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## THE VITAL MINIMUM AS A GUIDING CRITERION OF DISTRIBUTIVE JUSTICE IN THE CONTEXT OF HUMAN RIGHTS THEORIES AND THE THEORIES OF JUSTICE OF RAWLS AND SEN

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**Abstract:** Using the term “Justice” can lead to polysemy. However – mainly in the Anglo-Saxon world – there are connotations of the term that refer to aspects of distributive justice: How to distribute burdens, obligations, rights and prerogatives within society in order to refer to a “fair” distribution of responsibilities. Using a criterion or metric for said distribution becomes relevant. John Rawls and Amartya Sen have been two reference authors when dealing with the topic related to the metrics of justice and have developed their approaches in a very complete manner. Besides; In the context of the theories of Human Rights and Fundamental Rights, the concept of *well-being* and *quality of life* linked to the *minimum vital income* connects in terms of material content with the indicated distribution criteria. For both domains, a significant aspect is the object of each model; Both deal with similar problems, but start from different budgets. The thesis that I maintain in this essay is that there are points of agreement that allow us to present a proposal that links the guiding criteria of Theories of Justice and Theories of Human Rights and Fundamental Rights so that they form part of a Constitution.

**Keywords:** distributive justice, theories of justice, vital minimum, quality of life, human rights.

## METHODOLOGICAL NOTE

The research approach is philosophical legal/formal-legal. The approach is qualitative; the main approach: Hermeneutics and the Case Study; The sample consists of the analysis of the SCJN criteria; information contained in ECLAC reports, Ibero-American Federation of Ombudsman, and ILO; as well as the in-depth interview with specialists in Social Rights. (Triangulation of techniques: Documentary/Case study/Interview)

The methodology used to develop this research is based on the descriptive analytical

method; with an inductive and comparative approach, focused on the particular analysis and contrast of two models: Theories of Distributive Justice and Social Rights within the Theories of Fundamental Rights.

From the method of application of the Law, with respect to the criteria of jurisprudence, the analysis to be used will be Jus Naturalist and Realist.

Being a work of Legal Philosophy and Theory of Law, this work is basically based on documentary sources, doctrinal and normative analysis, it includes the compilation of bibliographic, jurisprudential and legislative data. Regarding the case study, the resolutions of the SCJN most relevant in matters of Social Rights that involve terms such as *quality of life*, *minimum vital* in order to obtain from there the essential categories and their components.

The components and categories that, in the domain of Political Philosophy, concepts such as *quality of life* or the metric used to establish the respective reference are analyzed, in order to precisely identify the range of scope of said components. The contrast of concepts and categories will be carried out so that the components that correspond between both domains can be identified.

## PRIOR CONSIDERATION: IDENTIFICATION OF THE SCIENTIFIC PROBLEM; TWO THEORETICAL MODELS

These are two theoretical models: Theories of distributive justice, on the one hand; and the theories of human rights or fundamental rights, on the other. For both models, a significant aspect is the object that each one has; Both deal with similar problems, but start from different assumptions, hence the difficulty in justifying a theoretical framework. Cruz Parceró states “a solution would be to adapt and integrate these two types of theories, although it is not

easy to determine how these theories could be combined or complemented” (2017:26); The appropriate way, as a hypothetical assumption, is the integration of both models based on the common components that relate them and as Cruz Parceró himself says “The construction of this integral theory would in any case be a challenge for the future of philosophy.” politics, ethics and philosophy of law.” (2017:27)

Jurist Mario Álvarez Ledesma maintains that when reference is made to human rights, we are basically referring to a theory of justice. “A useful way of characterizing human rights...is to understand that when reference is made to them, we are fundamentally referring to a theory of justice.” (2015:40).

This author explains that by establishing a series of paradigmatic criteria “—such as human rights,...whose objective is to determine what must be considered good and correct in society. It is, therefore, a speculation, mainly, of an ethical-philosophical order.” (2015:40).

Álvarez also states that the theory of human rights is deontological, which allows us to understand a moral conception of the human person; of the individual; by conceiving it as endowed with a legality, which is already natural; moral or historical; depending on its foundation; conceives them as valuable in themselves, and therefore their protection and promotion is the origin and reason for being of the State:

—that is why they are a criterion of political legitimacy—, and that result,...the criterion of justice of social institutions.... [I]ts compliance or non-compliance can be predicated on a public institution (legal, health, educational, etc.) acting with or without justice.” (2015:41).

He continues – and this seems relevant to the thesis that is supported in this work— “three [are] the characteristic theoretical assumptions of human rights: moral autonomy of the person, dignity and universality of

rights.” (2015:41).

This means that the conception of the human person in a theory of human rights is as a free and equal being, endowed with moral rationality that allows him to choose what is right or wrong; People are ends in themselves, of such a condition that gives rise to their rights. Thus, theories of human rights are individualistic, different from selfishness or personalism and:

Given that the ownership of goods comes not from a positive normative system but from an ethical or ideal normative system, its scope of validity will have to be universal, regardless of whether the norms of that ethical or ideal system are recognized by the citizens or not. positive law systems. (MIA Ledesma, 2015:41).

But it must be noted that Álvarez himself recognizes that the predicates of human rights theories, as well as their foundation, are complex aspects.

In this sense, it is appropriate to highlight that models or theories of distributive justice, such as those proposed by Rawls and Sen, refer to the need to establish metrics so that people can develop their project and/or *quality of life*.

The *minimum vital* precept that, without being included, is inferred from the Political Constitution of the United Mexican States and that the Supreme Court of Justice of the Nation has partially interpreted (2007 and 2011) deriving it from articles 1, 3, 4, 6, 13, 25, 27, 31 section IV and 123 of the Political Constitution of the United Mexican States and which conceives it as a budget of the democratic State; It is an element that affects another concept: *decent and decent quality of life*, which is the object of study of the models or theories of Distributive Justice; Is this precept the one that links the theories of Human and/or Fundamental Rights with the theories of justice; And, does it work as a new parameter to consider for distributive justice metrics in specific cases?

## CONCEPTIONS OF HUMAN RIGHTS LINKED TO SOCIAL AND GLOBAL JUSTICE

Currently, the conceptions of human rights imply a different way of addressing the issue of social and global justice; By different, I mean a different way of approaching this category than the so-called Theories of Distributive Justice traditionally do. In reality, to date, there have been few works that have linked the topic of Human Rights and Theories of Justice. Apparently, this is due to a disconnection between both theoretical models:

Despite the enormous importance of these two conceptions, there have actually been few experts who have drawn attention to the fact that there is a more or less large disconnection between theories of justice and theories of human rights... in particular the disconnection of the theories of justice with the idea of social rights.(Cruz 2017, 26)

Apparently, these theories have been developed in parallel in different environments without clear points of contact, continues Cruz Parceró; in such a way that if a person is interested in aspects of social justice they could opt for one or another theoretical model.

This is precisely where Rawls' approach *A Theory of Justice* ([1971] 1999) and *Justice as Equity* (1999), as well as Sen's *Approach to Capabilities* (1993 and 1999) and *The Idea of Justice* (2009) allow draw a line of connection between theories of distributive justice and human rights, each from their own characteristics, so that the relationship between human rights, specifically social rights and theories of justice, can be linked.

A theory of justice could be identified with a highly abstract model, but the idea of *social rights* or *welfare rights* presupposes that they are the result of some criterion or distributive model; that is, a theory of justice.

This way, the focus could be directed

towards the way in which a theory of justice accommodates human rights in its composition and social rights by granting them recognition, clearly establishing that the reference to human and social rights implies more than just indicating the existence of basic capabilities, but rather to normative conclusions derived from those capabilities and that must be capable of being effectively materialized as rights.

A theory of justice starts from a basic premise: all human beings have basic rights that include, to an indispensable extent: food, housing; health and education, that is, a minimum *quality of life*.

There are two minimum components that theories of justice must contain: a) the scheme of freedoms and obligations within which the person operates in society and b) the scheme of distribution of their income and other benefits. Regarding the second aspect, I consider income to be the elements that imply "direct distribution of taxes, transfers and subsidies (...) productive resources (...) consumption of personal items or goods (material goods, services, self-respect, well-being, knowledge, health, mental or physical aptitudes, etc.)" (Caballero, 2006: 1). There are some other options for what a theory of justice must consider; Some propose a scheme "of freedoms and primary goods" (Rawls, [1971] 1999: 54), others believe that "the greatest scheme of freedoms" must be privileged (Nozick, 1974: 85) or they propose a "model focused on capabilities." (Sen, 2009:19,64).

The approach proposed in the present work involves delving into the type of relationships that two types of theories that "compete in orientation of how we must evaluate...our institutions, our social order and the design of alternatives" (Cruz, 2017:39) to guide this link between both types of theories and open the space for analysis of the call to the variable of social rights.

Precisely in this aspect, the dogmatic content of deliberation in research can be materialized from Robert Alexy's theory of fundamental rights when referring to norms, the distinction between rules and principles.

Fundamental Rights: They can be rights to something; rights to negative actions/Rights to positive actions or benefits, freedoms, powers.

[T]hey are rights of the individual against the State to something that – if the individual had sufficient financial means and a sufficient supply was found on the market – could also be obtained from individuals. When we talk about fundamental social rights, for example, the right to social security, work, housing and education, we primarily refer to benefits in the strict sense. (Alexy, 2007:482)

It is necessary to decompose it into the different relationships that are implicit in the concept. Legal-Positive or Ethical-Political. It must be remembered that there are rights that are rules or guidelines and rights that are principles. The principles are configured in an open way; The application conditions are specific. The guideline deontically qualifies the achievement of a certain goal or state of affairs.

When we talk about social rights we must distinguish whether it is a right in a broad sense or in a specific sense; Every right in the broad sense must be analyzed in terms of the legal relationships it implies. Norms of action *versus* norms of purpose.

At the present time there is no research that establishes the bridge or connection between the two aforementioned models of Theories of Justice and Theories of Human Rights and/or Fundamental Rights from the perspective of social rights. The problem has been identified or suggested by some specialists, but has not been developed. There are multiple elements to carry out a documentary investigation with these characteristics.

This is a real problem since it has been the

subject of interpretation in the Supreme Court of Justice of the Nation (SCJN) and derives from a precept contained in the constitution that to date requires determining its scope. It is scientific, at all times, which can be developed through conceptual categories such as those already mentioned: *Theories of Justice* and *Human or Fundamental Rights*. It is relevant insofar as the problem of social inequality is a topic present today and through the resolution of cases raised, the door has been opened to reflection on the contents of these human and social rights. The contribution made to this problem from the speculative area is timely. Solving it can give elements or tools to different operators of the legal system on the content and scope of this right linked to the category that derives from it: *Quality of life*.

For some years, about 50, legal and political philosophers have argued about what is the appropriate metric for justice. In that sense, they have tried to answer the question “what must we observe when we evaluate whether one state of affairs is more or less fair than another?” Must we evaluate the distribution of happiness? Or wealth? Or opportunities in life? Or some combination of these and other factors?” (Robeyns I., Brighouse, 2010:13)

In this sense, Roemer's approach to the richness of contributions to theories or models of distributive justice becomes relevant:

[Translate a philosophical view on distributive justice into concrete social policy such as tax policy; or outline a set of feasible social policies that are consistent with that point of view. These services are certainly valid, perhaps even indispensable. In any case, I do not believe that the economists' way of thinking has produced or will ever produce a profound new understanding of what distributive justice is. The key new concepts in the last thirty years of distributive justice theory – primary goods, functionings and capacity, responsibility in its various forms, procedural justice versus outcome justice, midfare – have all come

from a philosophical way of thinking.  
(Roemer,1996:3) *The translation is my own.*

## THE CRITERION PROPOSED BY RAWLS

As explained in the previous section, Rawls's approach to primary goods and Sen's approach to capabilities are two of the most relevant answers to these questions. But what are primary goods? Primary goods according to Rawls' approach are those goods that anyone would want regardless of the type of preferences they may have. These are means or resources, in the broad sense; In this approach, the possession of said resources must be considered without necessarily focusing on the abilities of the possessors and what they can do with them, but it must be understood that their possession is justified to the extent that society is conceived as a system of cooperation. mutual, governed by institutions. In his 1971 work – already referred to – Rawls explained the following:

[Suppose that the basic structure of society distributes certain primary goods, that is, things that every rational being is presumed to desire. These goods normally have a use, regardless of a person's rational life plan. For the sake of simplicity let us assume that the main primary goods available to society are rights, freedoms, opportunities, as well as income and wealth. ... These are the primary social goods. ([1971] 1999:59)

For Rawls there are other primary goods of an intangible nature such as health, vigor and imagination, as well as the conception of self-value, but he believes that these goods are not directly linked to the basic structure of society; since this is what provides the space for the allocation of primary goods.

Let us then imagine an initial hypothetical agreement in which all primary social goods are distributed equally: everyone has similar rights and duties, and income and wealth are shared equally. This state of affairs offers

a parameter for judging improvements. If certain inequalities of wealth and differences in authority made everyone better off with respect to their hypothetical initial situation, then they would agree with the general conception.

Later in the development of *A Theory of Justice*, he added: "they are social goods given their connection with the basic structure; freedoms and opportunities are defined by the rules of larger institutions and the distribution of income and wealth is regulated by them." ([1971] 1999: 80) Rawls's theory of justice is interested in the range of equality and inequality that a basic structure of society can generate. Within this structure, individuals act so that the allocation of certain goods is assured to each participant. A man is happy when he manages to approach his life plan, according to Rawls. He understands *good as the approximation of rational desire*. Each individual has a rational life plan, designed according to the conditions that confront him or her; This plan must allow for a harmonious satisfaction of your interests; It schedules activities in a way that rejects those that are less likely to occur or do not allow for inclusive achievement of objectives. Thus given the options, a rational plan "is one that cannot be improved; There is no other plan that, taking everything into consideration, is preferable." (Rawls, 1971[1999]:80) The basic structure of society distributes primary social goods; these arise from institutions, that is, from legal powers and the space of inviolability of the person.

Primary goods are strongly linked to the two principles of justice.

These principles apply to what I will call <<the basic structure of society,>> that is, to the way in which the main social institutions fit into a system. These institutions assign fundamental rights and duties, and by working together they influence the division of advantages that arise through social cooperation. ([1971] 1999:85)

And it characterizes them in five headings:

- a) First, the basic freedoms established by a list, for example: freedom of thought and conscience; freedom of association; that defined by the freedom and integrity of the person, as well as by the rule of law, and finally political freedoms;
- b) Second, freedom of movement and choice of occupation against a background of diverse opportunities;
- c) Third, powers and prerogatives of positions and positions of responsibility, particularly those of the main political and economic institutions;
- d) Fourth, income and wealth; and
- e) Finally, the social bases of self-respect. (1999:362)

Each of Rawls's two principles of justice regulates different primary social goods of the rubrics. The initial principle regulates the first set of goods: freedoms. The principle of equality of opportunity immersed in the second principle regulates sets two and three of the rubrics, the principle of difference, also immersed in the second principle, regulates the fourth; and the fifth is explained by Rawls himself separately.

The question that arises is why Rawls identifies these *primary social goods* as the appropriate metric for principles of justice that govern the basic structure of society? One of the possible answers is that the primary social goods approach satisfies some of the necessary conditions for the metric of interpersonal comparisons appropriate for principles in this matter.

The theoretical model of Justice as equity generates a political conception based on the fundamental idea of society as an equitable system of social cooperation and the intention is that this conception can gain supporters through an overlapping consensus.

## THE CRITERION PROPOSED BY SEN

On the other hand, the *capabilities approach* has been developed most prominently by Amartya Sen. In this approach, we do not look so much at what the person possesses, or expects to possess, external goods; but rather what kind of functionings they are capable of achieving. Sen states that an adequate theory of well-being must account not only for the primary goods that people respectively possess, but also for the relevant personal characteristics that govern the conversion of primary goods into the person's ability to promote its goals. "What matters to people is that they are capable of truly achieving functioning; that is, the life they really manage to achieve." (Sen, 2014:74)

The concept of *functioning* becomes relevant. "reflects the different things that a person can value when doing or being; varying from the basic (being adequately fed) to the very complex (being able to take part in the life of the community)." (2014:75) However, when making interpersonal comparisons of well-being, one must find a metric that takes into consideration the concept of *functionings*, as well as the consideration that it is not enough to achieve a particular *functioning*, but that we must incorporate "the freedom to manage a standard of living that one may have reason to value." (2014:76)

Functioning through capabilities allows us to move beyond purely quantitative criteria to establish well-being indicators:

the use of variables focused exclusively on the economic dimension (income and material goods) ... the process of converting resources (a bicycle) into valuable functions (mobility) is mediated by capabilities, which are considered the "precise space" and central axis of the approach (Deneulin and Shahani, 2009: 42)." (Mercado, CG, & Adarme, XV, 2016:111).

Amartya Sen states at the beginning of his work *The Idea of Justice* that "what moves us,

reasonably, is not the certainty that the world falls short of being completely fair – which few of us expect – but that there are clearly remediable injustices around us.” of us that we want to eliminate.” (2009: vii) In that sense, Sen relies on some passages from Charles Dickens’ *Great Expectations* to exemplify how in the world where children exist there is nothing as finely perceived and as finely felt as injustice. He mentions that – in his opinion – the strong perception of manifest injustice is not exclusive to the world of children, but also applies to the world of adults.

He continues in the preface of this work stating that the above becomes evident in our daily lives when we feel upset when experiencing inequitable situations or being subjugated. Injustice is felt not only at an individual level, but it is possible to perceive it on a larger scale, in what he calls “a diagnosis of injustice in the broader world in which we live.” (Sen, 2009: viii). He uses three examples: that of the Bastille in 18th century Paris, that of Gandhi challenging the English empire and that of Martin Luther King in the United States of America; and highlights how by acting in these events those who participated in them, in doing so, did so to modify the status quo. In none of the three cases was there an attempt to achieve a *perfectly just world*, but what they tried to do was eradicate injustice within a possible range.

In Sen’s project, the place of the conception of justice is occupied by a sense of injustice. The defense of principles of justice in a prioritized manner represents a difficulty for this author, for this reason he approaches the topic of justice from its opposite. He thus outlines his approach regarding the fact that approaching the issue of justice and injustice must not be done from a transcendental position but from the perspective of a particular state of injustice that can be corrected or repaired in a specific context.

The identification of reparable injustice is not the only thing that motivates Sen to reflect on what is just and unjust in his work, but also the central role played by thinking about a theory of justice. The above is because the *diagnosis of injustice* will sometimes be the starting point of your reflection; as will trying to answer the question why it is necessary to have a theory of justice.

Sen’s reflection on justice finds its origin in the idea of equality. First as a criticism of the different prevailing conceptions of equality: the utilitarian, the libertarian and the Rawlsian, to later adopt the form of a more complete theory of justice supported by its approach to capabilities.

Already in 1979 in his Tanner Lecture on Human Values, entitled *Equality, Of What?* at Stanford University, speaking on the topic and posing the question of what? Referring to equality, he points out that “an adequate theory cannot be built – yet – on the combined basis of the three” (197) referring to three types of equality, *utilitarian equality*, *equality of total utility and Rawlsian equality*. It is important to highlight how it refers to an adequate theory and its analysis in that work limits it to the idea of equality. It is inferred that he refers to a theory of justice, especially by concentrating his criticism on the utilitarian model and Rawls’s model, but his reflection is supported by the idea of equality: “That need was in the deepest background of the concept.” justice, which, in the most common intuition, inevitably brings with it the idea referring to some type of symmetry, balance, proportion or... equity, *aequitas*, with which *aequalitas*, equality, has a direct relationship.” (Álvarez, 2012:78)

He mentions in this conference that he will try to present an alternative formulation of equality that in his opinion deserves more attention than it had received up to that point. Sen has stated that “every normative theory



of social arrangements that has, at all, stood the test of time, seems to require equality of something.” (Sen, 1980:26)

An aspect that is pertinent to point out is the distinction that Sen makes between the logical element and the political philosophical element when referring to equality and justice.

In his analysis of these concepts, it is very common for him to resort to exercises in economic science and mathematics to support his statements, to later take the leap and make a consideration of an ethical or moral nature: Social and political equality in a normative sense, not descriptive, is a controversial concept. Aspects such as the exact notion of the term equality, its relationship with the term justice, the measurement of the ideal of equality and its status with respect to a comprehensive theory of justice are relevant to better understand the scope of the term.

The terms equality, equal and equally imply a qualitative relationship.

### **A. Human and Fundamental Rights and the Supreme Court of Justice of the Nation**

Finally, Human and Fundamental Rights, as well as the theories that refer to them link them to the dignity of the person, are the positive, immediate and vital projection of the same, they constitute the condition of their freedom and self-determination. Legal duty means the existence of a valid norm that orders certain behavior. From a material perspective, there is identity of content in the theories of distributive justice, as in the latter.

The Supreme Court of Justice of the Nation (SCJN, Mexico) and it is under review 1780/2006 and 811/2008, resolved by the First Chamber, the existence of the right to the *vital minimum* as a limit for the tax legislator in the imposition of taxes, while the Second Chamber, specifically in the protection under review 1301/2006, determined that the ordinary legislator cannot impose contributions on

those who receive the minimum wage, as remuneration barely sufficient to cover the needs of those people.

The first chamber of the Supreme Court of Justice has prepared considerations that recognize the existence of a *vital minimum*; but they have referred primarily to tax aspects; They do not conceive the *minimum living wage* or income as a human right or as an effective resource against poverty. They deduce and refer to it indirectly, when elaborating arguments about contributory capacity: “you cannot impose contributions on those who receive the minimum wage, as remuneration barely sufficient to cover the needs of those people.” (2011)

In the jurisdictional deliberation, The *Vital Minimum* has been interpreted as a projection of the principle of tax proportionality, and thus is assimilated as a guarantee for people; Some rubric has been outlined: it must respect a free or reduced threshold of taxation, it must correspond to the resources necessary for people’s subsistence, “so the imposition of taxes is not constitutionally legitimized on that indispensable minimum.” (2011)

However, they argue something paradoxical:

It is not valid to maintain that the principle of contributory capacity, through the recognition of the right to the vital minimum, demands that a general exemption be necessarily incorporated into the tax, or, a deduction that is also of a general nature,” (2011)

Therefore, it would seem that they are tax considerations that peripherally or residually refer to the right to the *vital minimum*, by conceiving or identifying it with the possibility that the person will not see their assets affected except to the extent that they have authentic contributory capacity and, “evidence having resources that exceed the minimum threshold with which the most basic needs are covered,” (2011)

The Mexican Court maintains, “The right to a vital minimum must not be considered solely as a minimum for economic survival (article 31, section IV, constitutional),” it elaborates and establishes that it must also be understood as one that allows “the free existence and dignity referred to in article 25 of the Constitution of the United Mexican States (by regulating the effective participation of all citizens in the political, economic, cultural and social organization of the country).” (2011) It must also be linked to the content of section VIII of section A of article 123 of the Constitution, in the sense that the minimum wage will be exempt from embargo, compensation or discount. All of the above as interpretive criteria.

This, continues the SCJN, “aligned with what is established in international conventions, which reflect the projection that the State must have to guarantee that the citizen can obtain the necessary elements to have a dignified and decent *quality of life*,” (2011) as They are the American Declaration of the Rights and Duties of Man and the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights.

Taking into consideration, the aforementioned aspects, the SCJN remains silent regarding other aspects of similar relevance and linked by their material content to the concept of *vital minimum* such as: equality of opportunities and permissible economic and social inequities, as well as others related to the common good., preservation of culture and sustainability, which are also part of the constitutional order and that could be addressed in secondary legislation.

Although in the precedent of May 2007, the first chamber of the SCJN, when resolving the review 1780/2006, “Right to the vital minimum in the Mexican constitutional order” established:

...of the systematic interpretation of the fundamental rights enshrined in the General Constitution and particularly of articles 1, 3, 4, 6, 13, 25, 27, 31, section IV, and 123...requires that individuals have as a starting point such conditions that allow them to develop an autonomous life plan, in order to facilitate the governed to actively participate in democratic life... consists of the determination of a minimum of dignified and autonomous subsistence protected constitutionally... coincides with the competencies, basic conditions and social benefits necessary for the person to lead a life free from fear and the burdens of misery, in such a way that the object of the right to the vital minimum covers all the essential positive or negative measures to prevent the person from being unconstitutionally reduced in their intrinsic value as a human being due to not having the material conditions that allow them to lead a dignified existence. (2007)

Mexican law through jurisprudence has established—in a non-determinative, but rather inconsistent way—the meaning that links dignity of the person through a *vital minimum*. This in terms of the jurisprudence of the Plenary of the SCJN: “Right to the vital minimum. Its content transcends all areas that provide for state measures that allow respect for human dignity,” it states that:

“...it also recognizes that the right to the minimum vital transcends both fiscal and labor matters, and encompasses a set of state measures of various kinds (positive and negative actions) that allow respect for human dignity under the conditions prescribed by article 25 constitutional, taking into account that this right not only refers to a minimum for economic survival, but also for the free and dignified existence described in the dogmatic part of the Federal Constitution, which in terms of its article 1, is consistent with international instruments that are the basis of human rights recognized by the Supreme Law.”(2013)

Avendaño González mentions that the right to the *vital minimum*:

...is not limited to tax matters and is projected on the need for the State to guarantee the availability of certain benefits in terms of... vital assistance, assume the task of removing economic and social obstacles that prevent the full development of the person and the effective participation of all citizens in the political, economic, cultural and social organization of the country. (2021: 112)

The Mexican court has ruled under the headings “Human dignity. Definition” and “Human dignity. Its nature and concept”, has pointed out that “human dignity is the origin, essence and end of all human rights”, as well as “a supreme value, by virtue of which a unique and exceptional quality is recognized in every being. human for the simple fact of being human, whose full effectiveness must be fully respected and protected without exception...” (2011)

In terms of the Isolated Thesis issued by the First Chamber, under the heading “Human dignity. It constitutes a legal norm that enshrines a fundamental right in favor of people and not a simple ethical declaration.” Which provides in its conductive part that:

“Human dignity is not identified or confused with a merely moral precept, but is projected in our system as a circumstantial legal good for the human being, deserving of the broadest legal protection,... a legal principle that permeates the entire system, but also as a fundamental right that must be respected in all cases, whose importance stands out as it is the basis and condition for the enjoyment of other rights and the integral development of the personality....a legal norm that enshrines a fundamental right in favor of the person and by which the constitutional mandate is established for all authorities, and even individuals, to respect and protect the dignity of every individual, understood - in its most essential core— as the inherent interest of every person, by the mere fact of being one, to be treated as such

and not as an object, to not be humiliated, degraded, debased or objectified” (2014)

According to the criteria that Rawls postulates, the constitution must establish a general status of citizen equality and must achieve political justice; but in the interpretation proposed by the Mexican Court, the scope of the *minimum vital precept* seems to fall short.

### **B. A constitutional aspect**

Understand the constitution only from its value or force with respect to other norms; That is, as a fundamental norm of the legal system, superior and higher compared to the rest of the laws, it is an incomplete approach; it places the analysis on a merely formal level. The above implies dismissing its content. By maintaining only, the fundamental legality of a State, attention is not being paid to the material aspect, which implies reality.

A constitution is in turn a form that covers reality. “Understanding the constitution this way implies discussing the constitution in a material sense, taking into account the matter or substance of which the constitution is made.” (Garrorena, 2011:76).

The idea that ordinary laws can be more decisive even than the constitution itself. And that is where the aspects that the metrics and composition of the various models of distributive justice become relevant since they allow the introduction of material and technical considerations into the discussion on the constitutional format, such as those already mentioned: metrics, aggregation and priority, among others.

The approach is very simple. From a category called constitution, understood in a heterogeneous material sense in terms of the various sources that may contain it: Constitutional precepts, constitutional laws, general laws, constitutional jurisprudence, among others; make the contrast between the constitutional models and foundations

proposed by John Rawls throughout his work; as well as the criticism that Amartya Sen, including the *minimum vital concept*, in order to achieve a study on relevant aspects of Democratic Order, Constitution and Human Rights to provide postulates that allow improving the *quality of life* in a Latin American social environment, assuming that the Social and economic policies must aim to maximize the long-term expectations of citizens.

### **SPECIFIC CONSIDERATION: MINIMUM WAGE OR MINIMUM LIVING INCOME AND ITS RELATIONSHIP WITH QUALITY OF LIFE WORTHY**

The concept of *Minimum Wage or Minimum Living Income* may vary in its scope depending on the country and region. However, overall, Latin America faces significant income inequality, with many people struggling to meet their basic needs.

According to a 2020 report from the International Labor Organization, around 39 million people in Latin America and the Caribbean lived in extreme poverty, with incomes of less than \$1.90 a day. (ILO Labor Panorama of Latin America and the Caribbean, 2020: 4) On the other hand, according to ECLAC, extreme poverty in the region rose to more than 5 million in the last 2 years, they estimate that it will reach 86 million in 2021 due to the deepening of the social and health crisis caused by the COVID-19 pandemic (ECLAC Social Panorama of Latin America, 2021:14).

In addition to the above, many workers in the region earn low wages and work in precarious conditions without access to social security, which makes it difficult for them to achieve a decent standard of living. According to the same source in 2020 (ILO), some 30 million people are unemployed and

23 million will have left the labor force due to lack of opportunities. In 2021 “employment will be in intensive care and the indicators could worsen,” (ILO Labor Overview of Latin America and the Caribbean, 2020). as can be seen from *the ILO’s annual Labor Overview for Latin America and the Caribbean*.

The *minimum wage* labor laws to protect workers’ rights, but these wages may not always be enough to cover basic needs. In addition, informal work and underemployment are widespread in Latin America, making it difficult to control and enforce labor standards.

Overall, while some efforts have been made to address the living wage issue in the region, there is still much work to be done to ensure that all workers can earn a fair wage and support themselves and their families.

Latin America understood as a diverse territory, with a wide range of economic conditions and living standards, explains the existence or not of a *minimum wage* and a *Minimum Living Income* and how it can vary depending on the country and even according to the city.

Although it is true that most of the countries in this area legally protect the *minimum wage*, the essential objective of this regulation is to guarantee that workers receive a fair salary for their work. However, these *minimum wages* in reality may not be enough for workers to satisfy their basic needs and cover their expenses. In many cases, workers are required to work multiple jobs or rely on government assistance to make ends meet.

Additionally, the cost of living can vary widely within a single country, with major urban areas often being significantly more expensive than rural regions. This can make it difficult for workers to have a *Minimum Living Income*, even if they earn more than the minimum wage.

It must be noted that while some workers in Latin America can earn a *minimum wage*,

many others, as already mentioned, may have difficulties in daily subsistence. The problem of income inequality and poverty remains a major challenge for the region.

Income, according to Rawls – is a primary good necessary for people to achieve a wide range of goals and opportunities in life; But from their perspective income is not valuable in itself, but because it allows people to buy other goods and services that are necessary for a good life, used to satisfy basic needs such as food, clothing, housing, as well as education., health and other goods necessary for personal development and social participation.

What can be modified is the distribution. of income and wealth and the way in which those in positions of authority and responsibility can regulate cooperative activities. In accordance with the constraints of freedom and accessibility, the allocation of these primary resource goods can be adjusted to modify the expectations of representative individuals. An arrangement of the basic structure is efficient when there is no way to change this distribution to increase the prospects of some without decreasing the prospects of others. ([1974]1999: 61)

Rawls also argues that the distribution of income must be organized in a way that maximizes the well-being of the least advantaged members of society. Since income inequality can lead to unequal access to opportunities and life possibilities, which can be inequitable and unfair. Therefore, Rawls advocates a system of social and economic justice that ensures that income is distributed in a way that benefits the least advantaged members of society. Thus, the fair distribution of primary goods would give priority to the needs and interests of the least advantaged, while allowing inequalities that benefit everyone in society.

The *Minimum Living Income* has a significant impact on a person's *quality of life* since it is based on the idea that people must earn enough money at work to cover their basic

expenses, such as housing, food, medical care and education. and have some discretionary income to participate in the community and enjoy a decent standard of living.

When people earn a sufficient *minimum wage*, they are less likely to experience financial stress, which can lead to poor physical and mental health outcomes. They may also have more opportunities to participate in their community and enjoy recreational activities, which can improve their overall well-being. On the contrary, when people are not paid a *minimum wage* that constitutes a *Minimum Living Income*, they may have difficulty, as is commonly said, making ends meet; which generates – as has been addressed, financial stress and a lower *quality of life*.

People in this situation may have to rely on government assistance to cover their basic expenses, leaving little time and energy for other activities. Which generates the imperative to establish whether the *minimum wage* must be sufficient or, if applicable, whether it must be subsidiarily supplemented by the State. Rawls refers:

consider the distribution of income between social classes. Suppose that the various income groups correlate with representative individuals by reference to whose expectations we can judge the distribution. Now those who start out as members of the business class in property-owning democracy, say, have a better prospect than those who start out in the unskilled worker class. It seems likely that this will be true even if the social injustices that now exist are eliminated. So what can justify this kind of initial decision? inequality in life prospects? According to the difference principle, it is justifiable only if the difference in expectation is to the benefit of the worse-off male representative, in this case the unskilled blue-collar representative. Inequality in expectation is permissible only if reducing it would make the situation of the working class even worse. ([1974]1999: 67-68)

Amartya Sen has discussed Rawls's views on income and primary goods in his own work on welfare economics and social justice. In particular, Sen has criticized Rawls's reliance on income as a primary good and has proposed alternative measures of well-being that take a broader view of human capabilities and functions.

A *Minimum Living Income* is an important factor in determining a person's *quality of life*, as it can determine access to education; to medical care and general standard of living. The relationship between *decent quality of life* and *Minimum Living Income* directly affects a person's ability to satisfy their basic needs and maintain a certain standard of living.

Hence the requirement for an amount of money sufficient to cover the basic needs of life, such as food, housing, healthcare and education, without depending on government assistance or additional sources of income.

If a person has a *Minimum Living Income*, they are more likely to have the financial stability necessary to maintain a reasonable standard of living. This can lead to improvements in your overall *quality of life*, such as better access to healthcare, safer housing, and a more nutritious diet.

On the other hand, if a person does not have a *Minimum Living Income*, it can have a negative impact on their *quality of life*. Being forced – for example – to live in inadequate housing, skip meals or rely on unhealthy foods, or forgo necessary medical treatment.

The *Minimum Living Income* is an important factor in determining a person's *quality of life* because it directly affects their ability to satisfy their basic needs and maintain a certain standard of living.

## COMPLEMENTARY CONSIDERATION: THEORIES OF JUSTICE AND THEIR RELATIONSHIP WITH QUALITY OF LIFE

A theory of justice is a philosophical framework that attempts to provide principles and guidelines for creating a just society. The concept of *quality of life* is often closely related to discussions of justice, as it is generally considered a fundamental objective of any society to improve the well-being of its citizens.

One way that a theory of justice could address the issue of *quality of life* is by advocating the distribution of resources and opportunities in a way that maximizes overall well-being. As explained in previous sections, the philosopher John Rawls maintains that a just society would be one in which the basic rights and freedoms of all individuals are protected, and where social and economic inequalities are arranged to benefit the least advantaged members of the society.

Each theory of justice takes a different approach to addressing *quality of life*. For example, utilitarianism, a consequentialist ethical theory, suggests that actions and policies must be evaluated based on their ability to maximize overall happiness or well-being. Therefore, from a utilitarian perspective, policies that improve the *quality of life* for large numbers of people would be considered fair.

But Rawls emphasizes the importance of ensuring that all people have access to the basic goods and services necessary to lead a dignified life, such as health care, education and adequate housing and not only obtain indicators of well-being with aggregate results. (See section II, subsections A and B)

By prioritizing the needs of the most vulnerable members of society, a theory of justice can help ensure that everyone has the

opportunity to live a full and meaningful life. Thus, a theory of justice can address *quality of life* by providing a framework for evaluating and prioritizing policies and actions that promote the well-being of individuals and society as a whole.

A theoretical model of these characteristics is concerned with determining the principles and values that must guide the distribution of resources and opportunities within a society. The concept of *quality of life* is often considered an important factor in determining justice in a society.

In general, a theoretical construct on justice seeks to guarantee that everyone has satisfaction of basic needs and access to essential opportunities to guarantee a good life. This includes access to housing, health care, education, and other resources that contribute to the quality of housing.

Ensuring that everyone has access to basic resources is how a theory of justice addresses the *quality of life category*. For example, a just society could provide universal healthcare, affordable housing, and free education to all its citizens. This would help ensure that everyone has the opportunity to live a healthy and fulfilling life.

Another way in which a theory of justice addresses *quality of life* is by ensuring that the distribution of resources and opportunities is fair and equitable. This could involve policies that aim to reduce economic inequality, such as progressive taxes or social welfare programs. By reducing economic inequality, everyone can have access to the resources necessary to achieve a high *quality of life*. (See section III)

Another aspect to consider would be how a theory of justice could address *quality of life* by promoting social and environmental sustainability. This would involve policies that aim to protect the environment and promote sustainable development, such as investing in renewable energy or reducing carbon

emissions. By ensuring we live in a sustainable and healthy environment, we can ensure that everyone has the opportunity to live a long and full life.

### **C. Superposition of Categories: Theories of justice from political philosophy and minimum vital income from the philosophy of law. Through *Quality of Life***

There is an overlap between the concept of *Minimum Living Income* and theories of justice that address *quality of life*. A living wage can be understood as the minimum amount of income necessary for a person or household to cover their basic needs, including food, housing, healthcare, and other essential expenses.

The idea behind a *Minimum Living Income* is to ensure that workers can maintain a reasonable standard of living and prevent them from falling into poverty.

The concept of a *Minimum Living Income*, as explained previously (See section III and IV), is closely linked to theories of justice that emphasize the importance of providing people with the resources they need to lead a dignified and satisfactory life. In many theories of justice, including those proposed by philosophers such as John Rawls and Amartya Sen, *quality of life* is a central concern. These theories argue that justice requires that people have access to the basic goods and services necessary to lead a good life, including adequate income, health care, education, and other resources.

From this perspective, a living wage can be seen as a means of promoting justice by ensuring that workers have the resources they need to live an adequate life. By providing workers with a living wage, societies can help reduce poverty and inequality, promote social mobility, and ensure that all people have access to the basic goods and services necessary for proper subsistence.

Elaborating a little more on the above, the *connection* of concepts and categories exists between political and legal philosophy through the concept of *quality of life* as a derivation of both a model of justice, as well as a *Minimum Living Income*. Theories of justice that address *quality of life* refer, either as *primary goods* (Rawls) or others, to the minimum income necessary for a person or family to satisfy their basic needs, including food, housing, health care, education, and other expenses. essential; This in turn means that a *Minimum Living Income* is what everyone who works full time must be able to have to pay for a basic standard of living.

Theories of justice that address *quality of life*, such as the capabilities approach (Amartya Sen), argue that justice is not just about ensuring equitable distribution of resources, but also about enabling people to live a better life. that they have reason to value. Sen criticizes that *primary goods* are “general-purpose means that help any person promote his or her ends” (2014, 72), but they cannot be an adequate informational basis for evaluating well-being. This means that we must seek to provide people with the necessary resources to achieve their goals and lead a full life, beyond the metric proposed by Rawls.

Other authors have referred to the concept of *quality of life itself*, specifically Martha Nussbaum who worked jointly with Sen in the 1980s. There are some differences between the *quality of life approach* according to Amartya Sen and Martha Nussbaum, but there are also some similarities.

Amartya Sen’s *quality of life* approach is a *Capability Approach*, which emphasizes the importance of individual capabilities and opportunities in determining a person’s *quality of life*. Capability, according to Sen, is therefore a type of freedom: “the substantive freedom to achieve the things that a person may value doing and being.” (1999: 75) The

Indian author considers that people’s well-being is determined not only by income or material resources, but also by their ability to use those resources to achieve their goals and lead a satisfactory life. Thus, Sen argues that State policies and interventions must aim to expand people’s capabilities and opportunities, such as education, health, and social and political freedoms.

The *quality of life* approach is based on the capabilities approach, but emphasizes the role of human rights in the formation of individual capabilities. Nussbaum believes that human beings have certain basic capabilities that are essential to a good life, such as the ability to love, form relationships, think critically, and participate in society. Nussbaum argues that these capabilities must be protected and promoted through policies and interventions that defend human rights and promote social justice.

When referring to *quality of life*, Sen bases his focus on capabilities, the person’s ability to lead a valuable life. Since a person’s capabilities are the main determinants of their well-being, and expanding them is the key to improving their *quality of life*. According to this author, the most important capabilities are those that allow people to achieve valuable functions, such as good health, education and social relationships; emphasizing the importance of agency and individual freedom in determining *quality of life*. In other words, people must have the ability to choose their own goals and pursue their own values. (See section II, subsection B)

Regarding Nussbaum’s approach to *quality of life*, while it is true that it is based on capabilities, it expands the range with respect to Sen’s framework. “Making comparisons regarding the *quality of life* aims to advance the idea of what it is, instead of asking what people are capable of doing or being, and not in their level of satisfaction or in the amount



of resources they are capable of to have, what is understood as a better *quality of human life*" (Nussbaum 2000, 12).

She develops a list or list of ten "core capabilities" that are necessary for a dignified and prosperous human life. Included in this relationship are capabilities such as having meaningful work, participating in political life, and the ability to experience emotions and have relationships. Nussbaum argues that these capabilities are necessary for people to live lives consistent with a standard of human dignity, and therefore must be guaranteed to all people as a matter of social justice.

A key difference between Sen's and Nussbaum's approaches is that she places more emphasis on the idea of *human dignity* and the importance of guaranteeing certain capabilities to all people, while Sen focuses more on the importance of expanding capabilities and the agency of people. Regarding the previous point, Sen has mentioned that drawing up a list or enumerating capabilities is a way of limiting them, so he does not share that criterion.

Martha Nussbaum is more prescriptive and specific than Sen's approach, which is interpreted as more open and flexible. While both authors share the importance of individual freedom and agency, Nussbaum places more emphasis on the importance of social and political institutions in allowing people to achieve their capabilities, which links her to her Aristotelian influence.

This way, while both Sen and Nussbaum emphasize the importance of capabilities in determining *quality of life*, the latter focuses on the role of human rights in the configuration of these capabilities, while the approach of Sen focuses more broadly on expanding opportunities and capabilities. What does exist in both is a shared interest in the concept of human capabilities.

Returning to our analysis, a living wage corresponds to the primary goods approach and the capabilities approach with regard to distributive justice; as it provides people with the resources they need to satisfy their basic needs and pursue their goals. By ensuring that people have a basic standard of living, a living wage can help promote greater equality and equity in society, as well as the realization or functioning to develop one's goals; Therefore, living wage advocates often argue that it is a matter of justice and human dignity to ensure that all workers are paid enough to support themselves and their families.

Sen himself argues that focusing solely on income is not sufficient to evaluate human well-being, since income is only one among many factors that can contribute to a person's ability to function and achieve their goals. A broader conception of well-being must take into consideration, a person's capabilities and functioning, including their health, education, social relationships, and access to political and cultural resources, but income does play an important role in enabling people to pursue their goals. and capabilities.

This way, developing a paraphrase of Rawls, there is an overlap of concepts that link both domains in political and legal reflection.

It remains to be established whether in this case, the configuration of an autonomous right to protect against poverty or to promote a dignified life derives, whose existence as a human right requires being expressed and elevated to constitutional rank, or whether we are in the presence of a fundamental right. implicit. It is necessary to "analyze whether there is parallel recognition at the national constitutional level (fundamental right). [Since] No Ibero-American Constitution expressly recognizes it." (Ibero-American Federation of Ombudsman. Report on Human Rights. Poverty, 2016: 384)

## HUMAN AND FUNDAMENTAL RIGHTS: HOW TO GUARANTEE QUALITY OF LIFE THROUGH MINIMUM VITAL INCOME

The Universal Declaration of Human Rights states that “freedom, justice and peace in the world are based on the recognition of the intrinsic dignity and equal and inalienable rights of all members of the human family” (Universal Declaration of Human Rights).

The declaration positions economic, social and cultural rights alongside civil and political rights. Among the former, the following stand out: – right to work, to equitable and satisfactory conditions of employment, and to protection against unemployment; – right to form and join trade unions; – The declaration continues in its contents “right to an adequate standard of living”. that ensures health and well-being, including food, clothing, housing, medical care and social services, as well as insurance in the event of loss of livelihood, whether due to unemployment, illness, disability, old age or for any other reason” (Amnesty International. An introduction to economic, social and cultural rights, 2005:17); as well as the right to education, which must be free and compulsory in *elementary and fundamental instruction*: – right to take part in cultural life and benefit from scientific progress.

The fine point consists of how to effectively guarantee these rights, of which the *Minimum Living Income* is the species. The International Covenant on Economic, Social and Cultural Rights establishes the right of workers to *sufficient remuneration* so that they and their families can achieve the conditions of a decent life; That is, as argued in this paper, the idea that people must earn enough money at work to cover their basic expenses, such as housing, food, health care, and education, and have some discretionary income to participate in the community and enjoy an adequate standard of living:

Constitutional jurisprudence has defended with special forcefulness the existence of a fundamental right to the protection of poverty in Colombia... under the nomen iuris of the right to the vital minimum, which implies the obligation of the State to “guarantee minimum conditions of dignified living to all.” people, and to do so it must provide assistance and protection to those who find themselves in circumstances of inferiority, either indirectly, through investment in social spending, or directly, adopting measures in favor of those people who for reasons economic, physical or mental, are in circumstances of manifest weakness. This doctrine of the vital minimum came to Mexican jurisprudence in 2013 (sic). (Ibero-American Ombudsman Federation. Report on Human Rights. Poverty, 2016: 385)

The report continues:

In a substantially coincident direction, in El Salvador, since 2001 the Supreme Court affirms the existence of the fundamental right of every person “to have access to the means, circumstances and conditions that allow them to live in a dignified manner, therefore it is up to the State to carry out relevant positive actions. In Peru, since 2004, the Constitutional Court has established the obligation of the State, based on dignity and equality, to carry out positive actions aimed at equalizing people in the satisfaction of their rights and basic needs. In Portugal, in 2002 the Constitutional Court derived this right from the dignity of the person, declaring unconstitutional the legal limitation of the circle of beneficiaries of social benefits. In Argentina there is no such clear jurisprudential pronouncement in favor of an autonomous right to protection against poverty, but there is a clearly favorable line to the enforceability and universality of social rights... at the constitutional level this right is not established, or at least not exclusively, in social security, as has been recommended by the ILO (chapter I, section 1), but in values that are surely of greater weight, such as dignity, real and effective equality or life. Lack of an express fundamental

right to protection against poverty and the right to the minimum vital in constitutional jurisprudence. (Ibero-American Federation of Ombudsmen. Report on Human Rights. Poverty, 2016: 385)

In particular, in the case of Mexico, the general and/or secondary legal provisions – not constitutional – that have been generated in relation to the concept of *Minimum Living Income* as argued by Judge Raúl Martínez are “tended to guarantee the minimum conditions of subsistence of people who enjoy or have enjoyed a source of employment;...not so for those who do not have a source of income or are not able to survive on their own” (Martínez, 2023:14). The author adds: “they are political in nature and even paternalistic, since they do not justify or do not They do not comply with the object or purpose of the right to that “Minimum Vital”. (Martínez, 2023:14)

Considering that human rights are fundamental principles that must be guaranteed to all people, regardless of their race, gender, religion or social status. The effective way to achieve this guarantee is through the constitutional order, human rights translated into fundamental rights, Pérez Luño affirms that “The definition of human rights... responds to three guiding ideas: 1. natural law at its foundation; 2. historicism in its form, and 3. axiologism in its content.” (Pérez L., 1993:180).

The first, natural law foundation of human rights, implies the conjunction of the ethical root with the legal vocation. Since, as this author states, the concept of human rights has an inalienable prescriptive or deontological dimension and implies a series of ethical demands of “must be,” which legitimize their claim where they have not been recognized. But, at the same time, they constitute categories that cannot be separated from legal systems: their very reason for being is to be a model and critical limit to positive normative and institutional structures.” (Pérez L., 1993:180).

He thus explains that when this reception occurs we find fundamental rights: “those human rights guaranteed by the positive legal system, ... in their constitutional regulations, and that usually enjoy reinforced protection. These are always, therefore, “positive” human rights, whose name evokes their founding role in the political legal system of States of Law.” (Pérez L., 1993:180) Thus, regarding their foundation, these prerogatives are usually based on various theories of justice, which seek to explain the nature and scope of rights. And regardless of the variables in the models of justice that may occur, having a foundation in one or some of these theories expands the scope of the right that is invoked.

For example, natural rights theory holds that human rights are inherent to all individuals by virtue of their humanity, and cannot be legitimately violated by any government or authority. From a contractualist perspective, human rights are based on a social agreement between individuals to live together under certain rules and protections. In both cases theories of justice provide frameworks for understanding how human rights must be enforced and protected, ensuring that resources and opportunities are distributed fairly among all individuals. Even those theories, which are not distributive, as much as corrective, focus on rectifying past errors and compensating victims. Establishing a parameter for the scope of Human Rights.

In general, the relationship between human rights and theories of justice is complex and multifaceted, since both concepts are deeply interconnected and depend on each other for their development and implementation.

Human rights are often considered necessary conditions for achieving justice, and theories of justice aim to provide a framework for understanding and promoting human rights.

Human rights are fundamental rights to which every individual is entitled by virtue of his or her humanity. They include civil and political rights, such as the right to freedom of expression and the right to a fair trial, as well as social, economic and cultural rights, such as the right to education, the right to health care and to an adequate income or remuneration. They can be considered as the basic conditions necessary for people to live a dignified, free and equal life.

Theories of justice, on the other hand, deal with the principles and values that govern how society must be organized and how resources must be distributed. Its objective is to provide a framework for determining what is equitable in social, economic and political relations.

That is why concepts and categories such as *quality of life*, *minimum vital income*, *human dignity*, must be filled with content and not be precepts that are defined indeterminately according to the circumstance.

As Wilkins argues:

The interconnection of rights does not prevent us from distinguishing basic rights from non-basic rights. For example, if we understand the right to life as Rawls did as the right to subsistence and security and if we see that education is increasingly useful for both subsistence and security, it still does not follow that we cannot say that the right to life is basic while the right to education is not. (2008:105-122)

Many theories of justice, such as Rawlsian justice, emphasize the importance of human rights as a necessary condition for a just society. Rawls argues that the basic structure of society must be designed to protect and promote the basic freedoms and opportunities necessary for people to lead meaningful lives. In the name of the two principles of justice that protect the rights and freedoms of citizens, at the same time, the requirements of distributive justice are satisfied.

When Rawls develops his difference principle, he refers to the needs of the most disadvantaged subject, because it would not be possible to include information about the needs of all the individuals who are having a bad time at the same time. (See section II, subsection A) Now, if this model is contrasted with that of Sen's capabilities, a specific characteristic stands out, the Indian author's is a very detailed comparative scheme that can make it unviable in a real environment, even when he maintains that "the only acceptable evaluation of human progress is primarily and ultimately the improvement of freedom and; that the achievement of development depends on the free will of people." (Sen: 2014) Wilkins, warning of a possible infeasibility of Sen's model in his terms, indicates: "the advantage of Rawls's approach is that primary goods can be,...' embedded[s]' in the principles of justice and in the basic structure of society." (2008:105-122). This allows us to appropriately approach what Sen has called the *effective distribution of freedoms*. (2008:105-122)

Other theories, such as utilitarianism, also recognize the importance of human rights, but may prioritize the general happiness and well-being of society over individual rights; that is, relying on a series of aggregate results to generate indicators, which distances it from specific situations, a very acute criticism that both Rawls and Sen have referred to.

In summary, human rights and theories of justice are closely related; Human rights are often considered a necessary condition for achieving justice and theories of justice provide a framework for understanding and promoting human rights.

## CONCLUSION

After the analytical development of the problem and within the results of the research, five interviews were carried out with key actors or specialists on the subject of Minimum Vital Rights to know their perspectives and essential aspects that must be categorized when dealing with a topic of this nature.

Dr. Guillermo Escobar Roca was interviewed; Professor of Human Rights at the University of Alcalá, in Spain. The Secretary General of the Supreme Court of Justice of the Nation, Judge Professor Rafael Coello Cetina. Collegiate Circuit Court Magistrate Raúl Martínez was interviewed. Mr. was interviewed. Aurelio Espinoza applicant lawyer specializing in labor and social law and interviewed the Local Representative, the Professor Daylin García Ruvalcaba for his *expertise* in <<Legislative processes>>.

From the interviews conducted with the five key actors, coincidences were found regarding the existence of a link between *distributive justice* and *human rights*.

Four of the five actors agree that although it is a figure that is recognized in an international regulatory context, there must be its own model to regulate at a constitutional level the figure of the vital minimum, which, although it is inferred at this time, guarantees effective protection. to the extent that it is positivized as a right.

This is not just a doctrinal problem, it is a practical problem. Although Doctor Guillermo Escobar Roca maintains that it is a problem that remains latent due to the lack of conceptual support it has. For two of our interviewees it is a problem of individual law; and three of them consider it a problem of social law.

There is consensus that it is a transversal right that affects various issues of people's lives and subsistence such as: Social Security, Education, Income, Housing, among others.

It is a conceptual category/right linked to human dignity and its materialization would be optimal if it found its foundation in the constitution.

All of the above can be briefly developed as follows:

**A.** The metric is one of the bases of variation or components for a theory of justice, in terms of advantages for a person; the other two are: the aggregation of information about those advantages of an individual and the priority of a particular aspect of a person's advantage. The metric is related to the way in which the criterion of equality and justice is evaluated with respect to the level of well-being of an individual.

**B.** Each model of justice; and, therefore, each metric criterion prioritizes an informational base, which is reflected in the principles that constitute it and that compete with the principles of other models. Each evaluative approach can be characterized by its informational base, but both the information considered and the information excluded are relevant to the judgment made. This information base is made up of two aspects: a) the relevant personal characteristics of the model and b) the choice of combined characteristics. This is what distinguishes a utilitarian model from a liberal egalitarian aspect.

**C.** Justice and equality are not the same. But there are two perspectives that affect the conception of what is fair: Politics and Logic. From a formal point of view, the demand for equity for all subjects is present within the theory chosen. Although not always when we talk about justice we are talking about equality, so that a logical model can be created; You must always turn to the conceptions of justice found in the beliefs and

convictions of the people where the idea of equality underlies. This must lead us to review the Latin American case.

**D.** There are two essential constitutional elements:

a) fundamental principles that specify the general structure of government and the political process: the three powers, Legislative, Executive and Judicial; the scope of majority rule, and

b) basic rights and freedoms of citizens, on an equal footing, that the legislative majority must respect: for example, the right to vote and participate in politics, freedom of conscience, freedom of thought and association, as well such as rule of law protections. (Rawls, [1971] 1999:217)

The constitution must satisfy at least those elements in an essential way. Which are closely related to the two principles of justice: Principle of Freedom and the Principle of difference and equal opportunities.

The aspects of another order, which are included in its second principle, such as equality of opportunities and permissible economic and social inequities, as well as other aspects related to the common good, preservation of culture and sustainability, are part of the constitutional order, in the to the extent that secondary legislation deals with them: the constitution establishes a general status of citizen equality and achieves political justice. <<The second principle intervenes in the legislative stage. It prescribes that social and economic policies have as their objective the maximization of the long-term expectations of the least advantaged.>> (Rawls, [1971] 1999:175) At this level (legislative) is where the areas of character are understood. social and economic.

The considerations that the SCJN has made about the concepts of *minimum vitality* and *quality of life* are of a tax nature, which peripherally or residually refer to the issue at hand, by conceiving it or identifying it with the possibility that the person's assets will not be affected. except to the extent that it has authentic contributory capacity. In this sense, the role of a judicial power that guarantees the justiciability of social rights based on the legislative level that would establish a metric for justice is fundamental.

**E.** The relationship between human rights and theories of justice is complex and multifaceted, since both concepts are deeply interconnected and depend on each other for their development and implementation. Human rights are often considered necessary conditions for achieving justice, and theories of justice aim to provide a framework for understanding and promoting human rights.

As it has been explained throughout this article, there are points of agreement that allow the presentation of a proposal that links the indicative criteria of Theories of Justice and Theories of Human Rights and Fundamental Rights linked to the justice criteria issued by the SCJN for the case. Mexico.

The above is based on the premise that a person has natural legality; every person has rights and duties. Being the holder of rights is not, therefore, a consequence solely of positive legislation, it is the expression of the dignity of the human person, hence the possibility of a study like the one proposed, which links Theories of Justice with Theories of Justice. of Human Rights and analyze the guiding criteria of distributive justice as the SCJN has expressed through concepts such as *vital minimum* and *quality of life*.

## TWO PROPOSALS

**A.** It is advisable to insert the *minimum vital concept* into the constitutional order in order to not only be in the presence of a precept that is derived or inferred from the already existing order, but as has been presented, to be in the presence of a guaranteed fundamental right; which allows us to turn to substantive considerations.

**B.** Once it is incorporated into the constitutional body, it is required to establish the content parameters of the minimum vital right; in the context of the models of justice and human rights presented; since it will be through its scope that it will be possible to identify whether we are in the presence of a primary good or a sum of money; or, its connection with other rights that allows establishing an indicator not only quantitative, but also well-being.

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