

Impact of Pandemic on Economic, Social and Cultural Rights

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Abstract

Pandemics have a devastating impact on human lives. Covid-19, the current global pandemic is impacting human societies in unimaginable ways and its enormous impacts on a range of human rights have only slowly begun to emerge. With public health care institutions facing unprecedented challenges in all countries of the world, the right to health is just one among the many human rights that have been adversely affected by the current global pandemic. With more than 1.3 million people dead as of this writing and States grappling with the implications of Covid-19, the impact of the pandemic on economic, social and cultural rights in international law is increasingly drawing the attention of international law scholars and practitioners who are mapping the interface between pandemics and these rights. In this context, this paper seeks to examine the impact of pandemics, particularly the current wave of Covid-19 on economic, social and cultural rights in a scholarly attempt to understand the broader implications that pandemics have on these rights in international law. It is believed that such an effort is essential both for improving our conceptual understanding of these rights and securing their better implementation in the wake of the current global health crisis. This paper is divided into two parts. Part I provides a broad overview of economic, social and cultural rights in international law. Part II examines the impact of Covid-19 on specific economic, social and cultural rights.

Part-I

Economic Social and Cultural Rights in International Law

1. Historic Background

The recognition of economic, social and cultural Rights (henceforth, ESCR) in international law as an independent legal category is an established fact of modern international life. The International Labour Organization (ILO) and the World Health Organization (WHO) were the first international organizations to recognize the nascent concept of ESCR in their respective constitutive instruments and institutional resolutions. The Philadelphia Declaration of the ILO in 1944 recognized the right of all workers to pursue their material well-being and spiritual development in conditions of freedom and dignity, of economic security and equal opportunity in what was the first international formulation of ESCR in the international arena¹. This was followed by the 1946 Constitution of the

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¹ <https://www.ilo.org/legacy/english/inwork/cb-policy-guide/declarationofPhiladelphia1944.pdf>, accessed on 06 December 2020.

WHO which provided for the “the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being” in what was one of the clearest articulation of ESCR in the early evolutionary years of these category of rights². It is also pertinent to mention that the UN Charter which came into force on 24 October 1945 also made specific mention of the need to promote “higher standards of living, full employment, and conditions of economic and social progress and development” in addition to “solutions of international economic, social, health and related problems; and international educational and cultural cooperation”³. Thus, the formal institutionalization of ESCR in international law broadly corresponded with the emerging global political scenario in the wake of WWII.

However, the first comprehensive recognition of ESCR was to follow two years later in 1948 by way of the Universal Declaration of Human Rights (UDHR) which articulated these rights in Articles 22, 23, 24, 25, 26 and 27⁴. Article 22 while recognizing the right to “social security” explicitly recognized the concept of ESCR institutionalizing its majestic presence in the Declaration. The UDHR was adopted on 10 December 1948 with no dissenting votes⁵. This was to be followed by the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966 which provided the first binding framework for the implementation of ESCR in international law and paved the way for their regional and domestic implementation⁶. In 1993, the World Conference on Human Rights in Vienna affirmed the notion that all human rights are universal, indivisible, interdependent and interrelated while emphasizing the need

² https://www.who.int/governance/eb/who_constitution_en.pdf, accessed on 06 December 2020.

³ Article 55

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

a. higher standards of living, full employment, and conditions of economic and social progress and development;
b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and
c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

⁴ <https://www.un.org/en/universal-declaration-human-rights/>, accessed on 10 December 2020.

⁵ History of the Document (UDHR), accessed from <<https://www.un.org/en/sections/universal-declaration/history-document/index.html> on 10 December 2020>

⁶ International Covenant on Economic, Social and Cultural Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 3 January 1976, in accordance with article 27, accessed from <<https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>>