame-based interventions.¹³ Clinical psychology recognises shame as a chronic emotional reaction that has the potential to severely damage identity and interfere with rehabilitation.

Socially, public shaming perpetuates stigma and exclusion, tending to exacerbate the alienation of the offender from society. Upendra Baxi contends that public shaming continues "structural violence" against the marginalised.¹⁴ It does not provide a channel of reintegration and

¹⁰ Universal Declaration of Human Rights, art 5 (1948).

¹¹ International Covenant on Civil and Political Rights, art 7 (1966).

¹² *Tyrer v United Kingdom* (1978) 2 EHRR 1.

¹³ Tangney JP and Dearing RL, *Shame and Guilt* (Guilford Press 2002).

¹⁴ Upendra Baxi, 'The Little Done, The Vast Undone: Reflections on Reading Granville Austin's *The Indian Constitution*' (1999) 9(1) SCC J 1.

rehabilitation. Sociological critiques further point to how these punishments tend to feed dominant moral discourses, criminalising the poor or non-conforming, instead of tackling the structural causes of crime.

COMPARATIVE JURISPRUDENCE

United States

In *United States v. Gementera*, the Ninth Circuit affirmed an order mandating the offender to carry a sign bearing his crime.¹⁵ But the decision remains controversial because its critics suggest it violates the Eighth Amendment ban on cruel and unusual punishment. Post-*United States v. Gementera* decisions and scholarship within the U.S. have shifted towards not accepting public shaming, particularly concerning juvenile justice and sex-offender registries.

United Kingdom

British courts avoid public shaming as a means of punishment. The rehabilitation focus of the UK, together with the Human Rights Act 1998, which includes the ECHR, has kept such practices to a minimum. In *Laskey, Jaggard and Brown v United Kingdom*, the court reinforced that punishment should be put to a test of proportionality and necessity in a democratic society.

Restorative Justice as an Alternative. Restorative justice is more concerned with healing and rehabilitation than punishment. It entails community service, victim-offender dialogue, and counselling. Such measures maintain dignity, promote accountability, and ensure reintegration.

The Malimath Committee Report on Reforms of the Criminal Justice System also suggested adopting principles of restorative justice in India. In addition, the Juvenile Justice (Care and Protection of Children) Act, 2015, reflects restorative models, focusing on rehabilitation rather than retribution.

Restorative justice can also be a middle ground that addresses the needs of victims for recognition while giving offenders a respectful process of accountability. It is very much in sync with Gandhian values of nonviolence and reconciliation, which are part of India's socio-legal legacy.

¹⁵ *United States v. Gementera* 379 F.3d 596 (9th Cir. 2004).

RECOMMENDATIONS

Legislative Reform: Parliament needs to outlaw public shaming as a judicial punishment to provide for compliance with constitutional values.

Judicial Restraint: The courts must refrain from the practice of shaming punishments and instead practice reformatory sentences.

Restorative Justice Training: Judicial officers must be trained in restorative justice principles.

Public Sensitisation: Public awareness programs must focus on bringing to the fore the psychological and constitutional concerns of public shaming.

Institutional Mechanisms: Establish monitoring agencies to scrutinise non-custodial sentencing and prescribe rehabilitation indicators in consonance with constitutional rights.

CONCLUSION

Public shaming, as carried out presently in India, is an exceedingly disturbing process of punishment with no statutory basis. It seems to violate the basic rights provided for in the Indian Constitution, such as the right to dignity under Article 21. It is patently contrary to international best practices enshrined in international human rights conventions to which India is a party. Anything but a means of justice, public shaming humiliates human beings, simplifies complex human action into crude moral absolutes, and cultivates a culture of humiliation as opposed to accountability.

This type of punishment tends to be selectively applied, disproportionately hitting the most vulnerable members of marginalised castes, economically poor sections, or minority groups, thereby reinforcing systemic injustices. It disregards the socio-economic contexts in which crimes are usually committed and subverts the values of fairness, equality, and due process upon which a democratic legal system is based.

In addition, shaming in public does not accomplish any real rehabilitation. It labels people, ostracises them from society, and oftentimes results in social exclusion, psychological distress, and in the most severe cases, harm to oneself or death. Rehabilitation will not take place within the context of hostility and voyeurism; it must be accomplished through compassion, protection, and a chance to redeem oneself within a system of justice that respects human dignity.

A criminal justice system based on constitutional morality cannot remain stuck in punitive populism. It should be guided by values of proportionality, justice, and compassion. Rather than resorting to public denunciation, India has to pledge itself to the establishment of a restorative justice paradigm; one that attempts to repair the harm, restore trust, and reintegrate individuals into society as responsible citizens. Restorative justice prioritises conversation over denunciation, accountability rather than shame, and transformation rather than retribution.

It is time to realise that public spectacle is not justice, it is a perversion of it. Judicial integrity should never be sacrificed to appease public outcry or media hysteria. Real justice consists of maintaining the rule of law, conducting fair trials, and upholding human dignity. As India goes on growing as a democratic country, it needs to recommit itself to a compassionate and rehabilitative justice system; a system that substitutes shame with care, punishment with utility, and exclusion with inclusiveness.

India's justice system has to be the champion of reform, reintegration, and rehabilitation. Only then can justice be served, not merely in the letter, but also in spirit.