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This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

WHITE BLACK LEGAL: THE LAW JOURNAL



SCHOOL OF LAW

COMPARATIVE PUBLIC LAW

TOPIC:

SOCIAL AND ECONOMIC RIGHTS AS A PART OF LAW



SUBMITTED BY:

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Social and economic rights as a part of rule of law

Abstract

Economic and social rights are human rights that relate to our ability to live in dignity and participate fully in our society. They include rights related to the workplace, social security and access to housing, food, water, health care and education. They include the right to fair wages and equal pay. The right to adequate protection of income in the event of unemployment, sickness or old age and the right to an adequate standard of living. The rule of law is a multidimensional concept, encompassing a variety of discrete components from security of a person and property rights and to checks on government and control of corruption. In this article reviews the various streams of theoretical and empirical research by academics emphasizing the connection to economic development, it is observed that there is correlation among different components of the rule of law concept are not tight among developing countries and that some inferences about the effects of property rights protection may not be warranted.

Introduction

Socio economic rights provide protection for the dignity, freedom and well-being of individuals by guaranteeing state –supported entitlement to education and public health care, housing and living wage, decent working conditions and other social goods. Constitutionalizing socio economic rights reflects the need to protect the most fundamental interests of individuals in having resources that are essential for the exercise of their wellbeing. Objections to the socio economic rights include the risk of overloading the state's capacity to deliver promised goods leading to a lack of legitimacy, the fear judges becoming too involved in policymaking and ideological objections.

What are Social economic rights

Right to universal public services

The right to education, health care and other public services that everyone is entitled to and that it is primarily the responsibility of public authorities to fund, provide or otherwise support.

Right Supported of decent living conditions

In less developed economies, these may take the form of specific rights to food, determination rights (i.e. giving workers a voice in the management of enterprises), protections against arbitrary dismissal and prohibition of workplace harassment and rules for the protection of workers health and safety.

Right of particular social group

Socio-economic rights may often be specifically applied to particular social groups. For example, a constitution may specifically refer to the position of women, people with disabilities, young people, the elderly or members of ethnic or linguistic minorities who are differentially affected by (and, perhaps, especially dependent upon) socio-economic rights. For example, a constitution may specifically seek to protect the reproductive rights of women or the rights of disabled people in access to education and work.

Right to natural resources

The right of access to clean water, to the natural environment and to the land. In addition, special provision may be made to protect the traditional land rights, hunting and fishing rights or grazing rights of indigenous communities.

Property rights

The right to private property is usually regarded as a first-generation right rather than a socio-economic right. However, the framing of property rights— particularly, the recognition that the right to property is not absolute, that it may be limited by social needs and may carry with it responsibilities—can have important socio-economic consequences. Article 43 of the Irish Constitution, for example, recognizes that property rights ‘ought, in civil society, to be regulated by the principles of social justice’, and allows the state, by law, to

‘delimit the exercise of [property rights] with a view to reconciling their exercise with the common goods.

In constitution

Part III of the constitution (fundamental rights) can be seen as dealing with many civil and political rights, while part IV dealing with directive principles of state policy) deal with mainly social and economic rights .the categorization of civil and political rights under part III and social economic rights under part IV is compared to ICCPR and ICESCR respectively .the core rights mentioned in ICESCR can be found under part IV of the constitution. These provisions pertaining to basic needs, worker rights and social justice. Part IV also contains other rights that are specific to the Indian context such as Uniform civil code (Article 44) and organization of village panchayat (Article 46) part IV is also referred as fundamental in the governance of the state.

Directive principles of state policy mainly social economic and cultural rights in the constitution of India are set out in this part .which include equal right of citizens to an adequate means of livelihood (Article 39 a),equal pay for equal work for both men & women(Article 39d),the right to work, education and public assistance in certain cases including unemployment ,old –age ,sickness, disablement and other cases of undeserved want(Article 41),just and humane conditions of work and maternity relief (Article 42),living wage etc. for workers (Article43) raising the level of nutrition and standard of living of the people (Article47) improvement of public health (Article 47)

Right to education (free and compulsory education for all children from the age of six to fourteen) has however been placed in part III as Article 21 A the constitution (eighty –six) amendment 2002, Article 23 prohibition of forced labour .Cultural and educational rights are rights of any section of citizens having distinct language, script of its own to conserve the same (Article 29 A) .Right of minorities to establish and administer educational institutions.(Article30)

Right	Indian constitution	ICESCR
Right to work	Article 41	Article 6(1)a
Just and favorable conditions of work with equal remuneration for work of equal value	Article 39d and 42	Article 7
Right to an adequate standard of living and the right to be free from hunger	Article 43 and 47(raising level of nutrition)	Article 11
Right to education including free and compulsory primary education	Article 21a ,41 and 45	Article 13
Health	Article 47(public health)	Article 12

Socio-economic rights as a part of rule of law

The rule of law does convey the idea of people ruled by law and not subject to lawlessness or arbitrary power. It is also for many people not merely procedural but there is a substantive quality, which includes some aspects of human rights, but usually only considerations of civil and political rights such as free speech and freedom of belief and religion.

But in the twenty-first century, with the development of human rights we also need to focus on what rights are fundamental to the rule of law and are the rule of law arbitrarily limited only to civil and political rights.

To which the argument is that socio-economic rights are now a fundamental aspect of the rule of law and that by not incorporating rights to food, water, healthcare, housing and an adequate standard of living we in the UK are not respecting the rule of law fully.

Status of directive principles

Article 37 according to article 37 “the provisions... shall not be enforceable by any court, but the principles therein laid down are nevertheless in the governance of the country and it shall be duty of the state to apply these principles in making laws”. At the framing stage most members supported the inclusion of these principles and some members (Sh B.N Rao ,Sh K.M Munshi) wanted them to be justiciable .however they made non –unenforceable to give the government sufficient latitude, Until action was taken towards changes in the economy.

According to B.R Ambedkar “it is the intention of the constituent assembly that both legislature and executive should not merely pay lip service to the principles enacted in this part, but they should be made the basis of all executive and legislative action that they may be taken hereinafter in the matter of governance in the country.it can be said as per Article 37 the rights incorporated in the directive principles of state policy are not justiciable. They are not of the same status as fundamental rights as mentioned in part III which are enforceable in the court of law.

In a broader context, social welfare rights are included in the text of most national constitutions and their inclusions are not recent phenomenon ... but social welfare rights are infrequently enforced by courts. Indeed constitutional scholars have largely contended that social welfare right rights are not justiciable.

Sachidanand pandey V/s state of west Bengal It was observed that when the court is called upon to give directive principles...the court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy making authority. The least that the court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded.

Constitutional amendment

25th constitutional amendment sought to give primacy to some (article 39b & 39c) directive principles and 42nd amendment gives primacy to all directive principles over the fundamental rights articles 14 & 19 exclude them from the scope from judicial review. In **Keshavanda Bharati V/s state of Kerala** 1973 SC The validity of article 31C(25TH Amendment) was partly upheld but the court preserved its power to judicial review to decide whether the law made by the legislature had any nexus with the principles recognized in article 39 b & c. **Minnerva Mills V/s Union of India** the amended form of article 31 c giving primacy to all directive principles over fundamental rights was held unconstitutional.

The approach in favor of enforced constitutional rights is viewed as providing classes of assistance

1. Remedying glaring rights violations,
2. Influencing government action through the threat of judicial enforcement.
3. Supporting extra-judicial social welfare action
4. Reinforcing constitutional values for social transformation .

In **State of Gujarat V/v Mirzapur moti kureshi kassab jamat and others** SC the interpretation of the relationship between the fundamental rights and directive principles was noted to have undergone three stages

Stage one initially a strict or literal interpretation of article 37 (State of Madras V/S Champakam Dorairajan) DPSP must conform to and run subservient to fundamental rights.

Stage two thereafter the position was that DPSP must be implemented but not so as to take away or abridge fundamental rights (Mohd Hanif Qureshi v/s STATE OF BIHAR)

Stage three DPSP and fundamental rights complementary and supplementary to each other towards the same goal –social revolution (C.B. Boarding and Lodging V/S State of Mysore) harmony and balance between them held to be part of the basic structure of the constitution. (Minnerva Mills v/s Union of India)

Now, it has been observed in interpreting any constitutional provisions, the directive principles were to be viewed as the “Book of interpretation” (Ashok Kumar Thakur V/s Union of India) also the court is required to interpret the fundamental rights in light of the directive principles (Charu Khurana v/s Union of India)

Under **Article 21** the following rights have been included as facets of the right to life & human dignity.

- **Livelihood** (Olga Tellis v Bombay Municipal Corporation, State of UP v Charan Singh)
- **Education** (Unnikrishnan v State of Andhra Pradesh, Mohini Jain v State of Karnataka , Society for Unaided Private Schools of Rajasthan V Union of India & others)
- **Food** (People’s Union for Civil Liberties V Union of India, Francis Coralie Mullin V Union Territory of Delhi)

- **Shelter** (shanti star builders V Narayan khimalal totame ,Ahmedabad municipal corporation V nawab khan gulab khan)
- **Clean drinking water**(A.p pollution control board II V prof. M.V nayaudu. Narmada bachao aandolan V union of india)

Such wide interpretation has also been given by the court to other fundamental rights to include some other socio economic rights

- **Equal pay for equal work** (grih kalyankendra workers union V union of india) having regard to Article 39 and equality in Article 14 and 15 U.P land development corporation and Another V Mohd.khursheed Anwar and another .
- **Right to be considered for employment** (anuj garg and others V Hotel association of India & others)
- **livelihood** (senior divisional commercial manager V SCR caterers ,dry fruits ,fruit juices stalls welfare association and another)
- **forced labour** held to include cases of persons compelled to work for remunerations lower than the statutory minimum wages (people's union for democratic rights V Union of india)
- **free legal wages** madhav hoskot V state of maharashtra

The state has enacted various pieces of legislation which reflect or give effect to different provisions of the DPSP (according to article 37 ,it shall be the duty of the state to apply these principles in making laws

- **worker's right** minimum wages act 1948 article 43 equal remuneration 1976 article 39 d ,factories act 1948 article 42,43 ,mines act 1948, Maternity act 1961, article 42
- **social assistance and insurance** Workmen's compensation Act ,1923,employees state insurance Act 1948 article 41
- **work** Mahatma Gandhi national rural employment guarantee Act 2005 article 41
- **education** the right of children to free and compulsory education Act 2009 21-A fundamental right
- **Basic needs** national security act, 2013 Article 47, access to adequate quantity of quality food at affordable prices.

Schemes and programs have also been formulated by various governments from time to time dealing with various socio- economic rights.

- Five year plans – sixth plan –removal of poverty as one of its objectives, eighth plan employment generation universalization of elementary education. Twelfth pan –inclusiveness and poverty reduction

- NITI Aayog (which replaced planning commission) three –year agenda includes among other development concerns, focus on education and skill development, health and inclusivity.
- MNREGA for employment pradhan mantra rozgar yojna (unemployed educated youth), public distributive system (certain quantity of food grains at subsidized prices) Mid-day meal schemes (one hot cooked meal daily to children attending school)
- **Sanitization** SWATCH bharat programme

Several institutions & legal mechanisms have been adopted to give affects to social –economic rights.

- **Access:** mechanism of public interest litigation (to ensure that sections of society unable to approach courts themselves for enforcement of their fundamental rights can access justice)
- **Appointment of commissioners :** or experts to ascertain facts (bandhua mukti morcha V union of india)
- **Continuous mandamus :** court passes short order sand monitors implementation (PUCL v union of india, swaraj abhiyan V union of india)

These mechanism enable the court to not only ensure access to justice and verify facts , but also monitor implementation of orders and progress made towards the enjoyment of rights by people.