

What are economic, social and cultural rights?

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In this chapter author analyzing the social, economical, and environmental aspect due to which the natural rights of personal get affected , for giving light to the every aspect of the study the chapter is broadly divided in to two parts, in first part we discuss the vacancy in the source of law and its effect, in this part we argue with constitutional framer on the absence of straight directing provision on economical security and environmental protection effecting fundamental rights, second and majorly we discuss the various prominent judgments and their reasoning which make vital contribution in filling the vacuum in our constitution towards the social, economical, and environmental aspects of the rights.

The Constitution of India: the constitution of India was framed after an in-depth study of manifold challenges and problems including that of poverty, illiteracy , inequalities and rights of the citizens. The independence struggle and intellectual debates in the constitutional assembly shows the value and importance of freedoms of rights.

The constitution of USA and Canada were examined and after extensive dileberation and discussions, the constitution was framed. A chapter on the fundamental rights were incorporated in detail the positive and negative rights. For enforcements of thease rights the Suprme court was vested with original jurisdiction as contained in article 32. During the last 68 years 101 amendments have been made in the constitution.

Source of law: for analyzing sources of law we have dig up the jurisprudential theories of sources of law from various schools, firstly we mention Austin according to which " the term source of law means sovereign in the country,

historical documents and causes that have brought into existence the which latterly acquire the force of law". secondly on the other side the historical jurists such as; von Savigny, Henry Maine, Puchta, etc. believed that foundation of law lies in the common consciousness of people that manifests itself in the practices of customs followed by people, according to them law is not made but formed, therefore they recognized custom and usage as a source of law , thirdly according to sociologist jurist , law emanates from various authority and not just one in the state, arriving at the Salmond classification of sources of law in which , will of the state in statute and decision of the court, material sources and historical sources which subsequently turned into legal principle classified as a source of law.

Vacancy in the future consideration forecasting: hence after analyzing one can easily come to the conclusion that sovereign section, historical document, custom, legislation , precedents, and conventional law are widely accepted as a sources of law. We can logically find out that there is a unconventional tendency of any constitution assembly or a well organized law making body to finished a law frame for state related, prominently formed on traditionally accepted sources of law and what were the experience to which a state go through, hence there is a natural shift from future forecasting.

Taking note of the original constitution of various leading countries in somehow manner they failed to enshrined the provision of equal economic balancing and environmental protection tools amongst and for their followers, it may be due to absence of time scenario or said to be the lack of rational fare forecasting, notwithstanding , to present , that time rational <https://assignbuster.com/what-are-economic-social-and-cultural-rights/>

thinkers must have been aware of infringement or compromising of the fundamental rights, due to the huge socio economic difference and endangerment of environment which affects two generations rights at the same time.

When there is a lack of future possible considerations its effect on the subjects of the states i.e.; people, flora and fauna, geographical distribution, and the affairs and materials related, vacancy in the supporting and protecting provisions in the legislations or the sources of rights leads to the compromise of the rights of the various sections of the society

Life, livelihoods, culture and society, are fundamental aspects of human existence - hence their maintenance and enhancement is a fundamental human right. Destruction of environment and thereby of the natural resources, is therefore, a violation or leads to the violation of human rights - directly by undermining the above aspects of human existence, or indirectly by leading to other violations of human rights, for example through social disruption, conflicts and even war.

Conversely, human rights violations of other kinds can lead to environmental destruction, for instance, displacement by social strife/war can cause environmental damage in areas of relocation; or breakdown in sustainable common property management. The manifestations of such violations present themselves through a loss of access to clean air and water; loss of access to productive land; loss of energy sources and biomass; loss of food and health security; social and economic marginalization; and physical displacement.

Several hundred million people have been increasingly forced to live far below the minimum levels required for a decent human existence, deprived of adequate water, food, clothing, shelter and education, health and sanitation. Development, which was supposed to alleviate such problems, has often increased them, especially by allowing the powerful sections of society to appropriate the natural resources of poor and resource-dependent people.

In *M/S. Shantistar Builders vs Narayan Khimalal Totame And others.*

OBSERVATION:

Justice rangnath mishra : " In recent years on account of erosion of the value of the rupee, rampant prevalence of black money and dearth of urban land, the value of such land has gone up sky-high. It has become impossible for any member of the weaker sections to have residential accommodation anywhere and much less in urban areas.

Since a reasonable residence is an indispensable necessity for fulfilling the Constitutional goal in the matter of development of man and should be taken as included in 'life' in Article 21, greater social control is called for and exemptions granted under Sections 20 and 21 of Urban Land (Ceiling & Regulation) Act, 1976 should have to be appropriately monitored to have the fullest benefit of the beneficial legislation. We, therefore, command to the Central Government to prescribe appropriate guidelines laying down the true scope of the term 'weaker sections of the society' so that everyone charged with administering the statute would find it convenient to implement the same.

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Basic needs of man have traditionally been accepted to be three-food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view.

For the animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect - physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well- built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud- built fire-proof accommodation.

With the increase of population and the shift of the rural masses to urban areas over the decades the ratio of poor people without houses in the urban areas has rapidly increased. This is a feature which has become more perceptible after independence. Apart from the fact that people in search of work move to urban agglomerations, availability of amenities and living conveniences also attract people to move from rural areas to cities.

Industrialisation is equally responsible for concentration of population around industries. These are feature which are mainly responsible for increase in the homeless urban population, Millions of people today live on the pavements of

different cities of India and a greater number live animal like existence in jhuggis"

In shanty star builders vs. Narayan Totame , Bench of justice R. Mishra, P. Sawant, K. Ramaswamy. the supreme court held that right to life is guaranteed in a civilized society within its sweep the right to food, the right to clothing , the right to decent environment and a reasonable accommodation to live in.

Bench also recognized the weaker section of the society needs special protection under Article 46 of the constitution which direct the state to promote their educational and economical strength , bench also give reasoning that in the era of industrial dependence where a large number of industries are mushrooming in urban areas resemble themselves as the mark of development of a country or a particular community-related, leaving= g behind al large section of society to render his or her life as homeless, fully ignoring the very concept of sustainable development, where a raising of a child is also as much important to countries development profile, a child who is homeless also needs a well built comfortable home, decision resemble the natural law appeals to the reason of man and there is no element of compulsion in it.

It embodies the principle of morality and natural justice, likewise the naturalistic insist that no social norm can be called law unless it satisfies a criterion of intrinsic worth, which may be either religion or ethics or moral or social good. Otherwise there will no difference between the kind of social norms which a tyrant like Hitler may lay down and the rest.

In particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation

The Role of Judiciary with respect to certain unremunerated rights such as, the right to shelter, right to rehabilitate, right to food, right to livelihood and right to medical aid is questioned; the Judiciary through its activism has transgressed into areas reserved for legislature and executive. It was held that there in that the fundamental rights are not islands but have to be read along with the other rights.

Hence reading Article 21 with 14 and 19, It was held that procedure established by law" under Article-21, of the Constitution means not just any procedure but a just, fair, and reasonable procedure. The right to life includes the right to live with human dignity and all that goes along with it namely. The bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading the writing and exposing oneself in diverse form freely moving about and mixing and commingling with fellow human beings"

Man has a fundamental right to freedom equality and adequate condition of life in an environment of quality that permits a life of dignity and well being, and he bears a solemn responsibility to protect and improve the environment for present and future generation.

The environment is considered as third generation fundamental right, also known as a "solidarity right". This category of right is complementing civil and political right of the first generation, and also social and economic right of second generation.

In *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*: In the observation of this case Justice K. Ramaswamy, cited *Chameli Singh & others v. State of U.P. & Anr.* In paragraph 8 it has been held thus: "In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object."

In support of this paragraph Justice K. Ramaswamy held that;

"Socio-economic justice, equality of status and of opportunity and dignity of person to foster the fraternity among all the sections of the society in an integrated Bharat is the arch of the Constitution set down in its Preamble. Articles 39 and 38 enjoin the State to provide facilities and opportunities. Article 38 and 46 of the Constitution enjoin the State to promote welfare of the people by securing social and economic justice to the weaker sections of the society to minimise inequalities in income and endeavor to eliminate inequalities in status."

In that case, it was held that to bring the Dalits and Tribes into the mainstream of national life, the State was to provide facilities and opportunities as it is the duty of the State to fulfil the basic human and constitutional rights to residents so as to make the right to life meaningful."