

HUMAN DIGNITY AFTER TEN YEARS OF THE CONSTITUTIONAL STATE IN SOUTH AFRICA

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Summary

Human dignity has been the marrow of our Constitution and our constitutional state since 1994. The inherent dignity of man is also a key principle of the Universal Declaration of Human Rights of 1948. The Kantian categorical imperatives continue to provide guidance regarding the meaning of human dignity. At the very least, people are entitled to be regarded as moral subjects and not as objects: as subjects with absolute and inherent worth and therefore also as moral subjects of equal worth.

The juridical core of the pathology of apartheid was the extensive and sustained attempt to deprive the majority of South Africans of the right to self-identification and self-determination. It amounted to an inversion of the Kantian imperatives. A reversal of this inversion has been attempted over the past ten years. The Constitution not only elevates human dignity to a specially entrenched value, but also affords it special protection in the context of fundamental rights. It is furthermore a specific consideration in the limitation of rights and in the development of the common law. It applies not only to the state/subject relationship, but also to "horizontal" relationships and it must be taken into account in the interpretation of the Constitution.

Constitutional jurisprudence has established that the Constitution is more than a formal document, but that it also represents an objective, normative value system. Thus the foundational norm of human dignity radiates into all areas of the law. The role of human dignity in the interpretation and application of norms applicable to remedial or restitutionary equality, as well as in the achievement of constitutional equilibrium in the "horizontal" operation of the Bill of Rights, has also been established.

The realization of human dignity is but in its initial stages: civil society, including educational institutions, are called upon to make their contribution to the process.

Keywords

Socio-economic rights, social and economic rights, housing, shelter, children, children's rights, poverty, human dignity, enforcement, limitations, right to access to adequate housing, right to shelter, child headed households, Constitutional Court, South African Human Rights Commission.