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**SOCIOECONOMIC RIGHTS ARE HUMAN RIGHTS: CRITICAL
ANALYSIS**- Ananya Gogoi & Panchami Khaund¹**Abstract**

Our right to education, adequate medical attention and nutrition, housing, employment as well as our right to fair working conditions and a healthy environment, all constitutes as the Socio-economic rights under International Law erudition also known variously as the positive rights or the Second-generation rights. They oblige the government or the state to intervene in the private domains of the individuals and satisfy the general claims to socio-economic interests of individuals in the society which every person is entitled by virtue of his birth. These rights are inherent for a decent living and sustenance in an ever-growing society. Today, most states in the world recognize these set of rights as a vital duty on the part of the state to oblige and has most respectfully incorporated ideals of social and economic democracy in their respective constitutional texts. Similarly, developments can be seen in introducing such social legislations at the national level. However, those rights are still considered as ‘second-generation rights’ and that is illuminative of the reality that they are not universally accepted and widely enjoyed. In many parts of the world, only civil-political rights are given priority and people’s basic entitlements to such socio-economic provisions are easily overlooked. And in this command play, the only victims are the poor, underprivileged and the disadvantaged. In this paper, the author seeks to dig deep into the jurisprudence of ‘rights’ while simultaneously tracing the origin of ‘Human Rights’. Additionally, while outlining the development of socio-economic rights in international and national legal panoramas, the paper analyzes what, why and how aspects of socio-economic rights as Human Rights which shall be deemed as equally significant as any other first-generation rights also known as the Civil-Political Rights.

Keywords:- Socio-economic rights, International Law, First-generation rights, Second-generation rights, basic entitlements.

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INTRODUCTION

Every individual, by virtue of his or her birth, is entitled to some basic rights and freedoms irrespective of where we are born or brought up. And panoply of these individual entitlements is termed as the 'Human Rights.' They are universally upheld principles or norms, inalienable and inherent by nature, which are regulated in municipal and international law. They impose an obligation on persons to respect the human rights of others and cannot be generally infringed unless established by due process of law based on varying circumstances. It was reaffirmed by the member countries in the Vienna Declaration and Program of Action as well as in the 2005 World Summit in New York, that all human rights must be treated in a fair and equal manner, on the same footing with the same emphasis globally.² Being a very influential doctrine of rights, actions of the government, as well as of non-governmental organizations, often build the foundation for public policy in many nations. The main thrust of Human Rights suggests that "if the public discourse of peacetime global society can be said to have a common moral language, it is that of human rights".³

However, there is a stark difference between theoretical acknowledgement and the practical application of these rights. The ambit of Human Rights is very wide and includes a wide array of interests of people such as the right to vote, to freely participate in the electoral process, right to life and dignity, right to privacy, right to a healthy environment, right of the minorities etc. The socio-economic rights essentially includes the right of workers, the right to access public resources, natural resources, right to decent living conditions, rights of particular social groups and property rights. Mostly, civil-political rights are prioritized over the socio-economic rights as they are considered as a burden, so the state often neglects their duty in dealing with the socio-economic entitlements of individuals which they are most respectfully permitted by virtue of their birth. Therefore, the perpetual cycle of neglect and inaction shadows the potential scope for development and upliftment for the people as well as society.

It was in the 19th century that it was realized that civil and political rights would often narrow down the opportunities and conditions necessary to appropriate the social and economic conditions, hence offering little help to ordinary people. Apart from this, much social reform legislation was struck down in the court of law some of the landmark case laws being *Lochner*

² Dawood Ahmed & Elliot Bulmer, *Social and Economic Rights International IDEA Constitution-Building Primer* 9, International Institute for Democracy and Electoral Assistance (International IDEA), Ed. 2, (2017).

³ J. W. NICKEL, *MAKING SENSE OF HUMAN RIGHTS*, [(Oxford Blackwell Press, 2nd Ed. 2007) as cited by Jeff King, *Judging Social Rights* 20 (Cambridge University Press, New York, 2012)].

v. New York and *Adkins v. Children's Hospital*. This attitude went through a drastic change considering the impact of World War I and II and now emphasis came to be placed upon positive entitlements of individuals. Most constitutions in the world, today, have incorporated some legally enforceable socio-economic rights or promote the political pursuit of progressive socio-economic objectives through constitutionally recognized directive principles of state policy.⁴ But some older constitutions have preferred to engage these rights merely as non-enforceable statutory provisions rather than giving a constitutional basis. These principles constitute the basic international norm to put a check on human conduct guided by prudent and reasonable considerations hence very essential for the effective functioning of the society.

HUMAN RIGHTS AS A COMPONENT OF INTERNATIONAL LAW SCHOLARSHIP

The concept of "Free Man" refers to a man who possesses the rights or privileges of a citizen; a person who has full civic and political rights; a person who is not a serf or slave with his own entitlements and interests. But was it always universally enjoyed is the question. The answer to this is simply negative. The rights that we universally enjoy today are the result of endless struggles and labors of our ancestors. History is brimming with stories full of injustice and horrid acts of violence to people. For centuries, the basic rights were not recognized and people lived lives devoid of it. The instability created by the onset of the First World War in Europe soon set the stage for yet another international conflict, more devastating and gory in consequences for the world – WWII that lasted for three years in the timeline of human history. The overwhelming multi-dimensional impact of World War II made the international community rush and settle for an international instrument which highlights the significance of all human rights essential for sustenance of a decent life of every individual born. It was through these events that protection and preservation of basic human rights were acknowledged and reached the highest level of international priority. For that reason, the normative arrangement of universally recognized human rights was prepared and was elucidated in the International Bill of Human Rights (IBHR) which includes the Universal Declaration of Human Rights (UDHR), The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

At the San Francisco Conference in 1945 on the eve of the promulgation of the International Bill of Human Rights, discussions by world leaders were engaged in relation to the drafting of

⁴ Christine Chinkin, *The Protection of Economic, Social and Cultural Rights Post-Conflict*, 235 (2005).

the Charter of the United Nations as well as to embody the “Declaration on the Essential Rights of Man”.⁵ Paragraph 3 of Article 3 of the Charter clearly speaks of "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion."⁶ The moral foundation of human rights is well engrafted in Article 1 of the IBHR which postulates that:

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”⁷

Human rights came to be defined as the basic rights and freedoms that everyone born is entitled to until death irrespective of the society which they live in. It is the magical and powerful tool of positive change, upliftment and development not only in the physical sphere but also in terms of psychological well-being. These set of rights are usually based on values and ideals such as independence, dignity, fairness, equality and respect.

Human Rights, as conceived by UDHR and other such international legal instruments postulate that these rights have certain inherent characteristics. These are firstly rights which have right holders and addresses. They are universal i.e., applicable to one and all irrespective of the societal differences. Also, they have strong justifications which enable to become a top priority over any form of consideration. They are moral rights which can be found at any community, national or international level, as a result, doesn't derive its authority from any particular state. These are primarily political norms rather than interpersonal standards whereby the governments are the primary addressees. They constitute the evaluation standards of conduct and humanitarian performance in the international community unrestricted by the political boundaries of countries. It includes a wide array of rights such as the right to privacy, the freedom of speech, the right to an education, right to equality, right to food, housing and healthcare, right to self-determination, right to healthy environment etc. Additionally, as minimal standards, these rights constrain and put a check on legislations, legal policies while leaving the national decisions at the hands of political leaders and government.

At the time when these rights were adopted in the IBHR, these rights were most obviously not enjoyed by all. Even the universal recognition of these rights was a difficult and strenuous task of advocacy and sensitization. Fifty years later, the potential significance of these rights have been realized and are being enjoyed while its recognition has undoubtedly become more

⁵ Paul Hunt, *Social Rights Are Human Rights but the UK system is rigged*, Centre for Welfare Reform, (September 2017).

⁶ United Nations, Charter of the United Nations, 1 UNTS XVI, Article 1 (2).

⁷ U.N. General Assembly, The International Bill of Human Rights, Res. 217 A (III), (10/12/1948).

widespread. Yet, there are a whole lot of things that need to be taken into consideration for the actual universal enjoyment of these set of human rights.

In 1979, Czech Jurist Sir Karel Vasak proposed to classify the human rights literature into three broad generations. And accordingly, the civil and political rights were categorized as the first generation rights; social and economic rights as the second generation rights and the right to self-determination and the rights of minorities as the third generation rights.⁸ The ambit of the first generation rights represents the claims of physical and civil security consisting of norms pertaining to civil-political empowerments of individuals. The second-generation rights pertain to the provisions of good meeting social and economic needs, basic to the sustenance of every individual. While the third-generation rights represent the most controversial and debated set of rights lacking legal status and recognition from the international community.

JURISPRUDENCE OF SOCIO-ECONOMIC RIGHTS

A jurisprudential interpretation of the first and second-generation rights is the Negative and Positive rights.⁹ In simple words, while the former impose upon the state the obligation to not interfere in the individual affairs whereby individuals have the freedom to express their own interests and opinion; the latter impose a positive obligation on the state to intervene and do the necessary instead of maintaining non-interference into the private zone of individuals.

A fundamental distinction between positive and negative rights is the duty distinction. They oblige a negative and positive duty on the state with respect to the concerned act respectively. The negative rights contemplate inaction from other parties while the positive rights contemplate action on the part of another person or persons. Isaiah Berlin in his famous treatise “Two Concepts of Liberty” has defined rights in terms of positive liberties and negative freedoms. He attributed negative freedom as the sphere of non-interference, a right to be left alone. Its focus is on the freedom from any potential violator instead of the right-holder. While he explained ‘positive freedom’ as a right to be enjoyed; it is the ‘freedom to’ as distinguished from ‘freedom from’ whose focus is the right-holder instead of the potential violator.¹⁰

Therefore, the civil and political rights are negative rights or freedoms and socio-economic

⁸ J. W. NICKEL, MAKING SENSE OF HUMAN RIGHTS, [(Oxford Blackwell Press, 2nd Ed. 2007) as cited by Jeff King, Judging Social Rights 20 (Cambridge University Press, New York, 2012)].

⁹ Ran Hirschl, “*Negative*” Rights vs. “*Positive*” Entitlements: A Comparative Study of Judicial Interpretations of Rights in an Emerging Neo-Liberal Economic Order, The Johns Hopkins University Press, Human Rights Quarterly, Vol. 22, No. 4 (Nov., 2000).

¹⁰ J. W. NICKEL, MAKING SENSE OF HUMAN RIGHTS, [(Oxford Blackwell Press, 2nd Ed. 2007) as cited by Jeff King, Judging Social Rights 20 (Cambridge University Press, New York, 2012)].

rights are by nature positive rights or freedoms. Deriving its roots from the French and American Revolution, the first-generation rights were claimed in the name of all free men and were conceived as 'freedoms from' as opposed to the positive entitlements of individuals without any geographical limitations. Rights such as right to vote, freedom of assembly and voluntary association; freedom of thought, conscience, and religion and; political participation in one's society are some examples. Popularly known as the 'Blue Rights', these rights are considered as the most important set of human rights.

The second-generation rights include the socio-economic rights like right to education, employment, an adequate standard of living, health and social security. The historical derivation of these rights goes all the way back to the eighteenth and twentieth century struggles, movements and political institutions. As earliest in the 18th century, the states of Bavaria and Prussia were considered as 'social agents of happiness' with the obligation to create employment and other economic opportunities to support the needy and less privileged class. The 1793 Constitution of France recognizes the duty of the state to provide public assistance for the needy. It was around that time when Bismarck introduced social legislation covering income related insurance in cases of accidents, illness etc.¹¹

The International Labor Organization was established simultaneously in 1919 which attempted to lay down international labor standards which subsequently contributed immensely in raising awareness about the significance of socio-economic rights of individuals. This influenced many other countries across the globe to adopt social and economic legislations in their constitutional texts. Apart from Germany, the Mexican Constitution of 1917, the 1936 Soviet Constitution as well as the 1937 Irish Constitution incorporated a comprehensive list of socio-economic rights such as right to adequate health care, education, social security, economic opportunities etc.¹² However, it was only after the Second World War that a considerable number of countries adopted or amended the constitution to incorporate the social and economic legislations and accordingly get it enforced. The 1948 UDHR upholds and recognizes all universal civil-political and socio-economic human rights. By 1966, the Commission on Human Rights developed two covenants i.e., The ICCPR and the ICESCR. Moreover, there are a plethora of regional instruments upholding the same.

Despite such efforts forged by the International Community, the universal recognition and enjoyment of these human rights failed to strike a balanced state of affairs. Thirty years into

¹¹ Christine Chinkin, *The Protection of Economic, Social and Cultural Rights Post-Conflict*, 237 (2005).

¹² Louise Arbour, *Economic and Social Justice for Societies in Transition*, CHRGI, Working Paper No. 10, 2006.

international covenants, social and economic legislations and national constitutional amendments, yet no priority and adequate recognition was awarded to the second-generation rights i.e., the socio-economic entitlements that we as humans deserve. As a result, these rights failed to receive universal acceptance and were hardly implemented.

ARE SOCIO-ECONOMIC RIGHTS HUMAN RIGHTS?

Significantly, nearly every country which adopted or amended their respective constitution in last few decades, have embraced the idea of incorporating a Bill of Rights and to recognize the social and economic obligations of the state to its citizens. They guaranteed a range of social and economic rights to its citizens such as the Right to housing, proper working conditions, adequate medical care and nutrition, employment etc. More and more social rights and economic rights are given recognition and being enjoyed by the population. This has been furthered with the amendments in the judicial procedures of the country with the introduction and application of Judicial Review and Judicial Activism.

Although courts were granted the power to declare socio-economic rights as enforceable by law, yet these set of rights were the subject matter of debate and controversies for a long period of time. Mainly, two arguments are presented against the enforceability of socio-economic rights. It is argued that firstly, the courts lack the capacity to translate a general claim for socio-economic provisions of goods into a legally enforceable right and secondly, that the enforceability of these rights would further interfere with the functioning of elected governments.¹³ Enforcing the socio-economic claims of individuals would clearly interfere with the allocation of government funds and budget. In such a context, the judiciary shall give direction to the flow of individual claims before the court. Judicial review and activism constitutes the significant and valuable means for justifying the socio-economic claims of individuals in the society.

It is a fact in reality that after the WWII, the value of socio-economic rights increased and was efficiently realized by the international community but somehow it failed to get popularity and acceptance just as the first-generation rights in international law literature pages. On one hand, some countries came to increasingly accept these claims while some other countries refused to comply with the socio-economic claims of individuals for the sake of political interests. For many years, people struggled to get their socio-economic entitlements enforced before law. The

¹³ Malcolm Langford, *Socio-Economic Rights Between Essentialism and Egalitarianism*, Cambridge University Press, 456 (September 2018).

civil and political rights came to be prioritized over the socio-economic rights and despite movements and protests, the end results were not favorable. But as time flew, potential developments could be seen at the international panorama.

With such changes, archaic and inhumane legislations were struck down and important developments began to take place within the national constitutional law as well. In the United States, one of the most publicized and controversial case was the 1954 landmark case of *Brown v. Board of Education* which struck down the concept of 'separate but equal' and paved a way for equal access to education to one and all. It was acknowledged by the courts that every student has the right to learn and may expect protection from misuse of time in educational institutions as has been observed in *Rosenberger v. Rectors and Visitors of the University* (1955), *Sweezy v. New Hampshire* (1957), *Hillis v. Stephen F. Austin University* (1982), *Keen v. Penson* (1982) and *Riggin v. Bd. of Trustees of Ball St. Univ.* (1982) cases.¹⁴ Similarly, case law developments were visible in relation to housing and residence halls which upheld the right to sex equality, disability accommodation and against gender discrimination and gender segregation in resident halls and housings in a number of instances.¹⁵

The legal provisions favorable to socio-economic claims of individuals in any constitution can be found either a form of a 'right' enforceable by law or as a directive principle of the state policy (DPSP). While preparing the Indian Constitution, the nationalist leaders were influenced by the state directive guidelines of the Irish Constitution and incorporated the provision of DPSPs under Part IV of the text. Basically, they are state directed principles or guidelines which aim to secure and practically come to term with the grand ideals mentioned in the Preamble to the Indian Constitution. They seek to establish a welfare state where social and economic democracy may flourish alongside the civil-political sphere. Article 36 to 51 of the Indian Constitutional text speak of a wide array of socio-economic rights including provisions with respect to right to work, to education, living wages and to public assistance in certain cases, organization of agriculture and animal husbandry, organization of village Panchayats, promotion of educational and economic interests of Scheduled Castes, Schedules Tribes and other weaker sections, the state obligation of protecting and improving the environment and safeguarding forests and wildlife, protection of monuments and places and objects of national

¹⁴ Yusuf Salma, *The Rise of Judicially Enforced Economic, Social, and Cultural Rights—Refocusing Perspectives*, *Seattle Journal for Social Justice*: Vol. 10 : Iss. 2, Article 3 (2012).

¹⁵ Dawood Ahmed & Elliot Bulmer, *Social and Economic Rights International IDEA Constitution-Building Primer* 9, International Institute for Democracy and Electoral Assistance (International IDEA), Ed. 2, (2017).

importance as well as promotion of international peace and security.¹⁶ These principles are a concerted effort to tackle effectively with the socio-economic evils inflicting harm and pain and further foster all-round development and upliftment in the social dynamics of the society.

However, the major loophole in this very context is another fact that although Indian Constitution recognizes the positive rights in the form of DPSPs, these rights are not enforceable by law. In other words, these are non-binding in nature and thus can't be enforced for their infringement. Since they are so vital for the governance of the country, it becomes the utmost moral obligation of the government or the state to satisfy the general claims to socio-economic goods. In such a scenario, the position of judicial intervention in the enforcement of the positive obligations of the state becomes especially perplexing and controversial.

In the 1990s, the debate on the justiciability of the economic, social as well as cultural rights was conventionally a theoretical one, but today, it has evolved into a practical issue that has taken roots in several domestic legal systems in different parts of the world. In a democratic system like India, doctrine of Separation of Powers is a crucial tool to check on the power limits of each of the organ but when the enforcement of socio-economic rights comes into question then, the judiciary may unconsciously intervene in the affairs meant for the legislature leading to the violation of the doctrine. Therefore, it becomes prudent for the Judiciary to deliver judgments that don't infringe the basic text and purpose of the doctrine as being as the protector of the Constitution. In this very context, the Indian Supreme Court has successfully delivered some landmark cases such as the case of *Olga Tellis v. Bombay Municipal Corporation*, whereby the Indian Supreme Court only went ahead to suggest the need and essentiality of implementing a policy rather than prescribing a course of action to the government body. The Indian courts has observed the value of judicial intervention in enforcing socio-economic rights in a considerable number of other instances, like in the *Simla case*, *Vincent v. Union of India*, *Bandhua Mukti Morcha, Unni Krishnan, J.P. & Others v. State of Andhra Pradesh & Ors.*, and *Mohini Jain v. State of Karnataka*. Likewise, a similar judicial approach has been adopted by the South African courts and it was well displayed in the milestone case of *Soobramoney v. Minister of Health, Kwazulu-Natal*, where the Constitutional Court noted its reluctance "to interfere with rational decisions taken in good faith by the political organs . . . whose responsibility it is to deal with such matters."¹⁷

¹⁶ 1 M. P. JAIN, *M. P. JAIN INDIAN CONSTITUTIONAL LAW*, (LexisNexis, 8th ed., 2018).

¹⁷ Yusuf Salma, *The Rise of Judicially Enforced Economic, Social, and Cultural Rights—Refocusing Perspectives*, *Seattle Journal for Social Justice*: Vol. 10: Iss. 2, Article 3 (2012).

The driving foundation of the first-generation rights which deals with the civil-political interests is basically guided by the socio-economic needs and considerations of individuals in a given society. It is conventionally believed that power and status provides the adequate means to satiate the material requirements of people that enables a person to lead a decent life. It is this core belief that drives the first-generation rights to constitute the most important set of rights for the human race. This very understanding also highlights the significance of socio-economic rights as the 'basic entitlements' that people need to appropriate first and is therefore the utmost obligation of the state to do the necessary to realize the same. Constitutionalizing these rights clearly reflects the need to protect the most fundamental interests of individuals in having resources that are necessary for the exercise of their well-being.¹⁸ Henceforth, it is imperative to conclude that socio-economic rights are crucial just as the civil-political rights and are definitely important 'Human Rights' which requires adequate attention from the state to achieve the ideals of social and economic democracy and for the larger welfare of the society.

CONCLUSION

In the cultured words of James Nickel, human rights are "the universal and normative claims whose truth is not dependent on legal recognition, and are meant to be minimum standards instead of complete statement of what is just."¹⁹ These are the basic entitlements of individuals by the virtue of one's birth. At the same time, it is important to realize that rights and duties co-exist i.e., every duty of the person must be the duty towards some person, in whom the right is vested and conversely every right must be against some persons upon whom a duty is imposed.²⁰ This efficiently leads us to the understanding that one's claim to socio-economic provisions of goods is the basic right of the person and the corresponding authority i.e., the state has the corresponding duty to secure it.

It is very well a fact that efforts have been made, legislations have been passed, policies have been implemented yet there remains a lot of loopholes to be taken into consideration to ensure that the legal provisions reach the people enabling them to enjoy it accordingly. As of yet, South Africa and Kenya are classic examples which display a strong recognition of socio-economic rights in their respective constitutional texts. On the other hand, the constitutions of

¹⁸ Paul Hunt, *Social Rights Are Human Rights but the UK system is rigged*, Centre for Welfare Reform, (September 2017).

¹⁹ J. W. NICKEL, *MAKING SENSE OF HUMAN RIGHTS*, [(Oxford Blackwell Press, 2nd Ed. 2007) as cited by Jeff King, *Judging Social Rights* 20 (Cambridge University Press, New York, 2012)].

²⁰ David P. Currie, *Positive and Negative Constitutional Rights*, *University of Chicago Law Review* 864 (1986).

India, Australia and France have partially recognized the socio-economic rights merely as ideals in the Preamble or as DPSPs which lack the power of enforceability as they are non-binding by nature.²¹ Apart from this, there are countries such as in the Caribbean and North America which are notable for the absence of such provisions and hardly bother to implement such favorable legislations.²² The acceptance and application of these provisions is clearly not universal as a result of which sections of the population are always suffering. Considering this, it is correct to infer that they lack the means to exercise their basic rights; that their human rights are infringed. It is very much important for the international community to put emphasis on constitutionalizing the socio-economic rights in the legal texts of the country followed by sensitizing and raising awareness of people's right to their basic entitlements. The international society shall also seek help from national and international NGOs or governmental units to put effort for the same. The role of civil society in imparting constitutional education, political culture and social values and carrying out necessary amendments and implementation of suitable policies would surely lead a positive direction to the issue. Despite the challenges, it is only quite right to fight for our basic interests, entitlements or rights for the well-being of the society and the domestic and international legal system as a whole.

²¹ Dawood Ahmed & Elliot Bulmer, *Social and Economic Rights International IDEA Constitution-Building Primer* 9, International Institute for Democracy and Electoral Assistance (International IDEA), Ed. 2, (2017).

²² Dawood Ahmed & Elliot Bulmer, *Social and Economic Rights International IDEA Constitution-Building Primer* 9, International Institute for Democracy and Electoral Assistance (International IDEA), Ed. 2, (2017).

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