POVERTY ERADICATION AND HUMAN RIGHTS: ADVANCING APPLICATION OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS AT THE STATE AND REGIONAL COURTS

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ABSTRACT

This article intends to explore whether the international human rights laws are capable of addressing the poverty issues and even whether the idea of “freedom from poverty” should be considered as fundamental human rights. This article would specifically reflect on the theoretical and practical difficulties an under-developed or developing State commonly meets in dealing with the economic, social and cultural rights (“ESCR”). In order to examine and understand the current situation this article would include a number of case studies from regional courts e.g. European Court of Human Rights (“ECtHR”), African Commission on Human Rights (“ACHR”) and from other national courts e.g. cases from India, Bangladesh, and Kenya etc.

I. INTRODUCTION

In today’s world, “poverty” has become one of the critical issues
that must be considered with broader outlook.\(^1\) Unfortunately, over 40% of the world’s total population living within the danger of poverty.\(^2\) The condition is so severe that one person from five struggling just to survive on this earth.\(^3\) Over the time, this “economic crisis”\(^4\) is reaching every sphere of human life and social structure around the globe.\(^5\) It is already settled that the human rights and global economy both are interlinked and has a strong correlation to each other.\(^6\) However, this relationship is not always steady and harmonious, rather sometimes problematic.\(^7\)

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The notion of “freedom from poverty”\textsuperscript{8} is developed rapidly and appealed vital considerations from distinct national and international organizations.\textsuperscript{9} It is mostly accepted that, poverty is neither an “accidental” nor “unavoidable” phenomenon, but it is an outcome of the substandard application of the human rights.\textsuperscript{10} It has been argued that, poverty debars individuals from practicing other established human rights fully and effectively.\textsuperscript{11} At times, it also causes the “denial” of entire collection of rights which are somehow connected to the human being.\textsuperscript{12} Thus, poverty is categorized as the core issue of concern due to its affect on the “individual freedom”\textsuperscript{13}.

Nonetheless, from the international human rights law perspective, every denial does not constitute a violation of human

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\textsuperscript{10} Per Niland (a representative of the UN High Commissioner), \textit{Human Rights Abuses Exacerbating Poverty in Afghanistan} (UN Report: March 2010).
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Sometimes question arises whether in fact this concept is diverting the main focus from serious human rights concerns to somewhere else; *i.e.* poverty, which is, (according to some scholars’ opinion) not at all an issue of human rights. In this regard, M. Revault argued that the poverty is a “never ending crisis”, thus it should be tackled and discussed in a different approach with some special plans. Therefore, the position of ESCR rights is ambiguous in terms of their enforceability and application. And no doubt that the ESCR rights are “systematically neglected” over the time due to the existed fallacy that ESCR rights have nothing to do with the poverty. Even some believes that these rights should exist as a silent and “programmed rights”, thus needs no further movements.

The main purpose of this paper is to critically evaluate the aptitudes of existing international human rights mechanisms in terms of poverty eradication. In the first phase, this paper would include a

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19 Symonides, n. 2, p. 159.
II. DEFINING POVERTY UNDER THE AMBIT OF HUMAN RIGHTS

In broader prospect, poverty defined as obstacle or barrier to take part in “well-being”.21 It is further asserted that poverty is considered as short of income or buying power,22 which then resulted in failure to achieve something at “acceptable levels” 23. In other

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words, the definition of poverty should not be confined to “lowness” of income levels rather it should be seen as the “deprivation” of essential “capabilities”.  

Office of the High Commissioner for Human Rights (“OHCHR”) limited the meaning of poverty to only some basic rights.  

In addition, even some prominent scholars considered poverty with a narrow dimension arguing that ESCR rights are restricted to the notion of “subsistence” only.

Certainly, “capability approach” opened a new door and created a theoretical “bridge” between the human rights and poverty.  

This concept provides a way of assessing poverty that reflects what we usually care about from the “rights perspective”.  

Moreover, this approach in a way creates a positive obligation on the State to eliminate the poverty.  

This essentially means that the State has some positive obligations to ensure the rights where one individual cannot exercise his/her capability or freedom due to the poverty constrains. It has been argued by a number of scholars

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25 Human rights and poverty reduction, n. 21, p. 7.
27 Costa, n. 14, p. 85.
29 Costa, n. 14, p. 92.
including Prof. Vera Lúcia Raposo\textsuperscript{30} and Prof. Antonio-Luis Martínez-Pujalte\textsuperscript{31} that, forming positive obligations on the member States will improve the condition especially regarding the ESCR. Accordingly, they argue that the ESCR rights should not be isolated from civil and political rights, and both should be merged and considered on an equal footing.\textsuperscript{32}

Often States deny their positive obligations specially related to the ESCR rights excusing that they do not have any such obligation.\textsuperscript{33} However, States certainly have both positive and negative obligations towards its subjects.\textsuperscript{34} For instance, in regards to the right to life, State’s negative obligation is not to kill a citizen; however, State has also a positive obligation to protect and ensure


\textsuperscript{31} Antonio-Luis Martínez-Pujalte, ‘Public Disability Policies as Policies Against Poverty’ \textit{Cuadernos Constitucionales de la Cátedra Fadrique Furió Ceriol} No. 64/64, pp. 155-170.


the security of its citizen’s life. Thus, fundamental rights (or human rights) are supposed to guarantee our most fundamental interests through the imposition of duties primarily on the State.\textsuperscript{35}

Moreover, extreme poverty and social exclusion has also a close link and need an in depth consideration. Poverty is one of the main factors which lead one person to be excluded from the overall social participation. For instance, a person not having his/her food to eat and a house to sleep cannot think of going to school and participating in all other aspects of social structure. It has been argued that, social exclusion is also a violation of human dignity.\textsuperscript{36} In this respect, Haugh and Ruan opined that, extreme poverty violates both ESCR and civil and political rights through “marginalization and discrimination”.\textsuperscript{37}

Additionally, a number of scholars concluded that the poverty should be considered as a subject matter of economics not the human rights.\textsuperscript{38} Nevertheless, this argument does not have a strong basis as

\textsuperscript{35} Octavio, n.18, p. 585.
\textsuperscript{36} Ibid.
poverty itself is the reason of so many other human rights violations.\textsuperscript{39} This is due to the fact that, without eradicating poverty, some of fundamental human rights would never be achieved. For example, the right to education as a fundamental right has a link with all rights including socio-economic, civil and political rights.\textsuperscript{40} This criticism is already proved as wrong with the wide realistic studies which show that human rights and poverty has a strong relationship in various ways.\textsuperscript{41}

As poverty affects all other fundamental rights including civil and political rights, this could be one approach to conceptualize the poverty within the human rights. It can be placed that, a wide consideration of poverty is inevitable to guarantee all other human rights which already accepted and recognized. Robinson correctly placed that, “[p]overty itself is a violation of numerous basic human rights”.\textsuperscript{42} For instance, death due to failure to afford high medical cost should be seen as a violation of right to life. Even, lack of

\textsuperscript{39} Costa, n. 14, p. 98.
education also can be related to the poverty.\textsuperscript{43} In addition to that, poverty aggravates the discrimination and inequality in all respects. For instances, poverty directly affects the women,\textsuperscript{44} children and disabled.\textsuperscript{45} In worst, sometimes even people cannot discover their own rights due to the poverty, \textit{e.g.} denial of access to justice.\textsuperscript{46}

The poverty could be accommodated within the human rights framework through establishing the State’s positive obligation. This can be done within the existing international and regional human rights framework. Nonetheless, national participation is one of the vital key to make such mechanism effective in a broader prospect. Notably, such scheme would demand a worldwide participation in the project to help the under-developed and developing countries to break the resource constrains.

\textbf{III. STATES OBLIGATIONS TO ENSURE ESCR RIGHTS ALONG WITH OTHER CIVIL AND POLITICAL RIGHTS}

The ESCR rights are usually closely related to the social and

\begin{itemize}
\item[\textsuperscript{43}] \textit{Ibid.}
\item[\textsuperscript{44}] Symonides, n.2, p. 159.
\item[\textsuperscript{45}] \textit{Ibid}, p. 160.
\item[\textsuperscript{46}] \textit{Ibid.}
\end{itemize}
family life, which includes rights related to housing, food, health and education, etc. Moreover, there is a diversion (at least in few scholars’ opinion) between civil, political rights and ESCR rights which primarily started after the Cold War. The politicians were divided into two parts and States “with centrally planned economies” supported legally binding character of ESCR rights while influential States with “market economies” had their strong views on strengthening the civil and political rights. This led to proceed with two different separate legal instruments to protect individuals’ human rights.

The approach taken by different international instruments dealing with the ESCR rights is substantially different from other rights. This can be demonstrated by the wordings used in ICESCR

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which entails limited responsibility on the part of the States to ensure the rights based on their capabilities and “resource constrains”. The ICESCR required States to “take steps” towards the treaty rights, whereas the *International Covenant on Civil and Political Rights 1966*\(^{53}\) (“ICCPR”) imposed a clear obligation on the States to “respect and ensure” the rights incorporated in the treaty.\(^{54}\) The wording clearly entails that the obligation under ICESCR is different from the obligations recognized under the ICCPR. Nevertheless, except the ICCPR and ECHR, other international human rights instruments including ACHPR, CERD and CEDAW framed both ESCR and civil, political rights in the same manner and on an equal footing.\(^{55}\)

In order to clarify the confusions regarding the nature of rights provided by ICESCR, the Committee on ESCR (“the Committee”) conducted extensive research and concluded that the ICESCR is indeed an enforceable treaty and it has an “immediate” application.\(^{56}\) In the same way, the UN Commission on Human Rights robustly placed that the ESCR rights are in fact “justiciable”.\(^{57}\) Yet, it has

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\(^{54}\) Ibid, at Preamble and Art. 2, 10, etc.


\(^{56}\) Ibid, p. 565.

been argued by many groups that the ICESCR does not provide any subjective rights for individuals what makes it “legally negligible” and as such it has no legal implication.\textsuperscript{58} They further argue that the ICCPR entails a clear obligation while ICESCR provisions are general and progressive in nature and it has no immediate application.\textsuperscript{59} Hence, considering the wordings of the ICESCR, it would be judicious to argue that, even though ESCR rights are undoubtedly human rights, however, in effect ESCR rights are less protected and enforcing mechanisms pattern are also different in some way.

Furthermore, the Committee in its general comment no. 3 confirms that, all party States should act to “realize” all rights provided in ICESCR “within a reasonably short time” and as quick as possible after ICESCR entered into force.\textsuperscript{60} This shows that the State parties have in fact an obligation to work through achieving all rights enunciated in the ICESCR. Keeping in mind the resource constraints, the Committee states that, if any State fails to fulfill their obligations due to insufficient resources then it must justify its claim that they have made their best effort to ensure the rights with what


\textsuperscript{60} ICCPR Commentary, n. 56, p.26
they have.\textsuperscript{61} This clearly indicates that, developing and underdeveloped countries are not excluded from obligations and they also have the duty to achieve the rights at all times with whatever they have got.

To understand the nature of the State’s obligation, the case of \textit{Government of the Republic of South Africa & Ors v Grootboom & Ors}\textsuperscript{62} from the Supreme Court of South Africa would be a good consideration. In this case, the Court defined the actual meaning of the “progressive realization” of the right to housing and applied the “reasonableness” test to determine whether government has taken an appropriate approach to realize the progressive requirement.\textsuperscript{63} In this case the Court held that the Government failed to ensure the housing right as they did not take any “reasonable measures” to develop the condition. The Court added that, this also needs a special consideration for those who are in desperate need.\textsuperscript{64}

In a critical analysis, this case clearly proves that, government would have to take all measures reasonably keeping in mind that they have an obligation to act progressively. Further, this case also shows that, State has the obligation to act reasonably when they determine

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\textsuperscript{61} \textit{Ibid}, p. 27.  \\
\textsuperscript{62} Constitutional Court of South Africa, 11 May, 2000, \textit{Government of the Republic of South Africa. & Ors v Grootboom & Ors}, BCLR 1169.  \\
\textsuperscript{63} \textit{Ibid}, para. 14.  \\
\textsuperscript{64} \textit{Ibid}, para. 44.
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their budgets in all spheres. Moreover, positive obligation on the part of the State is one of the reasons for which States often avoid the ESCR rights. It has been argued that, ESCR rights are more involved with positive actions and policies of the State.\textsuperscript{65} In reality, all rights involve two folded obligations \textit{i.e.} negative and positive. For instance, the right to housing which is ESCR rights involves both negative obligation \textit{i.e.} not to be evicted from house and positive \textit{i.e.} in few cases State needs to ensure the adequate housing.\textsuperscript{66} Thus, such excuses from States cannot be a justification to avoid their duty to work progressively and reasonably (keeping in mind the resource constrains).\textsuperscript{67}

It is also true that this problem is not only associated with under-developed or developing countries, ESCR rights are getting less weight even in developed countries. Therefore, it could be argued that, resource constraint argument has some basis but main problem subsist in its enforcement mechanisms.

\section*{IV. ENSURING ESCR RIGHTS THROUGH EXTRA TERRITORIAL OBLIGATION}

Certainly, under-developed and developing countries have

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65 Cranston, n.57 & \\
67 Skogly, n. 4, p. 56. & \\
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financial resource barriers to implement the ESCR rights in a large scale. Therefore, the ICESCR demands to take the progressive approach and other duties under the international human rights instruments are indeed not achievable alone. To deal with this issue an extraterritorial participation is needed to be established. However, this concept raises different controversies and opens the door for many questions such as, why a third State ought to deal and work to resolve another State’s problems?

In an attempt to answer such question, the guiding principles on poverty suggest that the State and non-State actors have a duty to work through aid and assistance to eliminate the poverty in cross border. This principle was also incorporated in the Maastricht Principles where it clearly describes that the States have the duty to protect and fulfill all human rights including socio-economic rights “extraterritorially”. In addition to that, all countries


70 Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, adopted in September 2011.

71 Ibid.
committed to work jointly with UN as well as individually to fulfill the goals enunciated in the Charter. Yet again, a number of questions arise when we deal with the nature of the obligation. Are those obligations binding on the States? Are they mere moral rights, thus not binding on the States?

In the context of eradication of the world poverty the term “international community” is limited to those States who hold power and influence over the international economic order. And unfortunately those States often deny their legal obligations to work extraterritorially. Besides, those States only justify their assistance and aids based on morality, self-interest (political stability) and solidarity not as obligation.

As regards to the nature of such obligation, Special Rapporteur in 1992 strongly argued that, each and every country has some

72 *Universal Declaration of Human Rights (1948)* article 56 states that, “All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55”; *Charter of the United Nations*, 26 June 1945, 1 UNTS 16, article 56-55.

Moreover, the notions of “global poverty eradication” and “right to development” as a human rights claim has a well-founded link. Certainly, in a way the purposes of both projects are same.\footnote{Marks, Stephen. ‘Human Right to Development: Between Rhetoric and Reality’ (2004) Harv. Hum. Rts. J. 17:137, p. 153.} While developing countries urges for recognizing such rights, developed countries mostly opposes such notion. However, in 1986 UN establishes the right to development as fundamental human rights through resolution.\footnote{Declaration on the Right to Development adopted by General Assembly Resolution 41/128 (4 December 1986). The right to development was reaffirmed by the Vienna Declaration and Programme of Action (Vienna Declaration) adopted by 171 countries participating in the World Conference on Human Rights in 1993.} This right is subsequently also recognized by the Vienna Declaration.\footnote{Vienna Declaration and Programme of Action (A/CONF 157/23, 12 July 1993).} However, in reality, a good number of States and scholars still believe that the ESCR rights are
not beyond controversy.\textsuperscript{81}

\textbf{V. HOW NATIONAL COURTS DEAL WITH THE ESCR RIGHTS: CASE STUDIES}

In most cases, domestic legislations do not incorporate ESCR rights, thus the Court cannot directly enforce such rights.\textsuperscript{82} The Courts also encounter frequent difficulties as regards to the "\textit{justiciability}" of those rights. The Committee already clarified the confusions and provided that the contracting States have two folded obligations under the ICESCR which are "\textit{justiciable}".\textsuperscript{83}

First, States have to ensure the availability of the "essential food, primary health care, basic shelter, and basic education".\textsuperscript{84} Thus, if any States fail to ensure such rights then it would be amounted to violation of the ICESCR except in situations where "it has taken every effort to use all its resources to satisfy the minimum obligations".\textsuperscript{85}

Second, a State cannot take "retrogressive measures" and

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\textsuperscript{81} Barsh, n. 67, p. 322.
\textsuperscript{83} CESCR, General Comment No. 9, The Domestic Application of the Covenant, UN Doc. E/C.12/1998/24, 3 December 1998, para. 10.
\textsuperscript{84} Ibid.
\textsuperscript{85} CESCR, General Comment No. 3, The Nature of States Parties Obligations, para. 10.
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should always take progressive approach as to fulfill the requirement provided in ICESCR.\textsuperscript{86} Moreover, the complete resource of one State will be measured in order to determine whether the State performing its obligation using its available resources.\textsuperscript{87} These requirements clearly illustrate that an effective application of this requirement would at least ensure the minimum ESCR rights for all.

In this stage, it is imperative to consider some of the case studies from national courts to understand the State’s practice and their approach towards the ESCR.

\textit{A. Cases from India and Bangladesh}

In the Indian case of \textit{Premlata w/o Ram Sagar and Others vs. Govt. of NCT Delhi},\textsuperscript{88} public authority denied to provide the rations and other health benefits to the six women living in the slum of Delhi (due to the “cap” in rations).\textsuperscript{89} The Court strongly criticized\textsuperscript{90} such

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\item[86] Ibid para. 9.
\item[88] Delhi High Court, 23 December, 2010, \textit{Premlata w/o Ram Sagar and Ors. v. Govt. of NCT Delhi}, W.P.C. 7687.
\item[89] \textit{Ibid} para. 8.
\item[90] \textit{Ibid} para. 10. Court stated that, “there cannot be any ‘caps’… denial of a ration card to a [person] is virtually a denial of his or her right to food and thereby the right to life under Article 21 of the Constitution (right to life).”
\end{itemize}
“cap” or limitations in the issuance of ration cards and found the violation of article 21 of the Indian Constitution i.e. “right to life” as such actions ultimately would affect their right to food.  

This provision was broadly interpreted by Indian Court and extended the ambit of article 21 to the right to “human dignity”, “livelihood”, and “right to health”.  

Further, in another case of Laxmi Mandal vs. Deen Dayal Harinagar Hospital & Ors, a woman died after repetitive denial of maternal healthcare despite of the fact that she was qualified for the free services. The High Court of Dehli held that, the State failed to properly implement the “pre and post natal services” to her which should have been available. The Court connected its finding to its previous decision of People’s Union for Civil Liberties vs. Union of India where the Court noted two critical “survival rights” which can be enforced under article 21 of the Indian Constitution. First, the rights related “right to life” which includes

“the right to healthcare, access to public health facilities, receiving a minimum standard of treatment and care, the

91 Ibid.
92 Ibid.
93 Delhi High Court, 4 June, 2008, Laxmi Mandal v. Deen Dayal Harinagar Hospital & Ors, W.P.(C), Nos. 8853.
94 Ibid.
95 Supreme Court of India, 13 March, 2003, People’s Union for Civil Liberties v. Union of India AIR SC 2363.
enforcement of the reproductive rights of the mother, and the right to nutrition and medical care of a newly born child until the age of six years.”

Second, the rights related to “right to food” which is essential to the right to health and life. The Court noted that,

“all of these rights are interrelated and indivisible and emphasized that the lack of effective implementation of health and nutrition schemes essentially creates a denial of the right to life [ESCR rights] guaranteed under international human rights treaties.”

Similarly, in the case of Ain o Salish Kendra (ASK) vs. Government and Bangladesh & Ors,96 public authority evicted a large number of residents through demolishing a basti (slum) at Dhaka city. The Supreme Court of Bangladesh held that the State “must direct its policies” towards ensuring the basic rights, which includes right to shelter. The Court confirms that that the right to life includes the right not to be deprived of a livelihood.

B. Cases from Kenya, South Africa and Botswana

96 Supreme Court of Bangladesh, 1999, Ain o Salish Kendra (ASK) vs. Government and Bangladesh & Ors, 19 BLD 488.
The Kenyan Court in the case of *constitutional petition no. 2 of 2011*\(^97\) offered some significant observations. In this case, petitioners including the women and children were forced by public authority to leave a public land they were occupying since 1940s. The Kenyan Court held for the petitioners recognizing that the civil, political rights and ESCR rights are inter-dependent to each other, thus cannot be separated.\(^98\) The Court established that the ESCR rights are part of Kenyan law as Kenya agreed to oblige those through ratification of international treaties. Most significantly, the Court recognized the “*justiciability*” of ESCR rights at the national level and found the violation of almost all ESCR rights including “right to be free from hunger” and “right to live a life with dignity”.\(^99\)

This decision in a way established the positive obligation on the government to ensure the ESCR rights of its citizens. The Court’s approach *i.e.* to ensure schooling, discussion on the hunger, poverty and housing indicates the nature of the obligation that imposed by the Court is not limited to negative duty.\(^100\) This case has a great significance in the international human rights law specifically to

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\(^98\) Ibid, para. 45.

\(^99\) Ibid, para. 58.

\(^100\) Ibid.
implement the ESCR rights at national level.\textsuperscript{101} In addition, such wide interpretation is also found in the South African case of \textit{Occupiers of 51 Olivia Road}\textsuperscript{102} where the Constitutional Court provided full concentration to decide whether the “eviction” in terms of housing rights guaranteed under ICESCR.\textsuperscript{103} The Court explicitly stated that the forceful evictions would be constituted a \textit{prima facie} violation of the rights guaranteed under ICESCR.\textsuperscript{104}

Furthermore, in this case of \textit{Socio-Economic Rights and Accountability Project (SERAP) v. Federal Republic of Nigeria and Universal Basic Education Commission}\textsuperscript{105} it was alleged that the right to education guaranteed under the ICESCR was breached by the Nigerian government.\textsuperscript{106} Accordingly, Nigerian Constitutional Court found the violation of the “right to education” guaranteed under ACPHR \textit{article} 17 and also under ICESCR \textit{article} 13.\textsuperscript{107}

\begin{thebibliography}{99}
\bibitem{102} Constitutional Court of South Africa, 19 February, 2008, Johannesburg v. City of Johannesburg and others, CCT 24/07 (Occupiers of 51 Olivia Road, Berea Township and 197 Main Street).
\bibitem{103} Ibid, paras. 35, 66, 111, 140, and 142.
\bibitem{104} Ibid para. 35.
\bibitem{106} \textit{Ibid} paras. 16 and 17.
\bibitem{107} \textit{Ibid} paras. 20 and 35.
\end{thebibliography}
In regards to the excuse that often States draw to avoid ensuring the ESCR rights is finely covered in cases of *Tapela*\(^{108}\) and *Mwale*\(^{109}\). In these cases, it was alleged that, the government of Botswana violated the right to health through making the discriminative law as to not providing free “ARV’s HIV” medicine to the prisoners who are not citizens of Botswana. In deciding the case, the Court refused to accept the government’s excuse regarding budget and resource limitations, instead ordered the government to ensure the budget. Appreciably, the Court established that, the lack of fund cannot be the justification as to avoid the core rights guaranteed.\(^{110}\)

These cases clearly demonstrate that, national Courts often find the ESCR violation within the constitutional framework. However, the Courts have very little to do as their hands are tied within the constitutional framework. In developing countries, the Constitutions incorporate ESCR rights as a State policy not as fundamental rights, thus, not directly enforceable at the Court.\(^{111}\) Thus, international human rights would be incomplete and arguably incapable of addressing poverty unless ICESCR make mechanisms


\(^{110}\) Ibid, para. 70

\(^{111}\) For instances, See the Part IV of the Indian Constitution; Part II Constitution of Bangladesh; The Constitution of the Islamic Republic of Pakistan, Chapter 2.
to reach at national level to incorporate ESCR within the constitutions with full enforceability.

VI. A POSSIBLE NEW JURISPRUDENCE FOR ESCR RIGHTS: CASE ANALYSIS FROM THE EUROPEAN COURT OF HUMAN RIGHTS

The concept of poverty also can be considered in a different dimension i.e. relating it with the civil and political rights, thus enforcing under the existing mechanisms. For instance, right to life does have a link with the right to food, health and housing (article 2) while extreme poverty could be covered under the ambit of humiliating and degrading treatment (article 3 of ECHR). Even though ECtHR did not establish any concrete case laws to propose such approach, however, ECtHR expressed future possibilities of such principle.

_European Convention on Human Rights 1950_\(^{112}\) (“ECHR or Convention”) does not explicitly include any provision in a coercive character which may be extended and be applied to establish social rights.\(^{113}\) The best possible doors to seek remedy for those who are

\(^{112}\)Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5.

\(^{113}\)Symonides, n.2, p. 164. However, European Social Charter is also operative as to ensure socio-economic rights within the European Council. Notably, one committee was established to oversee this Charter i.e. European Committee of Social Rights and the main function of this committee is analyzed the annual
living under the poverty in EC are articles 2, 3, 8 and article 1 Protocol 1 i.e. on right to property. Rights enshrined from article 2 mostly arises in cases where a State failed to provide a health service which States devoted to provide to all in general. Specifically, Courts’ approach is limited to only extreme cases where poverty i.e. financial crisis constrain one person to receive their basic health, mostly where such denial endanger one’s life.

In the case of M.S.S. the ECtHR for the first time recognized the violation of article 3 of the ECHR based on the degrading “living conditions”. In this case, one Afghan national namely Mr. M.S.S claimed the asylum in Belgium, however, they did not entertain the application and sent him to the Greece to consider his application there. Thus, at one point Mr. M.S.S led a vulnerable life in Greece

reports submitted by contracting parties. Through one additional Protocol the “collective complaints system” was introduced in 1995. This has very minimal role to play and to date only 15 countries ratified to additional protocol, thus, most of the countries are outside the ambit of the complaint system.

116 Grand Chamber of the European Court of Human Rights, 2013, Mehmet Senturk and Bekir Senturk v. Turkey (Application no. 13423/09) paras. 89 and 97
118 Ibid paras. 167-172.
119 Ibid para. 17.
being “homeless”\textsuperscript{120}, “not permitted to work”,\textsuperscript{121} not having proper “sanitation”\textsuperscript{122} system and other resources.\textsuperscript{123}

The Court held for Mr. M.S.S and provided that, Greece violated \textit{article} 3 of the ECHR as they arrested him in a degrading situation and following the release he survived under “extreme poverty”.\textsuperscript{124} The Court held that, such “living condition” with uncertainty of changes in his future conditions clearly attracts \textit{article} 3.\textsuperscript{125} Additionally, the Court also found the violation on the part of the Belgium for putting him in such vulnerable “living condition”.\textsuperscript{126}

However, it is noteworthy that, Court considered this case in a different perspective \textit{i.e.} “vulnerability as an asylum-seeker”.\textsuperscript{127} Thus, Court at one point clarified that, \textit{article} 3 is not meant to ensure home for each and every citizen living within contracting parties.\textsuperscript{128} Nevertheless, this case clearly shows a positive movement from the Court, to some extent opened the door for future cases in similar situations.\textsuperscript{129}

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\textsuperscript{120} Ibid paras. 245, 257 and 258.
\textsuperscript{121} Ibid para. 172.
\textsuperscript{122} Ibid para. 263.
\textsuperscript{123} Ibid para. 263.
\textsuperscript{124} Ibid.
\textsuperscript{125} Ibid.
\textsuperscript{126} Ibid para. 360.
\textsuperscript{127} Ibid para. 263.
\textsuperscript{128} Ibid para. 249. See concurring opinion of Judge Rozakis.
\textsuperscript{129} ECtHR established that, it is the fundamental requirement on the State to establish the “socio-economic needs” of the peoples and if they fail then it may attract the violation of article 3. See the analysis provided by the ESCR web on
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In the case of *Chapman v UK*\(^{130}\) the Court held that, even though it is “desirable” that every human being deserves to reside with “dignity”, admittedly many States failed to ensure their duties. However, Court further added that, this issues should be covered and dealt under “political not judicial” authorities.\(^{131}\) Nevertheless, the significance of this case can be found in Court’s explanation that, there is a possibility of future consensus on the party States exist as regards to the positive obligation to ensure the socio-economic rights of vulnerable people.\(^{132}\)

In the same way, Court in more recent case *Budina v Russia*\(^{133}\) found the strong possibility of future jurisprudence on the notion that sometimes indeed denial of socio-economic rights defy one’s “human dignity” thus disregard *article 3*.\(^{134}\)

These cases illustrate a positive indication towards identification of the extreme poverty as a violation of ECHR. Undoubtedly, ECHR as a living instrument can be interpreted

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\(^{130}\) Grand Chamber of the European Court of Human Rights, 18 January, 2001, Chapman v. The United Kingdom (Application no. 27238/95) [Chapman].


\(^{132}\) Chapman, n. 128, paras. 93, 94

\(^{133}\) Grand Chamber of the European Court of Human Rights, 18 June, 2009, Budina v. Russia (Application no. 45603/05).

\(^{134}\) M.S.S., n. 115, para. 53.
considering the “present-day conditions”. Further, living instrument doctrine helps the court to take some progressive steps to change an existing social condition. 

VII. AFRICAN HUMAN RIGHTS COMMISSION: ESCR RIGHTS

African Charter on Human and Peoples’ Rights (ACHPR) framed the socio-economic rights in a different manner *i.e.* obligatory for the State parties unlike ICESCR. Thus, ACHPR often enforces the rights on the contracting States enshrined in the African Charter. Thus, it can be argued that, the mechanisms that African Charter and African Human Rights Commission follows to deal with the ESCR rights can be considered as a model for the other regional Courts.

In the case of *Free Legal Assistance Group v Zaire*¹³⁷ (now Congo) a group of NGOs made a complain before the ACHPR against the government of Zaire alleging that the government failed to manage its budget properly which resulted the violation of right

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to health and education. The Court held that, the government is under positive obligation to ensure the right to health, education through allocating the proper budget for each scheme.

Further, in a case against Sudan i.e. *Centre on Housing Rights and Evictions v The Sudan*\(^\text{140}\), the ACHPR held that, Sudan failed to ensure the positive obligation to protect the people living in Darfur at the time armed conflict.\(^\text{141}\) In the time of armed conflict, a group forcefully evicted the people, damaged the corps and conducted atrocities in Darfur.\(^\text{142}\) This case clearly shows that, African Charter is quite straight forward in enforcing the rights provided in the Charter.

Moreover, in the case of *International Pen and Others (on behalf of Saro-Wiwa) v Nigeria*\(^\text{143}\), ACHPR held Nigeria liable for failing to provide medicine when the detainee died due to the high blood pressure. Further, in the *Slavery*\(^\text{144}\) case ACHPR also held the

\(^{138}\) Ibid, para. 47.  
\(^{139}\) Ibid.  
\(^{140}\) African Commission on Human Rights and People’s Rights, 2009, Centre on Housing Rights and Evictions v The Sudan (ACHPR Communications 279/03-296/05).  
\(^{141}\) Ibid paras. 223, 212, 229.  
\(^{142}\) Ibid para. 13.  
\(^{143}\) African Commission on Human Rights and People’s Rights, 2000, International Pen and Others (on behalf of Saro-Wiwa) vs. Nigeria, AHRLR 212.  
\(^{144}\) African Commission on Human Rights and People’s Rights, 2000, Malawi African Association and Others vs. Mauritania, AHRLR 149.
State liable as a detainee died suffering from cold without having any blanket.

VIII. CONCLUSION

In sum up, it can be placed that, there are multiple international human rights instruments subsist to recognize the ESCR rights. However, the structures of those instruments are not capable of addressing the poverty in some respects. This is due to the complications of financial burden related to the application of those treaties. In this regard, basic concepts including extraterritorial obligation, universalism, collective responsibilities and right to development are helpful to solve the resource crisis at the first instance. Further, the approach towards the ESCR rights would need to be changed in each and every sphere. Often we see that, States and other international community is silent on the violation of the ESCR rights unlike the civil and political rights. At national level the South African Constitution which contains guaranteed social rights can be considered as a model to enrich and to reconsider the existing constitutional frameworks universally. Additionally, the Court can also initiate a new jurisprudence relating to the ESCR rights with the civil and political rights depending on the proposition that all rights are somehow inter-dependent.

In my opinion, undoubtedly poverty and human rights has a
very strong and well founded link which cannot be denied. However, the framework provided under the ICESCR is very weak compare to ICCPR and other instruments related to civil and political rights. At the first instance, this opens the door for the State parties to skip the liability urging the resource crisis excuse. This can be evidenced from the scenario that sometimes even most developed countries also make such excuses in order to skip the obligations. This fact also illustrates that, the poverty problem is not only an issue for under-developed or developing countries; even developed countries are also not concentrating to ensure such rights. Concededly, international human rights framework alone would never be able to solve all issues related to the poverty. Thus, other important factors including political consensus on the extraterritorial obligation, accelerations of ESCR enforcement mechanisms, Courts wider interpretation, creation of a large scaled awareness on ESCR rights, formation of a strong theoretical basis would certainly assist the existing human rights apparatuses to change the situation.