

Right to Food as a Constitutional Mandate in India



Law

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ABSTRACT

The right to food is a basic human right and has been universally accepted as such. The Constitution of India is the foundation of the legal structure of the country. The right to food finds a place of importance in the Constitution. The Supreme Court of India has observed that it forms an integral part of the right to life, guaranteed under the Article 21. Furthermore Part IV of the Constitution stress on public health and nutrition which embodies within its ambit the right to food. This doctrinal study situates its appraisal to the adequacy of the protection of the right to food under the Constitution of India. It also enquires the competence of the steps taken by the state for realizing the right to food in discharge of this Constitutional mandate.

Introduction

The right to adequate food is defined by the United Nations Special Rapporteur as a human right to have a regular, permanent and unrestricted access directly or indirectly to qualitatively and quantitatively adequate food. The food should be culturally acceptable. It should fulfill the individual and collective needs of the people and enable them to lead a dignified life free from fear (Food and Agricultural Organisation, 2004).

The General Comment 12 of International Covenant on Economic, Social and Cultural Rights defines the right to adequate food as the economic and physical access to food or the means for its procurement.

The World Declaration on Nutrition, 1992 defined the right to food as the access to nutritionally adequate food which is safe for human consumption.

Jean Ziegler describes the right to food as a right of assistance when a person is unable to take care and includes above all, the right to feed oneself in dignity (Special Rapporteur on the right to food, 2004). He further described the right to food as an entitlement to be free from hunger, when the Nation State has resource both economic and institutional to ensure adequate nutrition to everybody (Dreze, 2005).

The human right to adequate food as defined by Rolf Kummann (Fain International) entitles all persons to enjoy certain minimum conditions of life like

- Access to food which is nutritiously and quantitatively adequate to lead a healthy life.
- Access to food safe from all adverse substance.
- Access to food that is culturally acceptable to the people.
- Opportunity to satisfy the food requirement without negotiating other basic needs.
- Access to food is sustainable over time.
- Access to food with human dignity.

The Special Rapporteur has expanded the definition of the right to food and food security. A new element has been added to the definition. According to the new definition there should be a proper utilization of the food. This implies that there should be proper dissemination of information on nutrition. Provision should be made for safe storage and processing technique (Fain International).

Distinction between Right to Food and Food Security

The Special Rapporteur on the right to food defines the food security as a corollary of the right to food. The concept of the right to food is much wider than the notion of food security. The right to food creates a human rights obligation on the Nation State and cannot be restricted to matter of policy or an inspirational goal (United Nations, 2003). The right to food includes the concept of accountability, dignity and transparency. It makes the individual an agent of change and makes the Government accountable to redress the violation (Rae, Thomas & Vidhar, 2007). Thus the right to food cannot be realized through framing legislation on food security.

Right to Food and Preamble of the Constitution

Socialism is one of the signature tunes of the Constitution. The concept of democratic socialism aims to put an end to poverty in India (Pande, 2009). The principle of socialism is also embodied in various provisions of Part III and Part IV of the Constitution. Socialism should be implemented in India in its true spirit (*D.S.Nakara-v-Union of India, H.S.E.B-v-Suresh & G.B.Pant University of Agriculture and Technology-v-State of U.P.*). According to John Rawls a society is said to be socialist when the egalitarian principles are followed, rights are valued and the dignity of each individual is upheld (Balakrishnan, 2011). Socialism operates as an important tool in the campaign towards realizing the right to food of the people living below the poverty line. The concept of socialism empowers the Government to adopt measures to diminish the difference between the rich and the poor. Such measures will end poverty in India to a large extent. The reduction of poverty shall lead to a reduction in hunger and malnourishment and help realization of the right to food of the people.

The Indian Constitution promotes social engineering. In order to achieve this social order distribution of wealth is required to be made on egalitarian basis. A socialist society should have a planned economy consisting of an effective distribution system and controlled pricing (*Exel Wear-v-Union of India*). An egalitarian society is definitely an important step towards the realization of the right to food. The socialist Government cannot justify hunger when it produces enough food to feed its entire population.

The economic resources of the country are not utilised as per the spirit of socialism. The economic growth of the country should lead to up-liftment of the condition of life of the vulnerable section of the society. Therefore improvement in rate of economic growth should lead to decline in the percentage of people affected by malnutrition and starvation resulting in improvement in their development indices (Sen, 2011).

Right to Food as a Fundamental Right

The Constitution guarantees the fundamental right to a dignified life (Article 21). The right to life under the Constitution does not merely mean animal existence. It includes the right to live with human dignity (*Francis Coralie-v-Union Territory of Delhi*). Since the need for food to satisfy hunger is the basic necessity of life, the right to food is thus protected under the right to life.

In a number of judgments the judiciary has recognised the right to food as a right flowing from the right to life guaranteed under the Constitution of India (*Peoples Union of Civil Liberties-v-Union of India, Shantistar Builders-v-Narayan Khmalal Totame, C.E.S.C. Limited, etc-v-Subhas Chandra Bose and other & Kapila Hingorani-v-State of Bihar*). The right to life imposes upon the Nation State the Constitutional obligation to ensure that there is no violation of the right to food (*Bandhua Mukti Morcha-v-Union of India*).

Right to Food as Basic Structure of the Constitution

The Constitution consists of certain basic features or framework which cannot be altered through the process of amendment. The essential elements of individual freedom like immunity

from starvation constitute the basic structure of the Constitution (Keshavananda Bharati-v-State of Kerala). Freedom from hunger is one of the most elementary needs for human existence, therefore the right to food is an integral part of the basic feature of the Constitution and is protected from all legislative interference that aims to dilute or abrogates the right.

The mandate of the Constitution to build a welfare state and an egalitarian society is another basic feature of the Constitution (Keshavananda Bharati). An egalitarian society ensures equality in distribution of the food produced in the country as well as the equal distribution of the wealth of the country therefore, its mandate protects the right to food of the people.

The rights guaranteed under the golden triangle consisting of the right to equality (Article 14), right to freedom (Article 19), and right to life (Article 21), is the basic feature of the Constitution as the provisions stands for equality and rule of law (*Minerva Mills-v-Union of India & I.R. Coelho-v-State of Tamil Nadu*). The rights flowing from the fundamental right to life constitute the core value and if such rights are allowed to be abrogated it shall alter the very nature of the Constitution (*I.R. Coelho*). The right to food is one of the rights flowing from the bundle of rights guaranteed under the right to life.

Right to Food as Directive Principles

The directive principles are non justiciable policies which the Nation State is required to provide to its people with the development of the economic resource of the country. The directive principles are inserted in the Constitution for the guidance of the Nation State. These policies are fundamental in the governance of the country. They impose an obligation on the Nation State to apply these policies in law making (Shiva Rao, 2010). The fundamental rights like the equality clause and the right to life can be used as a means to implement the directive principles (Keshavananda Bharati & Unni Krishnan-v-State of Andhra Pradesh). Part IV of the Constitution is as important as any other fundamental right in the governance of the country. It has now attained the status of a fundamental right (Shah, 2008). The directive principle and fundamental right supplements each other and both together form the conscience of the Constitution (*Olga Tellis-v-Bombay Municipal Corporation & Minerva Mills*).

The directive principle calls upon the Nation State for establishment of a Welfare State (Article 38(1)). A Welfare State promotes a just socio economic order and thereby aids the realization of the right to food of the people. It also directs the Nation State to ensure to its people in course of time a social order based on justice social, economical and political. In order to provide economic justice the directive principle calls upon the Nation State to minimize the inequalities of income, status, facilities opportunities amongst individuals and groups (Article 38(2)). It can be utilised harmoniously with the right to equality, right to freedom and the right to life to redress the sufferings of the poor and enforce their economic rights. Thus, the directive principles promote the realization of the right to food of the people.

The directive principles require the Nation State to formulate its policies to secure the adequate means of livelihood to the

people (Article 39(a)). Absence of an adequate means of livelihood leads to poverty. As hunger in India is the result of poverty rather than lack of production, means of livelihood shall eliminate hunger and malnutrition from the country.

The Constitution of India imposes a primary duty on the Government to improve the public health (Article 39 (e) and Article 47). The scope of this provision of the Constitution is very wide. It not only includes the right to food of the people which is nutritiously adequate to lead a healthy life free from all hidden hunger but also to ensure that the food available is free from all harmful substances and is fit for human consumption.

The National Food Security Act for the Discharge of the Constitutional Mandate

To discharge the obligation created under the Constitution, the country has adopted the National Food Security Act, 2013. This legislative framework is not in conformity with the international protection. Under the international law the Government has three obligations, namely the obligation to respect, protect and provide. The Act provides nutritional assistance to intervene hunger to the food vulnerable sections. The Act in reality has nothing more to provide then the re-drafting the present entitlements of the nutritional assistance under the ongoing schemes with increased coverage. The protections under this legislation are limited to the obligation of the state to provide food assistance to the people in hunger. It does not intervene the cause of hunger through protection which is sustainable in nature like the protections of agricultural land, livelihood to name a few. Therefore the Act fails to discharge the obligation to respect the right to food of the people which requires the Nation State to refrain from any act which deprives an individual or a group of individuals from enjoying their right to food through their own efforts. Such obligation prohibits policies that destroy the access to food of individuals or group of individuals. The Act also fails to discharge the obligation to respect the present access to food enjoyed by the people.

Conclusion

The right to food has established itself as a constitutional mandate. It occupies a position of prominence in the Constitution being a part of Article 21. Similar provisions in the Constitution like the right to education enjoy stronger entitlements. The Government of India has adopted a very restricted perception of the right to food while framing the National Food Security Act, 2013. This Act, for realization of the right to food mostly seeks to provide food assistance to the malnourished people ignoring other similar obligations of the state. Thus, right to food which is a Constitutional mandate is not adequately protected under the Indian Legal Framework.

Therefore the after thoughts of the study are as follows

Framing legislation on right to food which is wider in ambit than National Food Security Act, 2013.

A constitutional amendment to expressly include the right to food in the Constitution of India as has been done in the case of the similarly placed right to education, to ensure that its entitlements are not diluted.

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