

DIGNITY UNDER LAW: A GLOBAL HANDBOOK

JUDICIAL EDITION



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Dignity Rights Project
Dignity in Action

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- The Honorable Justice Syed Mansoor Ali Shah, Pakistan Supreme Court (<https://www.supremecourt.gov.pk/judges/honorable-judges/mr-justice-syed-mansoor-ali-shah/>) and the Honorable Justice Jawad Hassan, Lahore High Court (<https://www.lhc.gov.pk>).
- Dignity Media PVT LTD, an independent media house that aims to change the life of Dalit and Marginalized people. Dignity media is focused on bringing out the issues and also investigate the issues of Dalit and Marginalized groups, Women, LGBTQI+, religious freedom, migrant workers and laborers right, etc. whom the mainstream media doesn't cover. <https://dignitymedia.com.np/introduction/>
- SOMRAR (www.somrar.org). SOMRAR Organization is a humanitarian, non-governmental, non-political, non-profit and non-partisan organization legally registered in the Ministry of National planning and development in Somaliland. SOMRAR will struggle for improve based human needs throughout Somaliland. SOMRAR focuses on Poor and Vulnerable women in urban and rural area, IDPs and returnees both in cities and rural areas.

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Human dignity refers to the **equal worth of every member of the human family**, like a coin that a person has at birth that they can never lose. Every coin is identical in value, but it is unique to each person. Dignity is the foundation of all human activity: our sense of dignity animates how we seek to advance well-being and human flourishing, improve the conditions of life, and protect against harm and humiliation.

Appreciating human dignity is essential to the protection of human rights and to the spread of a **human rights culture**. When people own their equal and inalienable human dignity, they can claim their rights, individually and in solidarity with others. Claiming rights is itself an expression of human dignity and, in turn, it prompts the adoption and implementation of policies that allow people to live in greater dignity.

Dignity rights are the rights – recognized in international and constitutional law – that flow from the recognition of human dignity. These include civil, political, social, economic, cultural, and environmental rights. Dignity rights exist to protect the value of each person’s unique coin.

This Handbook provides tools to engage in the protection of human dignity to help spread a human rights culture and to enhance the ability of **people around the world to live with dignity**.

PART ONE: GENERAL PRINCIPLES OF DIGNITY RIGHTS

This Handbook provides advocates, lawyers, judges, and others with the tools they need to advance the dignity of all persons, including the most vulnerable among us. It shows that dignity is central and essential to law throughout the world. It shows that dignity rights – the rights that flow from the recognition of human dignity – are relevant to how people self-identify, to how they interact with others, to how they live day-to-day, and to how they participate in important decisions in their social and political communities. And it shows that human dignity is inalienable: all people are entitled to be treated with dignity, no matter what.

I. The Law Recognizes and Protects the Inherent Equal Worth of Every Person

A. Dignity is the Essence of International and Regional Human Rights Law.

Dignity is recognized in international law throughout the world. The recognition of human dignity is so widespread, it may be considered a matter of customary law which would presumptively bind all nations, even a specific treaty. It may also be considered *jus cogens*, an obligation that no nation can avoid.¹

The foundational documents of the modern human rights era – the Charter of the United Nations (1945), the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social, and Cultural Rights (1966) -- all commit to the affirmation of human dignity as the central axis of human rights protection.

According to the Human Rights Committee, “The right to life is a right which should not be interpreted narrowly. It concerns the entitlement of individuals ... to enjoy a life with dignity.”² This

¹ “Customary international law refers to international obligations arising from established international practices, as opposed to obligations arising from formal written conventions and treaties. Customary international law results from a general and consistent practice of states that they follow from a sense of legal obligation. Two examples of customary international laws are the doctrine of non-refoulement and the granting of immunity for visiting heads of state.” Cornell Law School, Legal Information Institute, Wex, *Customary International Law*, https://www.law.cornell.edu/wex/customary_international_law.

Jus cogens is a peremptory norm of general international law, also known as a non-derogable obligation because nations may not violate such norms for any reason. See Article 53 of the VCLT. According to the United Nations, Text of the draft conclusions on peremptory norms of general international law (*jus cogens*), adopted by the Commission on first Reading: “Conclusion 2: A peremptory norm of general international law (*jus cogens*) is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character. Conclusion 3: “General nature of peremptory norms of general international law (*jus cogens*) Peremptory norms of general international law (*jus cogens*) reflect and protect fundamental values of the international community, are hierarchically superior to other rules of international law and are universally applicable.” U.N. GAOR, Report of the International Law Commission, U.N. Doc. A/74/10, at ch. V (Aug. 20, 2019), <https://legal.un.org/ilc/reports/2019/english/chp5.pdf>

Although the list of peremptory norms is contested, it includes actions that are the most abject violations of human dignity including crimes against humanity, genocide, trafficking, and slavery – ie those actions that not only take life, but that diminish the equal agency and the bodily integrity of a person.

²U.N. Hum. Rts. Comm., Gen. Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights, on the Right to Life, ¶ 3, U.N. Doc. CCPR/C/GC/36 (Oct. 30, 2018), https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf.

imposes both positive and negative obligations on states: “The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity.”³

Dignity is recognized in most of the world’s human rights instruments at the international and regional levels.⁴

Table 1 Selected Human Rights Instruments

INTERNATIONAL LAW	
UN Charter, 1945 (Preamble)	“to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small . . .”
Universal Declaration of Human Rights, 1948 (Art. 1)	“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”
International Covenant of Civil & Political Rights, 1966 (Art. 10)	“Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world;” (preamble); “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”
International Covenant of Economic, Social, and Cultural Rights, 1966 (Preamble; Art 13)	“Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” “They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms.”
General Comment 36	“The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity.”
Convention on the Elimination of Racism	“solemnly affirms the necessity of speedily eliminating racial discrimination throughout the world in all its forms and manifestations and of securing understanding of and respect for the dignity of the human person.”
Convention on the Elimination of Discrimination Against	“Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social,

³ *Id.* at ¶ 26.

⁴ See ERIN DALY & JAMES R. MAY, DIGNITY LAW: GLOBAL RECOGNITION, CASES, AND PERSPECTIVES 30-31 (W.S. Hein 2020) [hereinafter Dignity Casebook]. Citing *Bouyid v. Belgium*, No. 23380/90, Judgment, Eur. Ct. H.R. (Sept. 28, 2015) (European Court of Human Rights, sitting as a Grand Chamber).

Women	economic and cultural life of their countries . . .”
Convention on the Rights of the Child (Preamble)	“Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity.”
Convention Against Torture	“equal and inalienable rights of all members of the human family, derive from the inherent dignity of the human person.”
Convention on the Rights of Persons with Disabilities	“discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person.”
Second Optional Protocol to the International Covenant on Civil and Political Rights on the Abolition of the Death Penalty	“abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights.”
Optional Protocol to the Convention on the Rights of the Child	“the status of the child as a subject of rights and as a human being with dignity and with evolving capacities.”
REGIONAL LAW	
American Declaration of the Rights and Duties of Man (Preamble)	“All men are born free and equal, in dignity and in rights, and, being endowed by nature with reason and conscience, they should conduct themselves as brothers one to another.”
Protocol of San Salvador (Preamble)	“Considering the close relationship that exists between economic, social and cultural rights, and civil and political rights, in that the different categories of rights constitute an indivisible whole based on the recognition of the dignity of the human person . . .”
African Charter of Human’s and People’s Rights (Art, 5)	Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status.”
European Union Charter of Fundamental Rights (Title 1)	“Human dignity is inviolable. It must be respected and protected.”
Final Act of the Helsinki Conference on Security and Cooperation in Europe (Principle VII)	“[States] will promote and encourage the effective exercise of civil, political, economic, social, cultural and other rights and freedoms all of which derive from the inherent dignity of the human person and are essential for his free and full development.”
Protocol No. 13 to the European Convention on Human Rights	Abolishing the death penalty due to the “inherent dignity of all human beings.”
Council of Europe Convention on Action against Trafficking in Human Beings	“trafficking in Human Beings constitutes a violation of human rights and an offence to the dignity and the integrity of the human being.”
ASEAN	“All persons are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of humanity.”

B. Most Countries Protect Human Dignity in their Constitutional Law

More than 160 constitutions from every corner of the world recognize human dignity as a constitutional right or constitutional value.⁵ Most of these post-date the Universal Declaration of Human Rights. Some constitutions protect dignity as an enforceable right, some as a fundamental value. Some associate dignity with a specific right or segment of the population, while others associate dignity with a foundational value of the nation.

“Dignity shows up as a fundamental value, an inviolable right, or a right associated with certain vulnerable groups (children, people who are disabled, migrants or people with disabilities) or to protect against certain unjustifiable wrongs (torture, medical experimentation) or to ensure certain rights (education, fair employment). Increasingly, it shows up in constitutions in more than one guise.”⁶

The table below shows language from selected constitutions. A full table of constitutional dignity provisions is available [here](#).

⁵ On Constitutional rights and constitutional values, see AHARON BARAK, HUMAN DIGNITY: THE CONSTITUTIONAL VALUE AND THE CONSTITUTIONAL RIGHT (Cambridge University Press 2015), <https://www.amazon.com/Human-Dignity-Constitutional-Value-Right/dp/1107090237>.

⁶ ERIN DALY, DIGNITY RIGHTS: COURTS, CONSTITUTIONS, AND THE WORTH OF THE HUMAN PERSON, at preface (2d ed. 2020) [hereinafter Dignity Rights].

Table 2 Selected Constitutional Texts

Colombia (Art. 21)	The right to dignity is guaranteed. An Act shall provide the manner in which it shall be upheld.
Germany (Art. 1)	Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority.
Kenya (Sec. 19(2))	The purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings.
Nepal (Sec. 16, Sec. 42)	Each person shall have the right to live with dignity. People with physical impairment shall have the right to a dignified way of life and equal access to social services and facilities, along with their diversity identity.
Pakistan (Art. 14)	The dignity of man and, subject to law, the privacy of home, shall be inviolable.
Peru (Art. 1)	The defense of the human person and respect for his dignity are the supreme purpose of the society and the State.
Somalia (Article 10)	Human dignity is given by God to every human being, and this is the basis for all human rights. Human dignity is inviolable and must be protected by all. State power must not be exercised in a manner that violates human dignity.
Somaliland (art.24 (3) and 36(2))	Every person shall have the right to have his dignity, reputation and private life respected. The Government shall encourage, and shall legislate for, the right of women to be free of practices which are contrary to Sharia and which are injurious to their person and dignity.
South Africa (S. 10)	Everyone has inherent dignity and the right to have their dignity respected and protected.

C. Courts Have Protected Dignity in Cases Involving the Full Range of Rights

There are thousands of cases from every part of the globe that interpret and apply and vindicate the right to have one's dignity respected and protected, including from:

- The Americas (especially Colombia and Peru but also Mexico, Argentina, Chile, Brazil, Canada, the United States, and elsewhere),
- Europe (especially Germany but also France, Spain, the Czech Republic, and elsewhere),
- Africa (especially South Africa and Kenya, but also Malawi, Uganda, and elsewhere),

- The Middle East (especially Israel), and
- Asia (especially India, Pakistan, Nepal, Bangladesh but also Taiwan and elsewhere).

“Courts have found dignity relevant in cases dealing with every type of right: personal matters relating to identity (name, gender identity, religious and cultural identity, professional ambitions, language, choice of family structure), matters relating to the quality of life (involving claims for adequate housing, food, water, education, environmental quality), protection from discrimination and humiliation (particularly in situations involving custody or dependence), and rights of participation in democratic governance (involving freedom of speech, association, the franchise, and so on). These cases are filling in dignity’s broad contours, giving it context and meaning.”⁷

The table below illustrates the range of cases in which courts have found human dignity to be critical and provides some language courts have used to describe the jurisprudential meaning of dignity. Cases are further discussed in context in Section 2.

Table 3 Sample Cases

Dr. Mehmood Nayyar Azam v State of Chattisgarh, Supreme Court of India, 2010 (Bench: K.S. Radhakrishnan, Dipak Misra)	Humiliation of a person in custody	“The reverence of life is inseparably associated with the dignity of a human being who is basically divine, not servile. A human personality is endowed with potential infinity and it blossoms when dignity is sustained. The sustenance of such dignity has to be the superlative concern of every sensitive soul. The essence of dignity can never be treated as a momentary spark of light or, for that matter, ‘a brief candle’, or ‘a hollow bubble’. The spark of life gets more resplendent when man is treated with dignity sans humiliation, for every man is expected to lead an honourable life which is a splendid gift of creative intelligence”.
Sentencia T-009/09, Constitutional Court of Colombia 2009	Right to choose to terminate a pregnancy	“to not be treated as an object upon which others make decisions that are transcendental in their impact on the course of a person’s life, in this case the woman, is part of the right to human dignity. A decision of such high importance as whether to interrupt or continue a pregnancy, when this represents risks for the life and health of the woman, is a decision that the woman alone can make, based on her own criteria ... since it is she who will have to live with the consequences of such a decision.”
Acción de Inconstitucionalidad 2/2010, Supreme Court of Mexico, 2010	Adoption by same-sex couples	“Legal doctrine has established that the dignity of man is inherent to his essence, to his being. It is about the recognition that, in the human being, there is a dignity that must be respected in any case, because “it is about the right to be considered as a human being, as a person, that is, as a being of eminent dignity.”
Movement for Quality Government in Israel v. The Knesset, Supreme Court of Israel, 2006	Deferral of military service	“[T]he right to human dignity is a bundle of rights whose preservation is necessary in order to ensure that dignity. At the foundation of the right to human dignity lies the recognition that man is a free creation that develops his body and spirit according to his desire in the society in which he lives; in the center of human dignity lies the sanctity of his

⁷ *Id.*

		life and of his liberty. At the foundation of human dignity lies the autonomy of individual desire, freedom to choose and freedom of action of man as a free creation. The dignity of man rests upon the recognition of man’s physical and spiritual integrity, his humanity, his value as a human being, all this without regard to the extent of utility which he creates for others.”
Satrose Ayuma & 11 Others v. Registered Trustees of the Kenya Railways Staff Retirement Benefits Scheme & 3 Others, High Court of Kenya at Nairobi, Constitutional and Human Rights Division, 2013	Rights against communal eviction	The right to housing “is linked to the inherent dignity of the human person and indeed, the right to dignity has become an interpretive principle to assist the further explication of the catalogue of rights and that all rights have come to be seen as best interpreted throughout the lens of right to dignity.”
R. v. Kapp, Supreme Court of Canada, 2008	Equal protection permits affirmative discrimination for historically disadvantaged groups.	“There can be no doubt that human dignity is an essential value underlying the s. 15 equality guarantee. In fact, the protection of all of the rights guaranteed by the Charter has as its lodestar the promotion of human dignity.”
Air Transport Security Act Case, Federal Constitutional Court of Germany, 2006	Invalidation of a security measure that would have put innocent lives at risk	“Human life is the vital basis of human dignity as the essential constitutive principle, and as the supreme value, of the constitution, is the claim to respect which results from it. This applies irrespective, inter alia, of the probable duration of the individual human life or the human being’s claim to respect for his or her dignity even after death. In view of this relation between the right to life and human dignity, the state is prohibited, on the one hand, from encroaching upon the fundamental right to life by measures of its own, thereby violating the ban on the disregard of human dignity. On the other hand, the state is also obliged to protect every human life.”
Atif Zareef v. The State, Supreme Court of Pakistan, 2021	Invalidating virginity testing in cases of rape	“Article 14 of our Constitution mandates that dignity shall be inviolable, therefore, reporting sexual history of a rape survivor amounts to discrediting her independence, identity, autonomy and free choice thereby degrading her human worth and offending her right to dignity [which] is an absolute right and not subject to law. Dignity means human worth: simply put, every person matters. No life is dispensable, disposable or demeanable. Every person has the right to live, and the right to live means right to live with dignity. A person should live as “person” and no less. Human dignity hovers over our laws like a guardian angel; it underlies every norm of a just legal system and provides an ultimate justification for every legal rule. Therefore, right to dignity is the crown of fundamental rights under our Constitution and stands at the top, drawing its strength from all the fundamental rights under our Constitution and yet standing alone and tall, making human worth and humanness of a person a far more

		fundamental a right than the others, a right that is absolutely non-negotiable.”
Pro Public v. Godavari Marble Industries Pvt. Ltd. and Others, Supreme Court of Nepal, 2015	Protecting a heritage site from marble quarrying	“Article 12(1) of the Interim Constitution has also incorporated the right to live with dignity under the right to life. It shall be erroneous and incomplete to have a narrow thinking that the right to life is only a matter of sustaining life. Rather it should be understood that all rights necessary for living a dignified life as a human being are included in it. Not only that, it cannot be imagined to live with dignity in a polluted environment rather it may create an adverse situation even exposing human life to dangers.”

II. The Functions of Human Dignity under Law

A. Dignity Plays Many Different Roles in a Legal System.

- i. **Enforceable right.** In many countries, courts allow claims that the government (and sometimes a private party) has violated a petitioner’s right to dignity (that is, their right to have their dignity respected). This is often tried in conjunction with other rights – most notably a right to life (as in the death penalty cases⁸), a right to privacy (as in cases about identity and life choices⁹), or a right to equality (as in cases about discrimination).¹⁰ Sometimes, dignity-rights based claims are associated with a more specific interest such as a right to a healthy environment,¹¹ a right to health,¹² education,¹³ or housing,¹⁴ or a right to protection from torture,¹⁵ or excessive or unjust punishment.¹⁶

⁸ *State v. Makwanyane & Another* 1995 (3) SA 391 (CC) (S. Afr.) (Chaskalson, P.), <http://www.saflii.org/za/cases/ZACC/1995/3.html>.

⁹ *Sunil Babu Pant & Others v. Government of Nepal*, Writ No. 917 (2064 BS) (2007 AD) (Supreme Court Division Bench, Hon’ble Justice Mr. Balram K.C. & Hon’ble Justice Mr. Pawan Kumar Ojha), <https://www.icj.org/wp-content/uploads/2012/07/Sunil-Babu-Pant-and-Others-v.-Nepal-Government-and-Others-Supreme-Court-of-Nepal.pdf>.

¹⁰ *Hafiz Junaid Mahmood v. Government of Punjab*, (2017) 2017 PLD 1 (Lahore High Court) (Pak.) (Syed Mansoor Ali Shah, CJ), <https://sys.lhc.gov.pk/appjudgments/2016LHC3573.pdf>.

¹¹ *Gbemre v. Shell Petroleum Development Company & Others* [2005] Suit No. FHC/B/CS/53/05 (Nigeria) (F.H.C., Benin Division), <https://www.globalhealthrights.org/wp-content/uploads/2013/02/HC-2005-Gbemre-v.-Shell-Petroleum-Development-Company-and-Ors..pdf>.

¹² Corte Constitucional [C.C.] [Constitutional Court], Third Chamber of Appeal, agosto 12, 2011, Sentencia T-608/11 (Colom.) (JUAN CARLOS HENAO PÉREZ, Magistrado; GABRIEL EDUARDO MENDOZA MARTELO, Magistrado; JORGE IVÁN PALACIO PALACIO, Magistrado; MARTHA VICTORIA SÁCHICA DE MONCALEANO, Secretaria General) (Therapeutic Parrot case), <https://www.corteconstitucional.gov.co/relatoria/2011/T-608-11.htm>.

¹³ *Soobramoney v. Minister of Health*, 1998 (1) SA 765 (CC) (S. Afr.) (Chaskalson, P.), <http://www.saflii.org/za/cases/ZACC/1997/17.html>.

¹⁴ *Miss Mohini Jain v. State Of Karnataka And Ors*, (1992) 3 SCR 658 (India) (Kuldip Singh, J.), <https://indiankanoon.org/doc/40715/>.

¹⁵ *Government of the Republic of South Africa & Others v. Grootboom & Others* 2001 (1) SA 46 (CC) (S. Afr.) (Yacoob, J.), <http://www.saflii.org/za/cases/ZACC/2000/19.html>.

¹⁶ *Bouyid v. Belgium*, No. 23380/90, Judgment, Eur. Ct. H.R. (Sept. 28, 2015) (European Court of Human Rights, sitting as a Grand Chamber), <http://hudoc.echr.coe.int/eng?i=001-157670>.

- ii. **Foundation of rights.** The American Bar Association, representing the legal profession in the United States, affirms that “human dignity — the inherent, equal, and inalienable worth of every person — is foundational to a just rule of law.”¹⁷ Thus, a just rule of law cannot exist if it is not based on the protection of human dignity.¹⁸ Indeed, the drafters of the UDHR based the new human rights agenda on the recognition of human dignity precisely to distinguish it from an unjust or tyrannical or totalitarian legal system that fails to value the inherent worth of each person and fails to allow the space for agency and control that people need.
- iii. **Source of rights.** For some courts, it is “the source from which all other rights are derived” and it “unites the other human rights into a whole.”¹⁹ That is dignity is what animates human rights; it is what gives individuals the right to have rights (in the words of the philosopher Hannah Arendt²⁰) and what gives societies the grounds for advancing human rights. In Israel, dignity is called the “mother right” which gives rise to many “daughter rights.”²¹ The United Nations General Assembly has declared that “any newly articulated international human rights should ... derive from the inherent dignity and worth of the human person.”²²
- iv. **Purpose of rights.** For others, it is the purpose of rights – that is, we protect human rights in order to protect human dignity for all. If that is the case, we can use dignity as the measure of law – a law is legitimate if it promotes human dignity and it is not legitimate if it impedes people’s ability to live with dignity or retards human flourishing. We see this explicitly in the constitutions of Kenya and Peru.
- v. **Defining justice.** If all people are born free and equal in dignity and rights, then the inequalities and oppressions to which people are subjected in their lives are not natural, but are created and imposed by state authorities or with state

¹⁶ BVerfG, Life Imprisonment (*lebenslange Freiheitsstrafe*) 45 BVerfGE 187, June 21, 1977 (Ger.). *An English translation of extracts of the judgment is available in* DONALD P. KOMMERS, *THE CONSTITUTIONAL JURISPRUDENCE OF THE FEDERAL REPUBLIC OF GERMANY* 306-313 (2nd ed. Duke University Press 1997).

Walker v. State, 68 P.3d 872 (Mont. 2003), <https://caselaw.findlaw.com/mt-supreme-court/1261052.html>.

¹⁷ A.B.A. Resolution 113B (Aug. 2019).

¹⁸ *Hafiz Junaid Mahmood*, (2017) 2017 PLD 1 (Pak.), *supra* note 10, (noting that the Constitution of Pakistan “recognizes inherent dignity of a human being, equal and inalienable rights of all the people as the foundation of freedom, justice and peace” and that the rights to life and dignity are the “epicenters of our constitutional architecture.”).

¹⁹ *Swaziland Government v. Aaron Ngomane*, 25/2013 [2013] SZSC 73 (November 29, 2013) (Sup. Ct. of Swaziland) (Ramodibedi CJ, Maphalala, JA & OTA JA) (“The substratum of all human rights is the right of dignity. It is the source from which all other human rights are derived. Dignity unites the other human rights into a whole.”), <https://swazilii.org/sz/judgment/supreme-court/2013/73-0>.

²⁰ Hannah Arendt, *The Rights of Man: Where Are They?* in 3 *MODERN REVIEW* 24-36 (1949).

²¹ AHARON BARAK, *HUMAN DIGNITY: THE CONSTITUTIONAL RIGHT AND ITS DAUGHTER-RIGHTS* (Tel Aviv: Nevo Publ’g 2014).

²² U.N. GAOR, *Setting International Standards in the Field of Human Rights*, ¶ 4 (b), U.N. Doc. A/RES/41/120 (Dec. 4, 1986).

acquiescence. Justice, then, might entail the removal of impediments to the equal dignity with which every person is born. This is why states have both negative obligations (to refrain from taking action that would violate human dignity²³) and positive obligations (to take action to protect human dignity²⁴).

- vi. **Boundary of state authority.** Dignity draws the line between the individual and the state. It defines the outer perimeter of state authority and ensures a zone of privacy and autonomy reserved for individual conscience, agency, and personhood. Dignity's origins in international law as the antidote to totalitarianism and genocide commits us to a certain systems of social organization that include democratic decision-making, the rule of law (or a state of law *rechtsstaat*), international non-derogable norms, and perhaps a principle of non-retrogression.

B. Dignity Serves as the Connective Tissue in Law.

In addition to being an enforceable right and a fundamental value or overarching purpose, dignity also provides the connective tissue that unifies and gives meaning to a legal system. This is true implicitly or explicitly in most of the legal systems in existence in the world today. As we have observed:

“First, most of the cases invoke not only their own constitutional provisions that are directly on point or inferred from a right to life with dignity and or an independent right to dignity but also invoke international and regional human rights law – also in all cases founded on the recognition of human dignity, whether directly applicable or not. ... Second, where dignity is concerned, the courts often blur the lines between negative and positive rights, imposing on the government the obligation not only to refrain from interfering with human dignity but also to take whatever actions are necessary to ensure that the people involved can live lives of dignity. Thus, the difference between civil and political rights on the one hand and socio-economic and cultural rights on the other may be more a distinction of remedy than of right ...”²⁵

- vii. **Human rights.** The idea of human dignity brings together the full range of human rights and shows their indivisibility among rights and their inter-dependence. For example, civil and political rights (like the rights of free expression, association, and voting) are essential to protecting social and economic rights (like the rights to education, health, and a healthy environment), and those in turn help to assure the effective exercise of the former.
- viii. **International, regional, and national law.** Dignity law connects international human rights law, which identifies values and rights that spread throughout the globe, with municipal law at the constitutional or sub-constitutional level. Many courts (and some constitutions) interpret the domestic commitment to human dignity in light of international and regional norms, but the application of those

²³ CONST. OF SOMALIA, art. X (3): “State power must not be exercised in a manner that violates human dignity.”

²⁴ PAKISTAN CONST. art. 14 (1): “The dignity of man and, subject to law, the privacy of home, shall be inviolable.”

²⁵ JAMES R. MAY & ERIN DALY, *ADVANCED INTRODUCTION TO HUMAN DIGNITY AND LAW* 128 (Edward Elgar 2020) [hereinafter *Advanced Introduction*].

global norms is specific to each country’s legal, social, political, economic, historic, and cultural context.²⁶ The international obligation to progressively realize social and economic rights, which courts apply, is one example of this.²⁷

- ix. **Borrowing among countries.** Many courts consider the developing dignity jurisprudence in other countries when they interpret, apply, and fashion the dignity jurisprudence in their own. Thus, dignity connects each country’s constitutional system with other countries’. Cases about the death penalty and same sex relationships are good examples of this global phenomenon. When courts “borrow” legal principles from another country, they are usually invoking the general ideas, but still applying the law as it fits within their own legal culture.
- x. **Connecting people and the law.** Because dignity is felt in people’s hearts and minds, it connects the law to people’s emotive experiences. Most often, when people seek a remedy for a wrong, it is because they feel the injury to their sense of dignity. Dignity rights are one way that the law responds to people’s own sense of justice. It is the language in which abstract aspirations of law – equality, justice, liberty – are drawn onto the human heart.
- xi. **Connecting people to each other.** Dignity inheres in the individual, but it is not atomistic. It joins people together. Because dignity is a universally shared attribute, it is the one thing that connects all people on earth to each other, as well as to past and future generations. Dignity makes space for the empathy that is necessary to deliver justice. It creates a language of empathy that allows people to understand each others’ perspectives and how the law impacts people in different positions. This is critical for judges who need to understand situations from a party’s perspective, even if that perspective is very different from their own.

C. A Glossary of Dignity Terms

A glossary is presented here to help construct a language or vocabulary of dignity.²⁸

xii. Terms relating to the nature of Dignity

- 1. HUMAN DIGNITY is the quality of inherent worth that each “member of the human family” has in equal measure with every other. In the UDHR, it comes from the human capacity for reason and conscience and thus

²⁶ See e.g., *Sunil Babu Pant*, Writ No. 917 (2064 BS) (2007 AD), *supra* note 9, (where the Court surveyed international and foreign law regarding recognition of persons whose gender identity is non-binary and concluded that ““while there are fundamental rights guaranteed by the Constitution on one hand there are international human rights standards on the other. Therefore, as a party to such conventions, Nepal is responsible to fulfill the obligations set by such conventions.”).

²⁷ See e.g. *Grootboom* 2001 (1) SA 46 (CC) (S. Afr.), *supra* note 14.

²⁸ Some of the terms in this Glossary were suggested by students in the Professor Daly’s course, Dignity Law (Spring 2021) at Delaware Law School. See also MAY & DALY, *Advanced Introduction*, *supra* note 25.

- animates the human capacity to make decisions, including decisions about oneself and one's life.
2. WORTH or value means that every life matters. No person is dispensable or disposable. Every life has worth and meaning. A person must be treated "as a person" because that means something; it means that a person can not be treated "inhumanely" – that is, as if they were not a person. Worth is the essential quality of dignity.
 3. UNIVERSAL refers to the fact that every person, in past, present and future generations has equal dignity. This is consistent with some religious versions of dignity (e.g. Q'ranic recognition of the dignity of all the children of Adam) but is inconsistent with some historic understandings of dignity that associated it with people of high rank who had certain immunities and privileges due to their status or station.
 4. INHERENT refers to the fact that dignity is an inherent quality inborn in the human person. It is not granted or defined by the state or by any other person or entity.
 5. INALIENABLE means that no government or authority may take away a person's dignity. It can be disrespected or "dented," but it can not be eliminated or denied. Another way of saying this is that there is no legitimate basis for a person's dignity to be denied.
 6. EQUALITY and dignity are intimately interconnected but they are not identical. Dignity means that each person has worth and equal dignity means that each person has worth that is equal. Dignity must be distributed in equal measure because if it were not, then one person would have more decision-making authority than another and that would allow them to make decisions for the other, to harm or oppress the other, and ultimately to destroy the other. The UDHR's lesson learned from the Holocaust is that no person can define the worth of another.
 7. FULL DEVELOPMENT OF THE PERSONALITY is sometimes given as the purpose of dignity; also thought of as human flourishing. This imposes on the state the obligation to treat each person "as a person," as an individual, it protects the zone of privacy that allows the person to distinguish themselves from others and to protect themselves from government over-reaching.
 8. AGENCY AND AUTONOMY are two similar but distinct terms. 'Agency' means the capacity to make decisions. 'Autonomy' means the capacity to make rules for oneself; it has a more individualistic nuance. While humans should have agency over themselves, they live in community with others and therefore do not live autonomously. Agency can accommodate the communal.
 9. CITIZENSHIP is the formal status of state citizenship. Sometimes, rights are granted only to citizens, with the result that children or people who are migrating who may not have full citizenship status, are denied certain fundamental rights such as the right to vote or the right to work or study. However, every person has equal human dignity so even those who are not citizens nonetheless always retain the right to have their dignity respected.

10. PARTICIPATORY DIGNITY refers to that aspect of human dignity that permits (or requires) engagement in political decision-making in one's local community or community at the national, regional, or international levels. Participatory dignity guarantees the set of rights associated with political authority, including rights to free expression, association, voting, and running for office.

xiii. Indignities

1. OBJECTIFICATION. The anti-objectification principle of the German philosopher, Emmanuel Kant (whose work has been extraordinarily influential in dignity law), holds that a person must always be treated as an end in and of themselves, and not as a means to another person's ends or goals. Thus, a person may not be objectified ("cosificar" in Spanish, to be made into a thing). This principle means, for instance, that a criminal penalty must not be imposed upon a person in order to deter others from committing the same crime.
2. HUMILIATION is also forbidden because respect for human dignity means that no person may be made to feel "less than" human or less than another. Protection from humiliation ranges from the prohibition against torture to protection from defamation or stigmatization.²⁹
3. VULNERABILITY is a condition of human existence which tends to impair people's ability to protect themselves. People may be vulnerable for one or more reasons – by virtue of age (high or low), poverty, physical or mental impairment, isolation, or any number of other reasons. Because the state must protect the dignity of every person, it may have an affirmative obligation to take steps to protect the dignity of people with vulnerabilities.³⁰

xiv. Terms relating to the adjudication of dignity rights

1. DIGNITY RIGHTS are the rights – recognized in international and constitutional law – that flow from the recognition of human dignity. These include civil, political, social, economic, cultural, and environmental rights. There is no single or formal definition of dignity rights.
2. INDIVISIBILITY and INTERDEPENDENCE describe the relationship among rights. Because dignity rights span human experience, the rights that human dignity protects and that are protected by dignity are interdependent: we need a healthy environment to fully enjoy the right to health and we need education to fully exercise our rights to free expression and voting.³¹ Some of these rights are also indivisible in the stronger sense

²⁹ H CJ 5100/94 Public Committee Against Torture v. State of Israel (1999) (President Judge Aharon Barak), https://www.casebriefs.com/blog/law/criminal-law/criminal-law-keyed-to-kadish/exculpation/public-committee-against-torture-v-state-of-israel/?utm_source=casebriefs?utm_source=casebriefs.

³⁰ Corte Constitucional [C.C.] [Constitutional Court], abril 23, 2009, Sentencia T-291/09 (Colom.) (CLARA ELENA REALES GUTIERREZ, Magistrada (E); GABRIEL EDUARDO MENDOZA MARTELO, Magistrado; LUIS ERNESTO VARGAS SILVA, Magistrado; MARTHA VICTORIA SACHICA MENDEZ, Secretaria General), <https://www.corteconstitucional.gov.co/relatoria/2009/t-291-09.htm>.

³¹ MAY & DALY, *ADVANCED INTRODUCTION*, *supra* note 25.

that one can not exist without the other: the right to clean water can not exist without the right to a healthy environment.³²

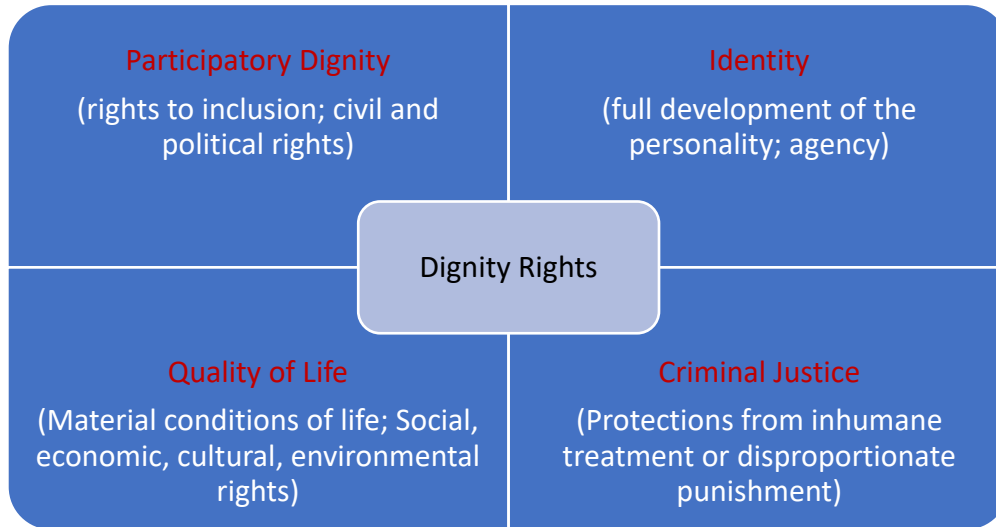
3. NEGATIVE AND AFFIRMATIVE OBLIGATIONS describe the obligations that states have to protect and promote dignity rights. Negative obligations require the state to refrain from taking action. These are usually immediately enforceable with little cost or political impediments; they are usually associated with civil and political rights such as freedom of religion or freedom of expression. Affirmative obligations require the state to take positive steps to provide the means necessary for the enjoyment of the right, such as providing health care or education or housing; they are usually associated with social, economic, and cultural rights and are usually not immediately enforceable.
4. PROGRESSIVE REALIZATION describes the obligations of states to provide social, economic, and cultural rights: “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all means, including particularly the adoption of legislative measures.”³³ States must generally take immediate steps to begin the process of progressive realization.
5. PROPORTIONALITY and DETERRENCE recognizes that respect for human dignity requires that laws be proportionate to their purpose: a law that imposes a much greater burden on a person than what the situation requires violates is using that person as a means for some purpose and is violating that person’s dignity.
6. THE RIGHT TO LIVE WITH DIGNITY recognizes that the “right to life” is not only the right to not lose one’s life but the right to live with dignity. Most notable is India, where there is no otherwise enforceable dignity right. Pakistan, Colombia, and Germany have also recognized such a right even where there are enforceable dignity rights.³⁴

PART TWO: THE 4 CORNERS OF DIGNITY RIGHTS

³² DANIEL J. WHELAN, *INDIVISIBLE HUMAN RIGHTS: A HISTORY* (University of Pennsylvania Press 2010).

³³International Covenant on Economic, Social and Cultural Rights, art. 2, 16 Dec. 1966, 993 U.N.T.S. 3 [hereinafter ICESCR]; *see also* CESCR General Comment No. 3, The Nature of State Parties’ Obligations.

³⁴ Frances Coralie Mullin v. Administrator, Union Territory of Delhi and Ors, (1981) 2 SCR 516 (India) (Bhagwati, P.N.), <https://indiankanoon.org/doc/78536/>; Ashgar Leghari v. Federation of Pakistan, (2018) 2018 PLD 364 (Lahore High Court) (Pak.) (Chief Justice Syed Mansoor Ali Shah), Official Stable link <https://sys.lhc.gov.pk/appjudgments/2018LHC132.pdf> (Chief Justice Syed Mansoor Ali Shah); BVerfG, 1 BvL 7/16, Nov. 5, 2019 (Ger.), https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2019/11/Is20191105_1bvl000716en.html; Corte Constitucional [C.C.] [Constitutional Court], noviembre 10, 2016, Sentencia T-622/16 (Colom.)(Center for Social Justice Studies et al. v. Presidency of the Republic et al. (“Rio Atrato” Case)) (recognizing the juridical personality of Colombia’s Atrato River), available in English at <http://files.harmonywithnatureun.org/uploads/upload838.pdf>.



PARTICIPATORY DIGNITY



Participation in political decision-making is essential to the expression of human dignity and is likely to contribute to policies that protect human dignity. This aspect of dignity – participatory dignity – reflects the dignity need to express one’s opinions according to one’s conscience and the human capacity to make decisions for oneself and one’s community, not as an object of policy but as a self-fulfilling subject. This Chapter illustrates the reciprocal relationship between dignity and participation in public decision-making and shows how international declarations, policies, and court judgments from around the world seek to advance participatory dignity.³⁵

³⁵ This section is based on reports drafted by John Howells and Victoria Partington.

I. Introduction: The Relationship Between Dignity and Political Participation

This chapter describes “participatory dignity” – that aspect of human dignity that allows and compels human beings to participate in political decision-making. This aspect of dignity combines the cognitive and self-defining aspects of dignity with the dignity-based need to live in community with others. Just as individual dignity reflects the free will of the individual, political decision-making must reflect the will of the people. If we are committed to defining our lives and our identity for ourselves, and we live with others in organized society, we are committed to defining the values and rules that shape that society. As Justice Sachs has written: “The right to free and equal participation in public authority is enshrined in human dignity.”³⁶

Participatory dignity recognizes that aspect of human dignity that is tied to participation in democratic decision-making. It follows from understanding dignity on the one hand as a matter of “reason and conscience,”³⁷ of self-definition and self-determination and on the other hand as recognizing that every person is a “member of the human family,”³⁸ the part of the human experience that involves belonging to a community. If humans have rights of self-definition and exist in community, then it follows that they have the right to participate in collective decision-making. This is the dignity-basis of democratic forms of governance – i.e. self-governance. Participation in political activity protects dignity both as a means and as an end: participation in governance itself is a manifestation of human dignity (means) and it has the potential to advance the ability of people to live in dignity (ends).

Most modern constitutions commit to public participation in political decision-making. We sometimes refer to this form of political decision-making as democratic in the sense that it is “by the people.” This Handbook takes no position on the precise form of democracy or of political participation generally (e.g. the frequency of elections, the subjects of political referenda, the rules of representation, and so on) as long as it reflects the dignity of every human person and allows each person to participate in a way that will conduce to the protection of their dignity and that of others. While the right to vote is the starkest way for people to express their dignity politically, it is not the only way and it may not even be necessary to promote dignity, as long as there are sufficient mechanisms for people to express their views on political matters that those in power recognize and respect.

As Justice Sachs of the South African Constitutional Court has written: “. . . public participation in governmental decision-making is derived not only from the belief that we improve the accuracy of decisions when we allow people to present their side of the story, but also from our sense that participation is necessary to preserve human dignity and self-respect.”³⁹

1. “Participation is necessary to preserve human dignity and self-respect.” The intrinsic value protects the agency inherent in public decision-making. The ability for a person to say what they need, to vote for who they support, and have their voice heard is an inherent aspect of the experience and expression of their human dignity. Authoritarianism offends dignity because it takes the decision-making authority away from the people.⁴⁰ Totalitarianism offends

³⁶BVerfG, 2 BvE 2/08, ¶ 211, June 2009 (Lisbon Case),

https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2009/06/es20090630_2bve000208en.html.

³⁷G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 1 (Dec. 10, 1948).

³⁸G.A. Res. 217, preamble, *supra* note 37.

³⁹ *Matatiele Municipality & Others v. President of the Republic of South Africa & Others* 2007 (1) BCLR 47 (CC) at para. 66 (S. Afr.) (J. Ngcobo), <http://www.saflii.org/za/cases/ZACC/2006/12.html>.

⁴⁰ Corte Suprema de Justicia de la Nacion [CSJN] [National Supreme Court of Justice], 21/11/2006, “Association for the struggle of Transvestite-Transexual Identity v. Inspector General of Justice,” (Argentina National Supreme Court

dignity for the further reason that it fails to treat each person “as a person,” as an individual person with agency over their own lives.⁴¹ This would be true even if the dictatorial power were benevolent and assured a good standard of living.

2. “We improve the accuracy of decisions when we allow people to present their side of the story:” The instrumental value of democracy and human dignity indicates that a free and equal vote and participation in a person’s government progresses dignity and should create more equal and fair policies – policies that allow people to live dignified lives (as described elsewhere in this Handbook).

Dignity may be said to require two duties of participation, “[t]he first is the duty to provide meaningful opportunities for public participation in the law-making process. The second is the duty to take measures to ensure that people have the ability to take advantage of the opportunities provided.”⁴²

Living with dignity means holding one’s head up and being acknowledged by others with equal respect.⁴³ It is dignified individuals who actively participate in a political system. “The right to free and equal participation in public authority is enshrined in human dignity. The conception of dignity we share as individuals and citizens of a community honors the worth in autonomous individuals.”⁴⁴ Dignity is necessary for collective self-governance because individuals require dignity if they are to govern themselves.⁴⁵

Dignity and democratic participation are thus mutually reinforcing. Dignity is a necessary condition for democracy, and democratic institutions defend dignity; and the habits of dignified citizens, in turn, provide the behavioral foundations for defending democracy.⁴⁶ The cycle is possible only through dignity, and that is because dignity gives individuals a means to self-govern. A political system without dignity is “repressive, autocratic, and tyrannical” and is devoid of self-respect, freedom and equity.⁴⁷

II. Applicable International Law Obligations.

Participatory dignity is reflected in the major human rights instruments. Article 21 of the UDHR states that

“(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

of Justice 2006) (Arg.) ([T]he protection of a guiding value such as human dignity implies that the law recognizes, insofar as it does not offend public order and morality, or harm a third party, an intimate and insurmountable area of freedom, that can lead to personal fulfillment, which is a requirement of a healthy society. The protection of the scope of privacy is one of the greatest values of respect for the dignity of the human being and a feature of essential differentiation between the rule of law and authoritarian forms of government.”).

⁴¹ *Acción de inconstitucionalidad 2/2010*, Suprema Court de Justicia de la Nación [SCJN] (Mex.) (“se trata del derecho a ser considerado como ser humano, como persona, es decir, como ser de eminente dignidad”) (“it is about the right to be considered as a human being, as a person, that is, as a being of eminent dignity.”).

⁴² *Doctors for Life International v. The Speaker of the National Assembly* 2006 (6) SA 416 (CC) (S. Afr.), <http://www.saflii.org/za/cases/ZACC/2006/11.html>.

⁴³ Josiah Ober, *Democracy’s Dignity*, 106 AM. POL.SCI. REV., 827 (2012).

⁴⁴ *Baxter v. State*, 224 P.3d 1211, 1230, ¶ 85 (Mont. 2009).

⁴⁵ Ober, *supra* note 43.

⁴⁶ Erik Encarnacion, *Boilerplate Indignity*, 94 IND. L.J. 1305, 1329 (2019).

⁴⁷ *Matatiele Municipality* 2007 (1) BCLR 47 (CC) (S. Afr.), *supra* note 39.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”

The language of the Universal Declaration of Human Rights has been adopted almost word for word, by (1) Article 13 of the African Charter on Human and People’s Rights in 1948; (2) Article 23 of the American Convention on Human Rights in 1981; and (3) Article 25 of the ASEAN Human Rights Declaration in 2012.

Article 25 of the International Covenant on Civil and Political Rights states:

“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.”⁴⁸

The authority of the government can only derive from the will of the people as expressed in genuine, free, and fair elections held at regular intervals on the basis of universal and equal suffrage.⁴⁹

The two principal international conventions concerned with discrimination, which also reaffirm the commitment to dignity in the UN Charter and the UDHR, also require states to undertake to eliminate discrimination in political participation. The International Convention on the Elimination of all forms of Racial Discrimination protects “Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service.”⁵⁰ The Convention on the Elimination of all Forms of Discrimination Against Women requires states to “take all appropriate measures to eliminate discrimination against women in the political and public life of the country.” In particular, it requires states to take affirmative measures to “ensure to women, on equal terms with men, the right (a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies; (b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government; (c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.”⁵¹ Likewise, the UN 2030 Agenda expounding 17 Sustainable Development Goals require states to “[e]nsure women’s full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life.”⁵²

⁴⁸ International Covenant on Civil and Political Rights, art. 25, 16 Dec. 1966, 999 U.N.T.S. 171 [hereinafter ICCPR].

⁴⁹ Inter-Parliamentary Council, Declaration on Criteria for Free and Fair Elections (Mar. 26, 1994).

⁵⁰ G.A. Res. 2106 (xx), International Convention on the Elimination of All Forms of Racial Discrimination, art. 5(c) (Dec. 21, 1965).

⁵¹ G.A. Res. 34/180, Convention on the Elimination of all Forms of Discrimination Against Women [CEDAW], art. 7 (Dec. 18, 1979).

⁵² U.N. GAOR, Transforming our world : the 2030 Agenda for Sustainable Development, goal 5.5, U.N. Doc. A/RES/70/1 (Oct. 21, 2015), <https://www.refworld.org/docid/57b6e3e44.html>.

These international instruments suggest a strong global consensus on the mutually reinforcing relationship between dignity and political decision-making.

III. Dignity and Self-Governance

Dignity is important because it is a precondition to having and claiming rights.⁵³ People must acknowledge and understand their own sense of dignity in order to be able to participate in political decision-making. People who understand their own equal sense of self-worth can choose representatives and officials to enact policies and laws to reflect their own values. People who understand the equal worth of others will choose representatives to enact policies that reflect democratic values and that promote the well-being of all. Dignity permits ownership in the political community.

As the South African Constitutional Court has said, self-governance is an indispensable feature of a system committed to dignity: “Our capacity of self-governance is what makes democracy the only acceptable secular form of political organization. For if we are capable of shaping our own ends as individuals, equal political treatment demands that we be able to shape them as citizens in a democracy.”⁵⁴ This is what the South African court has termed ‘civic dignity.’

Landmark decision. In *Arshad Mehmood v. The Comm’r of Elections in Pakistan*, Justice Syed Mansoor Ali Shah considered a claim of alleged gerrymandering where the weight of votes varied by geographical location, a common practice among political parties in power. Taken too far, it can greatly diminish the vote of marginalized communities, who are either “stacked” together in a district or dispersed, thereby diminishing the power of their vote.⁵⁵ Due to a significant migration of Pakistan’s young and dynamic population, the size of constituencies become unequal,⁵⁶ yet voting equality requires that “the vote of one citizen [is] in no manner [] less than the vote of another citizen.”⁵⁷ The court held the “homogeneity of interest of the community” needed to be considered along with “population parity and geographical compactness” during any “delimitation of constituencies.”⁵⁸ The court explained “everyone must be allowed to participate in politics as an equal,” holding several sections of the Punjab Local Government Act governing this process of delimitation to be unconstitutional.⁵⁹

In his opinion, Justice Shah wrote, “the writ of suffrage can be denied by a debasement or dilution of the weight of a citizen’s vote just as effectively as by wholly prohibiting the free exercise of the franchise. . . .”⁶⁰ Justice Shah relied upon the UDHR, the ICCPR, and other international instruments, as well as Pakistan’s Constitutional and fundamental right to dignity under Article 14 to establish the relationship between dignity rights and the invaluable importance of free, equal, unbridged suffrage among citizens.⁶¹ The court explained that human

⁵³ Hannah Arendt, *supra* note 20.

⁵⁴ *Matatiele Municipality 2007* (1) BCLR 47 (CC) (S. Afr), *supra* note 39.

⁵⁵ *Arshad Mehmood v. The Comm’r of Elections in Pakistan*, (2014) 2014 PLD 221 (Lahore High Court) (Judgment 2013) (Pak.), <https://sys.lhc.gov.pk/appjudgments/2013LHC4005.pdf>. Gerrymandering is defined as, “to divide or arrange (a territorial unit) into election districts in a way that gives one political party an unfair advantage.” *Gerrymander*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/gerrymander>.

⁵⁶ Democracy Reporting International, IP3, *Electoral Delimitation in Pakistan: “Formula for Inequality,”* (Feb. 9, 2015), https://democracy-reporting.org/de/dri_publications/briefing-paper-electoral-delimitation-in-pakistan-formula-for-inequality/.

⁵⁷ *Arshad Mehmood*, (2014) 2014 PLD 221 (Pak.), *supra* note 55.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

dignity “arises from” aspects of “human personality that flow from human intellectual and moral capacity,” allowing humans to shape and develop themselves to “strive for self-fulfillment in their lives.”⁶² Dignity provides individuals with tools to voice their opinions and views and allows individuals to participate in the political arena. Justice Shah further explains this concept by quoting a South African case that eloquently put, “if we are capable of shaping our own ends as individuals, equal political treatment demands that we be able to shape them as citizens in a democracy.”⁶³

The governmental infringement upon any group’s or citizen’s suffrage is an affront to their dignity whether through outright suppression or through the debasement or dilution of the vote’s weight or power. “The right to vote freely for the candidate of one’s choice is the essence of a democratic society, and any restriction on that right strike at the heart of representative government.”⁶⁴

Justice Shah explained that democratic decision-making rests on two pillars, both of which have relevance to the protection of human dignity. The “formal aspect of democracy”⁶⁵ is “manifested in majority rule and in the centrality of the legislative body through which the people’s representatives act . . . It is of central importance because without it the regime is not democratic.”⁶⁶ This pillar is process-based; that is, it requires that the people be allowed to express their views on matters of public importance and that their views be respected. Human dignity demands that states respect and protect and promote these values. To do so is to recognize (in Arendt’s terms) that dignity is the right to have rights; to fail to do so is (in Kant’s terms) to violate the fundamental premise of human dignity that requires that human beings be the subjects and not the objects of decision-making about issues that affect them. Most traditional civil and political rights protect these interests by guaranteeing freedom of expression and association and the right to vote and other forms of participation,⁶⁷ as detailed below.

The second pillar is rooted in the “rule of values” or the “substantive aspect of democracy” and entails adherence to values rooted in human dignity including “separation of powers, the rule of law, judicial independence, human rights, and basic principles that reflect yet other values (such as morality and justice), social objectives (such as the public peace and security), and appropriate ways of behavior (reasonableness, good faith).”⁶⁸ To Justice Shah, these two aspects are interdependent in regard to the rights of the people who govern themselves as, “[l]iberty and equality can hardly be realized if cumbersome registration procedures registration procedures or other electoral barriers make it difficult to vote.”⁶⁹ It is imperative to the governmental protection of dignity, liberty, and equality that the people have a fair and equal opportunity to “ . . . participate in the political life of the nation, the freedom to exercise political choice, the right to choose a political leader and elect the government of his or her choice.”⁷⁰ Justice Shah continues

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Doctors for Life International* 2006 (6) SA 416 (CC) (S. Afr.), *supra* note 42.

⁶⁸ *Arshad Mehmood*, (2014) 2014 PLD 221 (Pak.), *supra* note 55.

⁶⁹ *Id.*

⁷⁰ *Id.*

to call a “[p]olitical system, which is not chosen by the people is repressive, autocratic, and tyrannical besides being antithetical to self-respect, freedom, and human dignity.”⁷¹

The values that form a democratic order rest fundamentally on human dignity: we seek to separate powers so that no single person has enough power to crush another person or group. We protect judicial independence to ensure that the dignity of the individual person protected even as against majoritarian will. We commit to the rule of law to make sure that public decisions are made according to a process, and not raw power. More specifically, the way dignity has been interpreted by courts around the world (described elsewhere in this Handbook) may require a system of governance that ensures that no person will be oppressed or humiliated, that every person is entitled to live a decent life, and that the dignity of the most vulnerable people is always protected.

Political positions that are inconsistent with these substantive values are inconsistent not only with democracy but also with human dignity.⁷² In *Bundesrat v. National Democratic Party of Germany*, the Constitutional Court of Germany held that the Basic Law “relies on this power of engagement as the most effective weapon against the spread of totalitarian and inhuman ideologies”⁷³ and therefore that a political party that effectively encourages separate ethnic states threatens human dignity and “thus violates the democratic order” and therefore must be prohibited.⁷⁴ The Court explained that the free democratic order is rooted primarily in dignity and must be protected by the state at all costs.⁷⁵

Participatory dignity is therefore especially pertinent as protection against totalitarianism. The European Parliament resolution on European conscience and totalitarianism condemned all crimes against humanity and the massive human rights violations committed by totalitarian and authoritarian regimes.⁷⁶ A post-Communist court in Poland rejected a lustration process that would have assigned collective guilt and punishment to those associated with the Communist government previously in power. The Constitutional Court of Slovenia held that a petitioner’s rights to dignity were violated when a city named a street after Josip Broz Tito, the former leader of Yugoslavia.⁷⁷ Respect for human dignity, the Court said, is a “legal-ethical foundation” based on the concept of constitutional democracy,⁷⁸ which places restrictions on authority by giving certain fundamental rights and acknowledging inherent freedoms possessed by individuals due to their inherent worth.⁷⁹

IV. Participatory Dignity

If human dignity means that people have the right to have agency over their lives and they live in community with others, then they have the right a dignity-based right to have agency or control over the life of their community – over the decisions that people make as a community. This aspect of dignity can be thought of as “participatory dignity” as it entails the right to participate in political decision-making.

⁷¹ *Id.*

⁷² BVerfG, 2 BvB 1/13, ¶ 530, Jan. 17, 2017 (Ger.), https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2017/01/bs20170117_2bvb000113en.html.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.* at ¶ 538. The court acknowledged that this political party does not have enough support to noticeably threaten the free democratic order, but warned if this shall ever be the case, the National Democratic Party of Germany will be prohibited pursuant to the prohibition provisions of the German Constitution. *Id.* at ¶ 896.

⁷⁶ *Id.*

⁷⁷ Constitutional Court of Slovenia (Tito street decision), U-I-109/10, at 2, Sept. 26, 2011 (Slovn.), <http://www.us-rs.si/documents/4b/dc/u-i-109-102.pdf>.

⁷⁸ *Id.* at 4.

⁷⁹ *Id.*

Participatory dignity guarantees the set of rights associated with political authority, including rights to free expression, association, voting, and running for office.

A. The Right to Vote

A healthy democratic system holds free elections at reasonable intervals, under conditions that will ensure the free expression of opinion by the people in the choice of legislator.⁸⁰ As the South African Constitutional Court has famously said, democracy reflects respect for human dignity: “[t]he vote of each and every citizen is a badge of dignity and personhood. Quite literally, that everybody counts.”⁸¹ The right to vote assures that every person’s equal moral and legal worth matters, and when every vote counts and has an equal weight, the government cannot afford to do anything less than treat each person equally. This section addresses how human dignity requires that very same equal unabridged vote, and describes how human dignity is compromised when that right is infringed or suppressed.

Although the right to vote varies according to procedure and law in almost every country, the fundamental principle remains the same: “a vote is a symbol of political dignity and freedom of a citizen.”⁸² “[A] citizen’s right to determine in respect to persons and subjects, in freedom and equality by means of elections and other votes . . . is the fundamental element of the principle of democracy.”⁸³ A source of power underlying the right to vote lies in the equal weight accorded to each vote and the equal dignity owed to each voter.⁸⁴

The right to vote is not only an individual right but a social right as well. As the South African Court explained: “In countries of great disparity of wealth and power, [the right to vote] declares that we all belong to the same nation; that our destinies are intertwined in a single interactive polity.”⁸⁵ This makes explicit another important dimension of dignity: the dignity of belonging. Because it is essential for all human beings to be members of a community, those who are denied citizenship feel the stigma of ostracism, the disconnection from the community, and the isolation of being made into an “other,” not fit to be included. These all impair a person’s sense of self-worth and their standing in the political community.

The right to be treated with dignity and to have one’s dignity respected imposes both negative and positive obligations on government. In the context of participatory dignity, this means that governments must not only desist from suppressing the right to vote, but they must also take affirmative steps to ensure that each person can exercise their right to vote and that each person’s vote will be counted equally.

Governments must ensure that each person has equal rights to vote, regardless of class, race, gender, orientation, or any other differentiating factor. In the words of Justice Saad Saood Jan of Pakistan, “[t]here seems little doubt that the paramount consideration before the Constitution-makers was that no section of the citizenry no matter how small it might be, should be deprived of equal participation in the national life and no one should feel that he has not had a fair deal.”⁸⁶ This exemplifies

⁸⁰ Convention for the Protection of Human Rights and Fundamental Freedoms, Protocol, art. 3, 4 Nov. 1950, 213 U.N.T.S. 222.

⁸¹ *August & Another v. Electoral Comm’n & Others* 1999 (3) SA 1 (CC) (S. Afr.), <http://saflii.mobi/za/cases/ZACC/1999/3.html>.

⁸² *Arshad Mehmood*, (2014) 2014 PLD 221 (Pak.), *supra* note 55.

⁸³ BVerfG, 2 BvE 2/08, ¶ 211, June 2009, *supra* note 36.

⁸⁴ *Bush v. Gore*, 531 U.S. 98, 104, 121 (2000).

⁸⁵ *August & Another* 1999 (3) SA 1 (CC) (S. Afr.), *supra* note 81.

⁸⁶ *Mian Muhammad Nawaz Sharif v. President of Pakistan and Others* PLD 1993 Supreme Court 473.

the recognition and protection of human dignity requires fair and equal participation in public life for every person.

And yet, nations routinely deprive people of the right to vote for myriad reasons. Nations typically allow only citizens to vote. In addition, nations may have voting requirements that disenfranchise even members of the citizenry. Most countries do not allow any person under 18 to vote,⁸⁷ even though policies made today may impact youths throughout their lives. Some countries legally disenfranchise certain segments of the population including police and military, prisoners, and others. Other deprivations of the right to vote happen by practice if not by law: women, people with no fixed address, people who are illiterate or who can not maneuver complicated registration processes, people who are infirm, and others may be denied the dignity right to vote.⁸⁸ Other countries, like the United States, make voting difficult by scheduling elections on a workday and restricting access to polls; in 2021, the United States is seeing a spate of laws intending to restrict, rather than expand, the right to vote.⁸⁹ And for voters in many countries, the right to vote is limited by intimidation and violence⁹⁰ and by more sophisticated forms of technological manipulation.⁹¹

Although the UN Charter and the UDHR explicitly assert the equal dignity of women and men,⁹² women have not been able to vote in all countries until 2015 when Saudi Arabia finally allowed women the franchise.⁹³ Still, in practice, conditions may make it difficult or virtually impossible for women to vote⁹⁴ including where a birth certificate or other identification is required, or where literacy or other additional hurdles are imposed.⁹⁵ Communication modes may also exclude women from political participation. Because political rights are dignity rights, states have affirmative obligations not only to ensure that laws do not discriminate against women but to ensure that women have equal opportunities to participate in political activities.

B. Participation in Electoral Politics

Human dignity does not limit the right to political participation to elections.⁹⁶ “The right to political participation can . . . be realized in many ways,”⁹⁷ including freedom of assembly and expression,

⁸⁷ World Atlas, *Legal Voting Age By Country*, <https://www.worldatlas.com/articles/legal-voting-age-by-country.html> (last visited June 15, 2021); Al Jazeera, *How the World Votes: 2019*, <https://interactive.aljazeera.com/aje/2019/how-the-world-votes-2019/index.html> (last visited June 15, 2021).

⁸⁸ See e.g., Soumya Shankar, *Not Everyone Has a Vote in the World’s Largest Democracy*, FOREIGN POLICY, Nov. 22, 2019, <https://foreignpolicy.com/2019/10/22/missing-voters-india-elections-muslims-dalits/>. See also University of Minnesota Human Rights Library, “*Study Guide: The Right to Vote*,” University of Minnesota Human Rights Center (2003).

⁸⁹ The Brennan Center For Justice, *State Voting Bills Tracker 2021*, <https://www.brennancenter.org/our-work/research-reports/state-voting-bills-tracker-2021> (last visited June 15, 2021).

⁹⁰ Clayton Besaw, *Election Violence Spiked Worldwide in 2020 – will this year be better?*, THE CONVERSATION, Feb. 18, 2021, <https://theconversation.com/election-violence-spiked-worldwide-in-2020-will-this-year-be-better-153975>.

⁹¹ Freedom House, *Technology & Democracy*, <https://freedomhouse.org/issues/technology-democracy> (last visited June 15, 2021).

⁹² U.N. Charter preamble, ¶ 1: “to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small.” See also U.N. Office of the High Commissioner on Hum. Rts., *Women’s Rights are Human Rights*, p. 43. (2014).

⁹³ Mona El-Naggar, *Saudi Women Vote for First Time*, N.Y. TIMES, Oct. 18, 2016.

⁹⁴ *Women’s Rights are Human Rights*, p. 43, *supra* note 92.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Doctors for Life International 2006* (6) SA 416 (CC) (S. Afr.), *supra* note 42.

as well as the rights to participate in political decisionmaking, run for office, influence policy, and partake in public debates and dialogue with elected officials – all of which are aspects of exercising one’s dignity rights to have rights.

The Constitutional Court of South Africa has been especially emphatic about protecting what it has called “civic dignity.” Justice Albie Sachs of the South African Constitutional Court has written, “in a constitutional democracy, dialogue and the right to have a voice on public affairs is constitutive of dignity.”⁹⁸ Political participation, Justice Ngcobo wrote, “enhances the civic dignity of those who participate by enabling their voices to be heard and taken account of.”⁹⁹

Dignity entails that “a high priority should be accorded in political, social and legal arrangements to individual choices in such matters as belief, way of life, attitudes and the conduct of public affairs.”¹⁰⁰ Public participation in governmental decision-making is derived not only from the belief that we improve the accuracy of decisions when we allow people to present their side of the story, but also from our sense that participation is necessary to preserve human dignity and self-respect.¹⁰¹

Landmark case. In *Doctors for Life International v. The Speaker of the National Assembly*, Justice Sandile Ngcobo of the South African Constitutional Court explained why political participation is essential to the protection of human dignity. The Court invalidated four health laws that had been enacted without sufficient public involvement in its legislative process.¹⁰² South Africa, the Court said, in acknowledgment of and rooted in their history of apartheid and racism, has a Constitutional duty to facilitate public involvement. This duty is construed to have two aspects, “[t]he first is the duty to provide meaningful opportunities for public participation in the law-making process. The second is the duty to take measures to ensure that people have the ability to take advantage of the opportunities provided.”¹⁰³ Justice Ngcobo relied upon his country’s Constitutional duty, and upon Article 25 (b) of the International Covenant on Civil and Political Rights which “guarantees not only the ‘right’ but also the ‘opportunity’ to take part in the conduct of public affairs”¹⁰⁴ and on the African Charter on Human and Peoples’ Rights which guarantees “the individual’s inalienable right to participate by means of free and democratic processes in framing the society in which he or she lives.”¹⁰⁵ Additionally, Justice Ngcobo cited the U.N. Human Rights Committee, which has said that “[w]hatever form of constitution or government is in force, the [ICCPR] requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects.”¹⁰⁶

Justice Sachs, in concurrence, wrote, “[p]ublic involvement accordingly strengthens rather than undermines formal democracy, by responding to and negating some of its functional deficits.”¹⁰⁷ Justice Ngcobo and Justice Sachs not only recognized their country’s own specific Constitutional duty to facilitate political involvement but lay the groundwork for an undeniable right to an opportunity to participate rather than the mere right to participate.

⁹⁸ *Arshad Mehmood*, (2014) 2014 PLD 221 (Pak.), *supra* note 55.

⁹⁹ *Doctors for Life International* 2006 (6) SA 416 (CC) (S. Afr.), *supra* note 42.

¹⁰⁰ *Lozada Tirado v. Testigos Jehova*, 177 P.R. 893 (2010).

¹⁰¹ *Matatiele Municipality* 2007 (1) BCLR 47 (CC) (S. Afr.), *supra* note 39.

¹⁰² *Doctors for Life International* 2006 (6) SA 416 (CC) (S. Afr.), *supra* note 42.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

The European Court of Human Rights has also insisted on electoral participation. *Matthews v United Kingdom* concerned Gibraltans who were European Union citizens but were denied the right to participate in elections for Parliament.¹⁰⁸ Luzius Wildhaber, President of the Court, held this to be in violation under the European Convention on Human Rights, whose very essence is the protection of human dignity, invoking the right to “free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature.”¹⁰⁹ Under *Matthews*, States may be liable for human rights breaches even where they transferred their powers to an international organization, such as the European Union.¹¹⁰

C. Association and Assembly

Peaceful assembly as a form of political participation is an expression of human dignity because it sparks debate, calls out injustice, expresses views and ideas, and engages in activities of solidarity and community, among other things. The right to protest is therefore protected as a matter of human dignity, in addition to its contribution to democratic decision-making. Article 21 of the ICCPR clearly describes the right to peaceful protest:

“The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law, and which are necessary in a democratic society in the interests of national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others.”¹¹¹

Courts have recognized the importance of political protest to human dignity. In *Association for the Struggle of Transvestite-Transsexual v. Inspector General of Justice*, the Supreme Tribunal of Argentina held that:

“The participation of citizens in the democratic process and achieving greater social cohesion that is born, precisely, from sharing the foundational notion of respect for diversity and the interaction of people and groups with varied identities, beliefs, and traditions, whether cultural or religious, artistic, literary, social, economic, political, ethnic, religious, etc.”¹¹²

And in *Identoba and Others v. Georgia*, the European Court of Human Rights held that when an LGBT demonstration was interrupted by a violent counter-demonstration resulting in verbal and physical assaults, the state of Georgia had violated Article 3 of the European Convention by failing to protect the applicants. The Court held that “discriminatory treatment as such can in principle amount to degrading treatment within the meaning of Article 3 where it attains a level of severity such as to constitute an affront to human dignity” and that “the treatment of the applicants must necessarily have aroused in them feelings of fear, anguish and insecurity which were not compatible with respect for their human dignity and reached the threshold of severity within the meaning of Article 3 taken in conjunction with Article 14 of the Convention.”¹¹³

¹⁰⁸ *Matthews v. United Kingdom*, App. No. 24833/94, Eur. Ct. H.R. (Feb. 18, 1999).

¹⁰⁹ European Convention on Human Rights, Protocol, art. 3, 4 Nov. 1950, 213 U.N.T.S. 222.

¹¹⁰ *Matthews*, App. No. 24833/94 (1999).

¹¹¹ ICCPR, art. 21, 16 Dec. 1966, 999 U.N.T.S. 171.

¹¹² Corte Suprema de Justicia de la Nación [CSJN] [National Supreme Court of Justice], 21/11/2006, “Association for the Struggle of Transvestite-Transsexual v. Inspector General of Justice,” (ARG.).

¹¹³ Case of *Identoba and Others v. Georgia*, App. No. [73235/12](https://hudoc.echr.coe.int/fre?i=001-154400), ¶¶ 65, 71, Eur. Ct. H.R. (Dec. 8, 2015), <http://hudoc.echr.coe.int/fre?i=001-154400>.

V. Conclusion

The ability to participate in government through suffrage or alternate avenues is vital to the protection and furtherance of dignity rights and other unalienable rights. As a right derived from human dignity, political participation is essential not only for democratic legitimacy but to protect the dignity rights of every person. Political engagement allows people to express themselves according to their own views and conscience, and to contribute to the policies and programs that govern them. Because it is an expression of human dignity as well as a right to protect dignity, states have affirmative obligations to ensure that every person can participate fully, as well as the negative obligations to avoid deprivation or discrimination in the exercise of political rights. As Justice Shah wrote in *Arshad Mehmood v. The Comm’r of Elections in Pakistan*: “Not only that everyone must be allowed to participate in politics as an equal, through the vote and through freedom of speech and protest, but that political decisions must treat everyone with equal concern and respect, that each individual must be granted fundamental civil and political rights no combination of other citizens can take away.”¹¹⁴

These rights exist not only to protect democracy but to protect human dignity. Even if individual identity is protected and material comfort is otherwise assured, human dignity requires that people have the meaningful opportunities to engage in public decision-making on their own behalf. Political participation in democratic decision-making is a collective manifestation of human dignity.

¹¹⁴ *Arshad Mehmood*, (2014) 2014 PLD 221 (Pak.), *supra* note 55.

IDENTITY AND THE FULL DEVELOPMENT OF THE PERSONALITY



Human dignity refers to the equal worth of every member of the human family, like a coin that a person has at birth that they can never lose. Every coin is identical in value, but it is unique to each person. This Chapter illustrates how the law protects each person’s capacity to fully develop their own personality according to their own designs, and to have agency over important decisions in their lives. Dignity means that each person has the power to do this for themselves, equally with every other person. After describing some general principles of dignity law, this chapter surveys the law by focusing on different facets of the human personality that contribute to a person’s identity: spiritual, cultural, biological, mental, and relational. We then consider how discrimination violates human dignity.¹¹⁵

¹¹⁵ This section is based on reports drafted by Giulliana Brandalise and Julian Benson Reid.

I. Introduction: The Connection Between Human Dignity and Identity

Human dignity is understood as an intrinsic, inherent, or immanent value of each person, which marks both the uniqueness of each person and our common humanity. It is human dignity that allows each person's ability to develop their personality and chart their life course.¹¹⁶ Because it is the foundation of the human spirit, it is relevant to all human endeavors: religion, politics, law, and philosophy.¹¹⁷ As a constitutional value, human dignity protects a person's free will, autonomy, and their ability to write their life story within the framework of society. As a constitutional right, dignity law gives full expression to the value of human dignity, subject to the specific demands of constitutional architecture.¹¹⁸

This chapter describes the development of the human person in its physical, spiritual, mental, and relational dimensions, according to the evolving global law of dignity rights, drawing on three essential elements of dignity theory: agency as it relates to the full development of the personality, community and the dignity interest of living in society with others, and the dignity requirement of equality.

Agency. Many constitutional courts around the world have described dignity as autonomy¹¹⁹ and as the possibility of designing one's life plan "to live as one wishes."¹²⁰ That is, human dignity entitles us to the agency of our own free will, directly connected with the full development of our personalities: without some degree of agency, our personality would be developed not by our own dictates but those of others.¹²¹

The state, through its governments and its courts, must protect the right of people to fully develop their personality. The High Court of Lahore in Pakistan has explained it this way:

"Human dignity is based on the individual's free will and his ability to develop his personality and fulfill his life. The dignity of a human being is his free will: the freedom to shape his life and fulfill himself. It is a person's freedom to write his life story. Human dignity is therefore the freedom of the individual to shape an individual identity. It is the autonomy of the individual will. It is the freedom of choice. Human dignity regards a human being as an end, not as a means to achieve the ends of others."¹²²

Where dignity is respected, the state ensures that people have the space in which to exercise their free will to write their life stories. The Canadian Supreme Court has expressed the commitment to human dignity underlying the Canadian Charter of Rights and Freedoms as follows:

¹¹⁶ ERIN DALY, *Human Dignity: Courts, Constitutions, and the Worth of the Human Person*, 38 (University of Pennsylvania Press, 2013).

¹¹⁷ LUIS ROBERTO BARROSO, *A DIGNIDADE DA PESSOA HUMANA NO DIREITO CONSTITUCIONAL CONTEMPORÂNEO: A CONSTRUÇÃO DE UM CONCEITO JURÍDICO À LUZ DA JURISPRUDÊNCIA MUNDIAL*, 63. (Editora Fórum 2016).

¹¹⁸ AHARON BARAK, *HUMAN DIGNITY: THE CONSTITUTIONAL VALUE AND THE CONSTITUTIONAL RIGHT* (Cambridge 2015).

¹¹⁹ In this Handbook, we use the term "agency" rather than "autonomy" or "free will" except in quoted material. Agency suggests the authority to control decisions for oneself, which dignity protects and which is done in community with others. Autonomy, which literally means self-rule, which can not be fully respected in society with others; there is no social fabric where every person is making rules for themselves. See DALY, *DIGNITY RIGHTS* at _____. Free will is contested in certain religious traditions and therefore does not have universal acceptance. Because people live in society, they cannot be fully autonomous but they can have agency over their lives.

¹²⁰ Corte Constitucional [C.C.] [Constitutional Court], octubre 17, 2002, Sentencia T-881 (Colom.), cited in Corte Constitucional [C.C.] [Constitutional Court], febrero 5, 2008, Sentencia T-088/08, ¶ 3.5.5 (Colom.) (translation by authors).

¹²¹ DALY, *DIGNITY RIGHTS* 38-39, *supra* note 6.

¹²² Ameen Masih v. Federation of Pakistan, (2017) 2017 PLD 610 (Lahore High court) (Pak.), <https://sys.lhc.gov.pk/appjudgments/2017LHC2488.pdf>

“The idea of human dignity finds expression in almost every right and freedom guaranteed in the Charter. Individuals are afforded the right to choose their own religion and their own philosophy of life, the right to choose with whom they will associate and how they will express themselves, the right to choose where they will and what occupation they will pursue. These are all examples of the basic theory underlying the Charter, namely that the state will respect choices made by individuals and, to the greatest extent possible, will avoid subordinating these choices to any one conception of the good life.”¹²³

Many other cases from around the world articulate this aspect of dignity, focusing on the unique imperatives of each person, the capacity for “reason and conscience” (in the UDHR’s language) or “free will” (in the language of some courts) in informing the decisions that each person makes about their own life, and the multiple aspects of the human personality that form a part of each person’s dignity.

Community. The human personality does not develop in isolation, but in community with others. The South African Constitutional Court explains that “an individual human person cannot develop and achieve the fullness of his/her potential without the concrete act of relating to other individual persons.”¹²⁴ This highlights the community’s contribution to the creation of individual identity and human dignity – a concept known in South African jurisprudence as “ubuntu” (I am who I am through other people).¹²⁵ Thus, our dignity must also allow us to control not only how we live, but also how we present ourselves to others and to the world.¹²⁶ This is why dignity protects reputation, and the right to tell one’s story (e.g. in participatory fora) as well as the right to stay silent.

Equality. The question of equality presents itself as soon as we realize the people live together with others – what relation do people have to others? The UDHR’s affirmation that every member of the human family is born “equal in dignity”¹²⁷ refutes any possibility of hierarchy among people and prohibits any discrimination, oppression, or humiliation imposed by one on another. Discrimination harms many aspects of a person’s dignity: their sense of self-worth, their ability to make meaningful decisions for themselves, and their opportunities to live dignified lives in community with others. According to the Constitutional Court of South Africa, “At the heart of the prohibition of unfair discrimination lies a recognition that the purpose of our new constitutional and democratic order is the establishment of a society in which all human beings will be accorded equal dignity and respect regardless of their membership of particular groups.”¹²⁸

This does not mean that all forms of discrimination are illegitimate; only those that diminish a person’s dignity are invalid, whereas different treatment designed to augment or promote human dignity is valid. Thus, a government can promote equality through affirmative actions – that is, what the Brazilian

¹²³ R. v. Morgentaler, [1988] 1 S.C.R. 30 (Can.) (Chief Justice Brian Dickenson), <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/288/index.do>. (emphasis added).

¹²⁴ *MEC for Education: Kwazulu-Natal v. Pillay* 2008 (1) SA 474 (CC) at para 53 (S. Afr.), <http://www.saflii.org/za/cases/ZACC/2007/21.html>. (quoting KWAME GYEKYE, PERSON & COMMUNITY: GHANAIAN PHILOSOPHICAL STUDIES (1992) reprinted as “Person and Community in African Thought” in CO ETZEE & ROUX (eds) PHILOSOPHY FROM AFRICA: A TEXT WITH READINGS (Oxford University Press, Cape Town 1998)).

¹²⁵ LAURIE ACKERMAN, HUMAN DIGNITY: LODESTAR FOR EQUALITY IN SOUTH AFRICA (Juta & Co., 2012).

¹²⁶ *Id.* at 43.

¹²⁷ Note that the UDHR’s affirmation that every member of the human family is born equal in dignity goes to the value of the human person, regardless of any particular trait or quality or ability or disability of any individual.

¹²⁸ *President of the Republic of South Africa & Another v. Hugo* 1997 (4) SA (CC) 1 (S. Afr.) (Justice Joseph Goldstone) <http://www.saflii.org/za/cases/ZACC/1997/4.html>.

Federal Supreme Court has called “the struggle for recognition, which is the fight against any violation of dignity and honor.”¹²⁹

II. Facets of Dignity

A. Matters of Conscience and Spiritual Dignity

Freedom of conscience is an inherent and very personal part of a human being.¹³⁰ According to the Universal Declaration of Human Rights:

“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching practice and observance.”¹³¹

Both conscience and reason, according to the UHDR, make human beings distinct from other beings, and therefore it is this characteristic that justifies the recognition of human dignity. Conscience can refer to matters both spiritual and secular.

In accordance with the principles of human dignity, each person has the right to decide on his or her own faith or to have none at all. Freedom of religion includes the right to convert to another religion, which integrates the right to make decisions for oneself and develop one’s identity according to one’s will, including the right not to belong any religion,¹³² which is the right of “the freedom from religion, which members of other religions or non-believers enjoy.”¹³³

The general rule that “each person shall live by own beliefs”¹³⁴ has been applied in numerous cases. In *Meatreal v. The Prime Minister*, the Supreme Court of Israel invalidated a ban on the importation of non-kosher meat and its consumption by Jewish people.¹³⁵ On the other hand, the German Constitutional Court has held that, as a form of self-affirmation of dignity, a Sunni butcher could be exempted from an animal protection law that would have prohibited the slaughter of cattle in a way that violated Sunni religious teachings.¹³⁶ The Supreme Court of Canada recognized the right of a student practicing the Sikh religion to wear a kirpan, a knife that makes part of the religion’s clothing, in the school, stating that the risk to the safety of other students was the same as that arising from the

¹²⁹ S.T.F. ADPF 186, Relator: Ricardo Lewandowski, 26.04.2012, See ADPF, p. 40 (Braz.), <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=6984693>. See also R. v. Kapp, [2008] 2 S.C.R. 483 (Can.), <https://www.canlii.org/en/ca/scc/doc/2008/2008scc41/2008scc41.html>. (“where a program makes a distinction on one of the grounds enumerated under s. 15 or an analogous ground but has as its object the amelioration of the conditions of a disadvantaged group, s. 15’s guarantee of substantive equality is furthered, and the claim of discrimination must fail” where “the protection of all of the rights guaranteed by the Charter has as its lodestar th promotion of human dignity.”).

¹³⁰ DALY & MAY, DIGNITY CASEBOOK 90, *supra* note 4.

¹³¹ G.A. Res 217, art. 18, *supra* note 37.

¹³² BARAK, *supra* note 5, at 296-97.

¹³³ LPPA 4201/09 Raik v. Israel Prison Service, ¶ 2 of Deputy President Rivin’s opinion (24.3.2010) (Heb.).

¹³⁴ See HCJ 3872/93 *Meatreal v. The Prime Minister*, 47(5) IsrSC 497 (1993).

¹³⁵ *Id.*

¹³⁶ BverfGE, 1 BvR 1783/99, Jan. 15, 2002 (Ger.) (Justices Hans-Juergen Papier, Renate Jaeger, and Evelyn Haas), Bundesverfassungsgericht - Decisions - Permission for ritual slaughter Muslim butchers.

possibility of any other student taking scissors to school, and therefore the religious option as part of that student's human dignity should be respected.¹³⁷

Several courts have held that a religious group is entitled to have its dignity and that of its members respected. The Brazilian Federal Tribunal has held that it would violate the dignity of Jewish people to allow anti-semitic speech and denial of the Holocaust.¹³⁸ Similarly, the Supreme Court of Canada has held that a teacher may be punished for disseminating anti-semitic doctrine: "the wilful promotion of hatred against a section of the Canadian public distinguished by colour, race, religion or ethnic origin is antithetical to the dignity and worth of the members of an identifiable group."¹³⁹

Religious liberty, while protected by human dignity, is not absolute. It does not justify compelling another to accept a religious belief against their will.¹⁴⁰ This is why forced religious conversion is a crime against dignity.¹⁴¹ Nor does it justify limitations on the dignity of another.¹⁴² It may be possible to avoid this dichotomy by distinguishing between beliefs that are religious (that is, relating to a belief in one or more deities) and beliefs that are cultural (that is, promoted by the rules of religious institutions); the former would not ordinarily impair dignity, while the latter often do.

B. Physical Development: Individuality

The set of physical characteristics of each individual is an inherent quality from the birth of each being, and therefore, the protection of these characteristics is an essential part of human dignity. Some physical qualities are often the bases for discrimination. It is at this point that the law of dignity protects the physical and moral integrity of people who suffer a violation of their dignity based on this set of characteristics. This topic will focus on racial discrimination, discrimination based on gender, and discrimination based on disability.

1. The Uniqueness and Equality of the Human Genome

The Universal Declaration on the Human Genome and Human Rights determines:

¹³⁷ *Multani v. Commission Scolaire Marguerite-Bourgeoys*, [2006] 1 S.C.R. 256 (Can.) (Chief Justice Beverly McLachlin, Justices E. Michel Bastarache, Ian Binnie, Morris Fish, and Louise Charron), <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15/index.do>.

¹³⁸ S.T.F. No. 82.424-2, Relator: Ministro MoreiraAlves, DJ, 19.03.2004 (Braz.), <<http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=79052>>.

¹³⁹ *R. v. Keegstra*, [1990] 3 S.C.R. 697 (Can.) (Chief Justice Robert George Brian Dickson, Bertha Wilson, Claire L'Heureux-Dubé, and Charles Gonthier), <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/695/index.do>, quoting Quigley J. in the Court of Queen's Bench.

¹⁴⁰ "If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion, or force citizens to confess by word or act their faith therein." *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (Justice Robert H. Jackson), <https://supreme.justia.com/cases/federal/us/319/624/>. See also *Lee v. Weisman*, 505 U.S. 577 (1992) (Justice Anthony Kennedy), <https://supreme.justia.com/cases/federal/us/505/577/>; See also AHARON BARAK, *HUMAN DIGNITY: THE CONSTITUTIONAL VALUE AND THE CONSTITUTIONAL RIGHT*, 298. (Cambridge 2015).

¹⁴¹ The Pakistan Constitution provides that "every citizen shall have the right to profess, practice and propagate his religion . . ." PAKISTAN CONST. art 20, § a. It further provides that "adequate provision shall be made for the minorities to freely profess and practice their religions and develop their cultures . . .,"¹⁴¹ PAKISTAN CONST. art 2A, thereby protecting the dignity of the individual's choice of religion.)

¹⁴² But see *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, 138 S. Ct. 1719 (2018) (holding that religious conviction may justify the violation of a state's anti-discrimination laws even where such laws are intended to protect the human dignity of marginalized groups).

“Article 1. The human genome underlies the fundamental unity of all members of the human Family, as well as the recognition of their inherent dignity and diversity. In a symbolic sense, it is the heritage of humanity.

Article 2(a). Everyone has a right to respect for their dignity and for their rights regardless of their generic characteristics.

Article 2(b). That dignity makes it imperative not to reduce individuals to their genetic characteristics and to respect their uniqueness and diversity.”¹⁴³

These principles have been incorporated into the caselaw. The Brazilian Supreme Court said in the *Ellwanger* case (noted above), that “with the definition and mapping of the human genome, scientifically there are no distinctions between [people], whether by skin pigmentation, eye shape, height, hair or any other physical characteristics, since everyone qualifies as a member of the human species. There are no biological differences between humans. In essence they are all the same.”¹⁴⁴ The uniqueness of the human genome has also prompted courts to protect the human genome against copying, or selling, or commodifying in any way.¹⁴⁵

2. Biology and Identity

Classifications that assign benefits or burdens according to some immutable characteristic or criteria violate human dignity by definition because they deny the individuality of each person and deny each person’s ability to define themselves for themselves; instead, they allow another person to define them, thus objectifying them and denying their agency. Moreover, such classifications tend to impose burdens on people unrelated to the criteria but that have the intent or effect of limiting people’s life choices and opportunities for the full development of their personalities. Finally, such classifications tend to demean people and stigmatize people in their own eyes and in the eyes of others, making them second-class citizens or not citizens at all.

In recent years, questions about gender and sexual identity have raised constitutional issues not only because they implicate a nation’s commitment to equal treatment under law but because they implicate a nation’s commitment to the dignity of every person. The dignity in question here is the dignity of choice as to one’s own gender, regardless of their birth sex. Discrimination against people who choose differently than their birth sex would suggest is an infringement against this dignity. To discriminate against a person for choosing a gender is ultimately to discriminate based on gender itself, one would discriminate against another for performing actions that one would not discriminate against were the other a different gender.¹⁴⁶

The Brazilian Supreme Court has held that people who are transgender have the fundamental right to change their names and gender classifications in the civil registry simply on the basis of the

¹⁴³ Universal Declaration on the Human Genome and Hum. Rts., Educational, Scientific and Cultural Organization Gen. Conf, Res. 29 C/ Res.17 (November 11, 1997).

¹⁴⁴ S.T.F., No. 82.424-2, Relator: Moreira Alves 17.9.2003, 02144-03 Diarior da Justiça [D.J.], 19-03-2004, 00017 (Braz.) redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=79052.

¹⁴⁵ *Comm’r of Patents v. President & Fellows of Harvard College*, [2002] 4 S.C.R. 45 (Can.), <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/2019/index.do>.

¹⁴⁶ See e.g. *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731 (2020).

expression of their will. As the Court explained: "[Y]es, we are equal in our dignity, but we have the right to be different in our plurality and our way of being."¹⁴⁷

Landmark case. In *Sunil Babu Pant v. Nepal Government*,¹⁴⁸ the Constitutional Court of Nepal decided that people who do not identify as either male or female should not be compelled to choose one gender or the other in order to obtain a citizenship certificate; rather, the government must refrain from asking Nepalese people to choose a gender: "One segment of the Nepali citizens is being deprived of the ability to exercise their human rights on the basis of sexual orientation and gender identity. Further, government officials are denying the issuance of citizenship documents as the petitioners are unwilling to identify as merely male or female, when that is not in fact their gender identity. Police agencies are reluctant to handle the discrimination claims brought forth by citizens identifying as the third gender. The UN has reported similar instances of offensive behavior in various public places as perpetrators walk free and are not subject to punishment. All these practices act against the self-esteem of a person and the right to life as well as right to live with dignity."¹⁴⁹ The court directed the government to "make necessary arrangements towards making appropriate law or amending existing law for ensuring the legal provisions which allow the people of different gender identity and sexual orientation in enjoying their rights as other people without any discrimination following the completion of necessary study in this regard."¹⁵⁰ Since then, Nepal has taken such steps. In accordance with the law, the government included the third-gender option on official documents.¹⁵¹

In another decision involving the dignity of transgender people, the Brazilian Supreme Court ruled that transgender prisoners can choose whether to serve their sentence in a women's prison or in a men's prison, but with a separate department to ensure their safety,¹⁵² under the following arguments:

"At the international level, the protection of LGBTI people in general and, in particular, of LGBTI people in incarceration is based on the understanding that gender identity and sexual orientation are essential dimensions of dignity, personality, autonomy, privacy and freedom recognized to every human being by multiple international instruments. In these terms, the protection is articulated using: (i) the right to life, freedom and security; (ii) the prohibition against torture and inhuman treatment and (iii) the prohibition of discriminatory treatment, based on these

¹⁴⁷ S.T.F., RE 670422, Relator: Minister Dias Toffoli, 15.08.2018, Diário da Justiça [D.J.], 130 28.06.2018 (Braz.), EMENTA Direito Constitucional e Civil. Transexual. Identidade de gênero. Direito subjetivo à alteração do nome e da classificação de gênero no assento de nascimento. Possibilidade independentemente de cirurgia de procedimento cirúrgico de redesignação. Princípios da dignidade da pessoa humana, da personalidade, da intimidade, da isonomia, da saúde e da felicidade. Convivência com os princípios da publicidade, da informação pública, da segurança jurídica, da veracidade dos registros públicos e da confiança. Recurso extraordinário provido. Supremo Tribunal Federal STF - RECURSO EXTRAORDINÁRIO : RE 670422 RS - RIO GRANDE DO SUL (jusbrasil.com.br).

¹⁴⁸ *Sunil Babu Pant*, Writ 917 (2064 BS) (2007 AD) (Honorable Justice Mr. Balram, KC and Honorable Justice Pawan Kumar Ojha), *supra* note 9.

¹⁴⁹ *Sunil Babu Pant*, *supra* note 9; *see also* Van Kück v. Germany, No. 35968/97, Judgment, Eur. Ct. H.R. (Dec.6, 2003) [Section III] at 60: (noting that "the very essence of the [European] Convention [on Human Rights] being respect for human dignity and human freedom, protection is given to the right of transexualsto personal development and to physical and moral security.") (citations omitted).

¹⁵¹ Lisa Coutinho, *Recognition Of The Third Gender Category In Nepal, With Special Reference To Sunil Babu Pant V. Nepal Government*, JUDICATEME (Oct. 30, 2020), <https://judicateme.com/recognition-of-the-third-gender-category-in-nepal-with-special-reference-to-sunil-babu-pant-v-nepal-government/>.

¹⁵² S.T.F. HC 152491, Relator: Minister Roberto Barroso, 16.02.2018, Diário da Justiça [D.J.], 30 19.02.2018 (Braz.), http://www.stf.jus.br/arquivo/cms/noticiaNoticiaStf/anexo/ADPF527_liminar_26jun2019.pdf.

norms, states the duty of States to ensure non-discrimination based on gender identity and sexual orientation, in general, as well as to adopt all measures necessary to ensure the physical and psychological integrity of incarcerated LGBTI people.”¹⁵³

C. Mental Development: Education

Mental integrity entitles the individual to freedom of thought, the freedom to believe in what they think is right, and the freedom of self-determination. It also derives from the UDHR’s recognition of humanity’s capacity for “reason and conscience.”¹⁵⁴ Mental development contributes to the full development of the personality and is therefore an inherent part of a person’s sense of dignity and self-worth.¹⁵⁵ To pursue knowledge and individual thought is an inherent and inviolable right of all people. To deny a person these pursuits is to infringe upon their dignity as thinking creatures.

Mental and cognitive dignity is assured by education. This imposes positive obligations on governments to provide effective and education for all children, and to ensure its accessibility. Education also contributes to a better human coexistence, and strengthens mutual cultural respect, diversity, and family integrity, resulting in the appreciation of human dignity, the fraternity and equality of the ideal of rights. This applies equally to girls and boys since all children are born equal in dignity.

Under the Somaliland Constitution, education is a constitutional right of every citizen, and the Government must to provide education to citizens. Some constitutions recognize that education is essential to the protection of human dignity. Mexico’s 1917 constitution is one of the earliest to recognize dignity:

“State education shall [...] Contribute to a better human coexistence, in order to strengthen the appreciation and respect for cultural diversity, human dignity, the integrity of the family, the convictions over society’s general interest, the fraternity and equality of rights ideals, avoiding privileges based on race, religion, group, sex or individual.”¹⁵⁶

Similarly, the Andorran constitution provides: “All persons have the right to education, which shall be oriented towards the dignity and full development of the human personality, thus strengthening the respect for freedom and the fundamental rights.”¹⁵⁷

Elsewhere, courts have implied how education promotes human dignity. As the Supreme Court of Brazil has explained:

“the guarantee of comprehensive education must be seen as a necessary means, indispensable for access or, at least, for the most effective possibility of access to the fruits of social and economic development, therefore, the acquisition of a socio-cultural condition that promotes, in concrete, the great ideal of the dignity of the human person and the realization of each one's life project.”¹⁵⁸

¹⁵³ *Id.*

¹⁵⁴ G.A. Res 217, art. 1, *supra* note 37.

¹⁵⁵ U.N. GAOR, ICESCR, International Covenant on Civil and Political Rights and Optional Protocol to the International Covenant on Civil and Political Rights, 16 Dec. 1966, A/RES/2200, <https://www.refworld.org/docid/3b00f47924.html>.

¹⁵⁶ Constitución Política de los Estados Unidos Mexicanos, CPEUM, Chapter I, Title I, art. 3 II c., Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 10-02-214 (Mex.).

¹⁵⁷ CONSTITUCIÓ D'ANDORRA [CONSTITUTION] 1993, Title II, Chapter III, art. 20 (1) (Andorra).

¹⁵⁸ S.T.F. ADPF 186, Relator: Ricardo Lewandowski, 26.04.2012, See ADPF 186, (Braz.), *supra* note 129.

In other words, education directly contributes to the full development of each individual's personality, and is related to human dignity because the acquisition of knowledge promotes the recognition of the intrinsic value and dignity of each human being. In an important decision on the right of every person to education, the Supreme Court of India applied this in the context of medical education. In *Mohini Jain v. State of Karnataka and Ors*,¹⁵⁹ the court found that India's constitution guarantees a right to education and found that charging a capitation fee as mere consideration for admission was an infringement on this right since it could result in the denial of education to those who could not afford the fee.¹⁶⁰ (The *Mohini Jain* case is considered further in the Chapter on social and economic rights, below).

D. Relational Development: Intimate Relationships and Marriage

People should be free to choose who they want to relate to: to allow others to make those determinations is to objectify persons by forcing them to conform to another's dictates and to diminish their agency over their own identity and their own lives. The harm is the same whether the choice is made by private actors in the community or by public actors acting pursuant to government policy and it is true whether the forced association is for private purposes (such as in personal or intimate relationships) or for public purposes (such as compelled employment or the assignment of individuals to groups based on religious, racial, or other characteristics).

Again, women and men have equal dignity and so the choice of associates and partners must be in the hands of each person, regardless of gender. This is one reason forced sex and forced marriage violate human dignity.

The Supreme Court of India decriminalized same-sex relations between consenting adults in *Navtej Singh Johar & Others v. Union of India*, observing that the individual's choice to engage in acts within their private sphere defines the individualism of a person, and tainting it with criminality would violate the individual's right to dignity.¹⁶¹ By criminalizing the choice of two consenting individuals, the state infringed upon their dignity to choose their own bonds.

The commitment to the inherent and equal human dignity of all means that every person has the right to choose whether to marry and who to marry, and that the government cannot infringe on this nor can it tolerate private acts that infringe on marital self-determination. For these reasons, forced marriage and child marriage are inconsistent with human dignity which requires that women and men have equal agency with respect to marriage.

In recent years, advocates for marriage rights for same-sex couples have relied on the concept of dignity to invalidate laws that prohibit same sex intimate relationships. In countries as diverse as Nepal, South Africa, Canada, Mexico, and elsewhere, including throughout Europe, prohibitions on same sex marriage have been found to violate human dignity. As the South African Constitutional Court explained:

"The sting of past and continuing discrimination against both gays and lesbians was the clear message that it conveyed, namely, that they, whether viewed as individuals or in their same-sex relationships, did not have the inherent dignity and were not worthy of the human respect possessed by and accorded to heterosexuals and their relationships. This discrimination occurred at a deeply intimate level of human existence and relationality. . . . The denial of equal dignity and

¹⁵⁹ *Mohini Jain*, (1992) 3 SCR 658 (India) (Judge Kuldeep Singh), *supra* note 13.

¹⁶⁰ *Id.*

¹⁶¹ *Navtej Singh Johar & Others v. Union of India*, AIR 2018 SC 4321 (India) (Justice Misra Dipak), <https://indiankanoon.org/doc/168671544/>.

worth all too quickly and insidiously degenerated into a denial of humanity and led to inhuman treatment by the rest of society in many other ways.”¹⁶²

The Brazilian Supreme Court also decided similarly on same-sex unions.¹⁶³ The Court ruled that the recognition of the family depends only on each person's free choice, and that the constitution is responsible for promoting the dignity of the petitioners in order to prevent any form of suppression, contempt, and discrimination against minority groups by an established majority.¹⁶⁴

E. Cultural Practices: The Individual in Community

Culture refers more broadly to the set of norms that bind a community, apart from those that are based in religious doctrine. Because it can shape people’s personalities, as well as their outlook, understandings, and expectations, it is intimately connected to personal identity and dignity. The dignity of a person is preserved when the person is free to know, understand, visit, make use of, develop their cultural heritage. In *Sargsyan v. Azerbaijan*, the Grand Chamber considered the harm of violations of cultural dignity. Sargsyan, an Armenian, was unable to return to Nagorno-Karabakh due to the dispute between Armenia and Azerbaijan.¹⁶⁵ Sargsyan claimed damages for his anguish of being unable to return to their property or visit relatives’ graves, and pecuniary damage for the loss of their land.¹⁶⁶ The Court explained that “the applicant’s cultural and religious attachment with his late relatives’ graves in Gulistan may also fall within the notion of “private and family life.” In addition, the Court found a “continuing breach of the applicant’s rights under Article 8 of the Convention,” because of “the impossibility for the applicant to have access to his home and to his relatives’ graves in without the Government taking any measures in order to address his rights or to provide him at least with compensation for the loss of their enjoyment, placed and continues to place a disproportionate burden on him.”¹⁶⁷ Among other resources, the Court relied on General Assembly Resolution 43/131 considering that “the abandonment of the victims of natural disasters and similar emergency situations without humanitarian assistance constitute[d] a threat to human life and an offence to human dignity.”¹⁶⁸

Many cases that protect cultural practices concern the practices of indigenous groups.

Landmark cases. In *Mayagna (Sumo) Awas Tingni vs. Nicaragua*, the Inter-American Court of Human Rights recognized that indigenous people had a right to ownership of the land they occupied under cultural principles even if not recognized in the positive law of Nicaragua. For indigenous communities, “the relationship with the land is not merely a matter of possession and production, but a material and spiritual element that they must fully enjoy, including the

¹⁶² *Minister for Home Affairs v. Fourie* 2006 (1) SA 524 (CC) at para. 50 (S. Afr.) (Albie Sachs, J.), <http://www.saflii.org/za/cases/ZACC/2005/19.html>. See also *Lawrence v. Texas*, 539 U.S. 558 (2003) (Justice Anthony Kennedy). <https://supreme.justia.com/cases/federal/us/539/558/>.

¹⁶³ S.T.F., ADPF 132, Relator: Minister Ayres Britto Moreira Alves 05.05.2013 *Diario da Justiça* [D.J.] 198 10.13.2011, (Braz.), <https://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=628633>.

¹⁶⁴ *Id.*

¹⁶⁵ *Sargsyan v. Azerbaijan*, No. 40167/07, Eur. Ct. H.R. (June 16, 2015), <https://hudoc.echr.coe.int/fre#%22itemid%22:%22001-155662%22>].

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ G.A. Res. A/RES/43/131, Humanitarian Assistance to Victims of Natural Disasters and Similar Emergency Situations (Dec. 8, 1988).

preservation of its cultural legacy and its passing on to future generations.”¹⁶⁹ The promotion of dignity and respect for the culture of a people also concerns the maintenance of the lives of their members: “[T]he relationship that the Community maintains with its lands and resources is protected under other rights contemplated in the American Convention, such as the right to life, honor and dignity, freedom of conscience and religion, freedom of association, protection of the family, and the right of movement and residence.”¹⁷⁰ These values are directly related to how a person (or a people) defines their identity and therefore shapes their dignity.

In *Yakye Axa Indigenous Community v. Paraguay*, the Inter-American Court of Human Rights addressed the state’s failure to ensure the ancestral property rights of the Yakye Axa Indigenous Community and its members and made it impossible for them to own or possess their territory.¹⁷¹ The State deprived the Yakye Axa Community them of the possibility to access their traditional means of subsistence.¹⁷²

The property rights violated in these cases reflect the deprivation the people felt in all parts of their lives and their sense of dignity because protecting a person’s right to have access to their culture and enjoyment of their culture ensures equal treatment of all people in accordance with their human value without making one culture superior to another. Such protections preserve the dignity of a person to exercise autonomy upon knowledge one’s self through their heritage.¹⁷³

III. Discrimination as A Violation of Human Dignity

Discrimination may diminish a person in the eyes of others and may diminish their sense of self-worth. Over the long term, this can affect the development of a person’s identity and may therefore be an affront to human dignity.¹⁷⁴ Social discrimination can diminish a person's ability to choose and to plan the course of their life, and to act as full agents in the full development of their personality and identity. It is not enough to be born with the right to dignity, but rather, is necessary to live with dignity.

A. Discrimination on the Basis of Ethnic Status

Discrimination on the basis of race, ethnicity, and caste is common throughout the world and violates human dignity, regardless of whether it is justified by history, religion, or any other set of beliefs; in all cases it violates the principle that every person is born equal in dignity. Under the Hindu social order, people who are Dalits belong to the lowest stratum of the social hierarchy and have been treated as less worthy of rights and privileges.¹⁷⁵ Caste has extended for centuries throughout the Indian

¹⁶⁹ *Mayagna (Sumo) Awas Tingni v. Nicaragua*, Judgment (Merits, Reparations and Costs) Inter-Am. Ct. H.R. (ser. C) No. 79 (Aug. 31, 2001) (A.A. Cañado Trindade, M. Pacheco Gómez and A. Abreu Burelli), https://www.corteidh.or.cr/docs/casos/articulos/seriec_79_ing.pdf.

¹⁷⁰ *Id.*

¹⁷¹ *Yakye Axa Indigenous Community v. Paraguay*, Judgment (Merits, Reparations and Costs) Inter-Am Ct. H.R. (June 17, 2005), https://www.corteidh.or.cr/docs/casos/articulos/seriec_125_ing.pdf.

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Obergefell v. Hodges*, 576 U.S. 644 (2015).

¹⁷⁵ Since 2016, Nepal’s Constitution ensures the protection of all citizens, the promotion of equality and non-discrimination, social and cultural solidarity, tolerance, and harmony of people who were categorized in the lowest echelon of the caste system. Article 18 Constitution of Nepal (2006) The Constitution also ensures diversity and unity through the recognition of multiethnic, multireligious, multicultural, and regional diversity characteristics, into a procedure to build an egalitarian society, anchored in the principles of proportional inclusion of participation. Human Rights Watch, Caste Discrimination, <https://www.hrw.org/reports/2001/globalcaste/caste0801-03.htm>. The

subcontinent; they were denied not only the right to equality but also the right to live with dignity.¹⁷⁶ India, Nepal, and other countries have made discrimination against these people unconstitutional,¹⁷⁷ but that has not ended practices of discrimination and mindsets committed to the inferiority of some people and the superiority of others. Other forms of discrimination are equally pernicious. In *Rice v. Cayetano*, the United States Supreme Court invalidated a voting qualification restriction on the basis of ancestral ethnicity: "The ancestral inquiry in this case ... demeans a person's dignity and worth to be judged by ancestry instead of by his or her own merit and essential qualities."¹⁷⁸

B. Discrimination Against Women and Girls

While there is a lively debate across the globe about the meaning of gender and sex, discrimination against people who identify as women and girls ("gender discrimination") is rampant in every country. Gender discrimination can take many forms and can include fostering violence against women, segregating women to the home and family, implicitly or explicitly limiting opportunities for education and employment, and using women for sex. All of these objectify people so that they are no longer the architects of their own lives, but objects to be used for the ends of the state, the culture, or certain individuals. Sex discrimination in electoral politics is addressed further below.

Discrimination can happen by law, by force, or by threats and it can happen by people acting on their own behalf or under the authority of the state. Gender segregation precludes or impedes women's ability to participate in society as equal members and thereby violates those aspects of human dignity that require social integration. Denying women opportunities relating to education, employment, and life choices not only diminishes their ability to fully develop their personalities and exert agency over their lives, but it also stigmatizes women and girls and can impair their sense of self-worth – another tear in the fabric of their dignity. Discrimination thus constitutes an objectification of women both on an individual level (where an individual woman is not permitted to act as her own agent) and on a social level (where women as a group are relegated to the spheres that men have defined for them to accomplish some social policy).

Gender discrimination is pervasive even though almost every country in the world (189) has ratified the Convention on the Elimination of All Forms of Discrimination against Women¹⁷⁹ whose preamble recalls that "discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity . . ."¹⁸⁰

Many constitutions as well protect the equal rights of men and women. The Somaliland Constitution says that (1) All citizens of Somaliland shall enjoy equal rights and obligations before the law, and shall not be accorded precedence on grounds of colour, clan, birth, language, gender, property,

caste-dominated social environment not only generates social inequality and injustice, but also, in differentiating among human beings, violates the principle of equal human dignity envisioned in the post-UDHR human rights era.

¹⁷⁶ Human Rights Watch, *Caste Discrimination*, <https://www.hrw.org/reports/2001/globalcaste/caste0801-03.htm>.

¹⁷⁷ Nepal ko Sambidhan [Constitution of Nepal] art. 18.

¹⁷⁸ *Rice v. Cayetano*, 528 U.S. 495 (2000) (Justice Anthony Kennedy) <https://supreme.justia.com/cases/federal/us/528/495/>.

¹⁷⁹ The United States and Palau have signed but not ratified CEDAW, while the Holy See, Niue, Iran, Somalia, Sudan, and Tonga have taken no action.

¹⁸⁰ G.A. Res. 34/180, *supra* note 51.

status, opinion etc.¹⁸¹ As it pertains to gender, Article 36 establishes that men and women in Somaliland are to be absolutely equal, except only for “matters which are specifically ordained in Islamic Sharia.”¹⁸² If Islamic law does not specify that a given instance calls for inequality, then the Somaliland Constitution mandates that men and women are to be treated equally in that instance.

C. Discrimination on the Basis of Dis/Ability.

People who have different abilities than the majority of the population are also often the targets of discrimination in ways that harm their human dignity. Some disabilities are accidents of birth while others develop during life; either way, disability is an unjust basis for legal distinctions because people have no control over their abilities or disabilities. People with disabilities must live and enjoy their lives with honor and dignity just like others in society.¹⁸³ Whether a person is worthy of dignity is not determined by their usefulness to others; all people are worthy of dignity by virtue of their humanity. To discriminate on the basis of disability is to violate dignity by denying that people with disabilities are as worthy of equal treatment as those without. Protecting against such discrimination imposes both negative and positive obligations on the state: “Right to life and dignity of a person with disabilities can only be realized if the State and its institutions take steps to provide reasonable accommodation that will facilitate and ensure that the person with disabilities can enjoy life with honour and dignity like others in the society,”¹⁸⁴ as the High Court of Lahore in Pakistan has said.

The United Nations General Assembly has offered a blueprint for a rights-based approach to mainstreaming persons who are different abled. The UN Convention on the Rights of Persons with Disabilities opens with reaffirms the centrality of universal human dignity: “(h) Recognizing also that discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person. . .”¹⁸⁵ The Convention serves to advance: “(a) Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons”¹⁸⁶ and recognizes that “discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person.”¹⁸⁷

At the national level, some countries have begun to take steps to prevent discrimination against those with physically and mentally disabilities. For example, in *Center for Health, Human Rights and Development v Attorney General* (Uganda 2011), the Ugandan Constitutional Court found that provisions in the penal code that described people with mental disabilities in derogatory terms were unconstitutional, as they infringed on the dignity of the people.¹⁸⁸

¹⁸¹Dastuurka Somaliland [Somaliland Constitution] art. 8, § 1-2. Article 8 contains additional facets: The second lays out the first facet in plainer detail: discrimination on the given grounds will not be tolerated. The third goes even further by creating a national duty to end practices inconsistent with the other two facets. It forces the government to take efforts in correcting programs that deny equality.

¹⁸² Dastuurka Somaliland [Somaliland Constitution] art. 36.

¹⁸³ *Hafiz Junaid Mahmood*, (2017) 2017 PLD 1 (Pak.) (Chief Justice Syed Mansoor Ali Shah), *supra* note 10.

¹⁸⁴ *Id.*

¹⁸⁵ G.A. Res. A/Res/61/106, Convention on the Rights of Persons with Disabilities, preamble (h), (Dec. 13, 2006), <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>.

¹⁸⁶ *Id.* at art. 3.

¹⁸⁷ *Id.* at preamble (h).

¹⁸⁸ *Center for Health, Human Rights and Development v Attorney General*, Petition No. 16 of 2011 [2012] UGSC 48 (June 5, 2012) (Uganda), <https://ulii.org/ug/judgment/supreme-court->

Justice Mansoor Ali Shah has taken an important stance on discrimination against people with disabilities in *Hafiz Junaid Mahmood v. Government of Punjab*.¹⁸⁹ The petitioner had been disqualified from applying for a position due to a permanent visual impairment despite being otherwise highly qualified. The Court emphasized that such discrimination violates the essential premises of human dignity:

“Fundamental rights are the heart and soul of a living Constitution and must at all times be ready to embrace and protect the sensibilities and sensitivities of the people. They must be progressively and purposively interpreted to advance the frontiers of freedom, individual autonomy and free choice . . . In the present case, the department should have considered the possibility of providing necessary technical and human support to ensure that the petitioner was able to perform as an educator and was not discriminated on the ground of disability. The Recruitment Policy is devoid of any such sentiment.”¹⁹⁰

Of equal importance, in the case of *Barrister Asfandiyar Khan v. Government of Punjab* judged by the Lahore High Court in Pakistan, the Chief Justice Syed Mansoor Ali Shah ruled that the use of the words “disabled,” “physically handicapped” and “mentally retarded” violated the dignity of people with disabilities, and therefore should be excluded from the statutes:

“The use of the terms or words like “disabled,” “physically handicapped” and “mentally retarded” characterize and label a person on the basis of an impairment, which negates reasonable accommodation as they deny persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms . . .”¹⁹¹

In this way, the court considered that the use of these words promoted the discrimination of people with disabilities by creating labels and characterizations that seriously offend constitutional guarantees, such as the rights to life and the right to human dignity, of people with disabilities, who should be treated in a just like all other human beings.

Discrimination against individuals for reasons over which they have no control violates their human dignity because it limits their choices, demeans them in the eyes of others and may weaken their sense of self-worth, isolates them from the broader community and may have implications for their ability to define their life course and assure the material conditions for them to live with dignity and ensure dignity for their families. Not all legal distinctions do violate human dignity, but those that do are unjustified and should be rendered invalid.

IV. Conclusion

Human dignity is the kernel of worth of every human being.¹⁹² It is present in all of the facets of a human being: their spiritual dimension regarding matters of conscience, their unique physical and biological characteristics, their capacity of intellectual and reflective reasoning, and their needs to relate to others in intimate relationships as well as in broader social contexts. All of these reinforce the

uganda/2012/48. See also *Barrister Asfandiyar Khan v. Government of Punjab*, (2018) 2018 PLD 300 (Lahore High Court) (Pak.), <https://sys.lhc.gov.pk/appjudgments/2018LHC16.pdf>

¹⁸⁹ *Hafiz Junaid Mahmood*, (2017) 2017 PLD 1 (Pak.), *supra* note 10.

¹⁹⁰ *Id.*

¹⁹¹ *Barrister Asfandiyar Khan v. Government of Punjab*, (2018) 2018 PLD 300 (Lahore High Court) (Pak.), *supra* note 188.

¹⁹² MICHAEL ROSEN, *DIGNITY: ITS HISTORY AND MEANING* (Harvard University Press 2018).

commitment to dignity as protecting the full development of the personality and as allowing agency over decisions that are intrinsic to humankind.

LIVING WITH DIGNITY



Under international law and the constitutional law of many countries, the right to live is the right to live with dignity. While no country denotes precisely what is entailed in a life with dignity, it tends to include both the essential rights that are needed to satisfy biological needs including food, water, health, and a healthy environment and those needs that are essential to living in society with others, such as shelter, education, means of communication, and sufficient income or resources to avoid social isolation. This chapter describes how some of these rights have been enforced by courts help protect human dignity.¹⁹³

¹⁹³ This section is based on reports drafted by Candice Nailli and Kacey Johnson.

I. Introduction

Socio-economic rights typically include rights to housing or shelter, to water and food, to decent work, to healthcare, to education, and to language and culture, and, increasingly, to a healthy environment.¹⁹⁴ These are the essential rights that a person needs to enjoy in order to live a life with dignity. Many of these rights were originally denoted in constitutions from the early 20th century¹⁹⁵ and the International Covenant on Economic, Social, and Cultural Rights¹⁹⁶ while others, including environmental rights, have been recognized since then. Social, economic, cultural and environmental rights (SECE rights) are now protected in international and regional human rights law, as well as in the constitutions of most countries of the world.

SECE rights are connected to and interdependent with each other and with civil and political rights, but also have some distinctive qualities. These rights reinforce one another and some rights strengthen the enjoyment of other rights, like food and education, or health and a healthy environment. The principle of indivisibility of human rights suggests that there is no hierarchy between the rights of the first and second generations and that they must be understood and applied in conjunction with one another.¹⁹⁷ Such indivisibility implies that different human rights are intrinsically inter-connected and cannot be viewed in isolation from each other: the implementation of one human right can impact the enjoyment of others. Moreover, SECE rights and civil and political rights mutually reinforce each other: civil and political rights are typically used to advance people's ability to live with dignity, and living with dignity contributes to the social integration necessary for people to exercise their political rights. All rights derive from and are aimed at advancing human dignity, in a virtuous circle.

Like civil and political rights, SECE rights are enforceable in courts. However, they have certain distinctive qualities that require a delicate balance between the judicial authority seeking to protect such rights and political authorities who control policy and fiscal resources. The key differences between the two sets of rights are as follows:

- Whereas civil and political rights are relevant for people across the socio-economic spectrum, SECE rights tend to be more relevant for those with greater vulnerabilities and fewer resources because those with resources are usually able to provide for themselves. Thus, claimants of SECE rights are often those who lack resources.¹⁹⁸
- Because these rights are essential to the protection and promotion of human dignity, states are positively charged with protecting them,¹⁹⁹ and not just refraining from violating them. Affirmative of positive obligations are especially important for people with vulnerabilities who are less likely to be able to protect themselves but they pose significant challenges to implementation.

¹⁹⁴ May & Daly, *Why Dignity Rights Matter*, 19 EUROPEAN HUMAN RIGHTS L. REV. 129 (2019).

¹⁹⁵ The earliest constitutional invocations of dignity associated it with education (Mexico) and welfare (Finland). Germany's Weimar Constitution of 1919 insisted that "The organization of economic life must conform to the principles of justice to the end that all may be guaranteed a decent standard of living" or *Menschenwürdig*, often translated as "dignity" (Constitution of the German Reich [Weimar Constitution], art. 151 (1919)).

¹⁹⁶ ICESCR, 16 Dec. 1966, 993 U.N.T.S. 3.

¹⁹⁷ Whelan, *supra* note 32.

¹⁹⁸ ERIN DALY & JAMES R. MAY, "*Indivisibility of Human and Environmental Rights*" & "*New Dimensions in Human Rights and the Environment*," in *ENCYCLOPEDIA OF HUMAN RIGHTS AND THE ENVIRONMENT: LEGALITY, INDIVISIBILITY, DIGNITY AND GEOGRAPHY CURRENT GLOBAL CHALLENGES* (James R. May & Erin Daly, eds., Edward Elgar Publ'g 2019).

¹⁹⁹ Erin Daly and James R. May, "*The Indivisibility of Human Dignity and Sustainability*," in *THE CAMBRIDGE HANDBOOK ON ENVIRONMENTAL JUSTICE AND SUSTAINABLE DEVELOPMENT* (Sumudu Atapattu, Carmen G. Gonzalez & Sara Seck, eds., Cambridge University Press 2021).

- SECE rights are typically not immediately enforceable and their enforcement requires action by the political branches that may be costly and have long-term impacts. Because courts are limited in their ability to provide remedies in a reasonable time, courts apply a framework of “progressive realization,” to draw the line between political policy-making and judicial power.²⁰⁰ Under progressive realization, courts may order states to take immediate steps to guarantee SECE rights. Article 2(1) of the ICESCR requires States to “take steps to the maximum of their available resources” and cooperate with countries that do not have the means to guarantee such rights.²⁰¹ State’s obligations are sometimes put under three headings: to respect, to protect, and to fulfill economic, social, and cultural rights.²⁰²

After surveying the relevant sources of law that protect SECE rights, this chapter discusses how courts interpret the right to live with dignity in key areas: culture, education, health care, housing, and the environment. Enjoyment of these rights allows a person to have their worth recognized and respected, to fully develop their personalities and take agency in charting their own life course, and to participate in community life with others. Violations of such rights can be degrading and humiliating, and can contribute to social isolation and to the diminishment of the personality.

II. Applicable International, Regional, and Constitutional Law

International law. The International Covenant on Economic, Social, and Cultural Rights recognizes that rights “derive from the inherent dignity of the human person.”²⁰³ The rights denoted in the Covenant include, among other things “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions,”²⁰⁴ the right to favorable conditions in work,²⁰⁵ the right to the “highest attainable standard of

²⁰⁰ ICESCR, art. 2, 16 Dec. 1966, 993 U.N.T.S. 3, art. 2. General Comment 3, ¶ 9: “The concept of progressive realization constitutes a recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. In this sense the obligation differs significantly from that contained in article 2 of the International Covenant on Civil and Political Rights which embodies an immediate obligation to respect and ensure all of the relevant rights...[T]he phrase must be read in the light of the overall objective, indeed the *raison d’être*, of the Covenant which is to establish clear obligations for States parties in respect of the full realization of the rights in question. ... Moreover, any deliberately retrogressive measures in that regard would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources.” See also María Josefa García-Maestro García, *Human Dignity and Social Rights*, ARS IURIS SALMANTICENSIS, Vol 8. 99-114 Junio 2020 (9 March 2020).

²⁰¹ ICESCR, art. 2 (1) : “Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.” See also Office of the United Nations High Commissioner for Human Rights, *Frequently Asked Questions on Economic, Social and Cultural Rights*, Factsheet No. 33 at 13 (December 2008).

²⁰² Social and Economic Rights Action Center & the Center for Economic and Social Rights v. Nigeria, Communication No. 155/96 [Afr. Comm’n H.P.R.] (May 27, 2002) (establishing a duty to respect, protect, promote and fulfill human rights protected in the Charter); GC 36 (2018); see also DALY & MAY, DIGNITY CASEBOOK, ch. 9.

²⁰³ ICESCR, preamble, 16 Dec. 1966, 993 U.N.T.S. 3. At the same time, the Constitution of Kenya says, “The purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings.” CONSTITUTION art. 19(2) (2010) (Kenya).

²⁰⁴ ICESCR, art. 11(1), 16 Dec. 1966, 993 U.N.T.S. 3.

²⁰⁵ *Id.* at art. 6-8.

physical and mental health,”²⁰⁶ “the right of everyone to education ... directed to the full development of the human personality and the sense of its dignity” that strengthens “the respect for human rights and fundamental freedoms.”²⁰⁷ Along with the more recently emerging rights to a healthy environment, this web of SECE rights reflects the varying needs that human beings have in order to fully experience human dignity.

By way of example Table 4 shows some of the relevant treaties that Nepal, Pakistan, and Somalia have ratified concerning SECE rights.

Table 4 Selected Treaty Ratifications

Treaty	Nepal	Pakistan	Somalia
International Covenant on Economic, Social and Cultural Rights (1977)	Yes	Yes	Yes
Optional Protocol to the ICESCR (2008)	No	No	Yes
International Convention on the elimination of all forms of racial discrimination (1965)	Yes	Yes	Yes
Convention on the Elimination of all forms of Discriminations against Women	No	Yes	No
Convention on the Rights of the Child	No	Yes	Yes
International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990)	No	No	No
Convention on the Rights of Persons with Disabilities (2006)	No	Yes	Yes

Regional law. At present, three main regions of the world benefit from developed and functioning systems of protection for SECE rights: Europe, the Americas, and Africa.

In Europe, the Charter of Fundamental Rights of the European Union begins, in Title I, Article I, with a clear assertion of the primacy of the protection of human dignity: “Human dignity is inviolable. It must be respected and protected”;²⁰⁸ this provision precedes protection for the right to life, which is guaranteed in Article 2. The Charter’s 50 substantive articles protect the full panoply of civil and political rights as well as SECE rights including the right to education, to a healthy environment, to health care, to social security, and more. The Court of Justice of the European Union²⁰⁹ and the European Court of Human Rights²¹⁰ have both emphasized that the protection of human dignity is the essence of the European human rights system.

²⁰⁶ *Id.* at art. 12.

²⁰⁷ *Id.* at art. 13.

²⁰⁸ Charter of Fundamental Rights of the European Union, 2012/C 326/02 of Oct. 26, 2012, Title I, art. 1.

²⁰⁹ See e.g. Zubair Haqbin v. Federaal agentschap voor de opvang van asielzoekers, [2019] CJEU C233/18.

²¹⁰ Goodwin v. United Kingdom, App. No. 28957/95, ¶ 90 Eur. Ct. H.R. (July 11, 2002) (“the very essence of the Convention is respect for human dignity and human freedom.”), <http://hudoc.echr.coe.int/eng?i=001-60596>.

In the Americas, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (“San Salvador Protocol”) is the principal source of SECE rights, though its provisions are incorporated into the American Convention on Human Rights.²¹¹ The San Salvador Protocol includes fundamental rights such as the right to social security, education, work, health, healthy environment, and culture.²¹² Both the Inter-American Commission on Human Rights and the Inter-American Court on Human Rights have issued many decisions affirming that human dignity is the underlying value of the Inter-American Human Rights System.²¹³

The African Charter on Human and Peoples’ Rights includes SECE rights as well, focusing on the interconnection and indivisibility of the two main categories of human rights. The Charter first identifies dignity as an objective necessary for the functioning and success of the African Union.²¹⁴ Dignity is then established as an element for which the African peoples are struggling to access.²¹⁵ The Charter recognizes a broad array of SECE rights including the right to health, education, work, development, and it implicitly recognizes rights to housing and food as part of the right to life.²¹⁶ It additionally focuses on collective rights (right to self-determination, equality between peoples) in consideration of the significant numbers of minority and marginalized groups on the continent.²¹⁷ The African Court on Human and People’s Rights has recognized such rights as indigenous communities’ right to their ancestral lands.²¹⁸

Domestic constitutional law. Social and economic rights are protected in most of the world’s constitutions as well. In Pakistan, for instance, the right to work is legally protected by several provisions of the Constitution.²¹⁹ The rights to adequate living conditions, including inter alia the right to food and housing, are protected under the Constitution.²²⁰ Provisions on the protection of the right to education are promising for Pakistan: “The State shall provide free and compulsory education to all children of age

²¹¹ Inter-Am. Comm’n on Hum. Rts., Am. Convention on Hum. Rts., art. 26.

²¹² Additional Protocol to the Am. Convention on Hum. Rts. In the Area of Econ. Soc. & Cultural Rts "Protocol of San Salvador," art. 6, 9, 10, 11, 13, 14.

²¹³ JUAN MANUEL RIVERO GODOY, “*Vida Digna* and environmental human rights in the Inter-American System,” in ENCYCLOPEDIA OF HUMAN RIGHTS AND THE ENVIRONMENT: LEGALITY, INDIVISIBILITY, DIGNITY, AND GEOGRAPHY, at 472-482 (James R. May & Erin Daly, eds., Edward Elgar Publ’g 2019).

²¹⁴ African (Banjul) Charter on Human and People’s Rights, preamble (1986): “Considering the Charter of the Organisation of African Unity, which stipulates that “freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples.”

²¹⁵ Preamble of the African Charter on Human and People’s Rights (1986): “Conscious of their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo-colonialism, apartheid, zionism and to dismantle aggressive foreign military bases and all forms of discrimination, language, religion or political opinions.”

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ African Comm’n on Hum. Rts. and People’s Rts. v. Republic of Kenya (Ogiek case). App. No. 006/2012 [Afr. Comm’n H.P.R.] (May 16, 2017), <https://web.archive.org/web/20200726023847/https://en.african-court.org/images/Cases/Judgment/Application%20006-2012%20-%20African%20Commission%20on%20Human%20and%20Peoples%e2%80%99%20Rights%20v.%20the%20Republic%20of%20Kenya..pdf>.

²¹⁹ The State of Economic, Social and Cultural Rights in Pakistan: A Joint Civil Society Shadow Report on Economic Social and Cultural Rights, Coalition for alternate report on the International Covenant on Economic Social and Cultural Rights, Moniza Inam (April 2017).

²²⁰ PAKISTAN CONST. art. 38(d): “The State shall provide basic necessities of life, such as food, clothing, housing, education, and medical relief, for all citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment.”

five to sixteen years in such a manner as may be determined by law.”²²¹ The right to culture is also constitutionally protected. In addition, courts have protected environmental rights under the right to life and the right to dignity.²²²

In Nepal, the right to education is constitutionally protected,²²³ and reinforced within the Compulsory and Free Education Act of 2018, which affirms in its preamble that “the right to education is an inalienable human right enhancing human dignity with the help of knowledge, wisdom and understanding”.²²⁴ The Constitution additionally provides a protection of the right to culture and language.²²⁵ Work-related rights²²⁶ as well as rights to food and housing²²⁷ are constitutionally protected, as are health rights, ensuring the intervention of the State in developing access to health services.²²⁸

²²¹PAKISTAN CONST. art. 25A.

²²² PAKISTAN CONST. art. 14(1): “The dignity of man and, subject to law, the privacy of home, shall be inviolable”. See .e.g D. G. Khan Cement Company Ltd. v. Gov’t of Punjab, (2021) C.P.1290-L/2019 (Pak.) (Syed Mansoor Ali Shah, J.), http://climatecasechart.com/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2021/20210415_13410_judgment.pdf.

²²³ Nepal ko Sambidhan [Constitution of Nepal] art. 31., *Right relating to education*:

- (1) Every citizen shall have the right of access to basic education.
- (2) Every citizen shall have the right to get compulsory and free education up to the basic level and free education up to the secondary level from the State.
- (3) The citizens with disabilities and the economically indigent citizens shall have the right to get free higher education in accordance with law.
- (4) The visually impaired citizens shall have the right to get free education through brail script and the citizens with hearing or speaking impairment, to get free education through sign language, in accordance with law.
- (5) Every Nepalese community residing in Nepal shall have the right to get education in its mother tongue and, for that purpose, to open and operate schools and educational institutes, in accordance with law.

²²⁴ Jivesh Jha, *Right to Free and Compulsory Education in Nepal: A Study with Special Reference to India’s Right of Children to Free and Compulsory Education Act, 11(1)* DEHRADUN LAW REVIEW 41, 45 (2009).

²²⁵ Nepal ko Sambidhan [Constitution of Nepal] art. 32., *Right to language and culture*:

- (1) Every person and community shall have the right to use their languages.
- (2) Every person and community shall have the right to participate in the cultural life of their communities.
- (3) Every Nepalese community residing in Nepal shall have the right to preserve and promote its language, script, culture, cultural civilization and heritage.

²²⁶Nepal ko Sambidhan [Constitution of Nepal] art. 33., *Right to employment*:

- (1) Every citizen shall have the right to employment. The terms and conditions of employment, and unemployment benefit shall be as provided for in the Federal law.
- (2) Every citizen shall have the right to choose employment.

Nepal ko Sambidhan [Constitution of Nepal] art. 34., *Right to labour*:

- (1) Every labourer shall have the right to practice appropriate labour.
- (2) Every labourer shall have the right to appropriate remuneration, facilities and contributory social security.
- (3) Every labourer shall have the right to form and join trade unions and to engage in collective bargaining, in accordance with law.

²²⁷ Nepal ko Sambidhan [Constitution of Nepal] art. 36., *Right to food*:

- (1) Every citizen shall have the right relating to food.
- (2) Every citizen shall have the right to be safe from the state of being in danger of life from the scarcity of food.
- (3) Every citizen shall have the right to food sovereignty in accordance with law.

Nepal ko Sambidhan [Constitution of Nepal] art. 37., *Right to housing*:

- (1) Every citizen shall have the right to an appropriate housing.
- (2) No citizen shall be evicted from the residence owned by him or her nor shall his or her residence be infringed except in accordance with law.

²²⁸ Nepal ko Sambidhan [Constitution of Nepal] art. 35., *Right relating to health*:

Somaliland, a self-governing entity that is not recognized by the international community, has bound itself to follow international law,²²⁹ declaring that it “shall act in conformity with the United Nations Charter, International Law, and shall respect the Universal Declaration of Human Rights,”²³⁰ thus binding itself to the protection of human dignity. Somaliland has established a national human rights commission (SLNHRC) aiming at enhancing the development of human rights and addressing violations of such fundamental rights²³¹ by advancing three fundamental values: dignity, equality, and the advancement of human rights and freedoms.²³² The protection of fundamental rights in the territory relies primarily on the Constitution, guarantees the right to education, the right to health, the protection and safeguard of the environment, the right to work, the protection of culture, and the right to solidarity in the State.²³³ The Constitution explicitly guarantees equal “dignity” in Articles 24 (The Right to Life, Security of the Person, Respect for Reputation and Crimes against Human Rights) and 35 (The Rights of Women).²³⁴ The right to education, constitutionally guaranteed within Article 15,²³⁵ has been buttressed by two legal documents: the National Education Law of Somaliland (2018), and the Private Education Regulations (2018).²³⁶ In 2005, the Ministry of Education declared that the right to education was fundamental to labor rights, and the maintenance of respect dignity in work areas.²³⁷ The Constitution

(1) Every citizen shall have the right to free basic health services from the State, and no one shall be deprived of emergency health services.

(2) Every person shall have the right to get information about his or her medical treatment.

(3) Every citizen shall have equal access to health services.

(4) Every citizen shall have the right of access to clean drinking water and sanitation.

²²⁹ Dastuurka Somaliland [Somaliland Constitution] art. 10(2).

²³⁰ *Id.*

²³¹ Republic of Somaliland National Human Rights Commission Law, Law No. 39/2010 (December 26, 2010).

²³² Republic of Somaliland, National Human Rights Commission, *Strategic Plan: 2009-2011*, at 8.

²³³ Dastuurka Somaliland [Somaliland Constitution] art. 15-20.

²³⁴ *Id.* art. 24, 35.

²³⁵ *Id.* art. 15., *Education, Youth and Sports*:

1. The state shall pay particular attention to the advancement, extension and dissemination of knowledge and education as it recognises that education is the most appropriate investment that can play a major role in political, economic and social development. 2. Education is in the public interest, and is rooted in the experience and the special environment of the Somaliland society. 3. The learning of and training in the Islamic religion is a fundamental path and shall be compulsory at all levels of education. At the same time, the promotion of Koranic schools is the responsibility of the state. 4. Citizens and resident foreigners may open schools and educational or training projects of all levels in accordance with the Education Law. 5. The state shall accord a first priority to primary education, and shall endeavour to spread primary education to the regions and the districts. 6. The eradication of illiteracy and the (provision) of adult education is a national obligation, and the efforts of the public and the state shall be combined to fulfil this obligation. 7. The national policy is that primary education shall be free. 8. In order to ensure a healthy physical and mental growth of the young, and to improve their well being and maturity, the state shall give special attention to the promotion and encouragement of physical education and sports which will be recognised as one of the basic subjects in the educational curriculum of both state and other schools.”

²³⁶ National Education Law of Somaliland, Law No. 77/2018 (Aug. 25, 2018). Available in Somali:

http://www.somalilandlaw.com/xeerka_waxbarashada.pdf; [Somaliland Private Education Regulations](#),

[MoE/01/186/18 \(Nov. 30, 2018\)](#). Available in

Somali: http://www.somalilandlaw.com/xearnidaamiyaha_waxbarashada_gaarka_ah_2018.pdf.

²³⁷ Hassan Ahmed & Simon Bradford, *Constructing Education as Human Capital in a Transitional Society: a case study of Somaliland’s Educational Reconstruction*, 6 No. 2 RESEARCH IN COMPARATIVE AND INTERNATIONAL EDUCATION 236 (2011).

also protects the right to health²³⁸ as well as the modest character of the culture of the Somaliland society, which it protects alongside knowledge and literature.²³⁹

III. The Role of Dignity in the Interdependence of Fundamental SECE Rights

A. Cultural Rights

Protecting cultural rights ensures that a person can know, understand, visit, make use of, or develop cultural heritage and cultural expressions. These all contribute to a person's sense of their own self-worth as well as to their ability to develop their full personhood. In particular, cultural associations contribute to a person's sense of belonging to a community and to the enrichment of their lives as partaking of a culture. This value is protected under the law in the Universal Declaration of Human Rights which provides that "everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits."²⁴⁰ Because a person's connection to their culture is so intimately connected to their identity, court decisions relating to cultural rights are discussed in the Chapter on Identity.

B. Living With Dignity: Social and Economic Rights

In this section, we explore cases that address social and economic rights and how they relate to the advancement of human dignity. Social and economic rights express the relationship between people and their government: some states make significant resources available to people, while others leave the satisfaction of most human needs to the private sector. Among the most important decisions a state makes about how it provides for people are in the areas of education, healthcare, the material conditions of living in poverty, and the quality of the natural environment.

Landmark Case. The Supreme Court of India has consistently reaffirmed that the right to life protected in Article 21 in the Constitution of India protects a person's ability to live a dignified life and have their worth recognized.²⁴¹ Moreover, Justices N. Bhagwati and Syed Murtaza Fazalali were among the first judges in the world to recognize, in 1981, the important links between the ability of people to live with human dignity and the material conditions in which they lived.²⁴² In

²³⁸ Dastuurka Somaliland [Somaliland Constitution] art. 17.,: *Health*

1. In order to fulfil a policy of promoting public health, the state shall have the duty to meet the country's needs for equipment to combat communicable diseases, the provision of free medicine, and the care of the public welfare.

2. The state shall be responsible for the promotion and the extension of healthcare and private health centres.

²³⁹ Dastuurka Somaliland [Somaliland Constitution] art. 16.,: *Promotion of Knowledge, Literature, Arts and Culture*

1. The state shall promote knowledge and literature, and shall encourage creativity and research.

2. The law shall determine the rights to authoring, creating and inventing.

3. The state shall promote the Arts and the modest culture of the society whilst at the same time benefiting from the knowledge of other world societies. Literature, the arts, and indigenous sports shall be specially encouraged whilst Islamic behaviour is observed.

4. The state shall promote the Arts and the modest culture of the society, and shall eradicate customs which damage religion, development, culture and the health of the society. The production of alcohol and the cultivation or the sale or use of intoxicants (drugs) in the territory of Somaliland are prohibited.

²⁴⁰ G.A. Res. 217, art. 27, *supra* note 37

²⁴¹ *Francis Coralie Mullin*, (1981) 2 S.C.R. 516 (India) (N. Bhagwati, J.), *supra* note 34.

²⁴² *Id.*

Francis Coralie Mullin v. Administrator, Union of India, the Supreme Court announced that the right to life is not limited “only to protection of limb or faculty” but that it protects “something more”: it “includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expression oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings.”²⁴³ However, recognizing the limited resources of a nation like India, the Court added: “Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self.”²⁴⁴

A few years later, the Court elaborated on the idea of a life with dignity: In *Bandhua Mukti Morcha v. Union of India Ors.*,²⁴⁵ the Court said:

"This right to live with human dignity enshrined in Article 21 ... must include protection of the health and strength of 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 essential."²⁴⁶

In later cases, the Court would apply these principles to a range of social and economic rights including the right to education (see below).

1. Health Care

A violation of a person’s right to health deprives them of their right to live with dignity. Like education, health is a right that undergirds other rights: without health, one cannot enjoy other rights including rights relating to work, education, culture, and so on. At the same time, some rights, including rights to nutrition, safe water, and a healthy environment all contribute to the protection of the right to health.

Although health is undeniably among the most important human rights, the cost of providing health care and the myriad complex decisions that must be made relating to distribution of health care resources make it particularly difficult to enforce. The Constitutional Court of South Africa decided one case about access to health care early in its post-apartheid history: in *Soobramoney v. Minister of Health*,²⁴⁷ the question before the court was whether the right to health care or the right to life of Thiagraj Soobramoney had been violated when a hospital refused to provide the dialysis treatment he

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Bandhua Mukti Morcha v. Union of India & Others*, (1984) 2 SCR 67 (India), <https://indiankanoon.org/doc/595099/>.

²⁴⁶ *Id.*

²⁴⁷ *Soobramoney v. Minister of Health*, 1998 (1) SA 765 (CC) (S. Afr.) (The judgment of the Court was delivered by Chaskalson P and was concurred in by the other members of the Court. Madala J and Sachs J wrote separate concurring judgments), *supra* note 12.

needed to survive.²⁴⁸ The Court held that although everyone has an immediately enforceable right to not be refused emergency medical treatment under Section 27 of the Constitution,²⁴⁹ treatment for chronic conditions had to be left to the judgment of policy makers and health care professionals, subject to limited judicial oversight, given the limited resources available and the difficult decisions that would need to be made regarding competing health care needs. The Court distinguished between the two types of health care, against the backdrop of South Africa's socio-economic and racist history:

“We live in a society in which there are great disparities in wealth. Millions of people are living in deplorable conditions and in great poverty. There is a high level of unemployment, inadequate social security, and many do not have access to clean water or to adequate health services. These conditions already existed when the Constitution was adopted and a commitment to address them, and to transform our society into one in which there will be human dignity, freedom and equality, lies at the heart of our new constitutional order. For as long as these conditions continue to exist that aspiration will have a hollow ring.

The Constitution is forward-looking and guarantees to every citizen fundamental rights in such a manner that the ordinary person-in-the-street, who is aware of these guarantees, immediately claims them without further ado – and assumes that every right so guaranteed is available to him or her on demand. Some rights in the Constitution are the ideal and something to be strived for. They amount to a promise, in some cases, and an indication of what a democratic society aiming to salvage lost dignity, freedom and equality should embark upon. They are values which the Constitution seeks to provide, nurture and protect for a future South Africa.”²⁵⁰

The decision leaves people without resources at the mercy of hospital policies for their health care needs, except in emergencies. Thiagraj Soobramoney died a few days after the judgment was rendered.

Landmark case. The Supreme Court of Nepal in *Lakshmi v. Government of Nepal* also considered the implications on human dignity for inequitable access to health care services.²⁵¹ Lakshmi was a mother of five who gave birth for the sixth time because she lacked the resources to have an abortion. The Court held that her right guaranteed by law was violated when abortion services were limited to individuals who could afford the fee, which in Lakshmi's case was one-half her monthly salary.²⁵² The Court explained:

“The right to freedom, including the right to live with dignity, and the right to personal liberty are some of women's most important human rights. The right to health, reproductive health, family planning, to marry freely or found a family, to have or not to have children, if having children to decide how many and when, the right to decide to give birth and to space births, within that the right to abortion in

²⁴⁸ *Id.*

²⁴⁹ S. AFR. CONST., 1996, Chapter 2, 27: “1. Everyone has the right to have access to (a) health care services, including reproductive health care; (b) sufficient food and water; and (c) social security, including, if they are unable to support themselves and their dependents, appropriate social assistance. 2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights. 3. No one may be refused emergency medical treatment.” The Court held that s. 27 (3) was immediately enforceable but that s. 27 (1) was subject to progressive realization pursuant to s. 27 (2).

²⁵⁰ *Soobramoney*, 1998 (1) SA 765 (CC) at para. 8, 42 (S. Afr.), *supra* note 12.

²⁵¹ *Lakshmi (Dhikta) v. Government of Nepal*, Writ. No. WO-0757, 2067 (2007) (Supreme Court of Nepal) (Justice Kalyan Shrestha & Justice Rajendra Prasad Koirala), http://escrj.southasianrights.org/front/view_document/49.

²⁵² *Id.*

accordance with the law, the right to privacy, the right to non-discrimination, the right to freedom from cruel, inhuman and degrading treatment or punishment, the right to freedom from sexual violence, the right to benefit from scientific progress and research are all related issues.

Among these, as far as reproductive rights are concerned, the right to self-determination is seen to hold a special place. Within this figures the right to plan one's family, which includes the right to information about and access to methods of family planning and the right to use such methods to prevent pregnancy; women are also considered to have the right to make decisions relating to reproduction free from interference. This means that a woman is the master of her own body and whether or not to have sexual relations, to give birth to a child or not to give birth, and how to use her body are matters in which a woman has the final say. Traditionally in a marriage it is not unusual for a woman to make decisions with the consent of her husband or on the basis of mutual understanding but it is very important for a woman to have the final say about how her body shall be used and whether or not she will have children.²⁵³

In Nepal, abortion services were limited to those who lived near the cities where the services were provided, and most rural women did not know that abortion was legal.²⁵⁴ Nepal's Supreme Court stated the government must consider the situation from the point of view of distribution and distribution of services must be funded to cover the cost of abortion for poor and rural women.²⁵⁵ The government was required to invest enough resources to meet the demand for abortion services, and educate the public and health service providers about the existing abortion law. The legal basis to ensure accessibility and affordability of health care services that are recognized as fundamental rights is that it is the primary obligation of the state to prioritize the implementation of such rights.²⁵⁶ The court ordered Nepal to adopt a comprehensive abortion law establishing a national fund for abortion costs, ensuring stronger safeguards for women's privacy, promoting access to safe services for all women, and widely disseminating information about safe abortion services to health service providers and the public.²⁵⁷

This case illustrates the remedial powers of courts when they understand how the specific rights at issue are interconnected in a web of rights that implicate the ability of a person to live their life with dignity.

2. Education.

Education is necessary for human dignity to enable the human personality to flourish and to ensure that people can live in the broadest community with others. Moreover, education is necessary because to sustain a dignified life, a human being requires fulfilment of all the enabling rights, which are enhanced by education.²⁵⁸ Article 26 of the Universal Declaration of Human Rights provides that everyone has the right to education; education shall be free, at least in elementary and fundamental stages.²⁵⁹ Where education is protected under international or constitutional law, the ability to obtain an education must not only be available to citizens who can afford one: high fees, including capitation fees, can make

²⁵³ *Id.* at 6.

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ G.A. Res. 217, art. 26, *supra* note 37.

the constitutional right to an education unattainable to those who fall lower on the economic scale and thus infringe on a person's ability to live a dignified life.

Landmark case. The Indian Supreme Court has held that the constitutionally protected right to life is the right to live with dignity and in *Mohini Jain v. State of Karnataka*, the Court held that the right to live with dignity includes the right to an education. Against the backdrop of an illiteracy rate of more than 70 percent, the Court explained, "The dignity of man is inviolable. It is the duty of the State to respect and protect the same. It is primarily the education which brings forth the dignity of a man. An individual cannot be assured of human dignity unless his personality is developed and the only way to do that is to educate him."²⁶⁰

The Court then linked the right to education to the right to life, which is justiciable in the Indian Constitution. "'Right to life' is the compendious expression for all those rights which the Courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The State Government is under an obligation to endeavour to provide educational facilities at all levels to its citizens."

The Court further found "accessibility to education should be realized for all people, rich or poor."²⁶¹ The state action permitting a capitation or special admission fee to be charged by a state recognized institution violated the equality clause, was found to be per se arbitrary and could not be sustained by the court.²⁶² Because admission was based on income instead of merit, the government had made the availability of education beyond the reach of the poor,²⁶³ which violated not only the educational and equality rights of those who could not afford to pay, but their dignity as well, in violation of the state's duty to respect and protect human dignity.²⁶⁴

Courts in other countries have also adjudicated the quality of educational facilities. The Supreme Court of Pakistan presided over a petition regarding the miserable condition of the schools throughout the country and took action to ensure the Accreditation Board provided conditions in which people can enjoy their right to education and thus can live a life with dignity.²⁶⁵ Petitioners have complained that staff and teachers were recruited on the basis of political considerations over merit, resulting in untrained and uneducated persons serving in the schools.²⁶⁶ Schools were not equally staffed, resulting in some significantly understaffed schools, and there were no measures of teacher performance or student attendance.²⁶⁷ The Supreme Court directed the Accreditation Boards to strive to achieve the objects and purposes for which they had been established, with penal action against persons who had received salaries and other perks without performing their duties²⁶⁸ and specifically directed the Accreditation Boards to arrange manpower from other departments to achieve the constitutionally required objectives;

²⁶⁰ *Mohini Jain*, (1992) 3 SCR 658, 660 (India), *supra* note 13.

²⁶¹ *Mohini Jain v. State of Karnataka*, 1992 AIR 1858 (India) (KULDIP SINGH (J); KULDIP SINGH (J) and SAHAI, R.M. (J)), <https://www.escri-net.org/caselaw/2009/mohini-jain-v-state-karnataka-1992-air-1858>.

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ *Petition Regarding Miserable Condition of the Schools VS.*, (2014) 2014 SCMR 396 (Decided 2013) (Pak.) (Justices on the Bench: Iftikhar Muhammad Chaudhry, C.J., Ijaz Ahmed Chaudhry and Gulzar Ahmed, JJ.), <https://cite.pakcaselaw.com/scmr-supreme-court/2014/396/>.

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.*

the Court also required the budgetary allocations for improvement of education and to ensure the presence of students at primary, middle and high school levels.²⁶⁹

Because education is so fundamental to the enjoyment of other rights – including rights relating to work, to cultural connections, and to political participation, courts have imposed positive obligations on states to provide minimally decent educational opportunities for all people.

3. Housing

Focusing on human dignity reminds us that a violation of one right often leads to a deprivation of many other rights. The state thus has a responsibility to take positive action to meet the needs of all of their citizens, including those living in conditions of extreme poverty, as the Constitutional Court of South Africa has found.²⁷⁰

Landmark case: In an early case about the right to adequate housing, *Government of South Africa v. Grootboom*, the Court held that socio-economic rights are justiciable. The court stated that socio-economic rights are expressly included in the Bill of Rights and cannot be said to exist on paper only.²⁷¹ Section 7(2) of the South African Constitution requires the state “to respect, protect, promote and fulfil the rights in the Bill of Rights”²⁷² and the courts are constitutionally bound to ensure that they are protected and fulfilled. The fact that socio-economic rights will almost inevitably give rise to budgetary implications does not bar their justiciability; indeed, many of the civil and political rights that are considered immediately enforceable will also give rise to budgetary implications.²⁷³

Due to unavailability of land suitable for housing development and housing shortage, citizens had no choice but to move illegally into an area owned by another. In the *Grootboom* case, citizens were living in appalling conditions and complained to the court when they were forcibly evicted by the property owners who bulldozed, burnt, and destroyed their personal belongings. The judgment provisionally concluded that tents, portable latrines and a regular supply of water would constitute the bare minimum required to satisfy the dignity requirements of the South African Constitution. However, the Court was unable to assure that *Grootboom* and others like her would be able to live in dignified housing.

4. Environment

Living in a polluted environment deprives a person of a life with dignity and may cause an adverse situation or even exposure of human life to danger.²⁷⁴ In *Pro Public v. Godavari Marble Industries Pvt. Ltd. and others*, the Supreme Court of Nepal determined that certain mining operations were inconsistent with the constitutional rights to a healthy environment and to live with dignity.²⁷⁵ The Court held that “It shall be erroneous and incomplete to have a narrow thinking that the right to life is only a matter of sustaining life. Rather it should be understood that all rights necessary for living a dignified life as a human being are included in it. Not only that, it cannot be imagined to live with dignity in a polluted

²⁶⁹ *Id.*

²⁷⁰ *Grootboom* 2001 (1) SA 46 (CC) (S. Afr.), *supra* note 14.

²⁷¹ *Id.*

²⁷² S. AFR. CONST., 1996., Chapter 2, 7(2).

²⁷³ *Grootboom* 2001 (1) SA 46 (CC) (S. Afr.), *supra* note 14.

²⁷⁴ *Id.*

²⁷⁵ *Suray Prasad Sharma Dhungel v. Godavari Marble Industries & others*, No. WP 35/1991 (1995) (Supreme Court of Nepal), <https://elaw.org/system/files/English%20translation%20of%20Godavari%20Marble%20Case.pdf>.

environment; rather it may create an adverse situation even exposing human life to dangers.”²⁷⁶ Moreover, the Court noted that “Article 12(1) and Article 16 (1) of the Interim Constitution of Nepal, 2007 have placed respectively the right to live with dignity and the right to live in a clean environment as fundamental rights.”²⁷⁷ In light of the importance of the environment to the full protection of human dignity, the Supreme Court placed limits on when natural resources should be used for the benefit of humans. The quarrying and utilization of natural resources was allowed only if it did adversely impact the environment, whether or not it produced economic profit.²⁷⁸ The Godavari area’s importance was biological and environmental as well as religious and cultural and for those reasons, the Court ordered the closure of the mine.²⁷⁹

Environmental rights, like health care, education, and housing illustrate the interdependence of human rights and their indivisibility with the right to live a dignified life.

IV. Conclusion

Considering rights through the lens of human dignity helps clarify the connections among different kinds of rights. Social and economic rights tend to reinforce each other, and also tend to reinforce civil and political rights. This chapter explained the obligations that states have under international, regional, and municipal law to protect education, health care, housing, and cultural rights not only because they are positive obligations under written law but also because they are necessary to protect the human dignity of every person. To protect these rights is to protect the ability of each person to “live with dignity” because these rights help ensure that a person can live without humiliation, can develop their personalities and flourish, and can live in society with others. SECE rights help promote these dignity values and, in turn, human dignity defines the nature of these rights and ensures their guarantees on an equal basis.

²⁷⁶ *Id.* at 46.

²⁷⁷ *Id.* at 60.

²⁷⁸ *Id.*

²⁷⁹ See James R. May & Erin Daly, *Judicial Handbook on Environmental Constitutionalism* (UN Environment 2017), <https://wedocs.unep.org/bitstream/handle/20.500.11822/20766/judicial-handbook-environmental-constitutionalism.pdf?sequence=3&isAllowed=y>, and see *Compendium of Global: Environmental Constitutionalism Selected Cases and Materials*, Second Edition (United Nations Environment Programme 2019) https://unece.org/fileadmin/DAM/env/pp/a.to.j/JEN/2019_JEN/COMPENDIUM_of_Global_Environmental_Constitui_tonalism_2019.pdf.

CRIMINAL JUSTICE



Human dignity is an inherent and inalienable quality that gives rise to rights that are non-derogable and absolute; a person’s dignity rights remain intact throughout their lives, including before, during, and after interaction with the criminal justice system of a state. This Chapter describes how human dignity must be respected by public and private authorities in all phases of criminal justice. While most countries protect the dignity rights of those who are arrested, on trial, or incarcerated, few respect those rights in practice.²⁸⁰

²⁸⁰ This section is based on reports drafted by Nate Belluso and Guilherme Franco.

I. Introduction

The equal worth of every human being is inalienable. It does not weaken or disappear even if a person is charged with or convicted of committing a crime. Because every person has equal dignity throughout their lives, no one may be dominated or controlled by another, nor may any person humiliate or degrade another.²⁸¹ By extension, no person may be made to be the object of another person's (or the state's) design. Moreover, human dignity, which entails the right to be treated "as a person of eminent dignity"²⁸² requires that every person be able to "live with dignity" including certain basic material comforts, in all circumstances.²⁸³ As one court has said, "We do not understand Prisoners' Rights to be a special category of rights apart from human rights. Prisoners' rights must be understood to mean the rights that prisoners have as human beings as they remain incarcerated in a prison. Thus prisoners, even though they are lawfully deprived of liberty, are still entitled to basic or fundamental human rights."²⁸⁴

This chapter illustrates ways in which criminal justice systems can degrade dignity. First, we look at the relationship between human dignity rights and the criminal justice system. Second, we consider the impacts on human dignity for people who are involved in encounters with police and arrest, sentencing, and incarceration. Last, we consider the impacts of interactions with the criminal justice system on the dignity of women and on people who are intellectually disabled.

II. The Relationship Between Dignity Rights and Criminal Justice

People who are vulnerable outside the criminal justice system become especially vulnerable within it, and the state must make affirmative efforts to protect their dignity.

Purposes of criminal justice. The purpose of the criminal justice system may variously be said to be retribution (to make a person pay for the harm they have done), deterrence (to use a person as an example so that they or others will not replicate the harmful conduct), or rehabilitation (to improve the likelihood that the person will abide by the law when they reenter society). Only rehabilitation is consistent with principles of human dignity. Rehabilitation speaks to the whole person, and defines them by their agency and worth, not by the crime they have committed. Retribution and deterrence are not consistent with principles of human dignity because punishment diminishes and humiliates the person and deterrence uses them as an object of the state's criminal justice policies.

Proportionality. The European Court of Human Rights has explained that "where an individual is confronted with law-enforcement officers, any recourse to physical force which has not been made strictly necessary by the person's conduct diminishes human dignity."²⁸⁵ In *Trop v. Dulles*, the United States Supreme Court applied this principle to punishment after conviction: "punishments would be unconstitutionally cruel – in other words, contrary to human dignity – if they were disproportionately

²⁸¹ HJ 5100/94 *Public Committee Against Torture* (1999), *supra* note 29.

²⁸² *Acción de inconstitucionalidad 2/2010*, Suprema Court de Justicia de la Nación [SCJN] (Mex.)

²⁸³ *Masangano v. The Attorney General & Others*, [2009] MWHC 31 (Nov. 8, 2009) (High Court of Malawi 2009) (JUSTICE R.R. MZIKAMANDA), <https://malawilii.org/mw/judgment/supreme-court-appeal/2009/31-0>; *see also* *Walker v. State*, 68 P.3d 872 (Mont. 2003) (On this aspect of dignity in prison); HJ 5100/94 *Public Committee Against Torture v. State of Israel* (1999).

²⁸⁴ *Masangano*, [2009] MWHC 31 (Nov. 8, 2009), *supra* note 283. *See also* May and Daly, *ADVANCED INTRODUCTION*, *supra* note 25.

²⁸⁵ *Case of Aghdgomelashvili and Japaridze v. Georgia*, App. No. 7224/11, Eur. Ct. H.R., Fifth Section (Oct. 8, 2020), <http://hudoc.echr.coe.int/fre?i=001-204815>. *See also* *Bouyid*, No. 23380/90, Eur. Ct. H.R. (2015) (holding that a slap on the face that is not strictly necessary under the circumstances violates the prohibition against Torture in Article 3 of the European Convention because it violates the dignity of the detainee), *supra* note 15.

severe when compared to the gravity of the crime in question.”²⁸⁶ Thus, dignity requires that punishment be proportional to the sentence and no more cruel than is necessary under the circumstances. Moreover, it must be designed to augment, not to degrade, the human potential of each person.

Applicable law. Dignity is crucial to the criminal justice system at the level of international, regional, and domestic law. The United Nations High Commissioner for Human Rights detail in their Standards and Practice for the Police that “Human rights derive from the inherent dignity of the human person” and additionally “law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.”²⁸⁷

Regionally, Article 3 of the European Convention of Human Rights provided that “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”²⁸⁸ The American Convention on Human Rights of 1969 protects human dignity in Article 5: “No one should be subjected to torture, punishment and cruel, inhuman or degrading treatment. Every person deprived of their liberty will be treated with respect due to the inherent dignity of human beings.”²⁸⁹

Domestic law can also protect human dignity of those subject to the criminal justice system. For example, the Constitution of Ghana provides: “The dignity of all persons shall be inviolable. 2. No person shall, whether or not he is arrested, restricted or detained, be subjected to- [...] b.any other condition that detracts or is likely to detract from his dignity and worth as a human being.”²⁹⁰ In Egypt, “Prisons and detention centers shall be subject to judicial oversight. All that which violates the dignity of the person and or endangers his health is forbidden.”²⁹¹ In Cote d’Ivoire, “Any person arrested or detained has the right to humane treatment that protects their dignity. They must be informed immediately of the reasons for their arrest or detention and of their rights, in the language understandable to them.”²⁹²

The following sections address how the criminal justice systems can degrade the dignity rights of certain vulnerable populations including racial minorities, women, and those who are intellectually disabled.

III. In Context

A. Interactions with Police and Arrest

Law enforcement practices can sometimes violate human dignity rights by, for example, humiliating, diminishing one’s value, and enforcing the law unequally. These violations of dignity may occur on the streets, while in custody, or while being interrogated by authorities where people can be taken advantage of away from the public eye. Excessive use of force by law enforcement – that is, force

²⁸⁶ *Trop v. Dulles*, 356 U.S. (1958) (plurality opinion).

²⁸⁷ U.N. High Comm’n for Hum. Rts. Center for Hum. Rts., *Human Rights Standards and Practice for the Police*, at 2 (2004), <https://www.ohchr.org/documents/publications/training5add3en.pdf>.

²⁸⁸ European Convention on Human Rights, art. 3, 4 Nov. 1950, 213 U.N.T.S. 222.

²⁸⁹ Inter-Am. Comm’n on Hum. Rts., Am. Convention on Hum. Rts., art. 5, <https://www.cidh.oas.org/basicos/english/basic3.american%20convention.htm>.

²⁹⁰ CONST. OF GHANA, CHAPTER 5 PART I Gen. 15 (1).

²⁹¹ CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 18, Jan. 2014, art. 56; *see also* art. 55, providing that “All those who are apprehended, detained or have their freedom restricted shall be treated in a way that preserves their dignity. They may not be tortured, terrorized, or coerced. They may not be physically or mentally harmed, or arrested and confined in designated locations that are appropriate according to humanitarian and health standards. The state shall provide means of access for those with disabilities.”

²⁹² COTE D’IVOIRE CONST., art. 7.

that is not necessary for the circumstances – can constitute “a serious attack on the individual’s dignity.”²⁹³

Landmark Case. In *Bouyid v. Belgium*, the European Court of Human Rights held that a police officer who had unnecessarily slapped a youth across the face had violated Article 3 of the European Convention on Human Rights which protects against inhuman and degrading treatment. The Court explained that this prohibition is “a value of civilization closely bound up with respect for human dignity,”²⁹⁴ which “enshrines one of the most fundamental values of democratic societies.”²⁹⁵ The court noted that a person’s dignity is diminished when they are confronted with unnecessary physical force by police officers. Here, a single slap violated the Convention because it was unnecessary, and intended purely to emasculate the youth, making him feel “small” while in complete custodial control of the officer. Constituting “a serious attack on the individual’s dignity,” it was degrading treatment employed to make one feel subordinate to another,²⁹⁶ given that the relationship between police officer and persons under their control is one characterized by superiority and inferiority.²⁹⁷

Other cases have applied the same principle in different circumstances:

- In *Florence Amunga Omunkanda & Another v Attorney General*, the High Court of Nairobi found a violation of the constitutional right to dignity when a man was shot in the back after requesting a police officer stop smashing fruit carts and assaulting one of the cart’s owners with the butt of his gun.²⁹⁸ The court reasoned that the resulting coma, medical operations, and subsequent medical bills represented a deprivation of the victim’s right to live with human dignity. The Court said that the actions of the police were “inhuman and in complete disregard of his fundamental right to security of person and human dignity.”²⁹⁹
- Similarly, in *Swaziland v. Ngomane*, the Constitutional Court of Eswatini held that a police officer’s treatment of a suspect – including excessive numbers of push-ups, among other things -- violated his human dignity. The court noted that human dignity is infringed if a “person’s life or physical and mental welfare is harmed” and “when a person lives or is subjected to humiliating conditions which negate his humanity.”³⁰⁰ Moreover, the Court held that the punishment, imposed before trial, “equate[d] to a reversal of the presumption of innocence” and thus “infringe[d] upon human dignity.”³⁰¹ “The presumption that every person is innocent until proven guilty by law,” the Court said, “is part of human dignity.”³⁰²

Unnecessary force not only dehumanizes victims but produces spirals of violence and distrust. In 2020, protests erupted in the United States and immediately throughout the world in response to police killings of African Americans. A notable aspect of these protests was the insistence on “saying the names”

²⁹³ *Bouyid*, No. 23380/90, Eur. Ct. H.R. (2015), *supra* note 15.

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Florence Amunga Omunkanda & Another v. Attorney General and 2 Others* (2016) eKLR (Kenya) (G V ODUNGA), <http://kenyalaw.org/caselaw/cases/view/125045/>.

²⁹⁹ *Id.* at ¶ 102.

³⁰⁰ *Aaron Ngomane*, 25/2013 [2013] SZSC 73, at ¶ 3 (November 29, 2013) (Sup. Ct. of Swaziland) (RAMODIBEDI, C.J.), *supra* note 19.

³⁰¹ *Id.* at ¶ 64.

³⁰² *Id.*

of the victims of police brutality – an explicit effort to restore their dignity by denoting their humanity and their individuality. As one court described it in the midst of the Black Lives Matter protests:

“[W]e are asked to decide whether it was clearly established that five officers could not shoot a man 22 times as he lay motionless on the ground. Although we recognize that our police officers are often asked to make split-second decisions, we expect them to do so with respect for the dignity and worth of black lives. Before the ink dried on this opinion, the FBI opened an investigation into yet another death of a black man at the hands of police, this time George Floyd in Minneapolis. This has to stop.”³⁰³

Actions like these, ranging from a slap on the face to a multiple shooting resulting in death violate the person’s right to be treated as if their life matters, as if they have inherent value and worth, and it violates their right to be treated “as a person.”³⁰⁴

B. Dignity in Detention and Incarceration

Incarceration, by definition, diminishes a person’s dignity: it limits their liberty and autonomy, it demeans their individuality, it humiliates and diminishes the person in the eyes of others and impairs their own sense of self-worth. Incarceration does this by conditions (overcrowding, or lack of health care, privacy, sanitation, visitors) or conduct (torture, solitary confinement, or other and additional punishments). And yet, prisoners retain their dignity as humans. As the United States Supreme Court has explained: “As a consequence of their own actions, prisoners may be deprived of rights that are fundamental to liberty. Yet the law and the Constitution demand recognition of certain other rights. Prisoners retain the essence of human dignity inherent in all persons. Respect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment.”³⁰⁵

Landmark case. In *Francis Coralie Mullin v. Administrator, Union of India*, the Supreme Court of India interpreted the right to life to include the right to live with dignity, including adequate nutrition and clothing, shelter, and commingling with fellow human beings, among other things. “The right to basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self.”³⁰⁶ Thus, the right to live with dignity would include the right of inmates to have meetings with family members and legal counsel without regulation by the prison unless it was reasonable, fair and just.³⁰⁷ This case reinforces the strong social component of human dignity that requires people to be able to live with dignity even while incarcerated. This would seem to have broad application and would prohibit solitary confinement on the one hand and would require public oversight of prison conditions in general.

Prisons that do not adequately clothe, feed, or provide adequate means of hygiene or sleeping conditions to their inmates degrade them and strip away their human dignity. In *Masangano v. Minister of Home Affairs and Internal Security & Comm’r of Prisons*, the High Court of Malawi held that packing inmates into overcrowded jail cells with little room to move or sleep violated their human dignity.³⁰⁸ In *Brown v. Plata*, the U.S. Supreme Court said: “Just as a prisoner may starve if not fed, he or she may suffer or die if not provided adequate medical care. A prison that deprives prisoners of basic sustenance,

³⁰³ Estate of Wayne A. Jones v. City of Martinsburg, W. Va., 961 F.3d 661, 673 (4th Cir. 2020) (Gregory, C.J.).

³⁰⁴ G.A. Res. 217, art. 6, *supra* note 37.

³⁰⁵ Brown v. Plata, 563 U.S. 493, 510 (2011).

³⁰⁶ *Francis Coralie Mullin*, (1981) 2 S.C.R. 516 (India) (N. Bhagwati, J.), *supra* note 34.

³⁰⁷ *Id.*

³⁰⁸ *Masangano*, [2009] MWHC 31 (Nov. 8, 2009), *supra* note 283.

including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society.”³⁰⁹

Torture. Respect for human dignity absolutely prohibits torture and other inhumane or degrading treatment – or what the U.S. Constitution's Eighth Amendment refers to as “cruel and unusual punishment.”³¹⁰ The Supreme Court has expanded that phrase to “proscribe ‘torture(s)’ and other ‘barbar(ous)’ methods of punishment” and has held that “punishments of torture . . . are forbidden by [the] amendment.”³¹¹ In *Hope v. Pelzer*, a man who was incarcerated was hitched to a post for an extended period of time “in a position that was painful, and under circumstances that were both degrading and dangerous.”³¹² The court held that this treatment violated Hope’s constitutional right under the Eight Amendment and was “antithetical to human dignity.”³¹³ As in *Bouyid*, the court ruled that because the treatment was not done out of necessity, but as punishment, it was wanton and thus unlawful.³¹⁴ Likewise, in *Public Committee Against Torture v. State of Israel*, the Supreme Court of Israel ruled that shaking prisoners and keeping them in uncomfortable positions during interrogations³¹⁵ impinged on the suspect’s dignity, bodily integrity, and basic rights³¹⁶ because they were not strictly necessary.

C. The Dignity of Women who are Incarcerated

Dignity can be denied not only when similarly situated people are treated differently, but also when people who are not in similar situations are treated without regard to their differences. Men and women face different challenges when they are confined and failing to recognize the distinctive situations of women puts women in jeopardy of suffering further losses of dignity beyond what male prisoners suffer.

In the United States, the proportion of incarcerated women has increased 700% since 1980.³¹⁷ Many have suffered some form of abuse or trauma beforehand.³¹⁸ Once in prison, women face challenges relating to lack of health care around fertility and pregnancy, motherhood whether children are with them or not, and physical or sexual abuse, among other things.³¹⁹ Dignity reform of the criminal justice system could also address additional issues that affect women and men differently including drug use, poverty, and lack of education, to develop programs that would help women survive incarceration and live with dignity upon release.³²⁰ Expanding dignity rights in the criminal justice system would help to address the needs of many women who are impacted by it.

D. The Dignity of People with Psychiatric Disabilities who are Incarcerated

Treating people with mental health and psychiatric disabilities as if they were comparable to the prison population that does not have the same conditions also constitutes a denial of dignity: with the

³⁰⁹ *Brown v. Plata*, 563 U.S. 493, 501, 511 (2011).

³¹⁰ U.S. CONST. amend. VIII.

³¹¹ *Estelle v. Gamble*, 429 U.S. 97, 102 (1976) (Marshall, J.).

³¹² *Hope v. Pelzer*, 536 U.S. 730, 745 (2002) (Stevens, J.).

³¹³ *Id.*

³¹⁴ *Id.* at 738.

³¹⁵ H CJ 5100/94 *Public Committee Against Torture* (1999), *supra* note 29.

³¹⁶ *Id.* at ¶ 18.

³¹⁷ Sentencing Project, *Fact Sheet: Incarcerated Women and Girls*, <https://www.sentencingproject.org/wp-content/uploads/2016/02/Incarcerated-Women-and-Girls.pdf> (last updated Nov. 2020).

³¹⁸ *Id.* at 445-46.

³¹⁹ *Id.*

³²⁰ *Id.* at 465.

population of some countries' prisons growing, and sentences becoming less individualized, people sentenced to jail with serious mental health illnesses are more likely to be treated without the care they require.³²¹ For example, in *Brown v Plata*, the U.S. Supreme Court held that prison conditions that deny human dignity, including the failure to provide adequate medical and mental health care, violated the Eighth Amendment. The Court focused on the fate of prisoners with serious psychiatric disabilities and found California's prisons fell short of "minimum constitutional requirements" and basic health needs.³²² This ruling helps to build toward a dignity-based approach because it provides a commitment to treatment, minimization of incarceration, and ultimately can lead to helping those with psychiatric disabilities that doesn't involve solely putting them in jail long term.³²³

IV. Conclusion

This chapter illustrates some of the ways in which dignity is threatened when people come in contact with the criminal justice system. Of course, the violation of one person's dignity creates ripples throughout a community and is felt by those close by, whether incarcerated or on the outside: family members, friends and others are injured when a loved one suffers at the hands of police or others within the criminal justice system.

Improvement of the criminal justice system begins with better recognition of human dignity rights. Improving the dignity of those in the criminal justice system does not mean they should enjoy every right and freedom they did before committing their crime. However, the law of human dignity demands that each person's equal dignity be respected in all circumstances, including when a person is suspected, arrested, convicted, sentenced, incarcerated or paroled.

³²¹ Jonathan Simon & Stephen A. Rosenbaum, *Defying Madness: Rethinking Commitment Law in an Age of Mass Incarceration*, 70 U. MIAMI L. REV. 1 (2015).

³²² *Brown v. Plata*, 563 U.S. 493, 501 (2011).

³²³ Simon & Rosenbaum, at 11-13, *supra* note 321.

CONCLUSION

Dignity is the sense of worth that people feel within themselves. It is universal, and applies to all people equally. It is what entitles people to respect from all others.

But it is not only a personal sense but a legal right as well. Dignity is what gives people the right to have and to claim rights. It is what compels governments to provide equal rights to all, and to ensure that every person has the capacity to live with dignity. It is recognized in the constitutions of almost every country on earth. It has been incorporated into the jurisprudence of courts throughout the world, in every legal tradition, and in a wide variety of cases – on matters dealing with life and death, and nearly everything in between. It underpins human rights law at the international and regional levels as well. It is the axis around which a just foundation of law revolves.

This Handbook presented an overview of how dignity is reflected in law at the international, regional, and domestic levels. It then examined the 4 principal corners of dignity under law, illustrating the concepts with actual judicial decisions. These decisions, collectively demonstrate that dignity law is relevant to every important aspect of the human experience. Moreover, they exemplify how judges around the world are protecting human dignity by explaining how government actions impinge on human dignity and prohibiting them from doing so. This growing body of law is helping to redefine the obligations of governments toward people and to ensure that public authorities protect and promote the intrinsic worth of every person, in present and future generations.