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Right to Food in India

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ABSTRACT

The debate on 'Right to Food' in India has evolved from various International Covenants of which India is a signatory. Article 25(1) of the United Nations Declaration of Human Rights (UDHR) states that "everyone has the right to a standard of living adequate for the health and well-being of himself and his family including food, clothing, and housing..". The International Covenant on Economic, Social and Cultural Rights (ICESCR) also recognizes right to food as a basic human right . Other International instruments such as the Food and Agricultural Organisation (FAO) has declared that "ensuring humanity's freedom from hunger" is one of its basic purposes. The overspread of constitutional provisions in respect of 'Right to Food' is contained in Part III and Part IV of the Constitution of India. While some are very general in nature, others are very specific. Art. 39(f) ordains that the children be given opportunities and facilities to develop in a healthy manner. Article 21 which entitles the protection of life and personal liberty except according to procedure established by law in its expanded meaning includes the right to food and finally, Article 47 which is part of the Directive Principles of State policy states that "The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties..". While such directive is not enforceable in a court of law, care should be taken not to take it lightly as it is a cornerstone on which our constitution is founded and is aimed towards the socio-economic upliftment of the people.

This paper reviews the role of International Conventions and other their relation with an article 21 of our constitution in eradicating hunger death especially in children scenario.

Keywords: *International Conventions, Article 21, Social and Cultural Rights, Equality.*

I. INTRODUCTION

India though self-sufficient in food production, still faces an acute shortage of food grains from time to time and a substantial population of the country till date is malnourished. The right to food was first challenged by PUCL in its writ petition to the Supreme Court in 2001 under Article 21 of the constitution which entitles Protection of life and personal liberty except

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according to procedure established by law. As a result, the Supreme Court has directed several state governments and other central organizations to provide for adequate food to the needy. The United Nations Convention on the Rights of the Child signed on 20th November, 1989 is the most rapidly and widely ratified international human rights treaty in history. The Convention changed the way children are viewed and treated i.e., as human beings with a distinct set of rights instead of as passive objects of care and charity. The unprecedented acceptance of the Convention clearly shows a wide global commitment to advancing children's rights.

(A) Objective Of The Study

The aim of this research project will be to look into the similarities between the right to food provided under Article 21 of the constitution of India and the United Nations Convention on the Rights of the Child. The constitutional validity of the same will be analysed through case laws and other scholarly interpretations and finally, the existing framework to implement the right to food will be looked into and critiqued.

II. RIGHT TO FOOD IN INDIA

The debate on 'Right to Food' in India has evolved from various International Covenants of which India is a signatory. Article 25(1) of the United Nations Declaration of Human Rights (UDHR) states that "everyone has the right to a standard of living adequate for the health and well-being of himself and his family including food, clothing, and housing..". The International Covenant on Economic, Social and Cultural Rights (ICESCR) also recognizes right to food as a basic human right². Other International instruments such as the Food and Agricultural Organisation (FAO) has declared that "ensuring humanity's freedom from hunger" is one of its basic purposes.

The overspread of constitutional provisions in respect of 'Right to Food' is contained in Part III and Part IV of the Constitution of India. While some are very general in nature, others are very specific. Art. 39(f) ordains that the children be given opportunities and facilities to develop in a healthy manner. Article 21 which entitles the protection of life and personal liberty except according to procedure established by law in its expanded meaning includes the right to food and finally, Article 47 which is part of the Directive Principles of State policy states that "The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties..". While such directive is

² Article 11

not enforceable in a court of law, care should be taken not to take it lightly as it is a cornerstone on which our constitution is founded and is aimed towards the socio-economic upliftment of the people.

The Supreme Court in its quest to expand the scope of Article 21 has almost reached to the point of making 'Right to Food' a fundamental right. In *Francies Coroly v. U.T. Delhi*³, the bare necessities of life such as adequate nutrition was included under the ambit of right to life. In *Olga Tellis v. Bombay Municipal Corporation*⁴, the Supreme Court held that there is an obligation to call upon the state to secure to its citizens adequate means of livelihood. In *Vuneent v. Union of India*⁵, it was held that the right to maintenance and improvement of public health is included in the right to live with human dignity. In *Chameli Singh v. State of U.P.*⁶, it was held that right to life guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter.

In a writ petition submitted to the Supreme Court of India on April 16, 2001 PUCL asked three major questions.

1. Whether the people who are too poor to buy food grains ought to be given food grains free of cost especially when the state has a surplus stock, most of which goes unused?
2. Whether the Right to Life under Article 21 includes the Right to Food?
3. Whether the state has a duty to provide food especially in situations of drought, to people who are drought affected and are not in a position to purchase food?

As a result of the ongoing case, the Supreme Court on various occasions has directed the state (central as well as state governments) to implement various schemes which ensure the right to food. In August 2001, that it was the primary responsibility of the Central and State Governments to ensure that the food grains overflowing in FCI godowns reached the starving people and not wasted by being dumped in the sea or eaten by rats. In September, the SC directed 16 states, which had not identified the people below the poverty line (BPL) to do so within two weeks to enable the governments to distribute food to them under the public distribution system (PDS). In November 30, 2001 SC gave interim order directing all State governments to introduce cooked mid-day meals in primary schools within six months of the order.

³ A.I.R. 1981 S.C. 746

⁴ A.I.R. 1986 S.C. 180

⁵ A.I.R. 1987 S.C. 165

⁶ (1996) 2 SCC 549

III. THE CHILD RIGHTS CONVENTION

The United Nations Convention on the Rights of the Child (CRC) signed on 20th November, 1989 is a human rights treaty which majorly outlines the rights of a child and the care needed for their growth and well being. It declares that anybody who is less than 18 years of age (less in case the country's law allows it) is a child. India ratified the CRC on 11 December 1992, agreeing in principles to all articles except with certain reservations on the working permit of children as there are laws that prohibits child labour in the country.

The various articles of the convention can be classified into four parts.

1. The guiding principles: They represent the underlying requirements for any and all rights to be realized.

2. Survival and development rights: These are rights to the resources, skills and contributions necessary for the survival and full development of the child.

3. Protection rights: These rights include protection from all forms of child abuse, neglect, exploitation and cruelty, including the right to special protection in times of war and protection from abuse in the criminal justice system.

4. Participation rights: Children are entitled to the freedom to express opinions and to have a say in matters affecting their social, economic, religious, cultural and political life. Participation rights include the right to express opinions and be heard, the right to information and freedom of association.

The CRC contains provisions which are founded in various other international treaties. The equality and interconnection of rights are stressed in the Convention. In addition to governments' obligations, children and parents are responsible for respecting the rights of others particularly each other. These articles thus, not only guarantee a set of basic rights but also underline the special needs and care required for a child's growth.

IV. COMPARISON BETWEEN THE RIGHT TO FOOD IN INDIA AND THE CHILD RIGHTS CONVENTION

Looking at the question "Are there any similarities between 'The right to food' in India and the United Nations Convention on the Rights of the Child with respect to the nutritional well being of a child?",

Article 24 of the CRC states that "Every child has the right to access health services and attain the highest degree of health. To do so the state shall reduce the infant mortality rate, ensure medical assistance, provide prenatal and post natal care of mothers and child, combat diseases

and malnutrition, create awareness of correct health practises, and development preventive measure to protect children from possible risks. The state shall also abolish all traditional practises detrimental to a child's health".

On a bare reading of the text, it is clear that the article seeks to achieve the highest degree of health among the children through eradication of malnutrition among other things.

Looking at Article 39(f): Certain principles of policy to be followed by the State: The State shall, in particular, direct its policy towards securing:

that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

The right to food and proper healthcare of children is enshrined here and being a part of the Directive principles, it calls on the state to implement the same. It talks about the proper level of nutrition which needs to be guaranteed. While this being a directive principle is not enforceable, the legislative intent and the intent of the founding fathers of this constitution that proper nutrition through 'Right to Food' is quite clear as per this article.

We can thus draw a parallel between the constitutional provisions with respect to the 'Right to Food' in India and the CRC i.e Article 24 of the CRC and Article 39(f) of the Constitution of India.

1. Both of them talk about the right to proper nutrition of a child.
2. Both of them seek to guarantee the right to food for a child.
3. Both of them fail to provide a proper framework and/or guidelines to implement the same.
4. Both of them are not directly enforceable in a court of law.

We therefore, conclude that Article 24 of the CRC and Article 39(f) of the Constitution of India are essentially the same thing which talk about a common goal that is ensuring the right to food of a child.

V. CONSTITUTIONAL VALIDITY

As for the question whether the demand for 'right to food' for a child in accordance with right to life under Article 21 and Article 24 of the United Nations Convention on the Rights of the Child constitutionally valid?

The answer is Yes. A look at the various Supreme Court cases mentioned above tell us that

when the right to life was expanded to include "not only mere physical existence"⁷ the right to a proper livelihood and food was included under its ambit. Also the various cases⁸ pertaining to the idea of 'Right to Food' affirm the constitutional validity of this concept.

Krishna Iyer J., in the case of *Jolly George v. Bank of Cochin*⁹ held that India being a party to the Covenant on the Civil and Political Rights (CCPR) must respect the same and as such, an argument on these can never be considered outside the ambit of the constitution. We can thus safely say that the argument for 'Right to Food' for a child based on Article 24 of the CRC (of which India is a signatory) is very much constitutionally valid.

VI. HYPOTHESIS

Statement: The physical well being of a child in respect of 'The right to food' in India guaranteed under Article 21 of the Constitution of India and protection against 'Malnutrition' under Article 24 of the United Nations Convention on the Rights of the Child talk about a common goal but fail to provide a working framework for implementation of the same.

Looking at the bare text of Article 24 of the CRC¹⁰, it seeks to ensure the highest degree of health for a child through combating malnutrition, diseases etc. While the text underlines the steps which needs to be taken to ensure the healthy well being of a child, there is no guiding framework to implement the same.

As per Article 39(f) of the constitution of India¹¹ the directive that children should be allowed to grow in a healthy manner includes under its ambit the right to proper nutrition (part of the right to food) provides a only a brief idea as to the right to proper health of a child but does not in any way state the procedure, framework etc. for implementation of the same.

As for the two laws talking about a common goal, the same has been explained earlier.¹²

Observation: It is thus observed that the physical well being of a child in respect of 'The right to food' in India guaranteed under Article 21 of the Constitution of India and protection against 'Malnutrition' under Article 24 of the United Nations Convention on the Rights of the Child talk about a common goal but fail to provide a working framework for implementation of the

⁷ *Maneka Gandhi v. Union Of India*, A.I.R. 1978 S.C. 597

⁸ See Para 3 of the subtopic: RIGHT TO FOOD IN INDIA

⁹ A.I.R. 1980 S.C. 70

¹⁰ See Para 1 of the Subtopic: COMPARISSION BETWEEN THE RIGHT TO FOOD IN INDIA AND THE CHILD RIGHTS CONVENTION

¹¹ See Para 3 of the Subtopic: COMPARISSION BETWEEN THE RIGHT TO FOOD IN INDIA AND THE CHILD RIGHTS CONVENTION

¹² See Para 6 of the Subtopic: COMPARISSION BETWEEN THE RIGHT TO FOOD IN INDIA AND THE CHILD RIGHTS CONVENTION

same. The Hypothesis is hence proved.

VII. THE NEED FOR FURTHER LEGISLATIONS

Answering the question "Are the present provisions in India for protection of a child against starvation sufficient or is there a need for further legislations?",

While the 'Right to Food' is now legally enforceable in a court of law, stories of death due to hunger, malnutrition etc. still plague the country. The current welfare schemes such as the PDS, Mid-Day Meal etc. which are in place have been effective only to a certain extent and as a result certain new legislations with proper guiding framework needs to be enacted so as to increase the efficiency of such welfare schemes or introduce certain new ones in their place.

However, the following problems need to be looked into while drafting such a legislation.

1. The need to improve the basic infrastructure and management of resources.
2. Food Agencies need to be investigated independently.
3. Strict enforcing of welfare schemes such as the mid-day meal scheme.
4. A proper procedure (which includes tabulation of data, signatures of the authorities when, proper accounts etc.) needs to be in place managed by an independent commission.
5. Special courts to look into cases of Black marketing of food grains etc.
6. Express complaint redressal system and social security in terms of food need to guaranteed (the system in place in countries like USA provide for a fully functional framework that is effective and implementable).

VIII. CONCLUSION

Children are perhaps the most important citizens for any nation as the future of the nation in particular and the world in general rests on their shoulders. It is therefore important that utmost care be taken for them to realise their true potential and contribute to the society as and when they grow up. The Right to Food as per various international conventions and the underlying provisions in our constitution seeks to promote this very goal. There is thus a need to provide adequate nutrition and proper healthcare for the physical and mental well being of a child. Acknowledging such conventions like the CRC and making laws as per the directive principles in our constitution with a proper procedure to implement the same will ultimately help us in achieving this very objective.

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