Human Dignity as a Foundational Norm in the Understanding of Human Rights

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Abstract: This article discusses the notion of human dignity as the yardstick on which the philosophy of human rights derives its strength. Whilst lacking a universally accepted definition, human dignity is widely accepted to be premised on respecting, protecting and preserving human worth. It is an inviolable property upon which the established normative value system has been founded, which is integral in the study of contemporary human rights. In South Africa, it is observed that there is a strong linkage between the justiciability of socio-economic rights and the notion of dignity. This has been given added impetus by the agenda of transformative constitutionalism which espouses redressing the imbalances of the past, to achieve fundamental freedoms and substantive equality among others, all in efforts of restoring the inherent nature of dignity to the majority of the people. This is yet to be realized though, owing to notable triple challenges of poverty, unemployment and inequalities that make it impossible for the majority to meaningfully assert their dignity. Thus, it is asserted that trading human dignity as the hallmark of human rights is essential as it augments efforts of advancing humanitarianism, which is geared towards safeguarding social-welfare of the people.

Keywords: human dignity, human rights, humanity and humanitarianism, democracy, transformation.

Introduction

The Constitution of the Republic of South Africa, 1996 (hereinafter, the Constitution, 1996), has entrenched a progressive normative value system premised on the constitutional supremacy. This system has established South Africa as a human rights state fundamentally affirming a human-centred
protection of the right to dignity (Mandela, 1996; Buchanan, 2001; Kende, 2003; Reddy and Sokomani, 2008; Liebenberg, 2010; Human Rights Watch, 2014).

In *Carmichele v Minister of Safety & Security* 2001 (4) SA 938 (CC): 45, it was held that the right to dignity is entrenched at the core of this normative value system. Human dignity is also integral in the notable International Bill of Rights (that is, the Universal Declaration of Human Rights - *UDHR*, the International Covenant of Civil and Political Rights - *ICCPR*, and the International Covenant on Economic, Social and Cultural Rights - *ICESCR*). Hence, it ought to be recognized for its credence as a universally accepted foundational principle that propels successes behind human rights, its norms and teachings. Indeed, the profound origin of the universality of human rights theory is grounded in the quest for securing human dignity of all persons (Deng, 2004). This philosophy of human rights continues to thrive, featuring very prominently in various discourses cutting across numerous academic disciplines and societal orientations. It has prominently endured as a multidisciplinary phenomenon that has undoubtedly been and remains a subject of immense global attention, while also being recognized as a subject of scrutiny in other scholarly perspectives. Most importantly, it is essential to ask a question; can the world scholars, philosophers and humanitarians have deliberations on the study of human rights without regard to human dignity? Invariably, responses to this and other questions assist in illuminating on what should be considered as a fundamental objective of human rights theory.

Such questions are crucial as they prompt a continuous reverberation of the spirit and purport of the *UDHR*, 1948. This is necessarily because since the adoption of the UDHR world over, human rights have extensively been accepted as a reputed theory (Risse and Sikkink, 1999; Gauri and Gloppen, 2012; Bayefsky, 2013) in safeguarding and preserving human worth. Thus, human rights philosophy plays a fundamental role in the moulding of social values that are instrumental in the shaping of human kind. Having said that, to sustain the thriving agenda of human rights, some common understanding ought to prevail. This entails founding corresponding central yardsticks in modelling human rights experiences. That is, the world community ought to subscribe to a universalised culture of respecting and protecting human rights of all people in accordance with revered norms. This has to be premised on propagating the understanding and application of human dignity as the yardstick in the interpretation and understanding of human rights. This is indispensable in the quest for global peace, greater social welfare for the people, unity and prevention of wars and conflicts. More so because the notion of human dignity is invariably invoked in various areas of political and social dispensations (Bayefsky, 2013) that mould human rights studies.

In this article, I reflect on the notion of human dignity and its significance in the study of human rights. Although this article is written from a South African perspective, it also draws attention on international conceptualization of the theory of human rights and human dignity. In so doing, this work unpacks and illuminates on the essence of human dignity as the touchstone for our understanding and interpretation of modern human rights discourses. This article also reflects on intrinsic relationship
between law and its attitude towards human dignity, a task which is to be achieved through wider express or tacit constitutional provisions and other legislative initiatives. Thus, the role of legal framework and policy initiative in the shaping of human rights is considered essential

Most importantly, the article argues that human dignity has established itself as a soul in the teachings of human rights, particularly the second generation of rights, widely recognised as socio-economic rights. The article employs a qualitative method of research and utilizes content analysis approach relying on data from written texts, including laws, policies and scholarly works. Content analysis is the appropriate method as it assists in determining the legislative and policy positions with regards to societal reflection on the notion of human dignity. The study is both descriptive and exploratory in nature. Both primary and secondary sources were used as source material.

Understanding human dignity

Owing to the fact that human dignity is touted as the guiding instrument in the understanding of human rights, it is crucial to establish its primary meaning. The meaning has to be found, notwithstanding the notable absence of universalised definition of what constitute ‘human dignity’. Some linguists such as Shultziner (2003) went as far as contending that human dignity is an eclectic and ambiguous concept without a precise definition. Others such as Etienne recognise dignity as a complex concept with different dimensions that need to be taken into account if we are to do justice to it (De Villiers, 2010). I concur with Etienne. However, this accordingly presents further risks of having multiple regional definitions that may lead to contradictions and eventual widespread misunderstandings. In the main however, it is amenable that the notion of human dignity is an expansive concept which can best be understood within the context of its prime social value towards human kind. Thus, its broader conceptualisation is premised on framing a philosophically sound imperative of respecting and protecting the dignity of personhood. The dignity of human person underlies a certain exceptional position of man in nature’s creation and is referred to as synonymous for the human worth, the inherent excellence of the human person as distinguished from any other living being (Cohn, 1983). In defining human dignity, reference is appropriately made to the concept of ‘person’, which is regarded as the substance of dignity. Therefore, dignity points to the person’s inviolability as derived from his or her natural image.

It is asserted that to appropriately formulate a working definition of ‘human dignity’, it is essential to appreciate the core features constituting this notion. That is, it is fundamentally premised on the preservation of humans and their dignity. It therefore presupposes that humans occupy a distinct position than the rest other creatures in the society. Notably, it is a position of ‘self-worth and consciousness’ thereto. This finds proponents in the preamble of UDHR and Article 1, where it is rightfully proclaimed that the recognition of human dignity and of the equal and inalienable rights of members of the human family is the foundational value of freedom, justice and peace in the world.
Th us, a coherent meaning of human dignity should be centred on the embodiment of familiar benchmarks that each individual is capable of embracing. This should ideally entail the necessity to recognizing that every person is worthy of respect and protection as a human. The founding guideline in this regard should be premised on conforming to tangible characteristics that all humans hold. In a nutshell, human dignity can be accepted to refer to worthiness or excellence attributed to humans by virtue of being humans. Indeed, this is considered to be a profound humanist imperative that has flourished globally, despite it being distorted every so often, and continues to reinvent itself similarly in South Africa (De Grunchy, 2011). Thus, a common meaning to human dignity should be premised on a whole embodiment of humanism, which is arguably the gist of human rights.

Origin and the context of human dignity: theoretical framework

Human dignity can be articulated to prevail in accordance with three perspectives of arguments. Firstly, the sociological perspective, secondly, the legalistic and political approach and thirdly, the economic viewpoint to the origin of human dignity. From a social viewpoint, it is argued that human dignity profoundly stems from the worth of humans which accrues to a person upon birth and becomes inalienable. This entails that human beings are born free and equal in dignity and rights. This requires that all human beings should be afforded their dignity, and should not unduly be deprived of social amenities that enable them to assert their worth. It prevails to such an extent of obligating the state to ensure swift realisation of such amenities within reasonable constitutional tenets.

On the other hand, the legal, political and economic perspectives are premised on the express provisions of the UNDR which resulted in international promulgation of statutory framework protecting human dignity. This is particularly discernible in Article 22 which provides that 'everyone is entitled to the realisation of economic, social and cultural rights indispensable for his dignity and free development of personality'. Article 23 further entrenched the economic sense of protecting human dignity by requiring that those who work be afforded a just and favourable remuneration with the aim of ensuring an existence worthy of dignity. The legal, political and economic perspectives on the right to human dignity also coincide with the objectives of the Declaration on the Right to Development of 1989. UNGA Resolution 34/46 explicitly recognised the right to development as a human right with the effect of making third generation of rights another pre-condition for asserting human dignity. Therefore, human dignity encompasses social rights, legal and political rights and economic rights and thus, these tenets constitute its founding imperatives.

The conceptualisation of human right to dignity is better traded as the hallmark in the comprehension and the interpretation of contemporary human rights. Human dignity in its own nature is inviolable and all state power must respect and protect it (Starck, 2002). Human dignity is fundamentally key to modern constitutional thought since it determines the relationship between individuals and state, the guarantee a human dignity allows to draw inferences regarding the very basis of the state itself.
The story behind studies on protecting the right to dignity has largely been framed in accordance with the philosophical writings of Immanuel Kant. According to Kant, dignity is an inviolable property of all human beings, which gives the possessor the right never to be treated simply as a means, but always at the same time as an end (Schroeder, 2010). He argued that humans occupy a special place in creation, and that humans possess an intrinsic worth of dignity which cannot be comparable to that of other creatures (Rachels, 1986). Kant reasoned that humanity and dignity are such designated values which lack any equivalent (Shell, 2008). It is asserted that Kant’s theory has galvanized the world community to comprehend and accept the universality and inalienability of fundamental human rights.

The concept of human dignity is also central to political thought of Samuel Pufendorf (1958) who contended that it derives its strengths from the social character of human nature, which he believed was divinely determined. According to Pufendorf, human dignity provides the basis for morally anchored Freedom and Equality. It is used to recognise four senses in which human beings may be said to have dignity, first and perhaps least common in contemporary discussions that a person may have dignity simply by virtue of occupying a position of high rank in an established social hierarchy. It is noteworthy to indicate that everyone has dignity regardless of not only hereditary social position but also race, gender, nationality, ethnicity or other markets of social hierarchy. Further that this egalitarian account of ‘human dignity’ is arguably a moral high water rank mark of modern ethical and political thought (Meyer, 2002).

Michael Meyer (2002) maintains that having dignity can also be understood as just a ‘sense of dignity’ and further that a person with proper sense of his own dignity will most likely resist humiliation and dehumanisation by others. He further argues that it is also important to recognise that a person who does not have a sense of own dignity does not lack dignity altogether. That such an individual lacking proper appreciation of his human dignity still retain his dignity in the sense that he retains his state of deserving basic moral respect. This view maintains that for a person to assert dignity, one need not occupy any position of authority nor public status because the phenomenon of dignity is inherent in the nature of humans. Thus, Meyer’s position accords to Ronald Dworkin’s conceptualisation of dignity, that it is inherently linked with the capacity for self-respect, self-worth and consciousness (Dworkin, 1993). However, this view does not deprive of any person his/her dignity, it simply requires that every individual ought to first be conscious of his/her dignity, protect and respect it, before attempting to assert it over others.

Arthur Chaskalson (Chief Justice as he then was), asserted that in general and broader sense, respect for dignity represent a prerequisite for respect of the autonomy of every individual, and the right of everyone not to be devalued as a human being or treated in a degrading or humiliating manner (Chaskalson, 2002: 137). For Chaskalson, the basis of dignity is to safeguard human respect, because it is the source and essential content of all other rights. Further that committing ourselves to a society founded on recognition of human rights requires us to value right dignity and life above all others. This stance was also supported by Justice Kate O’Regan in S v Makwanyane 1995 (6) BCLR 655 (CC):
According to O'Regan J, recognising right to dignity is an acknowledgement of the intrinsic worth of human beings, and dignity is therefore the foundation of many other rights that are also specifically articulated in the Bill of Rights.

According to Shadrack Gutto (2002), while primarily accepting and acknowledging that the human dignity reigns central to all fundamental rights in a democratic state like South Africa, he contended that respect for human dignity and human rights can provide possible solutions to conflicts. He propagates protection of human dignity as an integral part of contemporary human rights protection, as espoused in the United Nations Charter, International Bill of Rights and African Charter on Human and Peoples’ Rights, among others. He also argued that understanding human dignity as a core constitutional and democratic value enables us to link it with other basic principles and values of modern democracy including popular participation, good governance and the rule of law. He is convinced that the vigorous pursuit of human dignity and human rights in all spheres of human activity can lead to minimizing or resolving conflict in a sustainable manner. He noted that while conflict cannot be “resolved” without substantive justice and honour, the conditions that create conflict in the first place must be addressed and substantially changed. Categorizing the violation and denial of substantive human dignity and human rights in peacetime or wartime as tyranny and oppression, Gutto believes that it is in the interest of humanity as a whole to civilize itself by securing substantive human dignity and human rights through the rule of law and solidarity. In a nutshell, Gutto’s reasoning resonate the ambitions of transformative constitutionalism which embraces the view of addressing the multiple challenges inherited from the past, which if not substantively altered will encumber efforts geared towards achieving peace and stability. His perspective contains narratives that advocate for the creation of an environment where the realisation of socio-economic rights enables persons to assert their dignity.

**Human dignity and South Africa’s transformative constitutionalism**

Upon attainment of democracy in 1994, South Africa went through a process of notable paradigm shift as far as extensive approaches to human rights theory were concerned. This culminated in the birth of a liberal legal system systematically epitomized on preserving human worth. It was this view that grounded human dignity at the centre of human rights advocacy. Thus, the notion of human dignity cannot escape its intrinsic interconnectedness with the agenda of transformative constitutionalism. This agenda has been founded on fundamental epitomes that espouse social justice and substantive justice in social, economic and political realities, and building a nation grounded on protecting democratic values and fundamental human rights (Rapatsa, 2014a).

Karl Klare conceived transformative constitutionalism as a ‘long-term project of constitutional enactment, interpretation and enforcement committed to transforming a country’s political, legal and social institutions, and power relations in a democratic, participatory and egalitarian direction’ (Klare, 1998). It has since set up a profound resonance in various academic discourses, judicial jurisprudence and civil society campaigns for social justice. This project enables perfect interpretations that augment
comprehensive transformative ambitions of the Constitution geared towards reaching various disciplines from philosophy, law to various social sciences areas (Van Marle, 2009) as a contrivance for safeguarding human right to dignity. The significance function of transformative constitutionalism has been and remains that of redressing past injustices and guiding the nation to a better future (Langa, 2006; Bohler-Muller, 2007), ensuring substantive equality and protection of human dignity (Moseeneke, 2007), and giving a true meaning to democracy, which enriches human rights discourse as a means to greater social ends. It committed the government to implement positive measures aimed at redressing both the legacy of the past and also deal with new or emerging forms of subordination that deny human dignity to certain groups in the society (Liebenberg, 2010). This is the essence of human dignity which is essential for determining successes of post 1994 democratic dispensation.

How does transformative constitutionalism safeguard human right to dignity? First and foremost, this is a project which prioritizes a comprehensive societal transformation. This is considerate of South Africa’s known history of unjust legal system under which indiscriminate protection of human rights could never develop (Sarkin, 1998). It also takes into account the extensive human rights violations which were a common phenomenon during apartheid (Ndangwa, 2004), effectively rendering the realization of human right to dignity difficult and impossible to assert. The institutionalised racially driven unjust legal system had perpetuated class-based segregation that has resulted in pervasive disadvantage, poverty and inequalities. The system regarded a human rights theory as an inessential theory. Within this context, President Thabo Mbeki (as he then was) emphasised that the struggle against minority domination was simply propelled by the importance of the restoration of dignity to every person and elevating the African people to their rightful place in humanity (Mbeki, 2007).

Thus, transformative constitutionalism carries with it, the hopes of ensuring that all citizens have access to an improved quality of life and are capable of re-asserting their dignity (Liebenberg, 2010). The project inculcated this culture by necessitating the entrenchment of the Bill of Rights which is recognized as the cornerstone of democracy (The Constitution, s7(1), (2) & (3)). It has also indicted the government to promote and faithfully observe international human rights norms and standards (Mandela, 1996).

But how did transformative constitutionalism get entrenched as a normative value system? South Africa’s transformation has seen wider human rights jurisprudence filled with successes owing to greater efforts of domesticating universal norms and standards. As part of reinforcing the transformation agenda, South Africa has had to promptly facilitate its re-integration into international communities that respect and protects human rights. This was because the international conventions that the government ratified embedded norms that have been widely accepted world over, and do possess credence of transcending domestic human rights initiatives in many instances. To aspire for meaningful change, the Constitution adapted to both monism and dualism theories. In terms of section 231(2) & (4), it adopts dualist approach when it states that international agreements only become law
in the country upon enactment into law through national legislation, while reasserting the Supremacy of the Constitution in section 2. Similarly, monism finds proponents in sections 231, 232 & 233. These provisions recognise that certain customary international laws transcend national laws without approval of the National Assembly. Section 39(a) & (b) also indict courts, tribunals or any other state functionaries to consider international when interpreting the Bill of Rights. This has arguably constituted a milestone of framework which safeguards the protection of human right to dignity at all times. This is because it has empowered judiciary to serve as custodians of democracy in view of holding public and private functionaries to have regard for human rights when exercising their functions. Thus, transformative constitutionalism has assured compatibility with international laws, especially the customary international Bill of Rights to safeguard right to dignity.

Therefore, the essence of transformative constitutionalism has been and remains that of restoring human worth indiscriminately. This entails redressing the material disadvantages that the majority of the people have suffered. It is also a contrivance to address the multiple and intersecting socio-economic challenges that if left unattended, would impede efforts towards meaningful transformation. In the main, this project has had to augment the vision of ensuring a progressive realisation of socio-economic rights.

**Human dignity and socio-economic rights**

South Africa’s human rights jurisprudence is premised on the Bill of Rights which has been described as a revolutionary text that has created vertical and horizontal obligation based relationships between the state, individuals and private entities (De Vos, 2002: 243). Within this context, section 7(2) of the Constitution begins by obligating the state to respect, protect, promote and fulfil all rights, and in this case, reference is made to socio-economic rights. This is founded on the need to protect the dignity of persons, equality and freedom. This Bill of Rights has entrenched socio-economic rights which are protected as constitutional rights. This entails that claims on socio-economic rights can be enforced through substantive judicial processes with probable resultant thereto being to hold the state accountable in terms of honouring and protecting them lest it is found justiciable before the law. Thus, human dignity is considered as a fundamental tenet or value which embodies critical dimensions on socio-economic rights. This includes the right to housing, health, education, food and/or social security, water,

Because adequate shelter is essentially an enabling precept in asserting dignity, this right was broadly canvassed in *The Government of the Republic of South Africa v Grootboom 2000 (11) BCLR 1169 (CC)*: 14, 15 & 23. This case effectively set a precedent in accordance with reasonableness test that the state is required to address and provide for people who desperately need such help as adequate housing. It has been held that this augment the process of giving meaning and substance to the foundational values essential for advancing transformative trajectory of socio-economic rights jurisprudence (Liebenberg, 2010). Yacoob J reasoned that to report progress on socio-economic right
of access to housing, imperatives on the right to dignity and equality ought be given due regard. Thus, the argument here is that without adequate housing, a person’s dignity falls out of place.

Entrenching socio-economic rights as justiciable rights has also aided efforts of guaranteeing widespread access to basic education. In Section27 and Others v Minister of Education and Another (24565/2012) [2012] ZAGPPHC 114: 3, Kollapen J articulated that ‘education is critical in both freeing and unlocking the potential of every individual, the impact of which effectively play the role of securing children’s better future. This resonates with the transformative ideals of the Constitution. Because education is a human need (Dieter-Beiter, 2006), it is essential for the enjoyment of other rights (Heyns, 2005) as it reinforces life of sustainable development aimed at securing enjoyment of dignity.

In Soobramoney v Minister of Health (Kwazulu-Natal) 1998 (1) SA 765 (CC); 1997 (12) BCLR 1696, the right to health care also befitted attention as a human rights issue. The right to health care notably became a contentious issue which could best be resolved through the transformative ideals of the Constitution. In this case, the Constitutional Court dealt with the right to life, the right to receive emergency medical services and the right to access health care services. Although the court considered the aforesaid rights as foundational, it invoked the reasonableness test and also found that the state’s failure to provide a kidney transplant/dialysis to Mr Soobramoney was justified as it required the patient to be free of other critical ailments such as vascular or cardiac diseases. This was also considerate of the scarcity of resources (dialysis machines) at the public hospital. Also important on the right to health was Treatment Action Campaign v Minister of Health 2002 (4) BCLR 356 (T), where the Constitutional Court ordered the state to administer niverapine at all public hospitals, to HIV positive mothers as an effective stratagem to prevent mother-to-child-transmission. State was obligated to uphold section 27(1) and (2).

The contextual approach on issues of dignity has further elevated it as an animating value. This has resulted in an express constitutional inclusion of the right to social security. This goes as afar as obligating the state to provide social assistance to the indigent members of the society. This was canvassed in Khosa v Minister of Social Development 2004 (6) SA 505 (CC): 111, where it was held that the social welfare system which the state has put in place ought to benefit everyone, as an imperative of enabling indigent people to reassert their dignity.

The right to dignity has also been invoked in claims pertaining to discrimination, on matters that adversely affect the person’s social status in the society. This is premised on the need to remedy the social-ills associated with group-disadvantage or harm. Very often than not, discrimination result in reduced opportunities and effectively, deplorable socio-economic conditions. The case of National Coalition for Gay and Lesbian Equality v Minister of Justice 1999 (1) SA 6 (CC): 29, laid bare the acute exposure that gays and lesbians face, thereby proffering an intervention to emphasise that dignity remains an inherent integrity of humans irrespective of gender or sex. In this case, the Constitutional Court upheld that human dignity is a creation of Kantian moral philosophy, and that we
should acknowledge every person’s value and worth as members of society. This emphasised the view in Harksen v Lane NO & Others 1998 (1) SA 300 (CC) that, guaranteeing the right to equality is essential in the preservation of dignity. Hence, it is discernible that first generation of rights is a precursor for the growing attention of both second and third generation rights.

**Challenges and prospects**

This section presents critical observations that are found to be hindering a comprehensive realisation of human right to dignity. These are largely social circumstances which have also been accepted as partly inherited from the legacy of apartheid. It is only unfortunate because the spiralling progress points in the negative direction. Notwithstanding the notable judicial activism that has been fundamental in reinforcing the enforceability and realisation of socio-economic rights, a wider experience in general public remain that filled with stark contrast.

In the recent past, it has been revealed that South Africa continues to experience threats particularly towards the Constitution’s transformative agenda. There are numerous factors that have notably been considered as pervasive threats towards achieving comprehensive dignity in meaningful terms. This is inclusive of high levels of poverty, spiralling levels of inequalities and soaring unemployment problems, with the youth being the hardest hit. These challenges are so intrinsic that they extensively determine the extent to which a person is capable of asserting his/her dignity as they affect access to education, health care, justice and other common social amenities. The official unemployment rate presently sits at 24.1% while the expanded unemployment rate is at 34.9% (Statistics SA, 2014). Subsequently, this has compounded and heightened poverty crisis (Frye, 2013), further spiralling the widening gap between the rich and the poor or worsening inequalities in simple terms (Kings, 2014; Mattes, 2012; Appolis and McKinley, 2009). The critical aspect of these phenomena is that approximately 16 million people are dependent on the state funded social assistance in the form of social grants (Statistics SA, 2014). Whereas it is amenable that social grants have mitigating effects over poverty, the grants do not eradicate it nor promise a permanent alternative relief (Rapatsa, 2014b). Thus, the sustainability of providing social grants as a means of safeguarding dignity remains a critical matter, because these are largely funded from tax contributions of the registered tax payers and other forms of public revenue, while employment levels remain stagnant or on a declining terrain. Another problem which compounds problems further, is the issue of public-private service. Public service is widely associated with poor service and is mostly utilized by ordinary members of the populace while private facilities are considered of high standard but accessible mainly to the rich. This amounts to what I term ‘silent-injustices’, where access to quality socio-economic services is determined by wealth (Liebenberg, 2010).

President Kgalema Motlanthe (as he then was), rightfully put it that we cannot boast to be espousing the principles of human dignity and equality when many people are still living in appalling conditions of poverty and underdevelopment (Motlanthe, 2009). It is indisputable that change in socio-economic conditions of the majority of the people would largely result in the fulfilment of preservation of human
worth, the crux of dignity. Thus, the fundamental question boils down on how to calibrate interventions underpinning values of human dignity in regard to socio-economic rights? In formulating social and economic policies, the government has to consider not only the rights of individuals to live with dignity but also, the general interests of community in pursuit of wider humanitarian goals. This shall reinforce efforts towards sustainable development and preservation of human dignity.

Conclusion

Indubitably, the notable universal successes associated with human rights philosophy can be attributed to human dignity as a foundational norm which enabled human rights to flourish. South Africa’s embracing of human right to dignity has meaningfully fostered widespread acceptance of human rights theory as a panacea to multiple societal challenges, and this has largely aided the Constitution’s transformative agenda. Thus, it is discernible that utilizing the right to dignity as the yardstick of human rights effectively made way for recognition, protection and justiciability of socio-economic rights, without which the project of transformative constitutionalism would crumble. Therefore, the notion of human dignity is the touchstone of all fundamental rights entrenched in the Bill of Rights. In the main, it is observed that South Africa has effectively succeeded in entrenching a progressive normative and institutional framework necessary to augment the realisation of human dignity. However, in practical terms, the impact of the normative framework has been encumbered owing to constant overwhelming problems associated with poor or non-existent political will to wholly advance a meaningful transformation and uphold the Constitution. This is worsened by the ever spiralling inequalities between the rich and the poor. Under these circumstances, it becomes impossible for the majority of the people to assert their right to dignity because of horrendous socio-economic conditions they experience on a daily basis.

References


Langa, P. 2006. The challenges facing transformative constitutionalism in South Africa. Prestige Lecture delivered at Stellenbosch University on 9 October 2006.


