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## **Civil and Political Rights vs. Social and Economic Rights: A Brief Overview**

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### **Abstract**

There have been significant conflicts in constituting both civil & political and economic & social rights. While some advocate the civil and political rights as primary rights, others claim that civil and political rights are nothing without social and economic regulations. In this paper, the emergence of these rights, their characteristics, the divisions and interdependence between them will be viewed in general terms. The ambiguous distinction between two sets of rights and the opposition to these rights will be analysed from different points of view. Related to the economic and social rights, the impact of globalisation and the role of international organisation will be explained by referring the WTO and TRIPS. Consequently the interdependence between both sets of rights will be detailed generally by referring Fredman and Sen.

**Anahtar Kelimeler:** *International Human Rights, Civil and Political Rights, Social and Economic Rights*

### **Medeni ve Siyasal Haklara Karşı Ekonomik ve Sosyal Haklar: Kısa Bir Değerlendirme**

#### **Öz**

Medeni ve siyasi ile ekonomik ve sosyal hakların oluşumu ve içeriği geçmişten günümüze tartışmalı bir konu olagelmıştır. Kimi yazarlar medeni ve siyasal hakları daha temel ve öncül olarak görürken, diğerleri bu hakları sosyal ve ekonomik düzenlemeler olmaksızın işlevsiz olarak görürler. Bu çalışmada, bu hakların çıkış noktaları, içerikleri, farklılıkları ve karşılıklı bağımlılıkları genel olarak incelenecektir. Bu iki farklı hak kümesi arasındaki muğlak ayırım ve bu haklara karşı geliştirilen argümanlar farklı bakış açılarından açıklanacaktır. Ekonomik ve sosyal haklarla ilintili olarak, küreselleşmenin etkisi ve ulusüstü kurumların rolü, DTÖ (Dünya Ticaret Örgütü) ve TRIPS'e (ticaretle bağlantılı fikri mülkiyet hakları anlaşması) atıfta bulunarak tartışılacaktır. Ayrıca, her iki hak kümesi arasındaki bağımlılık genel olarak Fredman ve Sen' in argümanları çerçevesinde detaylandırılacaktır.

**Anahtar Kavramlar:** *Uluslararası İnsan Hakları, Medeni ve Siyasal Haklar, Sosyal ve Ekonomik Haklar*

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### **The Emergence of Human Rights in Polarised World**

The Universal Declaration of Human Rights emerged after the Second World War. In this sense, it can be said that, the concepts of international human rights emerged in the West widely in order to overcome threats to human dignity posed by oppressive economic and political systems (Donnelly, 1999: 7). After the acceptance of the Universal Declaration in 1948, the necessity of transforming human rights into legally binding obligations was arose. In order to adopt a binding treaty for the protection of human rights, it was considered that a single treaty could not be sufficient to cover all issues of different characteristics. The ideological division between the former communist systems and the liberal democratic countries and was impossible to connect because each was insisting on rights focusing over specific issues. This division can be obviously observed in the acceptance of two separate covenants in 1966: The International Covenant on Economic Social and Cultural Rights and the International Covenant on Civil and Political Rights. They both came into effect ten years later in 1976 after thirty five states ratified both covenants (Bouandel, 1997: 18). The reason of lateness related to various issues mostly due to the cold war (Steiner, Alston and Goodman, 2008: 271). Throughout the cold war, human rights were politicized in a polarized world and commonly abused through ideological arguments. While the Western states aimed to reduce human rights to the traditional concept of civil and political rights, socialist states, defended the dominance of economic, social and cultural rights (Nowak, 2000:70).

Two sets of rights can be classified into negative and positive rights. This division basically based on the government's action in specific issues. Since civil and political rights require just the will of governments, and economic, social and cultural rights require material sources for their execution, former is defined as "negative" and the latter as "positive" rights (Bouandel, 1997: 24). Accordingly, protecting civil and political rights can be accomplished by basically setting judicial guarantees. For instance, the right to life, freedom of thought and movement, provided through not being subjected to governments' actions. However, economic, social and cultural rights are for specific categories of citizens only and rely on the material resources of every state (Bouandel, 1997: 23).

Characteristic instances of political rights are equal access to public service, the right to vote, and take part in the government. Civil rights are vary from the securing the individuals spiritual, physical, economic and legal existence (right to life, privacy and dignity, physical integrity; freedom of religion, thought, and opinion; right to recognition as a person before the law and nationality; right to own property) via classical freedom rights (liberty of person, freedom of movement, prohibition of slavery, freedom of expression) to detailed procedural safeguards related to the rule of law and fair trial generally (Nowak, 2000: 70). Second and modern generation economic and social rights are related with the

welfare state and the principles of international labour standards (Kenner, 2003: 1). The social rights concept basically are about creation of binding rules in order to protect disadvantageous members of society by giving them opportunities in education, health, employment ( and may be in other social services fields) till they become almost in the same equality as compared with the other members of society. This approach includes positive action by the government which goes to do more than only policing negative freedoms (Feldman, 2002: 14). The Covenant on Economic, Social and Cultural Rights was composed in order to protect such rights. There are also specific established organisations to support the economic and social rights. For instance, the rights linked to the ILO were presumed to be “economic”, those related to the UN agencies like the agriculture and food and the WHO were considered as “social”, and those which belong to the area of interest of UNESCO were considered as “cultural” (Steiner, Alston and Goodman, 2008: 276).

### **An Ambiguous Distinction?**

There are some distinctions between civil and political and economic and social rights which are depending on various factors: For instance, human rights, which referring to social, economic and cultural rights means that a person has a *right to* impose on government a positive obligation to supply the essential sources so that individuals can enjoy these rights. Civil liberties on the contrary usually include a person claiming a *freedom from*, for instance, an intervention of the government and its officials (Foster, 2003: 9). Also, social and economic rights are often conceived collectively enjoyed rather than individually like civil rights (Búrca, 2005: 1). However, there could be some exceptions of this distinction. Moreover, civil and political rights were perceived to be “legal” rights and could be best operated by the building good official committees, while economic and social rights were considered as “programme” rights and could be best operated by having a system of periodic reports (Steiner, Alston and Goodman, 2008: 273).

The division between economic and social rights and civil and political rights is eventually ambiguous notwithstanding the common presumption that the division are nearly juridically unavoidable and self-evident. Varieties of perceptions criticise that thesis and indicate the needs of more responsive ways to conceptualise the different rights (Alston, 1991: 139). The significant examples generally indicate the ambiguity of distinction based on positive and negative rights. For instance, implementing civil and political rights entails qualified judges, training military forces and the police, thus all those procedures need resources. These programmes require the positive action of government, therefore civil and political rights may be described as positive rights as well (Bouandel, 1997: 25). Many advocates of the negative rights indicate that while negative rights impose nothing on states, positive rights make claims on limited resources. This division fails, for instance, in developing countries, because not just the

primary education, but an independent judiciary also require financial resources. In all governments, negative rights must be secured by the means of state regulation by apparatus of legislation, police forces and so on which are not costless at all. In this respect, every characteristic over negative rights may be applied to positive rights clearly because there is not such big difference in terms of government action (Hill; 1992: 3). Again, as Fredman states, “Not only do civil and political rights give rise to positive duties. Many socio economic rights give rise to duties of restraint in addition to positive duties, thereby overlapping with civil and political rights. The right to be housed includes a restraint on the state from unlawful evictions, covering the same ground as the civil and political rights to respect for privacy, home, and family life” (Fredman, 2008: 68). Similarly, there are examples of ambiguous positive and negative duties in the principles of right to life and education. For instance, right to life can be required positive duties as well. This involves the right not to die of preventable reasons by governments, such as exposure, starvation, or reasonably evitable illnesses (Fredman, 2008: 67). Also, duties over education enhance both positive and negative rights respectively on economic and social and civil and political rights. In civil and political conception, the right to education emerges as restraint on the government from interfering with education, and specifically with preference of religious instruction (Fredman, 2008: 215). On the other hand, there are various oppositions from different points to both civil and political and economic and social rights.

### **Critics and Opposition**

The resistance to basic civil and political rights in developing countries stem from various directions. First, there is the argument that these rights hinder economic development and growth. Moreover, it has been stated that if poor people have the chance to choose between enjoying political freedoms and providing economic needs, they will invariably choose the latter. Finally, it has often been told that the highlight on democracy and political freedom, is particularly a “western” concept, which goes, specifically, against “Asian values”, which are supposed to be more concerned with discipline and order than on freedoms (Sen, 1999: 149). However, the opposition to social and economic rights was much more extensive than the opposition to civil and political rights. One aspect suggests that such expansive list of social and economic rights may result in “rights inflation” and downgrade “genuine” human rights, specifically the rights of the individual. Others claim that securing minimum income, education and health, necessarily requires a “large” state, or even socialism (Gauri, 2005: 70).

The fear of socialism or ideological driven concerns takes up a serious place in the discussion of economic rights. Furthermore, international labour rights, like the right to organise or work were considered by some as fundamental since it has been seen the way of realisation of dignity. However, the same rights

are seen ideological since they impose positive duties on states because the state intervention hinders operation of free market system ( Kenner, 2003: 3). Eide explains this opposition with cultural traditions:

“In many parts of the world economic and social rights are still not properly recognized. Scepticism about those rights with outright negative attitudes to economic and social rights, derives from cultural traditions. One manifestation of the relativity inherent in cultural traditions is the assumption in some western societies that human rights shall be construed as natural rights, securing the freedom of the individual from the state. On the basis of this narrow construction of human rights, significant parts of the International Bill of Human Rights can be challenged” (Eide, 2000: 110).

One discussion applied against social and economic rights from a legalistic perception is that they are not “justiciable”. That is to say that, they are not appropriate for conferring by courts. Several logics can be built against this. For Eide,

“First, many aspects of economic and social rights can be made justiciable, as can be seen in many domestic legal systems. Second, the concept of justiciability is in itself very fluid and reflects differences in legal traditions and in philosophical views about the relationship between courts and the state. Third, human rights can still be human rights even when they are not in all aspects justiciable. Furthermore rights which are not initially justiciable can gradually become so by concretization both through practice and through more detailed standard-setting at the international level and by legislation at the national level” (Eide, 2000: 112).

### **Implementation**

Civil and political rights may refer to the same meaning in different countries. However, for economic and social rights, it is very likely that they are going to be practiced variedly in different countries. Some approaches claim that providing social security, requires more than make laws; it needs a great capital wealth, and many countries in the world today are still in the economically desperate circumstances (Cranston, 1973: 66). That is to say that, it is not the same right to healthcare or shelter if you are living in a rich country with great sources or in a poor country. Thus, developing countries and highly developed countries cannot provide the same civil and political rights in the same equality. The same logic can be implemented on civil and political rights as well (Neier, 2008: 285).

It is not just about economic sources but legal mechanisms. The legal systems in most developing countries are inadequate and enforcement mechanism

are poor, thus, allowing people to make legal complaints of poor service provision will further politicise trials, undermine their capacity to judge present rights, and possibly augment government expenses even where it is unfair or inefficient (Gauri, 2003: 72). On the contrary, the implementation of social and economic rights, may be failed in rich and well established democracies as well. For instance, the huge deprivations in, education, healthcare and social sphere of the African Americans in the United States cause high mortality rates and the high rates show that the accession to certain rights for a segment of society obviously not protected well enough (Sen, 1999: 155).

Generally, the resistance to social and economic rights started with the decline of communism and the widespread acceptance of free market and continued with the processes of globalisation (Steiner, Alston and Goodman, 2008: 264). Depending on this, the enthusiastic adoption of free market economies in many countries has brought the diminishing role of the state as the main guarantor of social and economic rights (Alston, 1994: 150). According to Fredman,

“Globalisation argue against positive human rights duties, state intervention through positive duties is costly, artificially elevates labour costs above market value, and prevents companies from competing on equal terms with others in the globalized world who are not subject to such regulation. Positive human rights duties therefore obstruct the process of globalisation and make things worse for every people they set out the project. There are two aspects to this claim. The first is that globalisation on its own advances human welfare. The second is that positive human rights duties impede such advances” (Fredman, 2008: 44).

The functioning of welfare rights needs an active form of government. The welfare state generally includes transfer programs by which income is transferred from taxpayers to citizens whom the government give entitlements to various services. The welfare state requires government to have large-scale business enterprises such as health insurance, shelter plans, and so on. These complex regulations include recognising the needs of citizens and also an extensive bureaucracy is required to secure these regulations (Kelley, 2008: 287).

Sometimes states cannot make social intervenes even if it is wished to due to the fear of the capital flight. Thus, they cannot insist on protecting human rights if these rights against the interest of major companies. The weakness of the state is due to the trade regulations which impose by WTO. These laws generally prohibit state to take action protecting their domestic trade against international competitions. These prohibitions even include the non-trade regulations which have an indirect protectionism such as promoting social services (Fredman, 2008: 47). In the subject of global interventionism on governments, the agreement on

intellectual property becomes significantly important. TRIPS directly affect the will of states, deciding their patenting regime, and seek the state's own policies on the right to life, food and health. For example, the duty of protecting the right to life by the provision of medical care is endangered by the patenting criterion of TRIPS. In 2001, 39 leading pharmaceutical companies claimed TRIPS regulations and tried to prosecute the South African government for breaching the agreement with the reason that it made easy the generics production and importation to manage the AIDS (Fredman, 2008:49).

### **Interdependency**

The UDHR indicates a right to “a Standard of living adequate to ... health and well-being” but does not set the economic regulations to make this properly functioning (Nickel, 1987: 152). For Pogge, “Socio economic rights are currently, and by far, the most frequently unfulfilled human rights. The widespread fail in the fulfilment of these rights also plays a major role in explaining global deficit in civil and political human rights demanding democracy, due process, and the rule of law” (Pogge, 2003: 62). Also, as stated by Marx, civil and political rights are useless unless social and economic rights are provided (Bouandel, 1997: 17). Different from the UDHR, the preamble of the ICCPR states: “the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his or her civil and political rights, as well as his or her economic social and cultural rights.” Indeed, realisation of the civil rights such as freedom from inhuman and degrading treatment, a society may need to set up particular social and economic safeguards (Pogge, 2003:70). For instance in many countries, domestic servants suffer from inhuman or degrading treatment by their employers and it is completely legal. There are some legal prohibitions on this problem but unfortunately ineffective partly due to the low educational levels of the servants (Pogge, 2003: 63).

Moreover, as a supportive right, education is the primary medium through which socially and economically weak children and adults can take themselves out of misery and gain the ability to participate fully in society. Plus, education directly have a positive effect on individuals' political abilities to exercise their democratic right (Fredman, 2008: 216). In the same way, according to Sen, there is an open link between exercising political freedoms and the realisation of economic necessities. The relation between those notions are not only instrumental (political freedoms can have a great role in providing support and formation in the solution of serious economic needs), but also constructive. This notion of economic needs is related to generally open public discussions and debates, securing of which requires pressure on essential political liberty and civil rights. The concentration of economic needs joins to the necessity of political freedoms. There are three different aspects that take us in the destination of general supremacy of essential political and liberal rights:

1-their direct significance in human life accompanied with basic abilities (including that of social and political participation)

2-their instrumental character include the encourage individuals to express their claims to gain political attention (including claims on economic needs).

3-their constructive character in the formulation of “needs” (including perceiving of “economic needs” in a social aspect) (Sen, 1999: 148).

By explaining the “instrumental” role of the political and the democratic role of freedoms, Sen indicates that, “Political and civil rights give people the opportunity to draw attention forcefully to general needs, and demand appropriate public action. Governmental response to the acute suffering of people depends on the pressure that is put on the government, and this is where the exercise of political rights (voting, criticizing, protesting and so on) can make a real difference” (Sen, 1999: 151).

A genuine democracy cannot only be achieved by adopting and protecting certain procedures and rules. It should also contain the opportunities for people. The mobilisation of political participants was very significant in preventing disasters like famine and sharply blaming governments for causing open starvation, for not preventing it. Therefore, democracy can be seen as a medium for generating a set of opportunities and the utilisation of these opportunities are accompanied with the exercising of political and democratic rights (Sen, 1998: 155).

### **Conclusion**

Theoretically, there could be a distinction between both sets of rights. However, when it comes to practice, it is not as it seems to be. With its elements such as right to free speech and solidarity, political rights emerge as a primary instrument to claim social and economic rights. On the other hand, without economic and social rights the exercising of civil and political rights can be undermined. Especially, the right to education prepare a proper foundation to understand and practice civil and political rights. Therefore, advocating civil and political rights and blaming social and economic rights for downgrading the importance of human rights would be unfair and may lead to miss the foundational logic of these rights. Because of all these basic reasons and the indivisible connection, rights should not be concern superior to each other.



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