

Lord Kerr Essay Competition 2023

'Is there a human right to live free from poverty? Should there be?'

This essay critically discusses whether a human right to live free from poverty exists and, if not, whether it should. There is firstly an exploration of poverty as an intentional and avoidable consequence of the affluent as opposed to simply an accidental and unavoidable tragedy for those unlucky enough to be born into it. There then follows an analysis of international human rights law to examine what protections exist to alleviate poverty. It is seen that no free-standing right to live free from poverty currently exists. However, the essay argues that poverty violates a range of legally-recognised social and economic rights. Not only is poverty a violation of human dignity, it also violates basic human rights such as the right to participation and to food, health, housing and education. Yet, the essay then discusses how the justiciability of socio-economic rights, at both national and international level, is weak. The essay thus concludes that a free-standing right to live free from poverty is needed, in order to give a meaningful voice to the impoverished and break the perpetual cycle of poverty.

Poverty: 'a misfortune for which the law cannot take any responsibility'?

Poverty. It is a word we often hear, yet rarely do we fully understand the true extent of what it entails. Although poverty exists at different levels - extreme, moderate and relative - all 3 shorten life expectancy. Sen defines poverty as the failure to reach certain 'minimally acceptable levels', particularly with regards to access to adequate and safe water, shelter, healthcare, and basic education. Yet, whilst these are all protected by rights enshrined in international human rights law, the 'right to live free from poverty' is not recognised as such in

international human rights law, despite the fact that poverty has been described as ‘the most serious form of human rights violation in the world today.’ There is considerable debate as to whether a moral right to freedom from poverty does, or should, exist, and the nature of obligations imposed by such a right. However, it is clear that a legal right to ‘freedom from poverty’, in terms of a judicially-enforceable claim, is not included in any of the key human rights instruments at the international or regional levels. The closest that any instrument comes to the recognition of such a right is Article 30 of the Revised European Social Charter, which grants a ‘right to protection against poverty and social exclusion’ though falls short of a free-standing right to live free from poverty.

Instead, human rights exponents have sought to break poverty down into components which courts can adjudicate on. The 1948 Universal Declaration of Human Rights (UDHR) includes many rights that have traditionally been described as ‘civil and political’ on the one hand, such as freedom of expression and privacy, and ‘social and economic’ on the other. Attempts to transform this non-binding declaration into a single binding international bill of rights became caught up in Cold War politics. Western governments argued that economic and social rights were not as enforceable as civil and political rights, and were to be progressively implemented rather than applied immediately. The result is that two separate treaties were adopted by the UN General Assembly in 1966 – the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Although civil and political rights have been employed to challenge particular poverty-related issues before the courts, poverty is more often seen as violating socio-economic rights. Indeed,

it has been said that each of the rights in the ICESCR correlates to a part of the experience of the poor living in poverty. For example, Article 25 UDHR establishes the right to a life worthy of a human being and the right to social security. Rightly, poverty has increasingly come to be seen as a denial of this right, since the non-possession of resources, capabilities, choices, security and power needed to have a reasonable standard of living is impossible for those living in poverty. Poverty also denies the chance to enjoy other human rights, such as Article 35 UDHR, which provides that 'everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing and housing and medical care and necessary social services...'.

Yet, despite the fact that it has been claimed that 'states are responsible for violations of economic, social and cultural rights as they are for violations of civil and political rights,' the legal status of economic, social and cultural rights remains questionable. One of the great obstacles to the full implementation of socioeconomic rights is a feeling of hopelessness and inevitably, a viewpoint reflected in a 1933 House of Lords judgement in which it was stated that 'poverty is a misfortune for which the law cannot take any responsibility'. Although law has moved on from such an extreme view there is still much reluctance to countenance the idea of a legal duty to the poor and, in particular, implementing the incorporation of socioeconomic rights into justiciable rights. This rejectionist approach clings to 3 pervasive myths. Firstly, that poverty is an inescapable social tragedy. Secondly, that lawyers are helpless to remedy poverty in any meaningful way. Finally, that the alleviation of poverty lies beyond the courts and belongs exclusively to the political arena.

As a result, more than 2 billion people worldwide still cannot access basic medicine or sanitation, and some 50,000 people a day die every day due to poverty-related causes. For these people, poverty enforces a perpetual state of dependence just to survive, depriving them of the means to live a life compatible with human dignity. Human rights are centred around the notion of dignity; indeed, it has been said that 'the *raison d'être* of human rights law is the upholding of human dignity'. Poverty is always viewed as degrading human dignity, such as when the negative stereotyping of the poor discourages them from applying for jobs and benefits and thus deters them from taking up their rights. This 'povertyism' creates an underclass of society excluded from participating in political, cultural, public or social activities or accessing the results of scientific and technological developments. Living life on the extremities of society in this way unjustly deprives these individuals of their human dignity, hence it can be said that poverty violates the human right to live in dignity. Yet, these systematic and widespread violations of a large number of human rights are rarely addressed due to the lack of voice that the poor possess in national and international debates and decision-making.

Seen through the lens of human rights, it is clear that poverty thus chronically denies individuals of their civil, political, economic, social, cultural and development rights. One way in which poverty can be eradicated is through recognising the poor as individual right holders. Human rights aim to create a 'safety net' for all individuals guaranteeing their enjoyment of a minimum level of rights, enabling both rich and poor to be full members of society. Human rights exponents thus argue that international human rights, with their underlying moral values

which are universally recognised and reinforced by the force of the law, constitute an ideal framework for reducing poverty.

However, rights-based approaches to eradicating poverty have so far not been able to overcome prevailing neoliberal thinking on development, nor existing structures that characterise poverty as an inevitable harm that billions of people in the world must suffer as 'losers' of a political and economic global order imposed by elites. Though aiming to satisfy basic needs and to ensure freedom from want, international human rights law remains silent regarding the other side of the picture: that the winners of the economic system have no limits on the enjoyment of their rights. Indeed, they have an over-realisation of them, which directly harms the rights of the losers, thus perpetuating the cycle of poverty. Poverty is inextricably linked to affluence – indeed, it is the other side of the same coin. If we have more than our fair share, others will have less. This global economic order 'systemically sustains world poverty.' The affluent have a shared negative responsibility to work toward the eradication of severe poverty worldwide. The fact that poverty can be eradicated at such low cost to the world's affluent makes its continuation especially egregious.

Socio-economic rights aim at a greater level of equality, but the refusal of states to consider them as imposing legal duties have left aspirations at alleviating poverty firmly in the arena of 'charity'. For example, illustrating how the eradication of poverty is still considered a charitable aim rather than a legally-binding one, more than 45 years after the UK signed the ICESCR, it has still not yet incorporated the rights contained therein into domestic law, meaning the government can break its obligations without consequence. This approach ignores the poor as

rights-holders, thereby depriving them of the necessary means needed to change their reality, and instead treats them as right-less individuals who, at best, can only hope to benefit from generous public social security policies. This approach is convenient for global elites, since, with an important sector of the population marginalised, they are able to decide how, and the speed at which, poverty will be alleviated. This enables them to ensure that the methods employed neither compromise their privilege nor threaten structural reform, which would jeopardize their economic interests.

We need a more radical approach. In the words of Nelson Mandela, 'overcoming poverty is not a gesture of charity. It is an act of justice.' The global elite has imposed an economic order which, by design, foreseeably produces avoidable human rights violations on a massive scale. Surely, therefore, the moment has finally come to establish a revolutionary human rights approach to poverty eradication based on the recognition of a *sui generis* right to live free from poverty. Based on interests shared by all of humanity, we can assert a human right to be free from poverty, even if it is currently unenforceable and even if the positive obligations that are correlative to it have not been fully specified and allocated to identifiable duty-bearers. However, although the precise detail of what this right would entail remains underexplored, it has been suggested that it could encompass rights to non-discrimination, to participation, to redistribution of resources and power, to remedy in case of violations, and to resistance to political and economic systems that serve private interests and violate basic rights. Establishing a free-standing right to live free from poverty would also create a public forum for the voices of the impoverished to challenge and, in so doing, enrich the democratic process. Whilst a right to

live free from poverty should not be the only focus of combatting poverty, access to the courts by the most vulnerable in society would play a significant and important role within a broader eradication of poverty strategy. Indeed, one of the most striking features about the impoverished is their strength - the ability to survive in some of the harshest living conditions reflects a tremendous strength and will to survive. Empowering them with a right to live free from poverty will give them a direct way of using their voice to create meaningful change.

Conclusion

In 2023, it is clear that overcoming poverty should no longer be merely a charitable gesture, but an obligation of international human rights law. Poverty is neither simply an accidental 'misfortune' some are born into nor something for which the law cannot take any responsibility. The global elite has created a structure that perpetuates poverty, which violates a range of rights. Only by establishing a right to live free from it can the cycle of poverty ever be broken.

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