



A Study of Three Generations of Human Rights Litigation

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Abstract

Human rights are the most fundamental and basic rights to which a person is inherently and intrinsically entitled simply because she or he is a human being. According to the Universal Declaration of Human Rights and other international documents, these rights have features such as universality, inalienability, un-transferability, inseparability, non-discrimination, equality, unity, and interweaving. Much of the information in this research has been collected using library resources such as books, articles, theses, dissertations and also online resources and newspaper articles. In this study, the data collection method and practice is descriptive-analytical. The first generation of civil and political rights encompasses fundamental rights such as the right to life; freedom of opinion; freedom of speech and assembly; security; and judicial guarantees. These rights have a negative nature; it means that their implementation by the right holder must not be prevented by any means. The second generation of human rights is economic, social, and cultural rights. About the litigation of this generation of human rights, results suggested that; the regulatory or administrative system selected, in the Covenant, for these rights is reporting, which is versus the petition (complaint) system that exists in the Covenant of Civil and Political rights. In the international legal documents on the third generation of human rights, the emphasis is more on the importance of international cooperation than on commitment.

Keywords: litigation, the first generation, the second generation, the third generation, human rights

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Introduction

Human rights are the most fundamental and basic rights that every person intrinsically and inherently enjoys due to being a human. According to the Universal Declaration of Human Rights and other international documents, these rights have features such as universality, inalienability, un-transferability, inseparability, non-discrimination, equality, unity, and interweaving. Hence they belong to all people in every part of the world and no one can be deprived of human rights merely because of the geographic region where they live. In addition, regardless of factors such as race, nationality, gender, etc. all people are equal in enjoying these rights and in this regard no one is superior to another.

The concept of human rights has always been evolutionary. Ratification of international instruments on human rights and its increase reflect this evolutionary history. Despite this evolution, there are still very serious challenges in promoting human rights facing the international community because

although for a part of human rights including political, cultural, and civil rights, international instruments have been produced;

in the other part of human rights, called solidarity rights and desirable to the majority of developing and poor countries, very few protectionist measures have been done. However, since the drafting and adoption of the Universal Declaration of Human Rights, it has also always been the key concern to create and enact mechanisms to provide for the implementation of human rights instruments and support the recognized human fundamental freedoms and rights effectively. This requires identifying the new laws paralleled to the development of new technologies and changes. Therefore, the present study's objective is to review litigation of three generations of human rights.

Methodology

In this study, the data collection method and practice is descriptive-analytical. Descriptive researches include methods

that aim at describing the investigated conditions or phenomena. Doing descriptive researches can help better comprehension of the existing conditions or the decision making process. Among the characteristics of descriptive study is that the researcher does not manipulate, control, or get involved in the position, status, and roles of variables and just studies and describes what exists or has existed [1]. Much of the data in this research has been collected using library resources such as books, articles, theses, and also online resources and newspaper articles.

Research Findings

The First Generation of Human Rights

The first generation of human rights is a valuable heritage that under the slogan liberty, equality, and fraternity helped man passing through the dark history of authoritarianism to recover human dignity. The first generation of human rights advocates believe that people should be seriously protected and their civil and political rights, including fundamental freedoms of opinion, speech and formation of political parties, should be guaranteed. For instance, Aryeh Nheyr says: "The main reason for elevating human rights in the world is that the individuals' intrinsic values are at risk. These values include: the right all people to be free from cruel punishments and their right to freedom of speech and equality of individuals away from racial, ethnic, religious and, sexual discriminations. These rights are the fundamental rights of individuals, because they define us as human beings." [2]. Thus, it can be said that the first generation rights are so basic and fundamental that without them other rights cannot exist; as a result, despite the connecting and integrating with other rights in other generations, they somehow have prominence and priority over them.

Litigation in the First Generation

The covenant on Civil and Political Rights, ratified in 1966 and achieving administrative power in 1976, was inspired by the liberal ideas of the French Revolution, American Declaration of Independence, and the Bill of Rights in England. This Covenant is the basis of the first generation of human rights including the right to fundamental freedoms; the right to free and fair elections; the right to life; the right to fair trials; the right to political participation; and alike and it covers Articles 2 - 21 of the Universal Declaration. The Covenant guarantees, on the one hand, the inherent rights of the individual and, on the other hand, the rights that allow the individuals to participate in governing their society. The most prominent basis that can be a strong reason for litigation of this generation is that Covenant is a binding document required to be observed by states after accession because according to the Covenant, the governments are committed to ensure and observe the rights listed in it in their territory and under their jurisdiction. In addition, there is a special committee called the Human Rights Committee to monitor the implementation of these rights. And the states are required to report to this committee on the actions done for the implementation of these rights, as well as the practical progress made in their nations' enjoyment of these rights. More importantly, Articles 28 to 45 of the Covenant concern the

Human Rights Committee and through them the enforcement mechanisms of the mentioned rights are taken into consideration. In other words, this Committee has four essential tasks that can be strongly used on litigation. These tasks include:

- 1) To review the reports, submitted by States parties to the Covenant, on the measures taken in Civil and Political Rights progress in each of the states and to provide them with general considerations and recommendations.
- 2) To check the news and information claimed by each Member State saying that a government does not act according to its obligations under the Covenant and try to resolve the disputed issue amicably on the basis of respect for human rights and fundamental freedoms.
- 3) To adopt a general and interpretative attitude towards the rights contained in the Covenant and to take into account the conditions and circumstances of time and place and to issue the notices assisting the Member States to do their best in implementing the rights.
- 4) To investigate the complaints submitted by the individuals whose rights have been violated by a specific state and make recommendations to demand their rights [3].

On the basis for litigation of this generation including the executive and judicial requirements as well as the government's commitments, attention to the differences of this generation with the second one can be helpful. The fact is that although the international community is continually repeating and stressing that all human rights are interwoven in a complicated affiliated legal system, over the past decade, no human rights treaties have been callously and repeatedly violated so much as the Covenant on Economic, Social and Cultural Rights -second generation.

So in the area of the first generation rights, guarantee and protection of civil and political rights do not require complicated breathtaking actions and it has only been limited to activities protecting these rights. Moreover, violation of any right in this generation is easily distinguishable because the violated right has already been specified and clearly defined. And more importantly, the potential litigation of this category of human rights is more consistent and stable than other generations in the domestic legal systems. This is because violating them undermines the country's legitimacy at an international level and results in applying sanctions, threats, and resolutions against the trespassing country. While observing them, on the other hand, leads to establishing extensive relations with other countries and international organizations.

Litigation in the Second Generation of Human Rights

In fact, the legal nature of second generation rights - economic and social rights - can be discussed from two perspectives;

- 1) The validity of these rights
- 2) The ability to enforce them

Basically, the validity of these rights is not seriously doubted and debated in the binding documents, but what is more controversial and debated is the question of ability to enforce them or their applicability. Many believe that social and economic rights, due to their nature, cannot be petitioned. This means that they are incapable of being invoked by judges in the courts and, thus, do not have the legal applicability.

Despite this view on the litigation of the second generation rights, for two main reasons we can say that this view is true only about the less developed economic and social rights;

- 1) Text (words and phrases) of these Regulations.
- 2) Relatively weak international supervisory mechanisms based on documents related to welfare rights.

Certainly an important disadvantage of economic and social rights is the lack of clarity and transparency of terms and conditions in determining their content and limits. Philip Aston considers this a major disadvantage. It is generally accepted that the major flaw of the existing international arrangements for promoting respect for economic rights is the ambiguity of many of the rights included in the Covenant. Conclusion of new treaties or protocols for the present documents can certainly be an effective way to overcome the shortcomings mentioned in the existing regulations related to economic and social rights [4].

One way of strengthening the litigation capability of this generation of rights is recognizing them explicitly as the personal rights appealing within the domestic laws and national qualifications. In each country, Constitution is generally considered as the supreme law. Devoting a chapter, in the constitution, to the fundamental rights or the adoption of the Charter of Fundamental Rights can essentially and seriously affect the recognition and guarantee of human rights. The inclusion, in the constitution of different countries, of civil and political rights as the actionable rights capable of petition is greatly encouraged. When their civil and political rights are violated or threatened by the governments, people can generally complain to the courts according to the provisions of the constitution. The same condition can also be applied on economic and social rights. For example, in France, the provisions of the actionable right to housing have been ratified. Under these regulations, any Frenchman can complain to the

authorities and ultimately to the courts due to the lack of proper standard housing.

All in all, about the shortcomings of the second generation rights litigation, we can say: "The International Covenant on Economic, Social and Cultural Rights, as the main document concerning the second-generation human rights, predicted that the rights recognized in it will be gradually realized. It also requires the States parties to take gradual steps, using the maximum resources under their jurisdiction, towards the full realization of the registered rights. It is noteworthy that this document foresaw no supervisory system to ensure observing the Covenant provisions¹ and never went beyond submitting, to the Economic and Social Council, periodic reports on the measures taken and progress achieved towards the realization of these rights [5].

Litigation in the Third Generation of Human Rights

The most striking fact concerning this generation of rights is that they have litigation potentiality neither in the domestic courts nor in the international communities. Perhaps the main reason for this disability is that developed countries have rejected it. Although the same developed countries e Furthermore, the third-generation rights holders and those required to respect them are not easy to identify because they may be individuals, people or even the governments although the opponents of the third generation rights do not accept people and governments as human rights holders. As a result, the difficulty of determining the holders and obligors of the third-generation human rights has created serious problems for litigation of these rights. In fact, the traditional doctrine of human rights is not contrary to the emergence of new human rights and it illustrates the gradual evolution of human rights theory. But, this doctrine requires, for the third generation of human rights just like the former rights, subjects and objects, i. e., holders and obligators of rights while in the third generation rights, as stated, they are not clearly defined. Furthermore, the key factor that causes this generation to lose their litigation capability is that, unlike the first and second Covenants, they lack the international obligations and are merely manifestos. In short, in the international legal documents on the third generation of human rights, the emphasis is more on the importance of international cooperation than on commitment. So, for the Solidarity Rights, no Covenant was ratified, but in 1982, a pre-proposal for the third International Covenant on Human Rights, including the rights of the third generation, was introduced in the UN General Assembly. In the introduction of this proposal, some of the certain Solidarity Rights are referred to and the importance of cooperation for their realization has been noted.

Conclusion

The first generation of civil and political rights includes fundamental rights such as the right to life; freedom of opinion;

¹. The Economic and Social Council established, in 1985, a committee to monitor the implementation of the Covenant provisions.

of speech; of assembly; security; and judicial guarantee. These rights mostly have a negative nature; it means that their implementation by the right holder must not be prevented by any means. Regarding this generation of human rights litigation, investigation showed that the Covenant on Civil and Political Rights, ratified in 1966 and granted executive power in 1976, is the main basis. Since the Covenant is a binding document, as a result the governments, after the accession, are bound to observe the rights of this generation. Consequently, our hypothesis about the effectiveness of the first generation rights litigation was confirmed according to the evidences above.

The second-generation human rights are economic, social, and cultural rights. On the litigation of this generation of rights, results showed that the supervisory or executive system, selected for them in the Covenant, is a reporting system which is versus the petition (complaint) system considered in the Covenant on Civil and Political Rights. Such a monitoring system is politically less sensitive and largely dependent on the governments' goodwill. The supervisory institution is also only

missioned to provide the Member States with the necessary advice and assistance, and hence, such a system has a function of developing human rights or that of verification. Furthermore, many believe that social and economic rights, due to their nature, cannot be petitioned. This means that they are incapable of being invoked by judges in the courts and, thus, do not have the legal applicability. Distinguishing between "commitment to results" and "commitment to means", another group has considered Economic and Social Rights incapable of litigation.

On the third-generation human rights, the key factor that causes this generation to lose their litigation capability is that, unlike the first and second Covenants, they lack the international obligations and are merely manifestos. In short, in the international legal documents on the third generation of human rights, the emphasis is more on the importance of international cooperation than on commitment and no Covenants have been ever ratified for them. These results also approve our hypothesis regarding the inadequacy of resources to guarantee the litigation of the third-generation rights.

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 encourage the first and second generations, they have not ratified any binding documents for the Solidarity rights