



THE JURIDICAL STATUS OF HUMAN DIGNITY: AN INVESTIGATION

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ABSTRACT

Dignity is a conscientiously complicated concept, an abstract idea enormously debated for its juristic root, legal basis and judicial insinuation. Literatures on the juridical status of dignity are insufficient. There is a huge knowledge gap in determining the applicability of dignity concept in formulating and interpreting judgements. This paper endeavours to fill up that void and attempts to intersect the legal status of “Dignity” as a justified defence and not just a mere credible legal doctrine. To investigate the applicability of Human dignity as a legal formula, we have taken three distinct indicators of juristic assessment- International conventions and statutes, judgements and offences that breed dignity violation. We have set the first layer of argument by explaining the preambles and provisions of international legal instruments which proclaims dignity as a celebrated legal dogma. The discussion of the second part presents a detailed analysis of judgment of international and national courts and tribunals. Lastly, we have portrayed a thematic analysis of offences that are directly linked with human rights violations causing serious attack on individual dignity. We have argued that the concept of dignity possesses fundamental jural status in the legal archetype and judicial interpretational grandstanding. Judges not only consider “Human Dignity” as a core legal tenet of formulating the reasoning of their judgement in cases on human rights violations but also emphatically applied dignity jurisprudence as a juridical device and legal parameter of human rights protection. Judges in both offences and civil rights violations consider dignity as an important ingredient of awarding remedy, ensuring victim participation and protection of human rights. This article is a significant contribution in the academic field by addressing the application of dignity jurisprudence in adjudication and also a key factor for judges to determine the basis of gravity of offence, awarding punishment and judicial interpretation.

KEYWORDS

Human dignity, human rights, dignity rights, victim participation, individual integrity, judicial interpretation, *BVerfG* case.

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INTRODUCTION

It is difficult to define what human dignity is. It is not an organ to be discovered in our body, it is not an empirical notion, but without it we would be unable to answer the simple question: what is wrong with slavery (Leszek Kolakowski, 2002)?

Human interactions in primitive society were flawed by violence and conflicts. This came from the disrespect to human existence, individuality and the right to live peacefully without interference. The abovementioned quote resembles the intrinsic value or worth of humans as a person which signifies why the concept of equal respect to all human beings is pertinent to recognise the human existence that was denied by slavery. It is because slavery practices consider humans as a product or an object, more importantly, as a movable property. This sense of objectifying humans curtails the existence of humans as the best living entity, the creature of distinct or superior intellect. The practice of slavery had imposed an excruciating consequence to human identity, human rights, liberty, equality and justice- by rejecting the notion of self-respect. It generates various forms of inhumanity and violence that causes death and destruction of humans. Later, the idea of respect to all humans shapes the idea of human dignity as a legal right and made its place in many international laws. From feudal society to the 21st century, the concept of human dignity got evolved gradually.

Dignity is an inviolable and inevitable element of upholding and realisation of human rights. However, it is not treated as a distinct human right directly as a fundamental element of international human rights. One of the criticisms indicate that dignity is neither an exquisitely applied rule nor mentioned as any constitutional elements worldwide as a direct legal provision, making its applicability status doubtful. Except the German Basic Law Code and section 10 of the South African Constitution, dignity is not seen as semantic legal provision. Although the statutory position of dignity might be not that strong, dignity is the founding concept of the United Nations Charter along with UDHR which was built in order to sustain peace and equality universally by enabling active participation of the State parties through legal implementation and social influence in their respective nation.

Nevertheless, dignity is not included as a legal right in all the statutory laws around the world and it has expressive statutory mentions which can enable it to directly defend human rights violations. This paper aspires to show the legal applicability of human dignity as a defence against human rights violation in the judicial aspect. Dignity is placed as a threshold in many international instruments and especially in some of the landmark judgements of international courts. The study will showcase the reasoning of juristic value of the concept by analysing how while adjudicating a legal dispute, the Courts have both ethical and legal obligation to incorporate the dogmatic code of human dignity as treasured in most of the human rights tools of uniform application.

Sufficient academic works have not been conducted to address the issue of how the meaning of dignity will be applied regarding adjudication and legal enforcement of judgments. This paper attempts to find out the gaps in the literature that shrinks the legality of dignity as a doctrine by analysing legal scriptures of different jurisprudence that promotes the judicial applicability of the concept of dignity. To make the discussion distinct from existing literature, the paper included judgements where human dignity is used as legal basis to form reasoning of decision and to declare punishment for human rights violation.

LITERATURE REVIEW

Some scholars argue that dignity is a vague, unrealistic notion, unenforceable theory with no practical legal application, untenable to be projected as a legal conception. Philosophers like Nietzsche mocked the dignity diaspora arguing that elite section still required modern slavery to sustain hence, dignity is a mere theoretical phantasm (Aroney, 2021). Meanwhile

philosophers labelled the 'Dignity show' as rhetorically eternal nonsense, flowery utopia, luxury decoration of words, putrefied axioms, metaphorical expressionism, emotional exaggeration (Waldron, 2014).

Dignity, according to Rummens and Pierik, is considered as personal freedom that is contingent upon the state's ability to enforce necessary limitations, so as to preventing the excessive infringement of equal freedom by one group or individual upon others in society (Rummens & Pierik, 2015).

Some scholars opined that dignity should be implied as a mechanism for civil rights enforcement which will censure arbitrary attitudes, condemn discrimination or punish acts contrary to dignity like racism (Liu, 2024). Dignity is also suggested by religious scholars to be considered as a code of enforcing religious rules to instill just and equity in society (Asghari, 2023).

Court interpretation and social perception is outwardly different in defining dignity. Some scholars identified the term dignity as the focal point of ethical theory, a theorized concept subliming in a direct mode in the international implementations but largely an absent term in the binding treaties, conventions and the constitution of countries (Neuhaeuser et al., 2019).

The position of dignity as a legal concept is contestable (Fischel & McKinney, 2020). Dignity is more seen as a study of ethics and morality discourse jurisprudential idea. (Hanna, 2021) Many scholars argue dignity to be a vacant jar for a legal foundation for human rights as UN or other international organs have neither defined Dignity in clearly uniform manner, nor decided its basis or origination, while others opinionating it to be the basis of justice, equity and legal rights (Giselsson, 2018).

On the contrary, many scholars find dignity having its depth not just in morality, philosophy or religion, but also in legal jurisprudence (Shultziner, 2003). Constitutional jurisprudence underpins that all laws and legal rules must be witnessed and understood in the lens and sense of human dignity.

Legal scholars addressed that human dignity is differentiable than respect or honor, making it a philosophical or religious aspect, mere respect becomes dignity when it is applied by codified laws as regulatory norm irrespective of country, community or culture, exhibiting the essence of dignity protected under legal mechanism and making its violation punishable by law (Addis, 2015).

Emmanuel Kant was the first philosopher to decipher that dignity is an established custom of respecting an individual's capability of reasoning, decision making by own wisdom, moral obligation to obey ethical code which should be protected worldwide (Rinie Steinmann, 2016).

Modern theory of Dignity from Dignity standpoint has similarity with primitive Dignitas of legal humanism or core value of human identity which concentrates more on obligation to respect rather the right to be respected (Hennette-Vauchez, 2011). Benton do point out the juridical value of dignity by analysing how continuous systematic undignified activities and propaganda of hate speech breed a genocide in Rwanda.

He argued that human dignity can reduce lacunas in the substantive criminal law, rationalize judicial interpretations, solve the battle between rights and values, and hypothetically tackle the requirements of strict legality- all these empower judges to bring importance and sometimes morally compelling reasonings for their judgements (HEATH, 2012). Scholars have also labelled dignity as *jus cogens*, *erga omnes*, customary principle of international law due to its cognitive relevance with the elements of justice and human rights

(Moli, 2019). Dignity is found to be present in some State constitutions in recent literature. Maryna and others have shown that dignity is considered the founding principle of all legal rights in Germany, strong irrefutable legal right in Hungary but mere social value in Ukraine. Hence, Ukraine should consider enlisting dignity into constitutional ambit to enhance legal reform (Mikulina et al., 2024).

None of the literature completely presents the viewpoint of how dignity is reflected in the legal scriptures that validates dignity as a rule or how it is incumbent upon the States in constitutional standpoint to establish dignity as an integral of establishing justice and equality in the society. Also, the application of dignity in judicial pronouncement is greatly overlooked and remains untouched in the academic literature. This paper attempts to point out that gap in the academic literature, aspiring to highlight the usage of dignity in international laws and court judgements to fill this gap and encourage further research on application of dignity as a tool in formulation and interpretation of court judgments.

RESEARCH METHODOLOGY

Doctrinal method is followed to underpin the analysis of the paper. A deep thematic analysis is used to articulate and explain provisions of the nearly 40 international conventions from three different legal areas to grasp the legal perspective on dignity- International Human Rights Law, International Humanitarian Law and statutes of International Criminal Law. Each convention, charter or instrument is analysed on basis of how their preamble and provisions explain dignity.

To assess this theoretical problem, we applied a logical analysis, amalgamation, analysis of scientific literature and generalization process. To discover the core foundational basis of dignity application in the judicial aspect, we approached case-law analysis. We examined the key focus of applying dignity in the reasoning of the judgments of various constitutional courts, Statutory Supreme courts, international courts and tribunals to understand judges' perspective of human dignity implication, to highlight the judicial and jurisprudential value of the dignity concept as a legit tool to declare punishment for human rights violation and the challenges judges face while applying dignity as a rule. Finally, we resorted to a theoretical discussion of offences which violate the right to dignity of the victim and their justice seeking mechanism to showcase the reasonableness of dignity as a human right and thus establish its juristic value. For analysing literature, journal articles and books using multiple variation keywords for human dignity is utilised. Among the 260 literatures collected, 113 published documents are thoroughly reviewed, analyzed, cross checked and those in line with the research objective are used to author the paper.

THEORETICAL ANALYSIS AND DISCUSSION

Dignity is placed as an inalienable, intrinsic fundamental right of humans. Right to human dignity is recognised as a human right by international law. It is included in the legal provisions of multifarious international human rights law instruments, making it one of the celebrated and highly acclaimed rights for humans across the globe. Its significance is glaringly exhibited by such incorporation in the international human right law arena because dignity is interlinked with many other human rights such as right to life, right to freedom from torture, inhuman and degrading treatment, right to equality, right to equal legal protection etc.

Dignity in Universal Declaration of Human Rights (UDHR)

The utilisation of the concept of dignity in international and regional human rights documents is largely influenced by its initial use in the Universal Declaration of Human Rights. The preamble of the document refers to dignity in two instances. Firstly, it acknowledges that the inherent dignity and equal and absolute freedoms of all individuals is the basis for peace, justice, and liberty worldwide. Secondly, it highlights that the people of the United Nations

have reaffirmed their belief in the fundamental rights of humanity, the dignity and value of every human being, and the equal rights of both genders. The provisions have also committed to promoting social progress and improving living standards in a state of greater freedom. Article 1 of UDHR addresses this topic and states: 'Every individual is entitled to liberty and equality by birth regarding their dignity and rights.'

Dignity in the Preambles of Various International Conventions

UN Charter's principle of dignity and equality and UDHR's notion of all human beings born free and equal in dignity and rights has been reemphasized in 1965 Convention for Elimination of all forms of Racial Discrimination in its preamble stating importance of "securing understanding of and respect for the dignity of the human person"(UN General Assembly, 1969).

Dignity further has been strengthened by the preambles of The International Covenant on Civil and Political Rights (ICCPR)(United Nations General Assembly, 1966a) and International Covenant on Economic, Social and Cultural Rights (ICESCR)(United Nations General Assembly, 1966b) where the concept of inherent dignity is clearly stated as an inviolable fundamental essence of justice, peace and order, a person's own independence, human rights and human existence. The CEDAW convention signifies the "principles of equality of rights and respect for human dignity" in its preamble (United Nations, 1979). The Torture Convention included the term "inherent dignity of the human person" in its preamble (United Nations, 2015).

How fundamentally vital the concept of human dignity is in international law can be well understood from a UN resolution which binds all state parties to mandatorily ensure the inclusion of human dignity while legislating any human rights instruments. The resolution in its point 4(b) of agenda 41/120 incorporated the "inherent dignity and worth of the human person"(UN General Assembly (41st sess. : 1986-1987), 1986) to be one of the thresholds of the guideline of establishing international human rights standards. Recognising the concept of dignity in the preamble, the Additional Protocol to the Biomedicine Convention stipulates the value of dignity and respect for integrity for human life while applying medicine and biology in the arena of biomedical research (Council of Europe & Directorate General Legal Affairs, 2005).

Importance of human dignity has been repeatedly and emphatically reiterated in the preamble portion of various international instruments pointing the narratives "inherent dignity of human person"(United Nations General Assembly, 1966a)(United Nations General Assembly, 1966b) "dignity and worth of the human person"(United Nations, 1945)(United Nations, 1956)(United Nation, 1989a), "human rights and dignity"(International Labour Organisation, 2016),"dignity of human being"(Council of Europe, 1997) and "freedom and dignity"(International Labour Organisation, 1981)(International Labour Organisation, 1966)(International Labour Organisation (ILO), 1958)(International Labour Organization, 1957).

Dignity has also been identified as "right to life and human dignity"(United Nations, 1976), "respect for the inherent dignity of man"(Organization of American States (OAS), 1994b), inherent dignity of all human being"(Council of Europe, 2002)(Council of Europe, 1953)(Organization of American States (OAS), 1994a), "universal values of human dignity"(European Union, 2000), "dignity of the human race", "enhancement of human dignity"(United Nation, 1989b), "violence against women an offense against human dignity"(Organization of American States (OAS), 1994b), "freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples"(Organization of African Unity (OAU), 1981)(Organization of African Unity (OAU),

1963)(African Union, 2004), “Right to dignified life”(Organisation of Islamic Cooperation (OIC), 1990) etc. and the inevitability to protect that dignity.

The preamble of 1948 American Declaration precipitates the liberty and equality of each individual human being regarding availing dignity and rights (Organization of American States (OAS), 1948). How dignity correlates with rights and duties its preamble expresses that, rights elevate human liberty and responsibility defines the dignity of that liberty. Valuing dignity is presented as a part of morality in this declaration which it beautifully described in its preamble in the words – “as since moral conduct constitutes the noblest flowering of culture, it is the duty of every man always to hold it in high respect (Organization of American States (OAS), 1948).

In the preamble of the Disabilities Convention the concept of dignity formed a more lucid angle, it asserts that “discrimination against any person on the basis of disability is a violation of the inherent dignity and worth of the human person”(United Nations General Assembly 61st Session, 2007). The fact that almost all international instruments put dignity in their preamble is a significant mark that dignity is introduced as a fundamental inalienable spirit of human right that should be enshrined in the domestic legislation of the contracting States of these aforementioned international treaties and conventions.

This is the first paradigm where the legal recognition of dignity as a legal concept begins. Almost all international treaties have incorporated the idea of dignity with the concept of right, justice and humanity. It is evident that dignity is considered as an indivisible element of human identity, existence, development, progression, advancement and eradication of all atrocity against human race. Setting dignity in the preamble of these instruments establishes the fact that dignity cannot be ignored by laws when the rights and remedies of any violation come into question.

Provisions on Human Dignity in International Human Rights Law Instruments

ICCPR clearly enshrined in Article 10 that persons deprived of liberty must be treated humanely and their dignity as a human must be respected. ICESCR addresses the essentiality of human dignity as the pivotal instrument regarding highlighting the ESC rights like right to employment, equal wage, right to family, social security, adequate food, nutrition, clothing, shelter, standard of living and education. Among numerous instruments the one which starts with human dignity provision is the EU charter of Fundamental Rights. Article 1 of the charter sets a remarkable beginning addressing the very first provision on human dignity signifying the sacredness and inviolability of human dignity.

Respect for human dignity is also recognised in the newly inserted Article 1a of the amended European Union Treaty (European Union, 2007). Importance of inherent dignity and freedom of children (African Union, 1990) is recognised as a fundamental factor in children’s security, development, and growth (League of Arab States, 2004).

The Child Convention points out the State’s responsibility in promoting human dignity of children. While ensuring dignity regarding granting punishment for wrongdoing, no child will be subject to torture and they should be treated with humanity (United Nation, 1989a). Protection of dignity of a child delinquent in criminal investigations or trials is also ascribed in some instruments (African Union, 1990). Torture is considered a drastic medium to degrade human value causing serious attack on dignity and worthiness as a human. Hence any form of torture, physical, emotional, and psychological, are prohibited. Even awarding and execution of punishment must be within the prescribed limit and method stated in the provision of concerned laws.

Hence freedom from torture is an internationally well-established rule in protection to human dignity (United Nations, 1993a) and a cogent constitutional obligation and principle

for legislative body of every nation. Many Conventions depict promoting respect to inherent human dignity of disabled persons (United Nations General Assembly 61st Session, 2007).

The Disabilities Convention emphasises respecting and accepting human diversity, freedom of choice, liberty etc. for respecting dignity. State responsibilities are fostering complete dignity for disabled persons, undertaking physical, psychological and cerebral recovery measures in a dignified environment and raising awareness for their human rights and dignity through training.

Dignity of migrant workers is asserted in the Migrant Worker Protection Convention which denotes States' duty to undertake steps in ensuring working and living standards for migrant workers equal to the regular citizens with required safety standards and dignity (United Nations General Assembly, 1990). While earning is a means of workers' right to dignity (Council of Europe, 1996) as it ensures survival, poverty is also seen as a form of indignity to humans for which the State is obligated to eradicate poverty as a step towards protecting human dignity based on resource availability to minimize social exclusion (United Nations, 1993b).

Dignity relies on access to personal information which should not be used in a manner that causes violation of personal dignity (United Nations General Assembly 61st Session, 2006). About utilizing personal, medical or genetic information of any victim of enforced disappearance, the Enforced Disappearance Convention directs to use it only for searching the person disappeared and not for any other purpose as it will violate dignity, freedom and human rights of that person (United Nations General Assembly 61st Session, 2006). The convention categorises restoration of personal dignity and reputation as one of the moral damages to be compensated in exercising right to reparation (United Nations General Assembly 61st Session, 2006).

Dignity of Indigenous people is an internationally recognised concept (United Nations General Assembly 61st Session, 2007) which denotes the right to diversity as a form of dignity as a minimum standard for survival. Dignity for elderly people and workers having a safe, healthy and dignified environment is another recognition for the concept of dignity (European Union, 2000). Unlawful forced labour, human trafficking, slavery and servitude are prohibited as they violate human dignity, intellectual capability and physical capacity (Organization of American States (OAS), 1969) is considered an important and internationally recognised trait of dignity which states the right to protection from offensive and unauthorised intervention into private life, family, home and reputation (Organization of American States (OAS), 1969) (Organisation of Islamic Cooperation (OIC), 1990) Right to substantial welfare and spiritual growth is considered a form of human dignity (Organization of American States (OAS), 1970).

Right to education, as addressed in some instruments, is expected to be implemented for ensuring the right to dignity (Organization of American States (OAS), 1999) All forms of gender-based violence and inhuman treatment towards women including gender focused crimes such as women trafficking are prohibited as a gross violation of human dignity and integrity (United Nations, 1993b).

Right to dignity, honor and reputation is recognised accordingly in provisions of many other international instruments (Organization of American States (OAS), 1948)(Organization of American States (OAS), 1994b) (League of Arab States, 2004).

Therefore, the position of human dignity as a legal concept can be traced back from these leading human rights instruments such as ICCPR, ICESCR and UDHR. All these instruments are customary laws having binding effect in international courts as well as domestic legislatures and courts of respective States.

Dignity in International Humanitarian Law

The customary IHL principles- Principle of humanity and proportionality reflect the principle of dignity because human life is a priority to winning wars. The right to life means not only living but also living with dignity (Benvenisti, 2006). As the concept of human dignity is so crucial and inescapably in line with the fulfillment, upliftment and protection of human rights, even the non-state actors who do not incur all kinds of human rights obligation are still bound to maintain basic ones as part of fulfilling the customary principles and obligation under the international humanitarian law (Clapham, 2006).

The formal proposal preceded by the International Committee of Red Cross to the participating States for drafting Geneva Conventions reinforced the issue emphatically that no agreement or laws is required to enforce dignity because it is the non-negotiable, indistinguishable and inviolable element of human rights (International Committee of Red Cross ICRC, 1949).

These principles require that during times of war, individuals who are not directly involved in the fighting and those who are incapacitated due to illness, injuries, capture, or other circumstances, should be treated with respect and provided with protection from the consequences of war. Additionally, those who are suffering among them should be assisted and cared for, without any discrimination based on race, nationality, ethnic heritage, belief system, political opinions, or any other characteristic.

The Conventions' wording, when ratified, notably included the concept of 'dignity' in Common Article 3. This article specifically forbids acts that violate personal dignity, particularly those that include humiliation and degradation. The aforementioned actions are strictly forbidden universally, specifically in relation to those who are safeguarded by the Conventions.

Article 4 of the Lieber code considers the principle of dignity to be mandatory regarding applying martial law stating in words that, "As Martial Law is executed by military force, it is incumbent upon those who administer it to be strictly guided by the principles of justice, honor, and humanity..." (D.Schindler & J.Toman, 1988) The Code denotes that prisoners of war should be subjected to imprisonment and no other torture or indignity stating "Prisoners of war are subject to confinement or imprisonment such as may be deemed necessary on account of safety, but they are to be subjected to no other intentional suffering or indignity". Article 3(1)(c) of the Third Geneva Convention for protection of prisoners of war 1949 stipulates that- "Persons not actively participating in armed conflict must not face any outrages upon personal dignity, humiliating and degrading treatment" (ICRC, 1949).

Additional Protocol I to the Conventions relating to the Protection of Victims of International Armed Conflict explicitly forbids acts that violate personal dignity. In Article 75(2)(b), the Protocol has regarded the "outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault" to be prohibited and placed it as a violation of fundamental guarantees enshrined under this protocol (ICRC, 1977a).

According to Article 85, specific actions will be considered serious violations of this Protocol if they are done intentionally and in violation of the Conventions or the Protocol. Article 85(4)(c) of the Protocol prohibits "practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination" clearly labelling it as gross violation of the Protocol (ICRC, 1977a). The preamble of the Second Additional Protocol to the Geneva Convention stresses on the term respect for every human person. Article 4(2)(e) and (f) of Part II Human Treatment of the Protocol has termed the "outrages upon personal dignity, in particular humiliating and degrading treatment, rape,

enforced prostitution and any form of indecent assault” and the “slavery and the slave trade in all their forms” as prohibited (ICRC, 1977b). This discussion showcases the place of human dignity in the IHL instruments.

DIGNITY IN VARIOUS INTERNATIONAL CRIMINAL TRIBUNALS STATUTES

Article 3(e) of the Statute of the Special Court for Sierra Leone 2002, Article 4(e) of Statute of the International Tribunal For Rwanda 1994, and Article 8(2)(b)(xxi) of the Rome Statute of the International Criminal Court 1998, describes the “*Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault*” as prosecutable crime (United Nations and Government of Sierra Leone, 2002)(United Nations, 1994)(International Criminal Court, 1998).

DIGNITY IN THE LENS OF INTERNATIONAL JUDICIAL PRECEDENTS

Dignity is scholarly opinionated as the founding basis of the concept of human rights in the legal discourse (Waldron, 2013). Shultziner formulated four principles for jurists and lawmakers to indoctrinate dignity as an expressive formula in judicial and legislative deliberations: Firstly, Tribunal rulings should adhere to a stated law when considering the interpretation of human dignity; Secondly, the judiciary should endeavour to establish a clear and unequivocal definition of human dignity; Thirdly, Judges should strive to systematically utilise human dignity in their verdicts and subsequent determinations and lastly, human dignity should promote the expansion of basic human rights instead of imposing restrictions on them (Shultziner, 2017). The optics of judicial interpretational viewpoint picturized a big landscape of legal status and justifiability of dignity as well as the recognition of dignity as a crucial value of ratio decidendi of any international judgements. This part of study will showcase a great deal of case decisions pronounced by regional constitutional courts, international and regional courts, tribunals, International Court of Justice and other omnipotent judicial bodies where the concept of human dignity has been referred to as a legal doctrine.

The International Court of Justice (ICJ)

In a human rights case, the International Court of Justice has hardly ever experimented with the concept of “human dignity”. However, human worth has been extensively applied in the scope of constitutional rights in both concurring and dissenting views expressed by various ICJ members. While adjudicating the Nahimana Trial on indictment of genocide, the trial court found no legal instrument having clear definition of “direct and public incitement to genocide”. There was no single document to determine the category whose act will be a direct and public incitement to genocide. In absence of legal rule or principles, the court declared that any form of hate speech with intent to destroy a group of people can amount to persecution as hate speech is a vehement violation of human dignity (HEATH, 2012).

Judge Shahabuddeen introduced the notion of dignity in the 1996 Legality of the Threat or deployment of nuclear weapons decision (Advisory Opinion On The Legality Of The Threat Or Use Of Nuclear Weapons, 1996). He invoked this concept to bolster his argument that the deployment of nuclear weapons contravene human rights protections.

In 1996, Judge Weeramantry discussed the notion of dignity in the context of the Bosnia and Herzegovina v. Serbia and Montenegro decision. (Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro), 2007 I.C.J. (Feb. 26), 2007) He raised this point while presenting his argument on application of the crime of genocide in that particular instance. In numerous instances, the International Court of Justice (ICJ) applied the notion of dignity.

Judge Ranjeva made reference to Belgium’s application of universal jurisdiction in the Arrest Warrant of April 11, 2000 case (Case concerning Arrest Warrant of 11 April 2000 (The

Democratic Republic of the Congo v Belgium) Preliminary Objections, ICJ GL No 121, [2002] ICJ Rep 3, [2002] ICJ Rep 75, ICGJ 22 (ICJ 2002), 14th February 2002, 2000) In South West Africa judgment, Judge Tanaka used the idea of dignity to support their claim that apartheid and racial discrimination were against international law (Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J., 1970). Judge Tanaka said it is fundamentally wrong to demand a sacrifice for the sake of social security, particularly one that includes demeaning someone's dignity. Tanaka said:

As persons they have the dignity to be treated as such. This is the principle of equality which constitutes one of the fundamental human rights and freedoms which are universal to all mankind. ... The Respondent, probably being aware of the unreasonableness in such hard cases, tries to explain it as a necessary sacrifice which should be paid by individuals for the maintenance of social security. But it is unjust to require a sacrifice for the sake of social security when this sacrifice is of such importance as humiliation of the dignity of the personality."

Regarding the contested security fence constructed by Israel in occupied Palestinian territory, Judge Elaraby examined the reciprocal responsibilities of Israelis and Palestinians in the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* by the ICJ where the human dignity was focused as a primal part for the reasoning of the judgment (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ GL No 131, [2004] ICJ Rep 136, (2004) 43 ILM 1009, ICGJ 203 (ICJ 2004), 9th July 2004, 2004*).

Judge Koroma further underscored the significance of international obligations that Uganda breached during its armed operations in the Democratic Republic of the Congo, as argued in the 2005 case *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* (*Armed Activities on the Territory of the Congo, the Democratic Republic of the Congo v Uganda, ICJ GL No 116, [2005] ICJ Rep 168, ICGJ 31 (ICJ 2005), 19th December 2005, 2005*).

In these judicial interpretations, the judges incorporated their verdicts and reasoning based on the principle of dignity. It indicates how judges consider the concept of human dignity as a legal doctrine to determine the criminal liability, legal obligation to comply with international standard, international customary principles regarding human rights and legal compliances under international law.

International Criminal Court (ICC)

Dignity violation is enlisted as an element of international crime in statutes of various criminal tribunals. Rome statute covers some acts which directly links the dignity violation as an offence while committed during war or peacetime which are:

- a. Outrages upon personal dignity
- b. Humiliating and degrading treatment
- c. Rape is seen as gross dehumanization process of rapist and a vehement violation of right to human dignity and an essential element in war crimes, crime against humanity, and genocide.
- d. Enforced prostitution as a war tactic or military strategy is strictly prohibited under IHL rules. It is a manifestation of degrading or demeaning personal dignity and human identity of the woman and a specific act of violence towards women.
- e. Indecent assault that disgraces the modesty of women is also considered as violation of the right to human dignity.

Each of the genres of offences mentioned in the provision are interlinked with the idea of dignity rights and the obligation of the State to ensure dignity and rules for conflicting nations so that none of these are used as military policies during armed conflict to aggravate the war loss. The same crimes are enshrined in ICTR and ICTY statute and the statute of Sierra Leone special tribunal for war crime and crime against humanity. A valiant reason to add these elements in the provisions of these laws is the importance to include and ensure dignity as a basic human right.

The ICC judgements on sexual offence as a method of war crime or crime against humanity or genocide has been evolved more progressively in dignity jurisprudence than ICJ did. If we indulge into the case of Germain Katanga and Mathieu Ngudjolo Chui (*Situation In The Democratic Republic Of The Congo The Prosecutor V. Germain Katanga And Mathieu Ngudjolo Chui*, ICC-01/04-01/07 OA 8, 2009) it can be understood that dignity can be a good source of legal defence regarding adjudicating sexual offences in the international sphere.

ICC being the first international criminal court has indicted the two persons on several charges making it the second ICC trial and first gender-based crime ICC adjudication trial. They were first charged together with seven war crimes among which willful killing, sexual slavery, rape, and using children under the age of fifteen to actively participate in hostilities were present. They were also charged with three crimes against humanity (murder, sexual slavery, and rape).

The Akayesu judgement by Ictr (The Prosecutor Vs. Jean-Paul Akayesu, Case No. ICTR-96-4-T, 1998) and the Furundžija (PROSECUTOR vs. ANTO FURUND@IJA, CASE No. IT-95-17/1-T, 1998) and Kunarac judgement (The Prosecutor v. Dragoljub Kunarac, Radomir Kovak and Zoran Vukovic, Trial Judgment, IT-96-23-T& IT-96-23/1-T, 2001) by ICTY have successfully placed rape and sexual violence in a place more than just an offence.

By redefining rape, interpreting its usage as military strategy, its use as an excuse of military necessity and what it means to lose bodily integrity having ingrained psychological trauma, these Ad-hoc tribunals agreed that rape brings a distorted image of self-esteem into the victim which is a sheer violation of dignity rights (Gekker, 2014). ICC has not thought of this approach where it could consider rape in the dignity lens. The most valiant factor on this issue is admissibility of evidences, the kind of evidences judges of any international tribunal allows for proving sexual offences. Dignity, howsoever prominent or thematically inclined, could perhaps divert the mandatory criminal law standards the ICC judges had to follow. Nevertheless, the judicial precedent establishing dignity as a parameter for criminal law standard as well as a considerable judicial element for sexual offences, might have bring out positive solution to such inadvertence.

European Court of Human Rights (ECtHR)

Scholars have argued that dignity must be incorporated into the civil law jurisdiction for proper realization and establishment of victim rights, particularly right to seek legal remedy, right to access to court, right to victim participation. ECtHR has applied the doctrine of right to dignity in the form of positive and negative obligation of the State to protect human rights.

The court has several precedents upholding the implication of dignity principle in ensuring remedy to victim for violation of right to life, right to liberty, right to protection from torture, inhuman and degrading treatment, right to protection from victimisation, right to respect for private life including physical and moral integrity, right to privacy of records of victim (Holder & Dearing, 2024). These rights are enshrined in the European convention on human rights in light of which court decided many cases.

In *Z v Finland (1997)* court opined that the privacy of medical records from the public record fall into the category of right to dignity because it relates with respect to individual and

his privacy. In criminal cases on sexual and/or physical violence against one person by another person, the Court reflected the idea of dignity portraying that the State has violated human rights as well as failed to act in a way which could protect the personal dignity of an individual.

In *X & Y v The Netherlands* (1983), the Court pivoted on the point that the State has an obligation to maintain principle of noninterference with private life, and the idea of effective respect necessitates certain positive action. Court held that Article 8 has been violated for Y—a young female resident from a special home with psychosocial disability who was sexually abused. State has failed to protect the security and other human rights thus protection of dignity was seriously dishonored.

In para 23 of this particular judgment signifies the commencing of the shift towards Statutory obligation to “secure” rights even if both the offender and victim are private individuals. This points to the fact that dignity can be and should be utilized as a defence for both public and private violation of rights because dignity is a key component of individual value, an uncompromising factor of basic sense of respect, self-worth, personal freedom, prohibition against commodification.

Dignity is reflected as a cultural and victim protective element in the adjudication of criminal cases especially sexual crimes followed by first degree offences. In *MC v Bulgaria* (2003), a case involving allegation of rape, the Court found violations of both Articles 3 on prohibition against torture, inhuman or degrading treatment and Article 8 on respect for private and family life.

Both of these articles are about respect towards human identity and freedom i.e., dignity. In *Danciu and Others v. Romania* (2020), not conducting investigation of an attempted killing of a private person swiftly and efficiently was also found in violation of the right to life enshrined in Article 2 of convention. Court has visualized dignity in the positive and negative obligation of the State in safeguarding human rights violations.

That the obligation of the State as to mandatorily doing the necessary and not doing anything harmful to the victim in a criminal case can restore the shattered dignity of the victim because proper remedy is ensured by proper investigation which is a fact of statutory obligation. The victim participation enhances effective remedy which can only be achieved if the State complies with its positive and negative obligation of protecting human rights. Technically, this cycle of justice is interlinked with the Statutory obligation of safeguarding the right to dignity of an individual because sexual crimes are primarily committed to disgrace the honor, modesty and respect of the victim.

Similarly, in *Janković v. Croatia* (2009) a case of physical assault of a woman, the Court has found the concerned authorities were miserably unsuccessful to comply with their negative obligation to protect the bodily integrity of the victim. Besides this, by failing to conduct an effective investigation and prosecution for the victim, the authority has further infringed her right to privacy and respect for a private life as mentioned in Article 8.

The interpretations through the judgements delivered by this court on the prohibition of torture and cruel and humiliating treatment and punishment stated in Article 3 of the European Convention on Human Rights (ECHR), are heavily invested in the Human Dignity notion which constructs the footing of their judgments. *East African Asians v. United Kingdom*, 1981) is one of the instances where the court instilled the concept of human dignity to deprecate the fact of the case concerning the violation of human rights caused by racial discrimination.

In the specific context of the case, this discrimination was deemed to be degrading treatment. Human dignity is used by the European Court of Human Rights (ECtHR) in *Tyrer*

v. *UK*. In this case, the court ruled that corporal punishment, which was given as part of a legal sentence, violated Article 3 because it constituted an assault on a person's dignity and physical well-being, which Article 3 aims to safeguard (*Tyrer v United Kingdom*, n.d.).

This case paved the way of considering implication of human dignity in various judgments such as in *Bock v. Germany* in the context of the right to have an impartial hearing (*Bock v. Germany*, 1990), in *SW v. UK*; *CR v. UK* in the aspect of the right of no punishment without a punishment provision (*SW v. UK*; *CR v. UK*, 1995), in *Ribitsch v. Austria* for the prohibition of torture (*Ribitsch v. Austria*, 1995), and in *Goodwin v. United Kingdom* while addressing the necessity of recognising of right to private life (*Goodwin v. United Kingdom*, 2002).

European Court of Justice (ECJ)

In *Cornwall County*, the ECJ ruled that the Community Directive, which prohibits sex discrimination in employment, also prohibits dismissing someone from employment based on their trans-sexualism (*P v. S and Cornwall County Council*, 1996). The ECJ emphasized that allowing such an injustice would be equivalent to disregarding the dignity and liberty that transsexual individuals possess the right to, and that the court has a responsibility to protect.

In *Omega*, the Court determined that the Community regulation unequivocally aims to guarantee the observance of human dignity as a fundamental legal norm (*Omega Spielhallen Und Automatenaufstellungs GmbH v. Oberbürgermeisterin Der Bundesstadt Bonn*, 2004).

Inter-American Court of Human Rights (ACHR)

In the 1988 Velásquez-Rodríguez case against Honduras, the Inter-American Court of Human Rights ruled that state agencies failed to investigate a civilian's imprisonment and disappearance. This Court found violations of liberty, humane treatment, and the right to life. Therefore, the Court also concluded that the State's failure to comply with its statutory obligation of guaranteeing the unrestrained and complete expression of those rights to the persons within its jurisdictions necessitated more than just providing a country's legal system as a preventive step.

German Constitutional Court

The 2020 *Bundesverfassungsgericht* decision, briefly known as BVerfG decisions by the German Constitutional Court, brings us to the intellectual roots of human dignity, and hence its application to victim participation in criminal proceedings. Although the BVerfG is a national court, its decisions have far-reaching consequences throughout the EU. This Court analyses cases regarding Germany's Basic Law, the first of which states that human dignity is inviolable or respecting and protecting it is the responsibility of all state authorities. BVerfG decisions must therefore directly address dignity, as in a case heard in 2020. The BVerfG's conclusion in the matter focused on human dignity as the substantial rationale for what it decided (*BVerfG, Beschluss der 2. Kammer des Zweiten Senats, Decision of the Second Chamber of the Second Senate*, 2020).

The matter involved a woman who claimed she was wrongfully impeded in a facility for mental illness and that prosecution professionals dismissed preliminary proceedings against four people involved in her confinement in varying official (and other) powers, as required by her constitutional rights. In this regard, the BVerfG placed human dignity on three levels. The Court determined that the offence committed against the victim was primarily a violation of her dignity (a disregard for her autonomy as a patient) rather than a violation that caused her injury.

Second, her right to an official rebuttal of the crime through criminal processes is founded on human dignity, and the legal process must reinstate her dignity. Third, the victim's

standing in the procedures must be commensurate with her dignity, demonstrating procedural recognition.

Despite the fact that the medical authorities had no intention of causing injury and performed their duties in the most beneficial interests of the patient, the BVerfG has interpreted the defence of bodily integrity as the shield of the person's autonomy with respect to bodily integrity. The BVerfG decision can be seen as saying that the individual should be prevented from the burden of being completely subject to and at the whims of another's will, regardless of the ramifications for the individual's self-esteem and reliance on others.

The decision emphasises that the victim's entitlement to criminal procedures entails having their dignity recognised and rehabilitated by the criminal court. The judgement reinforces the remark that dignity is "the recognisable potential to assert claims" (Feinberg & Narveson, 1970). A skill or ability evidenced by a person's legal identity or position. Essentially, respecting human dignity beholds a "prohibition against objectification" (Daly, 2021).

Constitutional Viewpoint of judgements by Domestic Courts on dignity

Judges in several nations, where judicial review is not quite as prevalent, have begun to emphasise on the key importance of dignity rights: Several countries, including Argentina, Bangladesh, Botswana, Canada, Costa Rica, Ireland, Italy, Kenya, Malawi, Mexico, Namibia, Nigeria, Nepal, the Philippines, Slovenia, Taiwan, and the United States, have made significant decisions to uphold dignity rights in various areas such as casting ballots, jail conditions, ecological issues, sexual orientation and gender identities, marital status, constitutional rights, and criminal penalties (Daly, 2022).

In 2019, the American Bar Association announced a comprehensive resolution reaffirming that human dignity is the innate, equivalent and indisputable worth of every person - is the cornerstone to a constitutional rule of law; and the Association solicits governments to take steps to guarantee that "dignity rights" - the principle that human dignity is vital to all domains of law and policy - are recognised in their implementation of their legislative, executive, and judicial processes" (Daly, 2022).

Dignity in sexual offences

Dignity is one of the vital aspects of gender based violences, especially violence against women and a key ingredient of the offender in committing sexual offences. Scholars has emphasised that, rape and other sexual offences contributes (among other) to one damage to society at large that is violation of sexual dignity of an individual. The concept of sexual dignity is not confined in only sexual offence but anything that violates not only the celebrated universal human rights like right to life or freedom from torture.

It also covers the viewpoint of protection of an individual freedom of choice for sexuality. Judicial corset for adjudicating rape is generally centered to the concept of consent or revolves around bodily or sexual autonomy avoiding dignity.

That should be the primal focus for both prosecution and Judges' reasoning. Gladly, in recent times the parameter for forming ratio decidendi in case of rape or sexual violence Judges rely on dignity (if not as equal but most crucially than ever before). Sexual Dignity can be considered contributing exclusive doctrinal work for the criminalization of sexual behaviour.

It has been established in numerous national and international justice courts and tribunals that sexual offences are neither solely an act of focused sexual pleasure nor an act of ultimate violence, but an act of killing the spirit of the victim that makes her scarred with mental agony, self-hatred, demoralized for her entire life mostly leading the victim to suicide

or self-harm activities. Henceforth, dignity in sexual crimes is a significant legal right that is targeted and violated by the offender.

Supreme Court of Canada in its landmark judgment *R v Osolin* [1993] 4 SCR 595, 669 opined that, any form of sexual assault in its ordinary meaning might seem only a bodily aggression. But it is more than a simple act of violence. It has to be seen as a higher degree of violence because it causes both serious physical and mental harm and an individual's right to be respected. It is an assault upon the dignity of the victim and not just one victim but upon the entire human race.

International Criminal Tribunal for Rwanda (ICTR) has pronounced in *Akayesu* judgment (ICTR-96-4-T), Chamber I, 1998 [597] the act of rape as a violation of personal dignity of the victims. Sexual violence is portrayed as an extremely pernicious blow to the optimum honour of the victim and offends her self-esteem and dignity in the judgement of Supreme Court of India *State of Karnataka v Krishnappa* (2000) (4) SCC 75, 15.

Racial discrimination and dignity

Judicial viewpoints exhibit a variety of aspects that resembles the judicial status of human dignity and that concept of human dignity is not confined to personal freedom only. In *Rice v Cayetano*, Justice Kennedy held that a progressive action of categorisation founded on race should be unconstitutional cause the qualification is judged by the racial element of lineage and not by the individual capability and potential he acquired *Rice v. Cayetano*, 528 U.S. 495 (2000), 2000). The court rejected this notion of positive action as denying individual capacity and intellect is degrading to the dignity and value of a human identity and existence.

Dignity as individual liberty, privacy and right to choice

Some scholar considered dignity as nothing but a moral skeleton of human rights without judicial enforceability and an abstract portrayal of equal treatment or respect arguing that judges hardly can conform to the concrete depiction of dignity not mixing it with right to autonomy because the right to dignity and right to self-autonomy must be treated distinctly without confusing dignity with choice of liberty (O'Mahony, 2012).

Other scholars counter argued this dignity picturization emphasizing that dignity relies in autonomy, dignity can lead us in determining the status, applicability and prospect of many rights being the bedrock of international human rights law (White, 2012).

In *Lawrence* and *Obergefell*, Justices have increasingly invoked the concept of 'intrinsic integrity' to invalidate laws that criminalize homosexual sexual activity (Kennedy, 2018).

The US Supreme Court in *Lawrence* opined that, a person's private intimacy or activities of sexual variations are part of implying his own liberty, dignity and discretion (Kennedy, 2003).

If we witness the US Supreme Court decisions such as the *Roe vs Wade* (Burger et al., 2003) or the *Planned Parenthood Pennsylvania v Casey* (J Kennedy, 1992), court professed the need and acknowledged the right to self-autonomy, personal choice and freedom, right to choose, right to freedom and liberty, right to life.

Justice Blackmun in *Thornburgh v. American College of Obstetricians and Gynaecologists*, 476 US 747 (1986) illustrated the core altitude of the privacy of a woman's decision to pregnancy culmination reiterating the fact that not all decisions have to be collective rather some decisions are extremely individualistic and more appropriately cloistered, or more rudimentary to individual dignity and self-sufficiency, than a woman's decision. The concept of dignity is more far reaching in the context of sexual identity.

Sexuality is seen as a significant diagram of personal integrity which demands privacy, independence, confidentiality, secrecy and unapologetically ideal individual identity concept (Eskridge Jr & Hunter, 1997). The identity notion that glitches with societal mindset has been evidential enough to address the right to dignity coupled with right to express own identity as dignified person or right to freedom of expression.

Moreover, the issue of dignity is embedded in right to freedom from torture, right to life and has already been recognised as a fundamental legal right (Reeves, 2009) which is no more expressed or confined within the ambit of “Right to Privacy” only. Sexuality in the legal sense has a persistent connection in establishing judicial status for the right to dignity. Right to dignity in the sexuality perspective is associated with unaddressed dimensions of human rights discourse like of Right to sexual autonomy (Valentiner, 2021).

Right to pleasure (Wittrock, 2023), Right to Bodily Integrity (Heidari, 2015), Right to sexual health and right to inclusive sexual rights (Logie, 2023), Right to perceive own gender and sexuality- all these emerges from sexual autonomy which is an integral part of right to privacy.

Gender and sexual diversity concepts are rooted in the legal depiction of sexual autonomy (Valentiner, 2021) which several judicial decisions proclaimed as ‘manifestation of individual personality’. Sex discrimination was banned in *Bostock v. Clayton County* by the Supreme Court of US where employees were fired due to their sexual identity (Justice Gorsuch et al., 2020).

The European Court of Human Rights in *Dudgeon v. United Kingdom* has acknowledged right to privacy as per Article 8 includes right to self-identification and practice own sexuality (RYSSDAL et al., 1981). In *Justice K. Puttaswamy v Union of India 2017*, a nine-judges Bench recognised GSD people’s right to life, privacy, liberty, dignity, protection of own identity and freedom from discrimination (*Justice K.S.Puttaswamy(Retd) vs Union Of India on 26 September, 2018, 2019 (1) SCC 1, (2018) 12 SCALE 1, (2018) 4 CURCC 1, (2018) 255 DLT 1, 2018 (4) KCCR SN 331 (SC), AIRONLINE 2018 SC 237, 2018*)

In *I R Coelho v. State of Tamil Nadu AIR 2007 SC 861*, Court opined that right to choose personal identity which includes sexuality identity is the prerogative protected under Article 21 of Indian Constitution for an Indian citizen. All these decisions establish the acceptability of Human dignity in judicial pronouncement.

Dignity as freedom from undignified conduct and attitude

In his dissenting opinion in the case of *Ireland v. United Kingdom 2 EHRR 25*, Judge Gerald Fitzmaurice emphasized the significance of an understanding of a person’s dignity in determining what qualifies as ‘degrading’ treatments under Article 3 of the European Convention on Human Rights (ECHR) (*Ireland v United Kingdom, Admissibility, Merits, App No 5310/71, A/25, [1978] ECHR 1, (1979-80) 2 EHRR 25, IHRL 16 (ECHR 1978), 18th January 1978*).

He argued that in the given context, ‘degrading’ treatment should be understood as something profoundly humiliating, demeaning to one’s sense of worth, or derogatory. Examples he provided include acts such as forcibly shaving someone’s head, covering them in tar and feathers, smearing them with filth, subjecting them to public humiliation, forcing them to consume feces, defacing the image of a sovereign or head of the nation, or compelling them to be attired in a manner aimed at provoking mocking or disrespect.

In para 99 of *Selmouni v. France*, the Court emphasizes that using assault against someone who is deprived of their liberty, unless it is absolutely essential due to their own

actions, undermines their human dignity and generally constitutes a violation of the right stated in Article 3 (*Selmouni v France* (2000) 29 EHRR 403, n.d.).

In para 52 of *Pretty v. United Kingdom* (2002), the Court expressed its perspective on the judicial interpretation of the term “treatment”. It stated that “ill-treatment” must reach a certain level of severity and involve either physical harm or extreme physical or mental distress (*Pretty v United Kingdom* 2346/02 [2002] *Council of Europe: ECHR* 427, 29 April, 2002) Treatment that humiliates or debases a person, showing a lack of respect or causing feelings of fear, anguish, or inferiority that can weaken their moral and physical strength, can be considered degrading, which is also found in Article 3 of the convention.

Dignity while awarding capital punishment

In *Furman v. Georgia* 408 US 238 (1972), Justice Brennan of the US Supreme Court unveiled the customary practice of considering dignity perspective while awarding death sentence. Probably this tendency of judicial interpretation has opened a new horizon in the field of human rights discourse and firm admissibility of juristic status of Human Dignity (Menon, 2025). While administering punishment, the State must demonstrate reverence for the inherent value of its citizens as human beings.

If a penalty does not align with human dignity, it can be considered unconscionable and cruel. In another judgement *Gregg v. Georgia* 428 US 153 (1976) he believed that the punishment of death has a critical flaw in its constitutionality, as it regards individuals as non-human entities, to be manipulated and disposed of.

The statement is contradictory to the basic principle of the Clause, which asserts that even the most despicable criminal is still a human being with inherent human dignity. Pronouncing similar tone on Dignity principle’s application in Canadian jurisprudence, Supreme Court of Canada in *Kindler v. Canada* (*Communication No. 470/1991, U.N. Doc. CCPR/C/48/D/470/1991* (1993) held that, death penalty is abhorrently severe and undermining to human dignity as the worst humiliation to the individual, the ultimate physical punishment, the final and total removal of mental faculties, and the absolute and irreversible emasculation.’

UNDIGNIFIED TORTUROUS PRACTICES VIOLATING HUMAN DIGNITY

Three fundamental concepts of dignity have been recognised in various sources, including human rights theory, international human rights law, and Article 3 of the European Convention on Human Rights (ECHR). These concepts are based on the belief that human dignity is inherent and cannot be taken away from any individual. The concept of inherent human dignity is the fundamental basis on which human rights are established, as acknowledged by the Universal Declaration on Human Rights and its related international treaties. US researchers have developed a paradigm termed ‘IPA’ dignity, which combines three important aspects of human dignity: Inherence, Personal Inviolability, and Autonomy. These features have been carefully examined and evaluated in contemporary discussions on human dignity.

Subsequently, this text delves into the concept of dignity breach and scrutinises it by utilising the legal principles of Article 3 ECHR to showcase the acknowledgment by the judiciary of such violations. This analysis explores many ways in which dignity can be violated, considering it as a breach of one’s inherent worth and respect. Crimes are committed with a particular but common purpose of causing disgrace and discomfort to the targeted person as a victim to threaten his individual existence. Several particular offences are committed with an intent to demean the identity, integrity and dignity of a person based on gender, sex, religion or race.

These criminal conducts are major realms of gendered violence such as domestic violence or sexual violence that focuses the tarnishing dignity (Obioha et al., 2021), prestige of a particular gender who are more vulnerable, socially less respected and neglected.

Dignity violation breeds to many crimes commission which can destabilize a society (Uduigwomen, 2023). Most vehement violation of human dignity happens through the lane of several forms of gender-based violence which humiliate the human value and existence in every bit (Yadav, 2023).

Rape

Perhaps the most disgusting, abhorrent and ostracized destruction of human dignity is the crime of rape (Hermes et al., 2023). Gender based violence is itself a valiant hammer upon the right to integrity and dignity of a human particularly woman (Radacić, 2017). Here, incomparably rape is the outright rejection of a person's existence of being a human and an ideal basement for committing gender-based violence, more importantly it is the perfect weapon of torture to women resulting in international crimes like crime of genocide or war crime (Peltola, 2018).

Dignity is has a deeply rooted influence in creating moral obligation to respect human irrespective of gender and a powerful tool to obstruct human dignity by molesting or committing heinous forced sex like rape which exemplifies the operational legality of dignity (McJunkin, 2023).

Apartheid

Demeaning a person based on his race or color or caste is a prehistorical custom prevalent in the 21st century still creating a long setback for the upliftment of human dignity. Crime of apartheid is the historical example from African continent showing how destruction to human dignity causes acutely sensitive mode of human rights violation denoting a practice that simply based on racial discrimination denying the very existence of individual as a human deserving minimum respect and value (Schimmel, 2023).

Apartheid is a form of human rights violation that slaughters ethnicity or racial identity of a person through degrading treatment of expulsion, exclusion, restriction to a community based on how they look, act, survive or celebrate their existence as a race (Fazaeli, 2023). African concept of human dignity and recognition of human rights is predominantly centered to the elimination of apartheid practice (Allsobrook, 2023).

Slavery and forced labour

Slavery is considered acts of debasing human dignity punishable under national law (Hamdany et al., 2024). Slavery or forced labor both are coercive acts that vitiate the human worth rendering human as product. Human dignity has evolved as a legal concept from the alteration of several inhuman practices of human exploitation in the society mostly surrounded by slavery, forced labour, and human trading (Jovanovic, 2020).

Sex working and human trafficking

Scholars have criticised the role of International Courts for restrained and limited application of dignity in adjudicating cases on human trafficking, both consensual and non consensual prostitution, slavery etc (Simmons, 2024). Similarly, prostitution is found to be another prominent form of violation of human dignity of sex workers through sexual-service encounters that bring derogatory experience to them (Shepherd, 2015).

Female Genital Mutilation (FGM)

Female Genital Mutilation is an archaic and cruel form of abuse that blatantly violates fundamental human liberties and rights guaranteed by the law.

Unfortunately, it often evades substantial international involvement due to its protection under the pretext of “societal norms” or “religious beliefs” (Wellerstein, 1999). Research shows female genital cutting amounts to deterioration of unimaginable physical, psychosocial dignity of women (Onomerhievurhoyen & Mercy, 2015). Such custom contributes to cultural colonialism being a prevalent threat to human identity, dignity and sexuality (Oba, 2008).

Circumcising the genitals of female in the form of tradition and racial identification, ethnicity despite of severe health hazard and painstaking process, is an absolute disgrace of human dignity still practiced as a means of purification or religious devotion by females (Miyawaki, 2023). This is probably the most depressing form of human dignity violation, a conscientiously strategic method to subjugate women which surprisingly tends to signify social validation where statutorily such custom is rendered.

Honor Killing

Honor is considered as a distinct bridge between society and humans with a chain of culture, religion, customs and ethics (Ben-noun, 2022). Killing as a means of protecting societal honor and image is another inhuman practice against dignified life and safety of women. Finding honor in killing is the symbolization of a sentimental superstitious belief that strangulates the lives and dignity of many women. Honor crime is a severe abuse of human dignity (Access & Kumari, 2024). It is an outright rejection of gender equality, equity and neutrality. In the name of social pride, humans and predominantly women (Loza, 2022), have been the victims of killing by fellow family members due to exercise of individual freedom of choice regarding marriage, lifestyle, religious belief, cultural diversity etc. It equalises to structural violence and social injustice (Kaushal, 2020). The tendency to kill near ones arises out of pseudo social aura, fake assumed social rank, social censure, extreme misogyny and toxic patriarchy (Ali et al., 2020).

Forced Sterilization

Forced sterilization is a widely used tool in genocides to asphyxiate the image and dignity of women as a form of atrocity (Ko, 2023), also used to tear up the dignity and modesty of women as a strategy of weakening opponent combatants. It is still currently arguably being inflicted upon Uighur Muslim in China as a part of mass surveillance (Chaparro-Buitrago, 2024). This prohibited act is a gross violation of women’s dignity and health.

Sterilizing forcefully causes severe physical and psychological traumatizing impact upon women like rape or genital mutilation. All these practices invoke acute pain, sufferings and permanent hazard, even at the cost of life which shattered the dignity aspect of a human and his rights.

Human Dignity and Artificial Intelligence

Digitalisation augments the creation of ultrasound smart modern technology replacing human intelligence such as artificial intelligence (AI) which empowers human society in faster and greater accomplishment of tasks saving time, energy and active participation.

Innovations have been changing many legal spectrums by broadening concepts but it also complicates the legal enforcement or compliance (Helmus, 2022). AI technologies such as Deepfake creates photos, videos, audios resembling the real identity of a person which is completely fake and fraudulent and indistinguishable from the real identity of that person (Okolie, 2023)(King et al., 2020).

This mechanism of procreation leads to various rights violations like privacy and freedom (Lee et al., 2023). Many Deepfakes are sexual pornography or image based sexual violence specially targeting to women and children (Laffier & Rehman, 2023)(Santana, 2022).

The importance of dignity has been turning into an even more serious concern due to non consensual usage of individual identity via these technologies. Such AI innovations are impeding the right to privacy, personal choice, liberty, data protection, cyber security and many more fundamental human rights- all rooted in the right to human dignity. Hence, the inevitability to protect human dignity is more than ever increased among the legislators, administrators and Justices.

FINDINGS

Dignity is recognised as a core essence of human right in all international, regional, national legal instruments though not recognised as a ‘constitutional right’ directly enforceable by court but enshrined in the instruments as the founding basis of any international human rights or national statutory rights. We found that dignity is placed in the preambles of almost all conventions of the world, some of those incorporated explicit provision on dignity and hardly any legal instrument or legal system exists which does not adopt the principle of dignity. Almost every State has the essence of or has furnished their provisions with dignity principle in their constitution. Significant range of judicial decisions around the world from different jurisdictions has incorporated the dignity element as a crucial factor while adjudicating cases depicting the human rights purview. These judgments propounded that, based on the subject matter of any case, the concept of human dignity is recognised as a largely followed principle by courts through the active interpretation of the judicial reasoning as well as passive assertions while interpreting legal provisions of the relevant laws. This can lead us to the hypothetical approval of dignity being a legally enforceable right.

We contemplate that human dignity has sturdy legal application in judicial interpretation and a predominant principle in international legal jurisprudence. What we have found is that, Judges of domestic tribunals, national and constitutional courts are more vigilant, considerate and prone to apply dignity jurisprudence for adjudicating sexual crimes in comparison to the ICC or ICJ. Courts and tribunals like ICC are still not fully considering adjudicating sexual offences in a dignity lens. Interestingly ICTY and ICTR are slightly more independently reliant on dignity essence.

Apart from sexual offences, dignity has been of a keen interest to the judges for human rights violation for particularly addressing the constitutional basis and jus cogens imperatives for rights protection mechanism such as personal freedom, bodily integrity, right to remedy, right to have impartial, conclusive and transparent investigation, right to privacy of information and identity while ongoing trial etc. What we are trying to establish is that dignity is a universal human right, constitutional right and at the same time a well-established principle and a great juridical insinuation of access to justice. Henceforth, persons are afforded the same level of protection for violation of dignity similar to the violation of other rights.

In certain circumstances, human dignity is a fundamental notion that supports the interests of other people, but it does not require the execution of the concept by the government of a particular individual. The different though inter-related arguments for negative and positive obligation to protect human rights and those for victims’ rights have not, to date, dealt with alleged violations of dignity itself.

With regard to the dignity application in victim participation, a complication still prevails as to whether judges should adhere to dignity formula rather than criminal law while adjudication of offences. It is because offences must be adjudicated based on existing criminal laws and dignity is not incorporated into either criminal law or civil law. It is a universal

principle which is incumbent upon States for applying in their national laws for human rights protection and mitigating violation of these rights.

For example, persons persecuted by another individual by offence like murder, the widespread understanding is that they have been subjected to an alleged breach of the criminal law, not dignity. Dignity still has not attained the focal position for judges to consider while criminal case adjudication and still largely relies on the discretion of the bench.

It is not commonly accepted that this victimisation is also a violation of rights, in this example the right to life. Rather, States within Europe and across the globe have declared that such acts are committed against the public and not an individual. The central justification for the assertion is that it is for the State to punish in the interests of public order. However, the “paradox” is that criminal law also protects individual freedoms; protection that creates a “horizontal effect” into human rights. The recent 2020 judgement by the German Constitutional Court illustrates this effect. The judgement explains how dignity can be applied as a strong basis for justifiable application of criminal law and at the same time protecting personal rights and right to dignity.

Thus, dignity is considered as an important tool to unfold this complicated knot. From the above case analysis, we have found that dignity has a strong place in judicial interpretation in judges’ minds both in criminal cases and civil suits involving significant human rights violations. We are of the view that dignity is not at all a whimsical circus or a fashioning ornamental utopian scheme, rather it has its root deeply enrooted in the human rights protection mechanism and the criminal justice systems. Hence, dignity has its juristic significance in judicial interpretation as an inevitable flavour of humanism, justice, remedy and rights.

CONCLUSION

The universal adoption of dignity as an inevitable spirit or gist of the magnanimous arena of human rights makes dignity not seen as something distinctive from human right or as a separate genre of right, rather it is a minimum core value as a ground criterion for any human right, legal right, social right, cultural right, political right, constitutional right or any other right. The categorization of rights is made out of different context but dignity is an ingredient to be present in every single human right. It is the core human value which makes dignity a vital part of any fundamental right or human right. Still there is vagueness about its enforceability which largely depends on judicial interpretation, judges’ discretion and good sense of judgement.

Although countries have not expressively written legal provisions on enforcement of human dignity as a human right or constitutional right, dignity is the constituting element of any human rights as recognised by many international courts. Dignity comes in various shapes as the human identity, existence, human rights are ever-expanding dynamic discourse that gets reshaped from time to time through socio-legal development. Dignity might have rarely directed implication like laws or statutes but its significance in making the laws acquire social bindingness cannot be ignored.

Early scholars made an oversimplification of the critical position of dignity but every other international legal instrument flows from the ultimate goal of ensuring dignity in every phase for every human as inescapable as human right. From that very source, national and regional legal instruments are influenced and apply the notion of dignity in their codification. Judicial interpretations have been growingly pointing out the spirit of dignity into the blood and flesh of human identity rights. This article has attempted to point out those judgments accordingly. Therefore, dignity has at least some form of legal position in both law making

and judicial interpretations which proves that dignity lies at the heart of all human rights, equality, equity, neutrality, freedom and justice.

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