

"THE RIGHT TO FUNDAMENTAL DIGNITY – A NEW LAW'S POLICIE IN THE COMBAT OF EXTREME POVERTY"

I) Human Dignity

"All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. "

(Article 1 Universal Declaration of Human Rights, 1948)

The foundation of legal protection of man in the international community – part of the Universal Declaration of Human Rights of 1948 – is the legal recognition of the existence of dignity inherent for human beings. To be born alive is the only pre-requisite necessary to have rights .

From 10 December, 1948 onwards, the respect for human dignity is no longer connected to nationality which is recognized by the right – the concept of citizenship – " the right to have rights " (LAFER, 1988) becomes broader and acquires an international dimension . The citizenship that has nationality as a pre-requisite is the citizenship of a Nation-State.

The Universal Declaration of Human Rights (UDHR) inaugurates a new way of citizenship : a cosmopolitan citizenship.

The International Refugee Law which is one of the three subjects under discussion in the International Law of Human Rights (ILHR) (CANÇADO TRINDADE, 1996), is a good example to illustrate cosmopolitan citizenship. According to the 1st article of the Geneva Convention – 1951 a refugee is everyone who feels threatened with persecution on account of : race, religion, nationality, belonging to a social group or political opinion .

Persecution occurs when two of his simplest rights threaten life and freedom. Someone once persecuted , in spite of having a legal statute in his own country ,come across insurmountable difficulties in the normal application of citizenship. Therefore , the individual sees himself forced to leave his country of origin to seek asylum elsewhere.

If the individuals situation as a refugee is recognized by any other country of the international community, signatories of the Geneva Convention (1951) , the person re-acquires his basic right of citizenship.

It is important to emphasize that once this right is obtained ,the citizenship will be given in a country which is not the asylum seeker's native country or normal residence.

This legal alchemy only became possible thanks to the 1st article of the UDHR of 1948 that categorically affirms the inherent dignity of man.

The implementation of cosmopolitan citizenship, an ILHR principle, also turned into reality by the International Refugee Law – independent of the existence

of a legal link of the citizen with their own country since it can be employed in any other country.

The cosmopolitan citizenship is not linked to nationality. Such a fact has as a consequence the rise of a citizenship that has not as a requisite the legal link to the territory of a Nation-State.

Arjun Appadurai (1996) concludes:

"These disjunctions in the links between space, place, citizenship and nationality lead to various long reaching implications.(...)One of these disjunctions is that the territory and the territoriality are the critical logic basis of the legalization and of the power of state, while the nation conceptions are influenced by political discourses – sometimes linguistic, racial or religious, but rarely territorial. "

The cosmopolitan citizenship established through the ILHR chooses as a cornerstone of its system: dignity of human being.

Dignity of the human being is the manner to declare the difference of the human being. . Men and women are able to choose what to do, because they are free.

In all the universe only human beings have free will . For this reason they have been able to build an ethical world, different from nature.

Freedom makes men and women special beings in the universe.

There is dignity because human freedom must be respected.

Taking as a reference for our analysis the Brazilian jurist Miguel Reale's tridimension theory of Law, man dignity is the value that guides the creation of the ILHR.

It is important to clarify that it is not the person, but the value, that should be preserved ,but the dignity that is inherent to him.

In Miguel Reale's (1999) words : "man is the main source of all values or source of values."

The individual, besides being directly connected to the concept of value links himself , also to freedom, since there only is a possibility of choice when there is freedom and the act of valuing is an integral part and essential for freedom.

Miguel Reale claims:

"Values would not exist if there was not the possibility of free choice amongst the intrinsic alternatives to the central problem nor could we talk about freedom if there was not the possibility of option and real participation of the values and valorizations" (REALE – 1999).

II) Right to Fundamental Dignity

"The dignity of human beings is inviolable and it is the duty of every public authority to respect and protect it" (Fundamental Law of Bonn)

This article from the historical Fundamental Law of Bonn is perhaps the only article in the history of western constitutionalism which makes obvious the necessity of protection of man's dignity.

Although the Fundamental Law of Bonn is obvious, it does not indicate the means to operate this protection.

Our conclusion, so far, is that the ILHR concept of dignity works as a value and is able of gathering numerous people involved in it, however it does not exist in the ILHR set of rules nor a legal tool that has the aim to transform dignity into a right with a minimum level of effectiveness.

It is about time there was a change, the ILHR legislation phase has ended and the implementation stage started in 1993 at the World Conference of Human Rights in Vienna.

Eleven years have passed since this directive, and the UN have just been able to watch with astonishment and impotence. The transformation of personal dignity into a right is an imperative which helps the fight towards abolition of all forms of poverty.

To say that the poverty situation is a violation of human rights, is to put it very simply - an obvious statement.

We should press to improve a new right which has the possibility of being evaluated in the international community as a whole and works as an indicator of civility

I can better explain myself where the right to fundamental dignity is being respected, we can guarantee that it is an area with concrete possibilities of development, wherever the right to fundamental dignity are not respected we can assure that poverty has not been abolished.

In order to transform dignity into a right it is necessary to create strategies capable of giving this right more strength and the possibility of evaluation.

In this way we see the right to fundamental dignity as a multidimensional right which combines four other rights:

- 1- adequate food
- 2- drinkable water
- 3- shelter
- 4- basic health cares

These four rights constitute the right to fundamental dignity.

At the moment, in the UN system these rights are considered inextricably related, so this joint declaration by the special rapporteur on adequate housing, right to food and right to the highest attainable standard of physical and mental health, declared at the "Third Water Forum" (Kyoto, 17 March 2003).

"Water, being an essential resource for life, is one of the most fundamental elements for survival and inextricably linked to the rights, to adequate housing, food and the highest attainable standard of physical and mental health" (...)

Although there is an essential connection, recognized by the special rapporteurs, such rights are not analyzed and studied as a whole.

This is a strategic mistake in the approach to man's dignity protection because it destroys the rights transforming them, showing values only in a rhetorical way, making it difficult to take effective action in order to guarantee the enjoyment of these rights.

The right to fundamental dignity aims to offer a threshold between the situation in which man has the conditions of exercising freedom and those situations in which such exercise is impossible.

The poem "The Animal" by the Brazilian poet Manuel Bandeira, indicates an impossible situation of choice.

THE ANIMAL

Yesterday I saw an animal
In the filth of the yard
Scavenging remains for food scraps

When it found something
It did not examine or smell
It swallowed it voraciously

The animal was not a dog
Neither a cat
Nor a rat
The animal, my God, was man

The man or woman that – for any kind of reason – could not exercise their capacity of choice have lost their dignity. Poverty is one of these reasons.

III) Poverty and Capacity : right to fundamental dignity as a pre-requisite of the exercise of capacities

The concept of poverty which is linked to lack of income is a very limited definition. In this study we chose the definition of the Indian economist Amartya Sen ,to whom , poverty means "deprivation of capability". The theoretical proposal of development as freedom tackles the subject of development as a perspective of the governed and not of the government in the process of extension of individual freedom in order to make development effective.

Amartya Sem (2000) affirms:

"The development consists of the elimination of freedom deprivation which limits people's choices and opportunities to carry on in the social order".

"The connection between individual freedom and the accomplishment of social development goes far beyond the constitutional list, however important it might be. "

The positive fulfillment people achieve , is influenced by financial opportunities, political freedom, social power and basic needs , such as good health, basic education, incentive and improvement of initiative.

The institutions that provide these opportunities are influenced by the exercise of people's freedom, which helps in the social choice and public decisions that drive the progress of these opportunities.

According to Sen's theory, development is a consequence of an extending process of freedom changes . It has to be said that freedom extension generates development and the aim of any public politics that has development in mind which is the extension of freedom.

According to the development outlook, like freedom and poverty is defined as "capability deprivation". The group of capability of a person is created by the enjoyment of instrumental freedoms, which are :

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| 1- political freedom | 2 – financial facilities |
| 3- social opportunities | 4- anonymity |
| 5-protection | |

The lack or shortage of one of the above deprive mankind from using his capabilities.

The short story about Kader Mia illustrates this point :

" I was about 10 years old . One afternoon I was playing in my garden in Dhaka, which is today Bangladesh's capital, when a man came through the gate, shouting desperately and bleeding heavily. He had been stabbed in the back.

It was a time when Hindus and Muslims killed each other in the group conflicts which preceded independence and the division of India and Pakistan .The stabbed man was a Muslim worker who had come to do a job in the house next door for very low pay – and had been stabbed in the street by Hindu trouble makers.

While I was giving him water I asked the adults for help and some time after, while my father was hurriedly taking him to hospital, Kader Mia would not stop telling us that his wife had told him not to go to a hostile area, during such a troubled time. But Kader Mia had to go in search of work and some money because his family had nothing to eat. " (SEN ; 2000)

The impossibility of implementing some instrumental freedom, financial facility and protection, deprived Kader Mia from his choice of "good life" (the exercise of capability).This incident ended up with him dead.

This account is a classic example of poverty, not as a lack of money, but as a deprivation of capability.

We defend the idea that there is a pre- requisite for the exercise of capability, and that is – the right to fundamental dignity.

If we imagine the improbable hypothesis that an individual has not satisfied the right to adequate food, water, housing, and basic health care. Even if this person had access to political freedom, financial facilities, social opportunities, anonymity and protection , they would not have the physical ability of enjoying them.

I am not defending the idea of dividing human rights. I am just showing that there is a pre-requisite to the exercise of capabilities. I mean, if poverty is a deprivation of capabilities , then development is the process that eliminates deprivation.

There is an enormous amount of deprivation and we have to dare to set the boundaries of which basic grounds offer the best possibilities of practicing freedom – according to Sen – to develop himself. As he claims : development is freedom.

IV) The legal rule of the right to fundamental dignity : Non- violence as a Principle of guidance and Development as a value.

Human being is the reason for any process of development, as it is well explained in the Declaration on the Right to Development "people are the central subject of development and should be the active participants and beneficiaries of the right to development." (Article 2 Declaration on the Right to Development – 1986)

In the prospect of abolition of poverty, the right to fundamental dignity is a legal rule which came to life and became significant through the value : development .Development is the duty – to be of this legal rule .

And what is development ? Following our reasoning , development is the action or a process that eliminates the deprivation of freedom and consequently is the best means towards abolition of poverty. Perhaps the only one.

Conceiving the dichotomy poverty versus development . Poverty is a strong term that is characterized by the existence of deprivation , and development is a weak term characterized by a situation in which deprivation is eliminated .It means that development must be clarified as a non-poverty state.

In this sense the following declaration of the Copenhagen World Leadership (1995) signed by the heads of government :

" Our challenge is to establish an example of social development centered on people which guides us now and in the future to build a culture of cooperation and partnership, and to answer our immediate problems of human deprivation".

If development is the value that justifies the creation of the right to fundamental dignity then the legal principle that guides the creation of this right, is non-violence.

This is because the ILHR is a protective law which essentially aims to protect man and woman against all forms of violence.

In a situation of extreme poverty, violence is revealed in the absence of dignity. Robert MacNamara (World Bank ex-president) claims :

"A type of life marked by malnutrition , illiteracy, disease , unhygienic living conditions, high mortality rates and low life expectancy , is much lower than any reasonable definition of human decency. "

The aim of the right to fundamental dignity is to eliminate the problems in the process of development. In order to cope with the challenge of abolishing extreme poverty in the 21st century and not to postpone this task until the 22nd century.

It is essential to set up a new and vigorous within the scope of the International Law of Human Rights, capable of indicating solid and efficient actions .The creation of the right to fundamental dignity is the first step in this direction.

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