

CONVENIENCES, 'LUXURIES' AND HUMAN RIGHTS

Prof. (Dr.) Anupama Goel* and Ms. Kriti Agrawal**

Abstract

"... human rights are not luxuries we enjoy in times of prosperity and abundance, but inalienable entitlements which should be exercised everywhere by all members of the human family," - Alfred de Zayas¹

While some are only fortunate enough to have what can be said as a necessity to survive, the others have the fortune of enjoying all the conveniences and luxuries. A necessity is 'an indispensable thing' – something that everyone needs to survive, such as food, water, shelter, and clothing. But a necessity can also depend on what is normal² for an individual, which is dependent on factors like income, lifestyle, status, social group, etc. A luxury may be classified as something that is not really required, but may be wanted. According to the dictionary meaning, a luxury is 'an inessential, desirable item that is expensive or difficult to obtain'. On the other hand, 'convenience' falls between the two, which is not as difficult to obtain as a luxury, but may only be required to add more comfort to living. The line between necessity, convenience and luxury is dynamic, as it gets affected by new goods/amenities entering the market. It is also dynamic in the sense that the purchasing power of individuals in a community or economy determines the convenience or luxury quotient.

Human rights are universal, inalienable and indivisible entitlements for every person which inheres in an individual by virtue of being human. They have been classified as first, second and third generation rights. They can be correlated with necessities, conveniences and luxuries. International Bill of Human Rights and other core Human Rights Conventions have progressed and translated into reality with the passage of time. Can similar progress be seen in ensuring necessities, conveniences and luxuries or not? If, not, will it be violation of Human Rights? After the required ten ratifications, Optional Protocol to the second International Covenant on Economic, Social and Cultural Rights is one of the many examples in this direction.

In the present paper, the attempt is to find out that if any of the necessities, conveniences or luxuries, if not made available, can be said to be violation of human rights or human dignity?

Keywords: international human rights, conveniences, aspirations, Sustainable Development Goals, environmental rights

INTRODUCTION

In the aftermath of the two great World Wars, it was felt that a major prerequisite to ensure lasting peace is the guarantee of human rights to all peoples of the world, irrespective of their nationality, race, religion, colour or sex. The Charter of the United Nations, tasked with preventing future wars and conflicts, itself "reaffirmed faith in fundamental human rights, and dignity and worth of the human person" and committed all member states to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion". The General Assembly of the United Nations adopted the Universal Declaration of Human Rights 71 years ago, on December 10, 1948³, which is a Charter enlisting and defining the basic human guarantees and entitlements. This Declaration was followed by the International Covenants on Civil and Political Rights⁴ and Economic, Social and Cultural Rights in 1966⁵, which further took forward the global human rights movement, by minutely setting human rights benchmarks for the sovereign States in the world to test their domestic laws.

* Professor of Law, National Law University, Delhi

** Ph.D. Research Scholar, Allahabad University, Allahabad

¹ <http://hrlibrary.umn.edu/edumat/hreduseries/hereandnow/Part-3/Activity1.htm> accessed on August 29, 2019.

² This fits in with the findings of [happiness economists](#), who have noted that people's happiness often depends less on how much money they have than on how much they have compared to others. It's easy to be satisfied with a small house when all your friends live in apartments, but if they all live in large houses, a large house comes to look like the norm – or even a necessity.

³ UDHR was adopted by the United Nations General Assembly at its third session on 10 December 1948 as Resolution 217 at Paris, France. Of the then 58 members of the United Nations, 48 voted in favor, none against, eight abstained, and two did not vote. It was drafted by the Universal Declaration of Human Rights Drafting Committee established by the Commission on Human Rights. The Committee was chaired by Eleanor Roosevelt with the vision that it "may well become the international Magna Carta of all men everywhere."

⁴ ICCPR was drafted in 1954, signed on December 10, 1966 and came into effect on March 23, 1976. It has 172 parties, and six more signatories without ratification.

⁵ ICESCR was drafted in 1954, signed on December 16, 1966 and came into effect on January 3, 1976. It has 169 parties, and four more signatories without ratification. These three documents, viz., UDHR, ICCPR and ICESCR together form the International Bill of Rights.

Despite human rights having been defined and declared throughout the world by its adoption by nearly all the sovereign nations in the world, it is difficult to say that human rights violations have ceased. Not only are rights flagrantly violated in several parts of the world, they are often belittled as conveniences which may be made available to the extent the nation State deems necessary, or classified as 'luxuries' fit only for the populace of the developed world. Such an approach is not only directly opposed to the basic philosophy of the global human rights movement, but is also perilous for international peace.

In the present paper, the authors explore if human rights, which are basic entitlements, can at all be regarded as luxuries or conveniences. At the same time, it is equally true that human rights can be guaranteed in a phased manner. There is a recognisable hierarchy when it comes to the first, second and third generation rights. While the first and second generation rights revolve around the basic human entitlements of individuals, third generation rights transcend individualism and guarantee rights to groups and communities at large. Most of these third generation rights are largely aspirational in nature, and therefore, can tend to be confused as not being basic entitlements, but more dependent upon active realisation.

GLOBAL HUMAN RIGHTS DISCOURSE

The scourge of Second World War, in spite of the paper-tiger League of Nations, put the world leaders to thinking, and while the Second World War was going on, efforts to prevent another of these great wars began. Plugging the many loopholes in the philosophy of League of Nations included the setting up of a mutually agreeable mechanism to rid the human populations across the world of inequalities and deprivation. The American President Franklin D. Roosevelt, in his seminal address, laid down the foundation of modern global human rights discourse, when he spoke:

"[82] In the future days, which we seek to make secure, we look forward to a world founded upon four essential human freedoms.

[83] The first is freedom of speech and expression—everywhere in the world.

[84] The second is freedom of every person to worship God in his own way—everywhere in the world.

[85] The third is freedom from want—which, translated into world terms, means economic understandings which will secure to every nation a healthy peacetime life for its inhabitants—everywhere in the world.

*[86] The fourth is freedom from fear—which, translated into world terms, means a world-wide reduction of armaments to such a point and in such a thorough fashion that no nation will be in a position to commit an act of physical aggression against any neighbor—anywhere in the world."*⁶

Much of the global human rights movement has been built on these foundational four freedoms. At first blush, it may appear that global human rights is an aspirational or soft law movement, with little mechanism for implementation. But given its nearly universal acceptance by nations, and their commitment to implement these rights, it can no longer be said with certainty that the rights enshrined in the International Bill of Human Rights are mere sweet-nothings.

THREE GENERATIONS OF RIGHTS

While the four freedoms pronounced by President Roosevelt largely centered around individual rights of civil and political nature, Karel Vasak in his pathbreaking piece, proffered a new dimension to the rights discourse, when he attempted to categorise rights in three generations for the first time.⁷ While the first generation of rights would be the civil and political rights, in the nature of proscriptions to governments, the second generation of rights broadly include the social, economic and cultural rights, which are dependent on positive action by the state for implementation. The third generation of rights are the "rights of solidarity" which Vasak noted in 1977 as being embarked upon the international community. These rights include the rights to development, to a healthy and clean environment, to balanced environment, to peace, etc. and require the combined efforts of individuals, states and other non-state actors.

In our country, the third generation of rights, though not specifically defined in the constitutional text, have been read as part of the right to life guaranteed by Article 21 of the Constitution of India. Some such instances include the right to a healthy environment⁸, right to a clean environment⁹ and the right against noise pollution¹⁰.

In the context of environmental law too, which forms the fulcrum of third generation rights, the shift from anthropocentrism to ecocentrism in international law has been aptly recognised by our Supreme Court, while observing that in the first stage, human self-interest was the reason for environmental protection; in the

⁶ Franklin D. Roosevelt, "State of the Union Address: The Four Freedoms" (6 January 1941) available at <http://voicesofdemocracy.umd.edu/fdr-the-four-freedoms-speech-text/>, accessed on October 28, 2019

⁷ Karel Vasak, "A 30-year Struggle", UNESCO Courier, November 1977, p. 29.

⁸ Virender Gaur v. State of Haryana, (1995) 2 SCC 577

⁹ Vellore Citizens Welfare Forum v. Union of India, (1996) 5 SCC 647

¹⁰ In Re, Noise Pollution, (2005) 5 SCC 733

second, it was international equity, so as to cater to the needs of not only the present generation, but also the future generations of human beings; while the more recent international instruments have focused on the intrinsic value of nature.¹¹

'CONVENIENCES' AND 'LUXURIES'

According to the Dictionary, while 'convenience' is defined as "[a] thing that contributes to an easy and effortless way of life"¹², 'luxury' is defined as "an inessential, desirable item that is expensive or difficult to obtain"¹³. Therefore, logically speaking, convenience falls between necessities and luxuries. There can be situations where conveniences, though imminently desirable, may be difficult to attain on account of constraints such as economic or cultural. Luxuries, though, by their very definition, are for the elite. They are at the other end of the spectrum from necessities, and no basic human right can ever be a 'luxury'.

There are occasions when it may not be possible to realise each human right, on account of financial constraints. For instance, right to education, and particularly free and compulsory elementary education, is enshrined as a human right in Article 26 of the Universal Declaration of Human Rights. When the Constitution of India was being drafted, it was fiercely debated as to the guarantee of this right. While one school firmly believed that the right to free elementary education must be guaranteed at the inception, the more pragmatic view (a view which was eventually incorporated in the final constitutional text) was that guaranteeing free elementary education for a newly independent nation with a poverty rate of 70%¹⁴ and literacy rate of a paltry 12%¹⁵, would involve enormous burden on the exchequer. It was in these circumstances that Article 45 of the Constitution of India contained an unenforceable directive principle of State policy enjoining the State to achieve the goal of providing free and compulsory elementary education within a period of 10 years from the commencement of the Constitution. However, this situation was finally altered by the 86th Amendment to the Constitution when Article 21A became a guaranteed fundamental right to free and compulsory elementary education.¹⁶

Be that as it may, as a nation progresses, so do the aspirations of its people. A nation is known by the level of guarantees it is able to extend to its people. Certain rights are inalienable – rights to food, to shelter, to clothing, to work. But at the same time, financial constraints of a developing nation may not permit the guarantee of such rights. Often, a set of rights may come into conflict with the other. A classic example of this is the right to development pitted against the right to a clean and healthy environment. It is a usual dilemma for a policymaker that while industrialization improves the economic condition of a large number of people by increasing employment, production and self-reliance, it also involves a significant environmental cost and sometimes, incurs a heavy toll on the natural resources of the community. In such a situation, while both the set of rights are part of the human rights framework, it is a difficult exercise to balance and reconcile them. For this purpose, our legislations provide for an Environment Impact Assessment exercise to be carried out, along with a close monitoring by a host of agencies, including judicial fora such as the National Green Tribunal, to ensure that the environmental cost of industrialization is not heavier than desirable.¹⁷ The National Green Tribunal has vast powers, akin to the *ex relatione* powers of the New York Supreme Court in the context of the environmental conservation clause of the New York Constitution¹⁸.

RIGHTS AS ASPIRATIONS

Several rights, particularly the third generation rights, as more aspirational in character. They are aspirational for the reason that they are neither proscriptions, nor prescriptions, but instead involve active participation of the government, individual citizens and non-State actors, such as non-governmental organisations of a social and charitable character. In this context, the United Nations General Assembly adopted a set of 60 goals in the year 2000¹⁹, and 191 member states of the United Nations and 22 international organisations undertook to provide eight goals by the year 2015: to eradicate extreme poverty and hunger; to achieve universal primary

¹¹ Animal Welfare Board of India v. A. Nagaraja, (2014) 7 SCC 547, para 57

¹² Oxford English Dictionary, available at <https://www.lexico.com/en/definition/convenience>, accessed on October 28, 2019.

¹³ Oxford English Dictionary, available at <https://www.lexico.com/en/definition/luxury>, accessed on October 28, 2019.

¹⁴ <https://borgenproject.org/10-facts-poverty-in-india/>

¹⁵ <https://www.census2011.co.in/literacy.php>

¹⁶ By the same Constitutional Amendment, Article 45 was amended to provide for early childhood care and education for all children until they complete the age of six years.

¹⁷ See generally: Water (Prevention and Control of Pollution) Act, 1976; Air (Prevention and Control of Pollution) Act, 1981; Environment Protection Act, 1986; National Green Tribunal Act, 2010.

¹⁸ Constitution of the State of New York, Article XIV §5

¹⁹ United Nations Millennium Declaration, adopted on September 8, 2000

education; to promote gender equality and empower women; to reduce child mortality; to improve maternal health; to combat HIV/AIDS, malaria, and other diseases; to ensure environmental sustainability; to develop a global partnership for development. These were replaced in the year 2015 by the Sustainable Development Goals set by the General Assembly for the year 2030.²⁰

Rights as aspirations is a useful tool in attempting to realise human rights for several sections of population, hitherto deprived of these rights, while at the same time, ensuring that the developed states do not become complacent of their human rights achievements, and move further towards realization of the group rights, such as climate action and environment protection.

Therefore, it is clear that while the global human rights discourse may be universally that of entitlements, necessities, goals and aspirations, at the local level, the rights discourse may be dependent upon the nation's priorities, resources and constraints, and correspondingly, whether guaranteeing a particular right entails an insurmountable cost on another more necessary right.

CONCLUSION

From the above discussion, it is discernible that the global human rights discourse has moved from one attempting to prescribe a universally acceptable minimum standard, so that its implementation is possible; to one setting goals and aspirations for the world community to achieve. At the same time, when viewed at the national level, each nation's priorities vary on account of disparity in levels of development and economic progress. For instance, while it may be feasible for some nations to provide social security and healthcare to its citizens as a basic human entitlement, for others, it may be a desirable goal for the future and in that sense, a 'convenience'.

One can conclude from this that a particular right is termed a 'convenience' instead of a 'necessity' on account of constraints of providing it. There is really no debate on its recognition as a human right, or it being a basic entitlement, but its implementation is deferred, and *in praesenti* it is termed a 'convenience'. In no situation can a right be termed a 'luxury', except in a situation of rights violation. By its very nature, rights are entitlements and luxuries are which one can survive without any sense of discomfort.

However, one thing is certain, as long as disparity and inequality between nations as to their ability to deliver basic human entitlements to citizens remains, it poses a threat to world peace. Whether a nation is able to realise a particular human right for the present or not, it is only when the disparity between rights realization in different countries is eliminated, can lasting peace be ensured, which is the foundational germ for the global human rights movement. Till such time, the global rights movement is to march on.

²⁰ The Sustainable Development Goals are:

- i. No Poverty
- ii. Zero Hunger
- iii. Good Health and Well-being
- iv. Quality Education
- v. Gender Equality
- vi. Clean Water and Sanitation
- vii. Affordable and Clean Energy
- viii. Decent Work and Economic Growth
- ix. Industry, Innovation, and Infrastructure
- x. Reducing Inequality
- xi. Sustainable Cities and Communities
- xii. Responsible Consumption and Production
- xiii. Climate Action
- xiv. Life Below Water
- xv. Life On Land
- xvi. Peace, Justice, and Strong Institutions
- xvii. Partnerships for the Goals

For the complete text of Resolution 70/1 adopted by the UN General Assembly on September 25, 2015, see: http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/70/1&Lang=E, accessed on October 29, 2019.