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Need of Human Rights as a Better Way of Life

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ABSTRACT: Actually, basic needs postulates securing of the elementary conditions of existence to every human being. Despite of the practical and theoretical importance of the subject the greatest irony is non- availability of any universal preliminary definition of the concept of basic needs. Moreover, this becomes the reason for unpredictability of various political programmes aiming at providing basic needs to the people. The shift is necessary for development of this or any other conception. No labour reforms could be made in history till labours were treated as objects. Its only after they were started being treating as subjects, labour unions were allowed to represent themselves in strategy formulations that labour reforms could become a reality. The present research paper highlights the basic needs of Human Rights in life.

KEYWORDS: Basic Needs, Elementary Conditions, Labour Reforms, Human Rights.

INTRODUCTION: The fact is that by changing the perspective the human beings whose needs are at issue they becomes the subject of orientation and a peremptory duty is cast in the state, society and eventually the international community to take steps to provide for the basic needs of every single individual. By changing this approach the basic needs which were hitherto subjected to the discretion of politico-economic powers now becomes a human right which could be enforced by the person who is being denied such necessities. To fulfil this duty the politico-economic strategies need to be formulated. Whatever be the strategies the goal should be providing minimum of justice within social order. Gandhi in '*Harijan*' illustrated this by saying that "all useful labour ought to bring in the same and adequate wages to the labourer. Till that time comes the least that should be done is to see that every labourer gets enough to feed and clothe himself and his family. A government that does not ensure this much is no government." When there are no conceptual determinations then treating more and more rights as basic needs won't do any good. They would be just like a building with no foundations

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and more and more floors are being built which are destines to fall apart someday. Basic needs should not be treated as a tool through which freedom of the subjects could be curtailed. It would be a fatal error to assume that by providing for the basic needs of the masses one could otherwise consolidate the elite's undisturbed enjoyment of power. The reality is totally different, by relieving men from the daily struggle of bread will make them less tractable partners. They would then only become more aware of their rights.

Implications of Conceptualization of Basic Needs as a Right:

- It is common understanding that to determine what is right is difficult. However to mark out the encroachments in that right is more easy. For example to define what is health is relatively difficult than determining what is illness or determining what is happiness is more difficult task than determining what is unhappiness. Right implies social verifiability as a necessary consequence. A right is a claim to be enforced with the help of social authorities. Hence to conceptualize something as a right there has to be a binding understanding as to what is its violation. Thus it could be followed that there is no right where an eventual violation cannot in principle be ascertained. By this test a number of needs which are felt to be essential fail to qualify for inclusion in a right to basic needs. For example need for self-realization.
- The issue is not whether there is any possibility or meaning of human existence under conditions merely of subsistence supply. Here the situation is so grave that for some not even the basic necessities of human existence are secured.
- The concept of right implies an objective standard. A right is a claim which everyone is in fairness bound to recognize. Therefore it is not what a particular person thinks what should be his basic need, rather it is need in objective standards which determines what is to be recognised as a basic need. Not everything essential may be termed as basic needs, perhaps, not even what someone considers the most essential for himself. Ex- for a drunkard alcohol is the most essential thing. The question is not of standardisation for reasons of clarity and practicability but of justice and compatibility i.e. how far the individual claim is apt to be generalized. To ascertain such question of justice and compatibility Rawl's theory comes handy. The principles of social order are just, if they

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can be thought of as resulting from an original agreement by free and rational persons concerned to further their own interests, in an initial position of equality and ignorant of their own future positions in the order to be established(veil of ignorance). This ensures that everyone would have to calculate the risk of being allotted the worst possible condition, it rules out the acceptance of rights of one participant at the expense or sacrifice of another. It implies that a fundamental right to satisfy even the most vital needs of one individual has to be compatible not only with common good but also with an equal fundamental right of every single other individual. In this way principle of utility- maximum happiness to maximum number is excluded from the rights perspective. However, in present days all the development activities are based on utility theory. Many programmes providing for basic needs requires sacrifices from a minority. Ex- construction of huge irrigation reservoirs and the consequent flooding of fields and dwellings of minorities for the larger benefit of the majority. By changing the rights perspective it would become the duty of the state to exercise restricting and balancing functions and would have to provide compensatory benefits for the victims of development.

- Lastly, the concept of right implies a human recipient of the claim. It also implies a correlative responsibility of the state. This could pose a problem in case of fundamental right to basic necessities. Ex- injuries to human existence by epidemics, famines, homelessness, can only be regarded as infringement of human rights if they appear to be attributable to a state action or omission. This is the difference between basic needs and basic rights.

Concerning the Definition of Contents: To elaborate basic necessities in all details is not possible. But it is possible to indicate the principle under which such elaboration could be undertaken and standards could be evolved in case by case adjudication by the courts. The definition must proceed from narrow conception of the basic needs because of the reasons of practicality. The criterion must be objective. Basic necessities thus must be taken to mean the irreducible minimum of prerequisites for a human being. The basic problem which arises in

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defining content of basic necessities is that it could be defined more easily in a negative sense than positively. It is possible to determine from where onwards a person can no longer survive, but no definite statement is possible to determine that till what level a person is enjoying basic necessities. At this point the standard of equality has to come in. Final death which has to be suffered by everyone is no injustice. But it is violation of basic necessities if the life expectancy of an individual is below than that of his equals.

Basic necessities of life must be taken to mean the prerequisites indispensable for leading a human life within a society as an equal at least in principle. The use of the term prerequisite distinguishes between basic necessities from more expansive though similarly fundamental rights. The right to basic necessities comprises minimum presuppositions for a human being to make use of other fundamental rights. They are so essential that these basic necessities make them capable to use other fundamental rights. Following this principle freedom does not itself qualify to be a basic necessity. One may argue that if freedom is not included as basic necessity then this means that the basic necessity of prison inmates is same as that of free person. And this is absolutely true. Basic necessities should be respected in case of every human being.

Constitutional Foundations of Basic Human Needs: We shall be concerned with the debate relating to constitutionality of basic needs and focus mainly on the three major aspects, namely (i) Hierarchy of Rights, (ii) Basic Needs as aspects of Equality, and (iii) Basic Needs as essence of Perambulatory Resolve.

(1) HIERARCHY OF RIGHTS: Those acquainted with the history and developments of legal rights would have no difficulty in appreciating that over a period of time certain categories of individual claims or interests received far greater recognition and protection from the legal system than the vast majority of other claims. Usually the preferred claims were closely associated with the property interests and the political status of the claimant. The Indian Constitution seems to have accepted the same type of dichotomy between the Fundamental Right and the Directive Principles of State Policy, by providing for two different types of treatments for them. There are several scholars who subscribe to the view that the Fundamental Rights deserve primacy over the Directive Principles. Such a view accords with

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Ronald Dworkin's distinction between "background rights" and "institutional rights". The distinction between the two types of rights is that the background rights are merely justification of political decision by society in abstract, while the institutional rights are concrete rights and can be enforced at the instance of the right claimant. However, in the typology of rights, Professor Amartya Sen prefers to add yet another tier which he describes as a metaright. According to Sen the focus of metaright is pursuit of policies that would make the achievement of an abstract right possible. Sen prefers to describe the Directive Principles as abstract background metarights only, thereby relegating them further down in the hierarchy of rights. However, Sen adds yet another legal concept, namely entitlements, that is useful for basic needs debate. Sen argues, "Most cases of starvation and famines across the world arise not from people being deprived of things to which they are entitled, but from people not being entitled, in the prevailing legal system of institutional right, to adequate means for survival." How do basic human needs fare in the hierarchy of rights under the Indian legal system? What is the import of the recognition accorded to certain basic needs in the Directive Principles? The orthodox legal rights approach entertains serious reservations in according rights status to basic needs, mainly for the following reasons. First the rights imply an autonomous and fully capable agent, while basic needs relate to those sections who can hardly be described as capable or autonomous. Second, rights are generally understood in the negative sense as absence of constraint or interference by others, while basic needs call for positive action or interference with a view to securing them. Third, rights usually relate to political and property interest, while basic needs mainly concern interests of economic and social nature. Without undertaking a detailed examination of these reasons, it is suggested that neither rights are always what the orthodox view projects them nor the difference between basic needs and rights so irreconcilable. When and what basic needs get transformed into rights depends upon the prevalent legal and political consciousness.

(2) BASIC NEEDS AS ASPECTS OF EQUALITY: The Article 14 guarantee of "equality before the law or the equal protection of the laws" is generally thought to require government to treat similarly circumscribed individuals in a similar manner. The essence of this provision is, like persons are to be treated alike, but it does not guarantee equal treatment for all persons. The

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equality guarantee may be invoked in all cases of unequal access to certain basic needs relating to food, shelter, health care, education, etc. However, since the guarantee of equality permits reasonable classification amongst persons the benefit of equality guarantee would get limited to those cases alone in which arbitrary or unreasonable classification is resorted too. Equality clause is deployed to claim a better distribution of medical care, education, social security etc. benefits. Frank I. Michelman views inequality not as a form of discrimination but a deprivation. In this way the concept of equality would require not equal terms of access but adequate means of access. According to this approach the government that fails to provide means treats its citizens unequally. The essence of Michleman's approach is that effective participation in the political process is impossible unless one is adequately fed, clothed and housed and in sound physical and mental condition and where people lack the basic means the state treats them unequally.

(3) THE BASIC NEED AND THE ESSENCE OF PERAMBULATORY RESOLVE: Preamble highlights three aspects of the social mission of the People of India, namely the socialist democratic form of Government, the commitment to ideals of justice, liberty, equality and fraternity and the resolve of being guided by the Constitution, which in a way is more vital for the basic needs debate. It can hardly be controverted that basic needs are likely to be better ensured in a socialist democracy than in a capitalist or a liberal one. A socialist society is more conducive to needs satisfaction not only because it better ensures need fulfilment but also because it takes care that needs are not generated at the first instance, by planning effective distribution of productive forces and eliminating the possibility of exploitation. Though all the four ideals mentioned in the Preamble have relevance to basic needs, but the ideal of fraternity is of special significance. Fraternity that requires sharing of a feeling of commonness, care and concern for each other is predicated upon a condition that ensures bare minimum for all. How can people whose basic needs remain unfulfilled feel fraternal relations with others. A slave can hardly have fraternal feelings for the slave owner and vice-versa. Finally, there is yet another aspect of the Preamble that has received little attention so far. The Preamble refers to the resolve of the People of India. It is neither the resolve of the State nor that of a few individuals, but that of the Indian people as a whole. What does such a collective resolve imply? It implies

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that each member of the Indian society agrees to the form of Government, accepts the cherished ideals and agrees to be bound by the Constitution. Relating the collective resolve or contract to the basic needs debate means that the satisfaction of basic needs is not merely the responsibility of the State, but of each well-off member of society.

Securing Basic Human Needs through Judiciary: It has to be recognised that from the right to basic necessities flows an incidental right or rather a correlative state duty to facilitate access to justice for the victims of such deprivation. This may be done by state schemes or in a much better way by granting locus standii to move a court. The principle has traditionally been noticed in habeas corpus proceedings. But off lately the Supreme Court has opened access to the courts via Public Interest Litigation. The Supreme Court of India developed a new kind of sensitivity to the issues relating to the poor, the Harijans, the tribals, the bonded labour, the low-paid worker and various other weaker sections of society. This new judicial sensitivity is amply reflected in some notable judicial decisions like the Rickshaw Pullers case, the Asiad Workers case, the Bandhua Mazdoor case, the Pavement dwellers case, the Beggars case, etc. These decisions did succeed in creating a general impression that the judiciary and the Indian Legal System is becoming more favourably inclined to the claims of the weaker sections and that a social revolution is underway at the instance of the Indian higher judiciary. We can critically evaluate the courts' role in two sectors, namely (a) in conceptualization and securing the basic needs as rights, and (b) the degree of the courts' commitment to the basic needs.

CONCEPTUAL AMBIVALENCE REGARDING BASIC NEEDS: The first important case involving basic needs issues was the Asiad Workers case1, which arose out of a public interest petition preferred by an activist social organisation with a view to securing the interests of the workers engaged in various Asiad projects. The main plank of the petitioners' case was that by the persistent denial of minimum wage, standard conditions of work and medical benefits, etc., the workers interests were being put in jeopardy; such a denial was not only a violation of the welfare legislations but also unconstitutional. However, since the petition was preferred under Article 32 of the Constitution, the main contention centred round the violation of the fundamental rights. The Supreme Court speaking through Justice Bhagwati (Bahrul Islam, J.

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concurring) found no difficulty in locating the basis of a constitutional action in several rights such as equality, personal liberty, non-employment of children and prohibition of begar or forced labour. But the Court relied upon Article 23 for deriving the main support for the judgment. In this context it may be said that the Court ought to be remembered for its creative interpretation of Article 23, which involved expanding the meaning of 'forced labour' to include within its ambit all varieties of involuntary, unfairly paid and compulsive labour. The giving of such expansive import to a typically Indian fundamental right was certainly a socially relevant exercise. But the court could have strengthened the understanding of the right by exploring how the non-payment of minimum wage, non-fulfilment of the conditions of work affects the working population in the contemporary Indian context. In Bandhua Mazdoor case 2 basic need issues relating to bonded labour in brick-kilns in Haryana were raised. The issues were more or less similar to the Asiad Workers case, with the only difference of the locale which made the scenario of dehumanisation a shade worse. Yet another significant difference was that the petitioners, an organisation dedicated to the cause of eradication of bonded labour system, had mainly focussed their attack against the bonded status of a large number of workers in terms of the Bonded Labour System (Abolition) Act, 1976. In this case again Justice Bhagwati was on the Bench along with R.S. Pathak and Amarendra Nath Sen, JJ. Justice Bhagwati in his concurring but separate judgment relied upon Article 21 of the Constitution to protect the workers in these words: "It is the fundamental right of everyone in this country, to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42." Though none can fault the courts' zeal to protect the interests of the workers, but certainly it is not possible to explain the reasons for the courts' disillusionment with Article 23, which it had so elaborately expanded in Asiad Workers case. It is submitted that by giving relief to bandhua mazdoors under Article 23, may be the court would have made this ignored fundamental right a Charter of Workers interest. Furthermore, in Bandhua Mazdoor caseJustice Bhagwati has preferred to identify the various needs enumerated in the Directive Principles as the attributes of human dignity and accorded them a kind of supremacy in these words: "These are the minimum requirements which must exist in

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order to enable a person to live with human dignity and no State - neither the Central Government nor any State government - has the right to take any action which will deprive a person of the enjoyment of these basic essentials. Since the Directive Principles of State Policy contained in clauses (e) and (f) of Article 39, Articles 41 and 42 are not enforceable in a court of law, it may not be possible to compel the State through the judicial process to make provision by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity but where legislation is already enacted by the State providing these basic requirements to the workmen and thus investing their right to live with basic human dignity, with concrete reality and content, the State can certainly be obligated to ensure observance of such legislation for inaction on the part of the State in securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21." Such a progressive interpretation would certainly help the cause of transformation of statutory benefits or privileges into constitutional rights.

LUKEWARM COMMITMENT TO BASIC NEEDS: Despite certain progressive trends it is still not possible to infer a clear and undiluted commitment of the Courts for the basic needs. The Pavement dwellers case3 is a classic example of such a weak commitment. The gut issue involved in the case was that the pavement- dwellers had claimed a right to shelter which was being denied to them by the relevant Municipal Corporation's action for their eviction. The Supreme Court speaking through Chief Justice Chandrachud made several useful observations relating to the basic needs by accepting the privilege to livelihood, shelter, as an aspect of right to life under Article 21 of the Constitution. Thus, for the first time the shelter need was transformed into a constitutionally guaranteed right, and in this sense the decision was an achievement for the large section of the shelter less, slum and pavement-dwellers, who continue to abound our newly-emerging centres of human habitation. However, the same court that recognised the shelter and livelihood need so radically, found no difficulty in pronouncing that the need could be subjected to reasonable restriction required for keeping the pavement clear for the road-users - the morning and evening-walkers and holiday-joggers included. Thus the Court preferred to make the shelter seekers' need subservient to the road-users' need. In a recent High Court decision Shanker Banerjee v. Durgapur Projects Ltd.4 the shelter need was

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again recognised as a fundamental right envisaged under Article 21 and also Article 43. In his order Justice Sudhir Ranjan Roy observed: "To ask a person to live in subhuman conditions by depriving him even of the benefits of two small rooms which is the minimum requirement for a family to live, and compelling him to live in one single room with his wife and children and to share the bath, toilet and kitchen with another family, if it connotes anything, is mere animal existence, nothing more.

The sweep of the right to life conferred by Article 21 of the Constitution, which according to the Supreme Court is 'wide and far-reaching' should, therefore, include such minimum living conditions without which a human being ceases to be one of the said species." It is true that the basic needs of the petitioners were in question in this case, but in appreciating conflicts like the present one is it desirable to totally ignore the shelter needs of the other employee whose large family was compelled to stay in the open, for want of even one room? Finally, in the Food Petitions the Court's commitment even to the most vital need weared down to a vanishingly thin level. The court saw the mischief and seemingly appreciated the denouement but did not care to do anything about it, thereby leaving us to face a dilemma that even advanced capitalist societies continue to face, in the words of Steven Box: "And of course in a society like ours, which pontificates about equality, freedom and human rights, even while encouraging enormous differences in the distribution of income, and even more in wealth, the problem of persuading those who haven't 'just about right' poses a constant headache."

Question of Bread v. Freedom: Prof. Upendra Baxi in his writing From Human Rights to Right to Be Human elaborates the fight between bread and freedom. He observes that it is the characteristic of western liberal thought to ignore the entire problematic of basic human needs. J.S.Mill excluded the backward nations, women and children from the right to liberty. Rawls in his theory of justice says that the lexical priority of liberty may not apply to societies where basic wants of individuals are not fulfilled. The quest for needs gets translated into a conflict between 'bread' and 'freedom'. Freedom usually wins with the liberal conceptions of rights, despite the awareness that without bread freedom of speech and assembly, of association, of conscience and religion would be meaningless. But the issues are not really 'bread and/or

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freedom' but rather who has how much of each, for how long at what cost to others, and why. Some people have both bread and freedom, others have freedom but little bread or none at all, yet others have half a loaf with or without freedom and still others have a precarious mix where bread is assured if certain freedoms are bartered. The problem of human rights in situation of mass poverty is one of redistribution, access and needs. In other words it is problem of development, a process of planned social change through continuing exercise of public power. As there is no assurance that public power will always be exercised in favour of the deprived and dispossessed an important conception of development itself is accountability. But the question arises that what is development? Whatever it may be made to mean development must at least mean that people will be given the right to be and remain human. In no society that takes human rights seriously should there be allowed a state of affairs where human beings become subhuman - i.e. when they are forced to surrender their inalienable rights of man, or where people sell their wives children or themselves in order to survive or surrender their life. The conception of development must meet basic needs. The Declaration of Cocoyoc stresses that any process or growth that does not lead to the fulfilment of basic needs of food, cloth, shelter, health and education is travesty of the idea of development. ILO report of 1976 supports participation as an aspect of basic needs strategy. It observes that a basic needs oriented policy implies the participation of the people in making decisions which affect them. It is inevitable that the emphasis on basic survival needs may lead to a situation of conflict between human needs and human rights i.e. bread v. freedom. The provision of bread may justify indefinite postponement of the provisions of any kind of freedom. In the absence of such freedom even the promised bread may not be realised by the masses, indeed they even loose in the process their power to protest at the indignity of regime sponsored starvation. But this does not mean that the concept of basic needs be abandoned. Should not the need for shelter for millions of pavement and slum dwellers have any legitimacy at all as compared with the rights of the nouveau riche to live in five star splendour? Should not continue drought or famine in India which forces people to sell their children to receive food for a day, justify a nationwide ban on conspicuous consumption of food on social events?

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