

Dignity as a Transformative Tool in the Workplace*

Aisha Adam

LLB LLM PhD

Postdoctoral Fellow, Mercantile Law, Stellenbosch University

<https://orcid.org/0000-0001-6891-857X>

SUMMARY

The concept of dignity is a prominent feature of the Constitution of the Republic of South Africa, playing a crucial role in social and political movements as well as in the foundation of certain jurisdictions' fundamental rights. Rooted in metaphysical and legal frameworks such as Kantian autonomy and *ubuntu*, dignity aims to affirm individual worth. Although it is positioned as both a moral value and a right, dignity addresses systemic inequalities, mediates competing rights, and promotes substantive equality in the workplace. While dignity is difficult to define, its conceptualisation can be realised through legislative instruments and landmark cases. The judiciary has used dignity to address workplace disputes and discrimination and to challenge unfair labour practices. An analysis of its multidimensional purpose reveals that dignity has wielded its transformative power in labour law, bridging historical injustices and advancing constitutional values like equality and fairness, and has become a cornerstone of an inclusive and equitable workplace.

KEYWORDS: human dignity, labour law, transformative constitutionalism, substantive equality, equality law

1 INTRODUCTION

Dignity serves as a cornerstone of South African constitutional and labour law, embodying both an aspirational ideal and an enforceable right. As the backbone of human rights discourse, dignity bridges philosophical, religious, and legal traditions, offering a universal framework for safeguarding individual worth.¹ In the workplace, dignity is particularly significant, shaping how discrimination, fairness, and equality are interpreted.² Far from being a static concept, dignity has evolved to address the complexities of historical injustices, systemic inequality, and modern societal challenges. Dignity has come under scrutiny for its critical role in balancing

* This article is based on doctoral research that the author conducted at the University of Cape Town. The author is thankful for Prof Christoph Garber's comments on this article. The views and any errors are those of the author.

¹ Ackermann *Human Dignity: Lodestar for Equality in South Africa* (2012) 26–30.

² Vice "Dignity and Equality in *Barnard*" 2015 7 *CCR* 150–151.

competing interests and advancing justice in the workplace.³ However, this article argues that although rooted in South Africa's transformative constitutionalism, dignity transcends mere recognition as a right; it functions as a moral and legal compass guiding equitable workplace practices.⁴ Its philosophical underpinnings, from Kantian notions to *ubuntu*, position dignity as both a relational and an individual value.⁵ This duality allows it to address the structural inequalities inherited from the apartheid era, while affirming each person's intrinsic worth.⁶ Furthermore, the South African and the international legal framework bolster its standing, reflecting the global relevance of dignity as a tool for advancing justice.

This article explores dignity's multidimensional role in the South African workplace, highlighting its capacity to mediate competing rights, resolve disputes, and promote substantive equality. An analysis of landmark cases reveals that the judiciary has demonstrated dignity's transformative potential in informing labour practices, challenging power imbalances, and fostering a culture of fairness and respect. Furthermore, this article emphasises the indispensable role of dignity in shaping a fair and inclusive workplace, not only as a legal principle but also as a dynamic force capable of bridging historical divides and advancing the democratic ideals enshrined in the Constitution.

2 FOUNDATIONS OF DIGNITY IN SOUTH AFRICAN LABOUR LAW

2.1 Conceptualising dignity

The concept of dignity emerges from a rich amalgamation of philosophical, religious, and legal interpretations.⁷ It lies at the core of human rights, often regarded as the basis of morality and human worth.⁸ When an individual's dignity is violated through inhumane treatment, it provokes widespread moral outrage, underscoring the fundamental importance of dignity. For instance, the right of same-sex couples to enter into civil unions or the rejection of practices that degrade individuals, like "dwarf-tossing" or submerging an employee's head in a fishpond as an alternative to discipline, demonstrate how dignity serves as a moral compass in diverse contexts.⁹

Dignity is also a key criterion for identifying discrimination and serves as a benchmark for evaluating whether an individual's fundamental rights and humanity have been compromised.¹⁰ In recent decades, the concept has evolved into a

³ Fagan "Human Dignity in South African Law" in Duwell, Braarvig, Brownsword and Mieth (eds) *The Cambridge Handbook of Human Dignity: Interdisciplinary Perspectives* (2014) 405–406, who argues that dignity's foundational role is purely formal and holds no play in the identification of rights.

⁴ Cowen "Can Dignity Guide South Africa's Equality Jurisprudence?" 2001 17 *SAJHR* 58.

⁵ Steinmann "The Core Meaning of Human Dignity" 2016 19 *PER/PELJ* 2–3.

⁶ Henrico *Religious Discrimination in the South African Workplace* (2016) 80–81.

⁷ Ackermann *Human Dignity* 26–30.

⁸ Rao "Three Concepts of Dignity in Constitutional Law" 2011 86(4) *Notre Dame L Rev* 223.

⁹ *Wackenheim v France* Comm No 854/1999 UN Doc A/57/40 Vol II 363 (HRC 2002) upheld a prohibition on dwarf-tossing as it impaired dignity as a part of public order. Also see *Van Tonder v Sibanye Stillwater Ltd* [2023] ZALCJHB 265.

¹⁰ Ackermann *Human Dignity* 30.

central pillar of constitutionalism across jurisdictions, serving as a moral guide for courts in protecting individual rights.¹¹ Despite its universal relevance, the precise meaning and scope of dignity remain contested, as its metaphysical interpretations vary widely. These interpretations, however, reveal the potential of dignity as a tool for fostering equality and advancing democracy.

2 1 1 *Philosophical perspectives*

Seminal philosophical perspectives have played a significant role in shaping our understanding of dignity. Recognising these outlooks offers a deeper insight into how dignity functions as an inherent value underpinning individual rights.¹²

St. Thomas Aquinas associated dignity with divine creation, asserting that all forms of creation, human or non-human, are inherently dignified because they are made by God.¹³ He viewed dignity as “something’s goodness on account of itself”, signifying the inherent value placed on all creations.¹⁴ However, Aquinas acknowledged a hierarchy, leaving unanswered questions about how human dignity differs from that of other living beings.¹⁵ He emphasised that dignity is strengthened when individuals practice their faith and is weakened when they stray from their Creator.¹⁶ His theological foundation influenced subsequent moral and human rights theories. While Aquinas’ views on dignity were steeped in religious doctrine, they formed a foundation that later philosophers, such as Kant, expanded into more secular and universal principles.¹⁷ Through this expansion, dignity was shown to lie behind individual liberty, and its political interpretations were modernised.¹⁸

Immanuel Kant’s philosophy profoundly shaped modern understandings of dignity. He asserted that dignity is intrinsic to human beings, rooted in their capacity for rationality and autonomy.¹⁹ Kant famously argued that human beings should always be treated as ends in themselves, never merely as a means to an end.²⁰ Kant’s work also established a strong link between dignity, equality, and autonomy, which resonates in the foundations of many modern legal frameworks, including South Africa’s.²¹ Kant’s work departs from Aquinas’s by grounding dignity in

¹¹ *Sidumo v Rustenburg Platinum Mines Ltd* 2008 (2) SA 24 (CC) par 149 emphasises the strong values that the conversation about religion, economics and politics holds when structuring a democratic society. See Moyn “The Secret History of Constitutional Dignity” 2014 17 *Yale Hum Rts & Dev LJ* 40.

¹² Kirchsclaeger “Human Dignity and Human Rights: Fostering and Protecting Pluralism and Particularity” 2020 5 *JRAT* 97. The views shared in this article aim to illustrate that dignity is a foundational value and not all views on dignity are represented.

¹³ Reis, Machado, Gati and Falk “Dignity Promoted or Violated: How Does the Deaf Person Included Perceive It?” 2017 18(3) *Rev Adm Mackenzie* 181.

¹⁴ Rosen *Dignity: Its History and Meaning* (2012) 16–17.

¹⁵ *Ibid.*

¹⁶ Guyette *Thomas Aquinas and Recent Questions about Human Dignity* (2013) 117–118.

¹⁷ Kant *Groundwork of the Metaphysics of Morals* (translated and edited by Allen Wood) (2002) 1–66.

¹⁸ Ackermann *Human Dignity* 55.

¹⁹ *Ibid.*

²⁰ Steinmann 2016 *PER/PELJ* 11–12.

²¹ Rosen *Dignity: Its History and Meaning* 30–31.

individual autonomy rather than in divine origin.²² He asserted that autonomy, which is defined as the ability to make free and rational choices, is the foundation of dignity. This notion of autonomy aligns dignity with freedom, equality, and the development of human potential. Kant's ideas have provided a cornerstone for legal systems, allowing other societies to establish dignity as a concept that reinforces the intrinsic value of an individual's being and organisation.²³

Ubuntu, a philosophy derived from African cultures, enriches our understanding of dignity by placing it in a communal context. Unlike Kant, who focused on individual autonomy, *ubuntu* emphasises interconnectedness and mutual respect in a community.²⁴ According to Metz, *ubuntu* underscores morality as the practice of living harmoniously and contributing to the well-being of others.²⁵ This concept aligns with South Africa's constitutional ethos, in which dignity is understood not only as an individual right but also as a relational value that enhances collective humanity and seeks to redress historical injustices. Moreover, *ubuntu* extends beyond conventional understandings of dignity by emphasising that dignity is deeply rooted in the honour and mutual respect shared among individuals.²⁶ In South Africa, the concept of dignity is profoundly shaped by the spirit of *ubuntu*, which complements modern theories that celebrate individual identity and the value of human beings and their moral worth.²⁷

2 1 2 Theological perspectives

Religious traditions have also significantly shaped the understanding of dignity. In many monotheistic religions, dignity is closely tied to divine creation and the inherent worth of human beings.

Christianity regards dignity as inherent in all human beings, based on the belief that individuals are created in the image of God (*Imago Dei*).²⁸ This theological foundation emphasises the equality and moral responsibility of all individuals to respect one another's dignity. Over time, the Christian understanding of dignity evolved from hierarchical notions in which dignity was reserved for the religious elite to a more inclusive, egalitarian framework, as reflected in modern human rights discourse.²⁹ This attachment to God coincides with Aquinas's view that

²² Kant *Groundwork of the Metaphysics of Morals* 54.

²³ Ackermann *Human Dignity* 77.

²⁴ Steinmann *The Legal Significance of Human Dignity* (doctoral thesis, North-West University) 2016 408.

²⁵ Metz "Ubuntu as a Moral Theory and Human Rights in South Africa" 2011 11(2) *AHRLJ* 537–559.

²⁶ *Ibid.*

²⁷ *S v Makwanyane* 1995 (3) SA 391 (CC) par 223–225; 307–308; *Hoffmann v South African Airways* 2000 (2) SA 628 (CC) par 38. Ngcobo J discusses how people living with HIV must be treated with compassion and understanding, particularly in relation to equal opportunity of employment. He states that we "must show *ubuntu* towards them". See also *Damons v City of Cape Town* 2022 (4) SA 131 (CC) par 84–85, where the court noted that *ubuntu* "suffuses our constitutional order as a compass to guide our humanity and morality" and emphasised that it should "fortify reasonable accommodation as a moral response" to inequality.

²⁸ Ackermann *Human Dignity* 37.

²⁹ Starck "The Religious and Philosophical Background of Human Dignity and Its Place in Modern Constitutions" in Kretzmer and Klein (eds) *The Concept of Human Dignity in Human Rights Discourse* (2002) 179–194.

dignity is derived from being a creation of God. The theory of dignity during this era was associated with those who belonged to a higher hierarchical social order; the more religious an individual, the more dignified they were perceived to be.³⁰

Similar to Christianity, Judaism views dignity as a gift from God that underscores the sacredness of every individual. Ackermann's work reiterates this notion by stating that all human worth is absolute and cannot be measured, and therefore all human beings are equal.³¹ By emphasising equality and mutual respect, the Judaic understanding of dignity resonates with the broader ideals of human rights and social justice.

Likewise, Islam views dignity as an intrinsic human quality endowed by God. The Qur'an asserts the equality of all people, regardless of race, gender, or social status.³² This principle is deeply embedded in Shari'ah law and the practices of the Sunnah (way of life of the Prophets), which advocate the recognition and protection of human dignity.³³ While certain interpretations of Shari'ah have sparked debates on equality, the overarching commitment to dignity remains a central tenet of Islamic philosophy, and the unity of humankind aims to recognise the equal worth of men and women.

2 1 3 *Legal perspectives*

Beyond its philosophical and theological roots, dignity holds a prominent place in legal frameworks. Internationally, it is enshrined in key instruments, including the Universal Declaration of Human Rights (UDHR)³⁴ and the African Charter on Human and Peoples' Rights (ACHPR).³⁵ These texts frame dignity as a universal value essential for safeguarding human rights. In South Africa, dignity occupies a unique position as both a constitutional value and an enforceable right.³⁶ The Constitution of the Republic of South Africa, 1996 (the Constitution) explicitly recognises dignity in its law, which serves as a benchmark for interpreting equality, freedom, and justice.³⁷ As part of transformative constitutionalism, South African law recognises the role of dignity in fostering equality, freedom, and fairness. Similarly, Germany enshrines dignity in article 1 of its Basic Law, highlighting its foundational importance.³⁸ South Africa's Constitution and Bill of Rights uphold dignity as an underlying right alongside equality and freedom. In contrast, the

³⁰ *Ibid.*

³¹ Ackermann *Human Dignity* 35–36.

³² Ackermann *Human Dignity* 44.

³³ An-Naim "Religious Minorities Under Islamic Law and the Limits of Cultural Relativism" 1987 9 *HRQ* 17.

³⁴ *Universal Declaration of Human Rights* GA Res 217(III)A, UN Doc A/810 at 71 (1948). Adopted: 10/12/1948.

³⁵ *African Charter on Human and Peoples' Rights* CAB/LEG/67/3 rev 5, 21 ILM 58 (1982). Adopted: 27/06/1981; EIF: 21/10/1986.

³⁶ Rao 2011 *Notre Dame L Rev* 193.

³⁷ S 1(a), 7(1), 10, 36(1) and 39(1)(a) of the Constitution of the Republic of South Africa, 1996, which collectively recognise human dignity as a foundational value and enforceable right underpinning equality, freedom, and justice.

³⁸ S 1, art 1(1) of the German Constitution (Basic Law) 1949 legally binds the force of basic rights and states that "(1) Human dignity shall be inviolate. To respect and protect it shall be the duty all state authority."

United States acknowledges that dignity operates primarily as a jurisprudential value rather than as a constitutional norm.³⁹

Despite its widespread acceptance, dignity remains difficult to define precisely.⁴⁰ Its interpretation varies across contexts, often reflecting the tension between respecting individual autonomy and promoting collective harmony.

2.1.4 Defining dignity

Defining dignity remains a complex endeavour, as the law struggles to encapsulate the multifaceted nature of human worth.⁴¹ Dignity, rooted in the intrinsic value of being human, defies precise legal articulation. Its moral underpinnings often align with subjective understandings of respect and autonomy. Historically, dignity was reserved for free individuals, with enslaved persons excluded from its ambit.⁴² Religious traditions link dignity to divine creation, situating it as an inherent trait bestowed by God.⁴³ However, dignity has also been tied to social hierarchies, as Gosdal demonstrated, where one's dignity reflected societal status.⁴⁴ These varied interpretations reveal how the concept has been both unifying and divisive, underlining the difficulty of constructing a universal definition.

Kant has greatly influenced contemporary understandings of dignity, which are rooted in individual worth and autonomy.⁴⁵ He posited that autonomy, mainly the ability to make decisions freely and rationally, is a cornerstone of dignity. According to Kant, dignity represents an individual's intrinsic value, which must be respected universally and unconditionally. Scholars such as Bockenforde,⁴⁶ Durig,⁴⁷ and Dworkin⁴⁸ have all expanded on Kant's ideas, arguing that dignity underpins the recognition of human rights and is essential for individuals to develop their personality and exercise independent judgment. In essence, dignity is intertwined with the pursuit of self-actualisation, illustrating its dynamic and multifaceted nature.

In South Africa, the concept of dignity is inextricably linked to the country's historical struggle for human rights and its transition to democracy.⁴⁹ Given the country's legacy of apartheid, the post-apartheid legal framework prioritises the protection and promotion of dignity as a way of rectifying historical injustices and fostering equality. Scholars such as Botha have highlighted dignity's role as a

³⁹ Rao 2011 *Notre Dame L Rev* 196.

⁴⁰ Ackermann *Human Dignity* 26.

⁴¹ Ackermann *Human Dignity* 86.

⁴² Riley "Human Dignity: Comparative and Conceptual Debates" 2010 6(2) *International Journal of Law in Context* 117–138. See also Rabenhorst *Dignidade Humana e Moralidade Democrática* (2001) and Machado and Teixeira "Dignity in the Context of Organizations: A Look Beyond Modernity" 2017 18(2) *Rev Adm Mackenzie* 83.

⁴³ Machado and Teixeira 2017 *Rev Adm Mackenzie* 83–84.

⁴⁴ *Ibid.*

⁴⁵ Steinmann 2016 *PER/PELJ* 8–9.

⁴⁶ Bockenforde *Recht, Staat, Freiheit* expanded ed (2006) 382. See also Ackermann *Human Dignity* 24.

⁴⁷ Durig "Der Grundrechtssatz von der Menschenwürde" 1956 81 *AoR* 125. See also Ackermann *Human Dignity* 24.

⁴⁸ Dworkin *Taking Rights Seriously* (1997) 198–199.

⁴⁹ Ackermann *Human Dignity* 86–87.

central pillar of South Africa's legal and moral order.⁵⁰ Botha argues that dignity serves as a bridge between the country's oppressive past and its aspirations for a just and inclusive future. Similarly, Ackermann describes dignity in the Constitution as an inherent attribute of human worth, affirming that all individuals possess equal value.⁵¹ This constitutional emphasis on dignity reflects an effort to address historical inequities while promoting a vision of society grounded in freedom, equality, and fairness.

The Constitutional Court has also played a pivotal role in interpreting and upholding the principle of dignity.⁵² The court's reasoning in its judgments often reflects Kant's moral framework. For example, in *Dawood*, the court recognised dignity as a justiciable and enforceable right, central to the constitutional order.⁵³ Additionally, in *S v Makwanyane*,⁵⁴ the court's abolition of the death penalty was grounded in the argument that capital punishment violates human dignity by treating individuals as mere objects. These cases demonstrate how dignity serves as both a legal and a moral standard for protecting fundamental rights.

Botha recognises that dignity is rooted in seven principles that reinforce its constitutional elements.⁵⁵ First, dignity is linked to equality, as inherent in the understanding of opposition to discrimination.⁵⁶ Second, dignity demands respect for an individual's identity and self-worth, regardless of their characteristics.⁵⁷ Third, dignity protects physical integrity, rejecting torture or degrading treatment.⁵⁸ Fourth, dignity encompasses personal self-determination, particularly in personal decisions about having children. Technology and scientific methods can support or limit this, but using these tools to objectify a person is degrading to one's dignity.⁵⁹ Fifth, dignity prevents the state from using excessive force, which often infringes autonomy and equality.⁶⁰ Sixth, dignity safeguards one's honour and reputation, even for those convicted of crimes, by recognising their right to reintegrate into society.⁶¹ Lastly, dignity requires the state to guarantee a dignified community that upholds these values.⁶² Furthermore, Botha identifies three foundational doctrines of dignity. The first links dignity to religion, viewing it as derived from God. While influential, this view faces challenges in secular contexts. The second doctrine sees dignity as a quality to be achieved through autonomy and independence, but this may exclude individuals who are unable to pursue self-determination. The third doctrine views dignity as linked with social recognition and reputation, emphasising

⁵⁰ Botha "Human Dignity in Comparative Perspective" 2009 20 *Stell LR* 171–220.

⁵¹ Ackermann *Human Dignity* 97.

⁵² *Ibid.*

⁵³ *Dawood v Minister of Home Affairs; Shalabi v Minister of Home Affairs; Thomas v Minister of Home Affairs* 2000 (3) SA 936 (CC) par 35.

⁵⁴ *S v Makwanyane supra* par 57.

⁵⁵ Botha 2009 *Stell LR* 171–220.

⁵⁶ Botha 2009 *Stell LR* 188–190.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

⁶² *Ibid.*

its relational nature. Botha aligns dignity with *ubuntu*, presenting it as a “relational and communicative concept” realised through mutual respect within a community.⁶³

To summarise: dignity emerges as a foundational principle rooted in moral, philosophical, and constitutional values, shaping the protection of human rights. Influenced by thinkers like Kant and philosophies like *ubuntu*, dignity emphasises individual autonomy, freedom, and community identity. While its origins lie in religious traditions, dignity has evolved into a progressive, secular concept that informs constitutional rights and legal frameworks. Despite the difficulty in defining this concept, its conception highlights dignity’s transformative role in fostering autonomy, equality, and liberty, establishing it as a critical element in legal and philosophical discourse.

2.2 Constitutional underpinnings of dignity

Dignity occupies a central role in both international and South African legal frameworks, particularly in the resolution of human rights issues. International human rights law has long emphasised the protection of human dignity as reflected in key instruments such as the Charter of the United Nations (UN Charter).⁶⁴ The preamble to the UN Charter obliges member states to promote and respect human rights and emphasises the role of dignity in fostering global cooperation and peace. This recognition of dignity as a fundamental legal principle has significantly influenced the development of South African constitutional law. Internationally, the UDHR is a cornerstone in advancing the concept of dignity. Its preamble explicitly acknowledges the inherent dignity of all individuals as the foundation of freedom and justice. The UDHR further articulates dignity as an indispensable element of equality, social justice, and individual development, notably in articles 1, 22, and 23(3). Similarly, instruments such as the ACHPR,⁶⁵ the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁶⁶ and the International Covenant on Civil and Political Rights⁶⁷ highlight dignity as a source of human rights. These global frameworks have deeply influenced South Africa’s domestic legal system by embedding dignity as a constitutional value and enforceable right.

As mentioned earlier, in South Africa, dignity is both a foundational value and a justiciable right under the Constitution. Section 10 expressly states: “Everyone has inherent dignity and the right to have their dignity respected and protected.”⁶⁸ This dual recognition reinforces the significance of dignity in shaping the transformative legal principles that guide the country’s democratic transition. Section 1 of the Constitution lists human dignity, equality, and freedom as core values alongside principles such as non-racialism, non-sexism, constitutional supremacy, and

⁶³ *Ibid.*

⁶⁴ *Charter of the United Nations* 1 UNTS XVI (1945) preamble.

⁶⁵ *African Charter on Human and Peoples’ Rights* 1520 UNTS 217; 21 ILM 58 (1982). Adopted: 27/06/1981; EIF: 21/10/1986).

⁶⁶ *International Covenant on Economic, Social and Cultural Rights* (ICESCR) 993 UNTS 3; [1976] ATS 5; 6 ILM 360 (1967). Adopted: 16/12/1966; EIF: 03/01/1976.

⁶⁷ *International Covenant on Civil and Political Rights* (ICCPR) 999 UNTS 171; 1057 UNTS 407; [1980] ATS 23; 6 ILM 368 (1967). Adopted: 16/12/1966; EIF: 23/03/1976.

⁶⁸ S 10 of the Constitution.

universal suffrage.⁶⁹ As a constitutional right, dignity serves as a critical tool in assessing whether limitations on rights in the Bill of Rights are reasonable and justifiable.⁷⁰ This assessment relies on a proportionality inquiry, which balances competing interests by considering factors such as the nature of the right, the purpose of the limitation, the extent of the limitation, and whether less restrictive means could achieve the same objective.⁷¹ Notably, the courts have upheld limitations on freedom of religion and expression when such restrictions serve to protect dignity, highlighting the centrality of dignity in adjudicating competing rights.⁷²

Section 39 of the Constitution further cements the role of dignity by requiring courts to interpret laws in a manner that promotes the values of a democratic society founded on dignity, equality, and freedom.⁷³ Additionally, this provision mandates the consideration of international foreign law, reinforcing the alignment of South African law with global human rights norms.⁷⁴ Courts are also tasked with promoting the spirit, purport, and objectives of the Bill of Rights, particularly by developing customary and common-law principles rooted in dignity. As a central component, dignity also intersects with transformative constitutionalism, a concept that seeks to remedy historical injustices and promote substantive equality.⁷⁵

Sections 9 and 23 of the Constitution form the backbone of South Africa's commitment to substantive equality and fair labour practices. Section 9 of the Constitution, which guarantees the right to equality, is inextricably linked to dignity,⁷⁶ while section 23 enshrines the right to fair labour practices.⁷⁷ These provisions are given practical effect through key legislation such as the Employment Equity Act (EEA)⁷⁸ and the Labour Relations Act (LRA).⁷⁹ The EEA operationalises section 9 by addressing workplace discrimination and promoting affirmative action,⁸⁰ while the LRA implements section 23 by providing mechanisms for fair dismissal, collective bargaining and the resolution of labour disputes.⁸¹

⁶⁹ S 1 of the Constitution.

⁷⁰ Ss 3(1) and 8(3)(b) of the Constitution.

⁷¹ S 36(1)(a)–(e) of the Constitution.

⁷² *Christian Education South Africa v Minister of Education* 2000 (4) SA 757 (CC); *De Reuck v Director of Public Prosecutions*, WLD 2004 (1) SA 406 (CC); *Khumalo v Holomisa* 2002 (5) SA 401 (CC).

⁷³ S 39 of the Constitution states: "(1) When interpreting the Bill of Rights, a court, tribunal or forum (a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom; (b) must consider international law; and (c) may consider foreign law. (2) When interpreting any legislation and when developing the common law or customary law, every court, tribunal, or forum must promote the spirit, purport and objects of the Bill of Rights."

⁷⁴ *Ibid.*

⁷⁵ Langa "Transformative Constitutionalism" 2006 3 *Stell LR* 351 352.

⁷⁶ S 9 of the Constitution prohibits unfair discrimination on various grounds, including race, gender, disability, and religion, and affirms the importance of the equal protection and benefit of the law for all individuals. Section 9(2) and (3) reinforces the commitment to substantive equality by developing equality in relation to an individual's identity, as well as outlining the social inequalities that need to be addressed.

⁷⁷ S 23(1) of the Constitution states everyone has the right to fair labour practices.

⁷⁸ 55 of 1998.

⁷⁹ 66 of 1995.

⁸⁰ S 9(2) of the Constitution permits legislative and other measures to advance equality for historically disadvantaged groups, while section 9(4) and (5) obligates the state to enact laws prohibiting unfair discrimination.

⁸¹ Chr 2, 4, 7, 8 of the LRA.

These laws are consistently interpreted through the lens of constitutional values, including dignity, equality and fairness. Together, these statutes ensure that constitutional rights are not merely aspirational but are actively enforced within the framework of South African labour law, reinforcing the foundational role of dignity in the workplace.

2.3 Statutory law

The constitutional commitment to dignity has also informed South Africa's legislative framework through the EEA and the Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA).⁸² The EEA has two primary objectives: prohibiting unfair discrimination and promoting affirmative action in the workplace. These objectives are implemented through both formal and substantive equality frameworks.⁸³

In addressing the prohibition of discrimination, the EEA adopts a formal equality approach, which emphasises equal opportunities for all individuals, focusing solely on personal merit.⁸⁴ However, this may be limited as it does not account for inherent characteristics such as race, gender, or religion that may hinder an individual's ability to qualify for a position.⁸⁵ To address these limitations, sections 6 to 11 of the EEA focus on the prohibition of unfair discrimination in the workplace.⁸⁶ These sections explicitly protect individuals from discrimination based on factors such as race, gender, sex, pregnancy, marital status, family responsibility, ethnic or social origin, sexual orientation, colour, age, disability, religion, HIV status, conscience, language, political opinion, culture, belief, birth or any other arbitrary ground.⁸⁷

To achieve affirmative action, the EEA employs a substantive equality approach, which goes beyond merely providing equal opportunities and seeks to remedy systemic inequalities experienced by marginalised groups.⁸⁸ These measures aim to redress the disadvantages faced by these groups and to restructure institutions to ensure equal opportunities and representation in the workplace.⁸⁹

PEPUDA plays a critical role in promoting equality that applies to the state and all persons, particularly those not covered by the EEA.⁹⁰ Enacted in terms of section 9(4) of the Constitution, PEPUDA seeks to promote the enjoyment of rights and freedoms, prohibit unfair discrimination, protect human dignity, and prohibit the advocacy of hatred based on a protected ground.⁹¹ Together, these statutes form a comprehensive legal framework designed to promote equity, address systemic inequalities, and foster dignity in the workplace.

⁸² 4 of 2000.

⁸³ Ss 6–11 of the EEA. See also Fredman "Substantive Equality Revisited" 2016 14 *IJCL* 715.

⁸⁴ Collier, Fergus, Cohen, Du Plessis, Godfrey, Le Roux and Singlee *Labour Law in South Africa* 412.

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ S 6 of the EEA.

⁸⁸ Albertyn and Fredman "Equality Beyond Dignity: Multi-Dimensional Equality and Justice Langa's Judgments" 2015 *Acta Juridica* 433.

⁸⁹ Fredman "Redistribution and Recognition: Reconciling Inequalities" 2007 23 *SAJHR* 216.

⁹⁰ S 5(3) of PEPUDA.

⁹¹ S 2(b) of PEPUDA.

3 DIGNITY AS A TOOL FOR RESOLVING WORKPLACE DISPUTES

The right to dignity is a cornerstone of South African labour law, particularly in matters involving discrimination or dismissals, which often stem from a breach of an individual's dignity in the workplace. These incidents frequently manifest as labour disputes; if not appropriately addressed, they may escalate into constitutional cases. Therefore, it is critical to reinforce dignity as a foundational remedial tool for workplace regulation from the outset.⁹² Depending on the circumstances, an employee may claim under the LRA for unfair dismissal or unfair labour practices, as well as under the EEA for unfair discrimination.

Dismissals, regardless of their context, are inherently distressing for employees. Employers, by virtue of their duty of care, are required to ensure the safety and well-being of their employees.⁹³ This duty extends beyond preventing physical harm to encompass psychological injury and mental well-being.⁹⁴ Upholding an employee's autonomy and dignity demands deeper consideration in the workplace, and proactive steps must be taken to safeguard their mental and physical health.⁹⁵ Therefore, dignity is essential in the workplace, and its recognition in constitutional and labour law underscores its elevated status across South African jurisprudence. Dignity is intricately tied to an individual's sense of self-worth, which is often closely linked to their contribution to society.⁹⁶ The ability to engage in productive work is a critical component of dignity. In *Chitsinde v Sol Plaatje University*, Steenkamp J highlighted that the freedom to work is not merely an economic activity but an intrinsic component of human dignity and liberty.⁹⁷ Accordingly, employers are obligated to provide a safe and reasonable working environment that not only protects but also actively promotes and sustains their employees' dignity. To fully appreciate the role of dignity in the workplace, it is necessary to examine case law that provides critical insights into how dignity is positioned and upheld in workplace disputes. This case law serves as a benchmark for the continued recognition of dignity.

3.1 Dignity and discrimination

One of the most pertinent cases that upholds the role of dignity in discrimination law is *Harksen v Lane*,⁹⁸ in which the court established a critical legal standard for

⁹² Vettori "The Role of Human Dignity in the Assessment of Fair Compensation for Unfair Dismissals" 2012 15(4) *PER/PELJ* 111.

⁹³ Brassey *Employment and Labour Law* (2000) 19–49.

⁹⁴ In *Media 24 Ltd v Grobler* 2005 (6) SA 328 (SCA) par 65, Farlam JA explained that the common-law duty of care should not "be confined to an obligation to take reasonable steps to protect them from physical harm caused by what may be called physical hazards. It must also in appropriate circumstances include a duty to protect them from psychological harm."

⁹⁵ *Legal Aid South Africa v Jansen* (2020) 41 *ILJ* 2580 (LAC) par 50.

⁹⁶ *Reis et al* 2017 *Rev Adm Mackenzie* 181.

⁹⁷ *Chitsinde v Sol Plaatje University* [2018] 10 *BLLR* 1012 (LC) par 32. See also *Minister of Home Affairs v Watchenuka* 2004 (4) SA 326 (SCA) par 25–27. Nugent JA affirmed this sentiment and stated that the freedom to work is fundamental not merely for survival but also for human fulfilment and dignity.

⁹⁸ 1998 (1) SA 300 (CC).

justifying discrimination, with fairness identified as a fundamental element closely tied to dignity and equality. The judgment emphasised that dignity is the central value when addressing the effects of unfair discrimination on individuals, particularly those who are disadvantaged or compromised. While fairness remains at the core of the test, the ultimate measure of whether a policy or action is justifiable lies in its impact on the affected individual.⁹⁹ This case highlighted that the protection and preservation of dignity are integral to evaluating the fairness of any discriminatory treatment in workplace contexts.

The role of dignity in resolving workplace discrimination disputes is well-illustrated in *Hoffmann v South African Airways*.¹⁰⁰ Hoffmann had applied for a flight attendant position, but was denied employment due to his HIV-positive status.¹⁰¹ The matter was initially brought before the High Court, which found that South African Airways' policy was justified on health and safety considerations.¹⁰² On appeal, the Constitutional Court held that the discrimination that Hoffmann faced was unfair and significantly impaired his dignity.¹⁰³ This judgment highlighted the central role that dignity plays in addressing discrimination, affirming that, in workplace disputes, alleged discrimination must be balanced against the individual's dignity and the societal value of equality.¹⁰⁴

In *Pioneer Foods (Pty) Ltd v Workers Against Regression*,¹⁰⁵ the court addressed an alleged claim of unfair discrimination in the workplace.¹⁰⁶ The union argued that newer employees were paid less than long-serving employees, which it claimed constituted discrimination on an arbitrary ground.¹⁰⁷ Applying the principles set out in *Harksen*, the court assessed whether the differentiation impaired the dignity of the affected employees. The court ultimately held that the discrimination was not unfair as the differentiation was justified and did not infringe on the employees' dignity.¹⁰⁸ In *Naidoo v Minister of Safety and Security*,¹⁰⁹ an Indian female police officer challenged her exclusion from a promotion due to a policy favouring male African candidates for the position. She argued that this policy constituted unfair discrimination and undermined the purpose of affirmative action by creating barriers that further disadvantaged certain groups.¹¹⁰ The court found that the policy violated both section 9 of the Constitution and the EEA, impairing Naidoo's dignity in the process.¹¹¹ The court noted that effective affirmative action policies should uphold the principles of equality and dignity, whereas this policy failed to do so; affirmative action measures must align with constitutional values.

⁹⁹ *Harksen supra* par 54–60; *Minister of Finance v Van Heerden* 2004 (6) SA 121 (CC).

¹⁰⁰ *Supra*.

¹⁰¹ *Hoffmann supra* par 5.

¹⁰² *Hoffmann supra* par 9.

¹⁰³ *Hoffmann supra* par 27–28, 40.

¹⁰⁴ *Hoffmann supra* par 72–76.

¹⁰⁵ (2016) 37 ILJ 2872 (LC).

¹⁰⁶ *Pioneer Foods supra* par 22.

¹⁰⁷ *Pioneer Foods supra* par 1–5.

¹⁰⁸ *Pioneer Foods supra* par 72–76.

¹⁰⁹ *Naidoo v Minister of Safety and Security* [2013] 5 BLLR 490 (LC).

¹¹⁰ *Naidoo supra* par 2–8.

¹¹¹ *Naidoo supra* par 217–227.

3 2 Dignity and harassment

Dignity plays a pivotal role in addressing harassment in South African labour jurisprudence, particularly in cases of sexual harassment in the workplace. Harassment is recognised as a form of unfair discrimination under section 6(3) of the EEA.¹¹² Furthermore, employers are obligated under section 60 to take immediate action upon being made aware of such incidents.¹¹³ Failure to address harassment renders employers liable for the discriminatory conduct. Harassment may occur on any of the prohibited grounds listed in section 6 of the EEA, and the Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace¹¹⁴ provides further guidance for employers in managing these cases. To establish sexual harassment, the conduct must be unwanted, sexual in nature, and must impair the dignity of the affected employee.¹¹⁵ The following cases illustrate how dignity is central to addressing harassment disputes in the workplace.

In *Ntsabo v Real Security CC*,¹¹⁶ a female security guard resigned after being sexually harassed by her supervisor and repeatedly reporting the harassment to her employer, who failed to act. The employee suffered significant psychological distress, including suicidal tendencies, due to the violation of her dignity and privacy.¹¹⁷ The Labour Court found that the harassment constituted unfair discrimination under section 6(3) of the EEA,¹¹⁸ and a constructive dismissal under section 186(1)(e) of the LRA.¹¹⁹ The court awarded maximum compensation for unfair dismissal, damages for the employer's statutory vicarious liability under section 60 of the EEA, and compensation for future psychiatric treatment, thereby highlighting the employer's duty to address harassment and protect the dignity of employees.¹²⁰

In *Biggar v City of Johannesburg*,¹²¹ an employee faced racial harassment off-duty, but on premises provided by the employer. Despite being aware of the harassment, the employer failed to prevent the discriminatory behaviour and was held liable. The court recognised the belittlement and indignity experienced by the employee and also emphasised the employer's obligation to prevent discriminatory practices in the workplace.¹²² Similarly, in *K v Minister of Safety and Security*,¹²³ the Constitutional Court held the Minister vicariously liable for the rape and assault of a

¹¹² S 6(3) of the EEA states that harassment is a form of unfair discrimination and is prohibited on any one or a combination of grounds of unfair discrimination listed in sub-s (1).

¹¹³ S 60(2) and (3) of the EEA obligates the employer to consult all necessary parties and, should the employer fail to do so, this will be a contravention of the provision.

¹¹⁴ GenR 1890 in GG 46056 of 18 March 2022.

¹¹⁵ Item 5.3.2 states the test for establishing whether there has been sexual harassment takes into account the following factors: whether the harassment is on the prohibited grounds of sex and/or gender and/or sexual orientation; whether the sexual conduct was unwanted or unacceptable; the nature and extent of the sexual conduct; and the impact of the sexual conduct on the employee.

¹¹⁶ (2003) 4 ILJ 2341 (LC).

¹¹⁷ *Ntsabo supra* par 45–48.

¹¹⁸ S 6(3) of the EEA.

¹¹⁹ S 186(1)(e) of the LRA.

¹²⁰ S 194 of the LRA; s 50(2) of the EEA.

¹²¹ (2011) 32 ILJ 1665 (LC).

¹²² *Biggar supra* par 19–21.

¹²³ 2005 (6) SA 419 (CC).

woman by an on-duty police officer. The court unanimously found that the officer's conduct was closely related to his professional duties and violated the victim's dignity and security.¹²⁴ This finding emphasised the importance of addressing workplace harassment and recognised the grave harm inflicted on the victim's dignity when her rights were disregarded by those entrusted to uphold them.¹²⁵

3 3 Dignity and the protection of employee well-being

The mental and physical well-being of an employee is often overlooked in labour law, particularly with respect to the grounds listed in section 187(1) of the LRA.¹²⁶ While not explicitly recognised, psychiatric ailments fall under the broader framework of anti-discrimination measures where reasonable accommodation by employers plays a vital role in achieving substantive equality, as emphasised in section 1 of the EEA.¹²⁷ Reasonable accommodation must therefore be considered in all cases of alleged unfair discrimination under the EEA. This principle was demonstrated in *Marsland*,¹²⁸ where an employee suffered a severe psychological breakdown following personal difficulties. Upon returning to work, the employee was subjected to verbal abuse by his employer. The court found that this conduct amounted to harassment, thus reinforcing the significance of dignity and reasonable accommodation in addressing mental health issues in the workplace.¹²⁹

Building on this, *Jansen v Legal Aid*¹³⁰ illustrated the complexities of addressing mental health issues in the workplace. Jansen, an employee suffering from major depression and anxiety, was dismissed after his employer deemed his behaviour unacceptable, despite the employer being informed of his condition by a clinical psychologist. Initially, the Labour Court found his dismissal to be automatically unfair due to discrimination based on his mental illness.¹³¹ However, the Labour Appeal Court overturned this decision, finding insufficient evidence to establish a direct link between the dismissal and his condition.¹³² The judgment emphasised that employers must adopt a measured approach when addressing mental health issues and must ensure that their actions, including dismissal, are not conducted in a manner that impairs an employee's dignity.¹³³

A landmark judgment that emphasised the role of dignity in addressing systemic discrimination and its implications for fair labour practices was *Mahlangu v Minister*

¹²⁴ *K supra* par 56.

¹²⁵ *K supra* par 18. See also *Carmichele v Minister of Safety and Security* 2001 (4) SA 938 (CC) par 62.

¹²⁶ S 187(1)(f) of the LRA states that a dismissal will be automatically unfair if the reason for the dismissal is that the employee was discriminated against on one of the prohibited listed grounds.

¹²⁷ S 1 of the EEA defines reasonable accommodation as including "any modification or adjustment to a job or the working environment that will enable a person from a designated group to have access to or participate or advance in employment".

¹²⁸ *New Way Motor & Diesel Engineering (Pty) Ltd v Marsland* (2009) 30 ILJ 2875 (LAC).

¹²⁹ *Marsland supra* par 24–26. The court found that the employee was subject to egregious treatment that fundamentally impaired his dignity and awarded the maximum compensation to the employee. (2019) JOL 42192 (LC).

¹³¹ *Jansen v Legal Aid supra* par 40–48.

¹³² *Legal Aid South Africa v Jansen supra*.

¹³³ *Legal Aid South Africa v Jansen supra* par 50.

of *Labour*.¹³⁴ This case challenged the exclusion of domestic workers from the Compensation for Occupational Injuries and Diseases Act (COIDA).¹³⁵ Mahlangu, a domestic worker, fell into her employer's pool and drowned; her daughter inquired about compensation for her mother's death and was told that she could not claim compensation in terms of COIDA because domestic workers were excluded from COIDA.¹³⁶ The court held that the exclusion was unconstitutional and emphasised the right to dignity. The exclusion of domestic workers impaired the fundamental dignity of domestic workers, and the failure to recognise domestic workers' rights and their work perpetuated attitudes from the apartheid era, which had a stigmatising effect on the dignity of workers.¹³⁷ This case illustrates the importance of addressing the structural barriers that can compromise an employee's dignity and equality.

A more recent case, *Van Tonder v Sibanye Stillwater Ltd*,¹³⁸ is a powerful illustration of the centrality of dignity in workplace disputes, particularly those involving disciplinary practices. Van Tonder, a senior supervisor, disciplined two black subordinates by forcing them to choose between a formal misconduct charge or having their heads submerged in a fishpond. The employees, who felt that they had no choice, opted for the fishpond, which resulted in humiliation, trauma, and long-term psychological harm. The court found this practice to be degrading, humiliating, and a clear violation of the employees' dignity.¹³⁹ Even when such actions are presented as traditional practices, the inherent power imbalance between employer and employee can strip workers of genuine autonomy.¹⁴⁰ Moreover, in this case, the court emphasised the need to maintain respectful and dignified conduct towards subordinates and that workplace values and rules cannot override fundamental rights.

4 THE MULTIDIMENSIONAL ROLE OF DIGNITY IN SOUTH AFRICAN LAW

4.1 Dignity as a core constitutional value

Dignity holds a central position not only in constitutional law but also in equality.¹⁴¹ *Brink v Kitshoff*¹⁴² highlighted this principle, emphasising that dignity is a *sine qua non* for equality. This case framed equality and dignity as interdependent constitutional rights essential for implementing anti-discrimination law; equality and dignity remain an essential part of labour jurisprudence. Fredman observes that dignity often centres on individual worth rather than on addressing structural,

¹³⁴ [2021] 2 BLLR 123 (CC).

¹³⁵ 130 of 1993.

¹³⁶ S 1(xix)(v) of COIDA expressly excluded domestic workers from the definition of an employee.

¹³⁷ *Mahlangu supra* par 18.

¹³⁸ *Van Tonder supra*.

¹³⁹ *Van Tonder supra* par 44.

¹⁴⁰ *Ibid*.

¹⁴¹ Botha "Equality, Plurality and Structural Power" 2009 25 *SAJHR* 1–2.

¹⁴² Albertyn and Fredman 2015 *Acta Juridica* 430.

group-based discrimination.¹⁴³ She proposes a multidimensional approach to substantive equality that incorporates dignity as a key element.¹⁴⁴ This approach involves four dimensions: redistribution to eradicate historical disadvantage; recognition to affirm individual value and identity transformation for progressive societal development; and participation to ensure inclusive decision-making processes.¹⁴⁵ Fredman's analysis illustrates that achieving substantive equality requires the interplay of these dimensions, with dignity and equality serving as guiding principles across all four.

Ackermann, like Fredman, contends that equality cannot be fully realised without grounding it in deeper normative values, such as dignity.¹⁴⁶ This dependence of equality on dignity reflects the symbiotic relationship between these rights, much like the interconnectedness of individuals in a community.¹⁴⁷ Cowen expands on this perspective by arguing that dignity transcends individual concerns, addressing collective and systemic injustices.¹⁴⁸ She highlights the role of dignity in exposing material disadvantage and economic power imbalances, thereby affirming its potential as a tool for achieving substantive equality.¹⁴⁹

The interplay between dignity and freedom further enriches the constitutional value of both. In *Ferreira v Levin*,¹⁵⁰ the court declared that dignity and freedom are nearly synonymous, reinforcing their interdependence. Similarly, in *Pillay*,¹⁵¹ Kantian philosophy echoes the claim that freedom is indispensable to dignity, as it enables personal development and fulfilment. Ackermann asserts that exercising judgment and striving for self-worth are essential components of dignity, showing how autonomy and dignity remain connected.¹⁵² *Zealand v Minister of Constitutional Development*¹⁵³ and *Minister of Finance v Van Heerden*¹⁵⁴ further demonstrate that restrictions on freedom often impair dignity by undermining an individual's societal status and autonomy.¹⁵⁵

Although freedom is essential to dignity, it does not supersede dignity in its importance.¹⁵⁶ Instead, dignity may constrain freedom, establishing boundaries rooted in moral obligations. Kant noted that freedom must be exercised within the limits of dignity.¹⁵⁷ For instance, as Bal notes, one might have the freedom to sell a kidney, but doing so would undermine the dignity of one's body; this illustrates that freedom, although integral to autonomy, is subject to ethical constraints that protect

¹⁴³ Dupper and Garbers *Equality in the Workplace: Reflections from South Africa and Beyond* (2009) 89.

¹⁴⁴ Fredman *Discrimination Law* 2ed (2012) 25–26.

¹⁴⁵ *Ibid.*

¹⁴⁶ Ackermann *Human Dignity* 187.

¹⁴⁷ Fredman 2007 SAJHR 225.

¹⁴⁸ Cowen 2001 SAJHR 50–51.

¹⁴⁹ *Ibid.*

¹⁵⁰ *Ferreira v Levin NO; Vryenhoek v Powell NO* 1996 (1) SA 984 (CC) par 49.

¹⁵¹ *MEC for Education; KwaZulu-Natal v Pillay* 2008 (1) SA 474 (CC) par 150.

¹⁵² Ackermann *Human Dignity* 102.

¹⁵³ 2008 (4) SA 458 (CC).

¹⁵⁴ *Minister of Finance v Van Heerden supra* par 146.

¹⁵⁵ *Brisley v Drotzky* 2002 (4) SA 1 (SCA) par 7. Cameron JA summarised this principle by explaining that "contractual autonomy informs the constitutional value of dignity".

¹⁵⁶ Bal *Dignity in the Workplace: New Theoretical Perspectives* (2017) 58.

¹⁵⁷ Kant *Groundwork of the Metaphysics of Morals* 43.

human dignity.¹⁵⁸ In *Stransham-Ford*,¹⁵⁹ the court acknowledged that the decision to end one's life is a matter of personal dignity and integrity.

South African courts have grappled with the interplay between dignity and freedom, striving to define their boundaries and interdependencies.¹⁶⁰ Understanding this connection is critical for recognising and protecting individual choice and identity. Although restrictions on freedom may not always constitute an equality issue, freedom is more than a matter of individual choice; it encompasses one's capacity to function, realised through personal fulfilment and dignity.¹⁶¹ By positioning dignity as a core constitutional value, South African law ensures that equality, freedom, and autonomy are pursued in ways that respect and uphold the intrinsic worth of every individual.

4.2 Dignity as a mediator of rights

Dignity plays a critical role in mediating competing rights, particularly in the context of equality and freedom. The Constitution envisions a transformative framework in which dignity is not only a right but also a guiding principle for balancing conflicting interests.¹⁶² This mediating role is especially pertinent in cases where policies aimed at redressing historical injustices intersect with individual autonomy and the right to be treated fairly. Notably, fairness is not equivalent to dignity and equality, despite its significance in determining the threshold of unfairness.¹⁶³ Fairness and dignity are considered when analysing whether the discrimination will impair an individual's dignity as a person. The Constitutional Court has repeatedly affirmed that dignity serves as a cornerstone in resolving tensions between equality and individual freedoms.¹⁶⁴ As mentioned earlier, in *Harksen*, the court introduced a test for fairness that evaluates the impact of discriminatory measures on the dignity of the affected individual.¹⁶⁵ This criterion ensures that policies that promote equality do not unduly impair personal dignity. By linking fairness and dignity, the court highlighted that the true measure of determining whether a rule or policy is discriminatory is its effect on the individual's sense of worth.¹⁶⁶

The interplay between dignity, fairness, and equality was further explored in *Barnard*,¹⁶⁷ where the court grappled with the tension between affirmative action measures and individual merit. The case involved a white female candidate who was overlooked for a promotion, despite being the most qualified applicant. The court upheld the decision as a legitimate restitutionary measure, noting that such policies must be implemented with due regard for dignity to avoid unduly infringing on it. Moseneke DCJ emphasised that mechanisms designed to redress

¹⁵⁸ *Bal Dignity in the Workplace* 58.

¹⁵⁹ *Stransham-Ford v Minister of Justice and Correctional Services* 2015 (4) SA 50 (GP) par 12.

¹⁶⁰ Botha 2009 *Stell LR* 173–176.

¹⁶¹ *Ackermann Human Dignity* 72.

¹⁶² S 36 of the Constitution addresses limitations on the Bill of Rights, particularly if the limitation is reasonable and justifiable based on factors such as dignity, equality and freedom.

¹⁶³ *South African Police Service v Solidarity obo Barnard* (2014) 35 *ILJ* 2981 (CC) par 98.

¹⁶⁴ *Hoffman supra* par 43.

¹⁶⁵ *Harksen supra* par 46–52.

¹⁶⁶ *Ibid.*

¹⁶⁷ *Barnard supra* par 30–32.

inequalities must strike a balance between advancing equality and respecting the dignity of those involved,¹⁶⁸ thus illustrating dignity's role as a mediator, ensuring that restorative measures do not disproportionately harm individuals when they pursue broader societal transformation. Moreover, the court's reasoning in *Barnard* aligns with Van der Westhuizen J's two-factor framework for assessing fairness. He proposed that fairness requires evaluating whether the discriminatory measure contributes to substantive equality and whether the affected party was treated as a mere means to an end.¹⁶⁹ This balancing act demonstrates how dignity acts as a moral compass, navigating the fine line between collective goals and individual rights.¹⁷⁰

Vice adds to this discussion by arguing that fair discrimination must be justified by public reasons acceptable to all, reinforcing the legitimacy of laws aimed at achieving equality.¹⁷¹ This perspective integrates dignity as a fundamental value, ensuring that policies designed to address systemic inequalities also respect the autonomy and worth of affected individuals. Dignity thus becomes a bridge that reconciles the tension between collective societal needs and individual freedoms. Despite the robust legal framework, the application of dignity in mediating competing rights remains complex. While dignity supports the advancement of equality, it also imposes constraints to prevent the erosion of autonomy. This dual role requires courts and policymakers to adopt a nuanced approach that accounts for both historical inequalities and the lived experiences of individuals.¹⁷²

4 3 Dignity and the pursuit of substantive equality

The concept of dignity plays a foundational role in advancing substantive equality, especially in addressing intersectional forms of disadvantage in the workplace. Intersectionality, a concept introduced by Crenshaw, helps us understand how overlapping protected grounds, such as race, gender, and socio-economic status, compound disadvantages that directly impair an individual's dignity.¹⁷³ Recognising and remedying such disadvantages will ensure that the constitutional vision of substantive equality, grounded in dignity, becomes a reality. Dignity is not merely a value linked to individual identity, but also serves as a tool for addressing the societal structures that perpetuate inequality.

As discussed earlier in *Mahlangu*,¹⁷⁴ the concept of intersectionality was acknowledged, and the court went further in explicitly recognising intersectionality as a means to protect dignity. The court recognised that the COIDA exclusion disproportionately affected domestic workers' dignity by failing to account for their compounded vulnerabilities based on race, gender, and socio-economic status.¹⁷⁵

¹⁶⁸ *Ibid.*

¹⁶⁹ *Barnard supra* par 180.

¹⁷⁰ Grant *Dignity and Equality* 2007 7 HRLR 323.

¹⁷¹ Vice 2015 CCR 152–154.

¹⁷² Grant 2007 HRLR 329.

¹⁷³ Crenshaw "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Anti-Discrimination Doctrine, Feminist Theory and Anti-Racist Policies" 1989 4 *U Chi Legal F* 139.

¹⁷⁴ *Mahlangu supra* par 18.

¹⁷⁵ Atrey "Beyond Discrimination: *Mahlangu* and the Use of Intersectionality as a General Theory of Constitutional Interpretation" 2021 21(2) *Int J Discrim Law* 174.

The judgment affirmed that protecting dignity requires recognising the intersection of multiple forms of discrimination and taking measures to address systemic disadvantage,¹⁷⁶ thus showing how intersectionality and dignity converge in their shared goal of ensuring substantive equality. Dignity not only demands the recognition of individuals as equals but also mandates the transformation of societal structures that impair people's self-worth and autonomy. Critically, the integration of dignity into the framework of substantive equality ensures that anti-discrimination efforts do not focus solely on formal equality but instead address the structural inequalities that perpetuate cycles of disadvantage. By recognising the intersectional nature of discrimination in the workplace and its impact on dignity, dignity provides a robust mechanism for protecting individuals against exclusion and marginalisation.¹⁷⁷

5 CONCLUSION

Dignity's transformative power lies in its capacity to bridge the gap between constitutional ideals and individuals' lived realities, particularly in the workplace. As a foundational principle, dignity transcends philosophical, legal, and moral boundaries, serving as both a value and a justiciable right.¹⁷⁸ This article has demonstrated that dignity is central to promoting equality, resolving workplace disputes, and addressing systemic injustices. It mediates competing rights, ensures fairness in the application of labour laws, and offers a framework for achieving substantive equality.

By examining the jurisprudence, this article shows how the courts have consistently recognised dignity as an essential component of fair and equitable treatment, whether in cases of discrimination, harassment, or the physical and mental well-being of employees. This illustrates its evolving role in addressing the nuanced and intersectional forms of disadvantage that permeate the workplace. Moreover, dignity fosters a transformative approach by acknowledging the complexities of historical inequalities while striving for inclusion and social justice. By aligning legal frameworks with the principles of dignity, South Africa continues to advance its constitutional commitment to redressing systemic inequities and promoting human rights. At the same time, dignity acts as a safeguard against policies or practices that could undermine individual autonomy, ensuring that the pursuit of equality does not come at the expense of individual worth.¹⁷⁹ Ultimately, dignity is not only a legal concept but also a moral compass, guiding employers, policymakers, and the judiciary in creating a workplace culture that values and respects every individual.¹⁸⁰ Dignity's transformative potential is realised through its dual role as a shield against injustice and a tool for societal progress, making it indispensable in achieving a fair, inclusive, and dignified workplace.

¹⁷⁶ *Mahlangu supra* par 79. Victor J indicated that an intersectional approach is the kind of interpretative approach that will achieve "the progressive realisation of our transformative constitutionalism".

¹⁷⁷ *Atrey Intersectional Discrimination* (2019) 149.

¹⁷⁸ *S v Makwanyane supra* par 57.

¹⁷⁹ Fredman 2016 *IJCL* 728–731.

¹⁸⁰ Cowen 2001 *SAJHR* 58.