

Dr. B.R. Ambedkar and his Philosophy on Health and Nutritional Food Security under The Constitution of India

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ABSTRACT

Dr. B.R. Ambedkar, *the Chief Architect of Indian Constitution is known for his versatile genius, His philosophy on to secure health and nutritional food security in the constitution of India is commendable. Dr. B.R Ambedkar had played a more prominent role to the nation building participation and integrated economic philosophy on the constitution of India, to Ensuring food and nutritional security for all, particularly the vulnerable. According to him everyone must have an adequate standard of living, especially for vulnerable people, including adequate food, clothing, housing, and better living conditions. According to the article 47 constitution of India, The State shall regard the raising the level of nutrition and the living standard of its people including public health as among its primary duties.*

Key Words: Health, Nutritional, Food Security, Constitution of India

I Introduction:

"To insure good health: eat lightly, breathe deeply, live Moderately, cultivate cheerfulness, and maintain an interest in life." **~William Londen**

Food and nutritional food insecurity continue a serious global challenge, reflecting government shortcoming in meeting international obligations to guarantee the availability, accessibility, and quality of food and to ensure the highest attainable standard of health of their peoples. With global climate change, urbanization, larger armed conflict, and the globalization of unhealthy diet, mainly in under-developed countries, food insecurity is rapidly becoming a greater challenge for those living in poverty. The International human rights law can serve a significant role in guiding governments that are struggling to protect the health of their populations, mainly amid the most vulnerable groups, in response to food and nutrition insecurity.¹ Human rights approach to food and nutrition security, specifically identify legal mechanism to control relevant international human rights principles through national policy. recognize nutrition security as a determinant of public health, this is main

¹ Available at <http://www.fao.org/about/en/> Food and Agriculture Organization (FAO) is a specialized agency of the United Nations that leads international efforts to defeat hunger. Goal of FAO is to achieve food security for all and make sure that people have regular access to enough high-quality food to lead active, healthy lives. With over 194 member states, FAO works in over 130 countries worldwide last visited on 4 March. 2020.

links between the four main elements of food security, i.e., availability, stability, utilization, and access and the normative attribute of the right to health and the right to food i.e., availability, accessibility, affordability, and quality. In drawing from the development of international human rights instrument, the official documents issue by international human rights body, as well as past scholarship at the intersection of the right to health and the right to food, this articulates the right-based obligations of national governments in the face of food and nutrition insecurity.²

II International Provisions on Health and Nutritional Food:

India is a party to an International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The Supreme Court held that Article 21 of the Constitution of India in relation to human rights has to be interpreted in conformity with international law³. Further, Article 25(2) of the Universal Declaration of Human Rights and Article 7(b) of the International Covenant on Economic, Social and Cultural Rights have been cited by the Supreme Court while as a right to health of a worker.⁴ These covenants find statutory recognition in the Statement of Objects and Reasons of The Protection of Human Rights Act, 1993. In addition to, these human rights commission is empowered to study treaty and other international instruments on human rights and make recommendations for their effective implementation in the recent past, many complaints of alleged medical negligence and poor service by private and government hospitals and medical professional have been filed with the national or State Human Rights Commissions.⁵

III Right to Health and Constitution of India:

According to The Constitution every person has a right to the utmost possible standard of physical and mental health. Article 21 of the Constitution guarantees protection of life and personal liberty to every citizen. The Supreme Court has held that the right to live with human dignity, enshrined in Article 21, derive from the directive principles of state policy, Therefore includes protection of health.⁶ Further, it has also been held that the right to health is basic to the right to life and the government has a constitutional duty to give health

² *Ibid.*

³ *People's Union for Civil Liberties v. Union of India* (1997) 1 SCC 301

⁴ *ESC Ltd v. Subhash Chandra Bose* (1992) 1 SCC 441

⁵ Chapter III, Section 12 (f) of the Protection of Human Rights Act, 1993

⁶ *Bandhua Mukti Morcha v. Union of India* (AIR 1984 SC 802)

facilities. Failure of a government hospital to provide a patient timely medical aid result in infringement of the patient's right to life.⁷

Similarly, the Court has upheld the state's obligation to maintain health services. A Public interest petition has been filed under Article 21 in response to violations of the right to health. It has been filed to provide special treatment to children in jail, on unsafe and inhuman condition in care homes, on the rights of mentally ill patients on the rights of patients in cataract surgery camps for immediate medical aid to injured persons, on conditions of tuberculosis patients In hospitals, on occupational health hazards, on the regulation of blood banks and availability of blood products for passive smoking in public places .and on conditions of person with HIV, on the rights of HIV/AIDS patients. Health is a very important indicator of human development and human development. The right to health is natural right to a life with dignity, and Article 21 should be read with Articles 38, 42, 43, & 47 to understand the nature of the obligation of the state in order to ensure the efficient understanding of this right.⁸

IV Right to Health and WHO:

According to World Health Organization, Health is a condition of entire physical, mental and social wellbeing and not only the lack of disease. From the definition itself, it is clearly indicated that condition of life of the person should incorporate physical, mental & social well being & must be devoid of illness & infirmity. Thus, this pioneering organization has played the most excellent supportive task in guiding health policy development and action at the global and national levels, with an overall object of ensuring & attaining the highest standard of health. WHO has also played an extremely important role to lessen malnutrition among the peoples⁹

V Right to Health and Preamble to the Constitution:

The Preamble to the Constitution of India, provides welfare state with socialistic patterns of society under the Article 21 of the Constitution, which also guarantee the right to life & personal liberty. The idea of democratic socialism aims to improve the condition of health of the people. The idea of socialism is also embodied in various provisions of part III & part IV of the Constitution...Socialist when the democratic principles are followed, rights

⁷ *State of Punjab v. Mohinder Singh Chawla* (1997) 2 SCC 83

⁸ *Ibid.*

⁹ Preamble to the Constitution of the WHO as adopted by the International Health Conference ,Official record of the WHO, no 2, P. 100

are valued & the dignity of each individual is upheld. So the Constitution of India talks about the obligation of the welfare state towards their people to protect their health,. Being a welfare state it is important duty of the state to protect the health of their subjects.¹⁰

VI Directive Principle of State Policy, Health and Nutritional Food:

The Constitution impose a duty on states and direct the state to take measures to improve the condition of health care of the people. Articles 38 imposes a duty on the state that states to secure a social order for the promotion of the welfare of the people but without public health we can't achieve it. Article 39(e) related with workers to protect their health. Article 41 imposes a duty on the states to provide public assistance within its limits basically for those who are sick & disable. According to article 42 it is the primary responsibility of the state to protect the health of the infant and his/her mother by giving maternity benefit to the pregnant women's . Article 47 states that the duty of the state to raise the level of nutrition & the standard of living of its people which is its primary responsibility. The state shall also, in particular, direct its policy towards securing the health of its workers.¹¹

VII Constitutional Obligation on Panchayat, Municipality and Right to Health:

It is not only the state, but also Panchayat and Municipalities are obliged to improve and protect public health. "The legislature of a state may endow Panchayat, and Municipalities with the necessary power and authority under XI and XII schedule.

- Water
- Health and sanitation, including hospitals, primary health care centres & dispensaries
- Family welfare
- Women and child development
- Social welfare, including welfare of the handicapped persons
- Water supply for domestic, industrial and commercial purpose
- Public health, sanitation conservancy and solid waste management
- Regulation of slaughter houses and tanneries.¹²

VIII Right to Health and Judiciary:

Indian Judiciary has played a very active role in Right to Health by entertaining public

¹⁰ P.M. Bakshi , "*The Constitution of India*", Universal Law Publishing Co. Pvt. Ltd., New Delhi, 4th Edition 2003. P, 432

¹¹ M. P., Jain, "*Indian Constitutional law*", Lexis Nexis Butterworth's Wadhwa, Nagpur, 6th Edition. 2010, p.678

¹² *Id at p,1076*

interest litigation which provides a chance to the judiciary to examine the socioeconomic and environmental condition of the oppressed, deprived and the downtrodden people through PIL under Article 32 of the Constitution. The Supreme court has given certain guidelines to the government to implement the fundamental right to life and liberty of the people. The fundamental rights are intended to advance the ideal of political democracy and to check the establishment of dictatorial rule, but they are of no value unless they can be enforced by resort to the courts. But it does not mean that directive principles are not more important than fundamental rights or they are not binding on the states.

In *Paschim Bangal Khet Mazdoor Samity & Others v. State of West Bengal & Others*¹³ the court held that in a welfare state, the main function of the government is to secure the welfare of the people and more over it is the obligation of the government to provide adequate medical services for its people. The government discharge its duty by providing medical facilities to the persons who wants to seek these medical facilities. Article 21 imposes a duty on the state to safeguard the right to life of all persons and protection of human life. The government hospitals run by the state are duty to expand medical aid to protect human life. Failure on the part of a government hospital to provide timely medical treatment to a person in need of such treatment, results in breach of his right to life which is assured under article 21 of the constitution.

IX Provision for Just and Humane Conditions of Workers and Maternity Relief for Women:

In *U.P.S.C. Board v. Harishankar*¹⁴ Supreme Court has held that Article 42 and 43 provides the basis of the larger body of labour law in India. Further. The Supreme Court has emphasised that the Constitution expresses a deep concern for the welfare of the labour. The Court may not implement the Directive Principles as such, but they must interpret the law so as to further the to the objective set out in the Directive Principles. In *Bandhua Mukti Morcha v. Union of India*¹⁵ BHAGWATI, J. observed: right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and Particularly clauses (e) and (f) of Article 39 and Article 41 and 42. "as the Directive Principles of State Policy are not enforceable in a Court of law, it is not feasible to compel

¹³ AIR1996 SC 2426, *Indian medical association v. V.P. Shantha* 1995(6) SCC , in view of the said decision that non availability of the facilities for treatment of serious injury in the government hospitals has resulted in denial of fundamental right guaranteed under article 21 of the Constitution.

¹⁴ AIR 1979 SC 65: (1978) 4 SC 16

¹⁵ AIR 1984 SC 802 The brief facts of the case was a survey of some of the stone quarries in Faridabad district near the city of Delhi and Faridabad that were a large number of labourers from Maharashtra, Madhya Pradesh, Uttar Pradesh and Rajasthan, who were working in these stone quarries under Inhuman and intolerable conditions many of whom were based labourer.

the State to formulate provision by legal enactment or executive fiat for ensuring these basic essentials which go on to guarantee a life of human and dignity”

It is right that no state or country can have limitless wealth to spend any amounts on its project. Similarly, providing medical facilities to an employee of the state cannot be unlimited and this point has arisen in the case of *State of Punjab v. Ram Lubhaya Bagga*¹⁶, Where medical services under a policy continue to be given to an employee, to get treatment in any private hospital in India, but the amount of reimbursement may be limited. The Supreme Court said that if no amount or fee is fixed, then in case private clinics or hospitals increase their rate to overpriced scales, the state would be bound to reimburse the same. The principle of fixing of the rate and scale under such a policy is justified, and cannot be held to violate art 21 or article 47 of the Constitution. It is the responsibility of the state to provide for secured health of its citizen. No doubt the government is rendering this obligation by opening government hospitals and health centre’s but to be meaningful they must be within the reach of its people and of sufficient liquid quality. Since it is one of the most sacrosanct and the sacred obligation of state, every citizen of this welfare state looks towards the state to perform this obligation with top priority including by way of allocation of sufficient funds.¹⁷

Supreme Court, in landmark judgment *Pramand Katara v. Union Of India & others*¹⁸ held that every sector, whether in a government hospital or otherwise has the professional obligation to extend his services with due expertise for protecting life. No state action can intrude to avoid or delay the discharge of the principal duty cast upon members of the medical profession. Similarly again the Supreme Court in *State of Karnataka v. Manjanna*¹⁹ said that tendency of refusal to conduct medical examination of rape victims by doctors in rural government hospitals unless referred by the police is infringement of the fundamental right of the victim. The court said we want to wish disapproval the of some government doctors, particularly in rural areas, where hospitals are few and far between to conduct any medical examination of a rape victim unless the case of rape is referred to them by the police’. The court said that such a refusal to conduct the medical examination necessary results in a delay in the ultimate examination of the victim by which the evidence of rape may

¹⁶ AIR 1985 SC 3245

¹⁷ *Ibid.*

¹⁸ AIR 1989 SC 2039 The brief facts of the case were that a Scooterist who was knocked down by a car and died due to lack of medical treatment. Following the accident, the Scooterist was taken to the nearest hospital, but was turned away and sent to the nearest hospital 20 km away which was authorised to handle medico-legal cases. The Scooterist died while he was being transported to other Hospital. The petitioner sought the issuance of specific direction to the Union of India by the SC which read as “every citizen brought for treatment should instantaneously be given medical aid to preserve life of the person.”

¹⁹ AIR 2000 SC 2231

have been washed away from the complainant herself or be otherwise lost, the court, therefore, directed that the state must ensure that such a situation does not happen again in future.

In *CESE Ltd v. Subhash Chandra Bose*,²⁰ the court held that, the health and strength of worker are an integral facet of the right to life. The aim of fundamental rights is to make a democratic society to free all citizens from oppression or restriction of society and to make freedom available for all. The court, while reiterating its stand for providing health facilities in *Vincent v. Union of India*²¹ the court said that all human conduct is the very basis of a their healthy body. A three Judge's bench of the Supreme Court in *Consumer Education & Research Centre v. Union of India*²² ruled that right to health and medical care, to protect health while in service or post retirement, is a fundamental right of a worker under article 21, read with articles 39(e), 41, 43,48A. All associated articles and fundamental rights are proposed to make the life of the workman meaningful and purposeful. Lack of health facilities denudes him if his livelihood compelling economic need to work in an industry expose to health hazard due to poverty to breed winning for himself and their dependents life's should not be depending on the health and vigour of the workman. The court further ruled that the jurisprudence of the right to life envisage in art 21 of the Constitution enlarges its sweep to include human personality in full bloom to sustain the dignity of a person and to live a life with dignity and equality. The health of the worker is an integral part of the right to life. In that case, health insurance while in service or after retirement was alleged to be a fundamental right and even private industry are enjoined to provide health insurance to the workman. The Supreme court of India in a number of judgment has said that the right to health care to be a fundamental right, but the state had not given due credit to the supreme court judgement. What is also quite unfortunate is that in a country where poor and marginalized are more in members and these people cannot have enough money to pay in any government and private hospitals, the state must develop new health insurance policies at a nominal price²³

X Right to Nutritional Food and Indian Judiciary:

The right to food is a human and universal right acknowledged at the national, regional and international level, and applies to every person and group of persons. However,

²⁰ AIR 1992 SC 573

²¹ AIR 1987 SC 990

²² AIR 1995 SC 42

²³ *Ibid.*

some 852 million persons all over the world are seriously and permanently malnourished, 815 million of whom are in developing countries, 28 million in countries in transition and 9 million in developed industrialized countries. In addition, every five seconds, a child under 10 years of age dies of hunger or malnutrition and more than 5 million per year. Thus, the cause of malnutrition and of death from hunger and starvation of children are immensely complex, and they cannot be merely due to war or natural catastrophe. They are mainly due to social injustice, to political and economic exclusion and to discrimination. Hundreds of millions of undernourished children suffer from political and social exclusion while their right to food is violated. Children's rights are the human rights of children with particular interest to the rights of special protection and care offered to the young including their food. In the case entitled *PUCL v. Union of India*²⁴ and Others the Supreme Court ordered to set up a central vigilance committee for public distribution system (PDS), chair by a retired Supreme Court judge and assist with court commission in the right to food case. The committee mandate was to look into the maladies affecting the proper functioning of the public distribution service. The right to Food ensures opportunity for appetite and access to safe and nutritious sustenance and numerous key human rights principle are fundamental to guarantee the right to food.²⁵ In *Vincent Panikurlangara v. Union of India*²⁶ the Court stated that "*maintenance and improvement of public health have to rank high as these are indispensable to the very physical existence of the community and for the betterment of these depends, the building of the society of which the Constitution makers had imagined.*" The Supreme Court while interpreting Article 47 has rightly stated that for the betterment of the society public health is to be protected. Further, it has been held that, in this welfare age raise the level of nutrition and improvement the standard of living of the people are main duty of the State²⁷

²⁴ Writ Petition 196 of 2001 brief facts of the PIL was, outside the city of Jaipur city were overflowing with grains. The grains were rotting due to fermentation of rainwater which had percolated down in the grain stock as it was kept outside the godowns. There was a village near the godown where the village people were eating in rotation, classically called "rotation eating", or "rotation hunger" where some members of the family eat on one day and the remaining persons eat on the other day. So the SC passed interim to constitute a committee and distribute the grains to the people who were eating food in the rotation.

²⁵ Available at <https://blog.ipleaders.in/peoples-union-for-civil-liberty-v-union-of-india-chameli-singh-and-others-etc-v-state-of-u-p-and-another-1996-2-scc-549-olga-tellis-&ors-v-bombay-municipal-corporation-1986-air-180-1985-scr-supl-2-51-c.e.s.c-ltd.-v-subhash-chandra-bose-1992-air-573-1991-scr-supl-2-267>

²⁶ AIR 1987 SC 990; (1987) 2 SCC 165

²⁷ *Ibid.*

Not surprisingly, there has been considerable debate over the nature, extent and validity of the Supreme Court's activism in the right to food as well as similar cases where PILs have been invoked by various actors to focus attention on the plight of the poor, who typically do not use legal channels to solve problems. In particular, political leaders at the state level, have expressed dismay at the additional costs associated with enforcing court orders. Indeed, politicians resent being lectured to by 'unelected' judges who do not have the mandate of the people. Others are more supportive of the courts, arguing that judicial activism is necessary not only for the protection of the powerless but also due to the presence of corruption and inefficiency in the legislative and executive branches.²⁸

The actions of the Supreme Court and the ensuing interim orders have had considerable impact, with the media and the political-administrative system paying close attention to the regular judicial pronouncements. It has also encouraged a few regional (state) governments in India to enact legislation of their own in order to improve service delivery. One prominent example is Chhattisgarh, a state which ranks low among other Indian states in relation to human development, where the government successfully enacted the Chhattisgarh Food Security Act in December 2012 with the aim of ensuring 'access to adequate quantity of food and other requirements of good nutrition to the people of the State, at affordable prices, at all times to live a life of dignity'. With several innovative features related to targeting of vulnerable food insecure households, availability and distribution of various types of food, and speedier mechanisms for service delivery, this piece of legislation has been hailed as a major success story amidst the general reluctance of state and national governments in India to abide by the directions of the central government and the Courts that are aimed at improving food security. It is particularly interesting to bear in mind at this stage that a state level legislation on food security came into force well before legislation at the national level.²⁹

CONCLUSION

The term Right to health and Right to nutritious food is nowhere mentioned in the constitution yet the Supreme Court has interpreted it as a fundamental right under Right to life enshrined in Article 21. The Supreme Court in its observation has interpreted the Right

²⁸ Sateh 2002, p. 278-281, cited in Zwart 2009, p. 6-7..

²⁹ *Ibid.*

to Health under part IV. i.e. Directive Principles of state policy. It is the responsibility of the state to take care the health of their people and their nutritious food at large. In its widest interpretation of Article 21 the Supreme Court said that, the right to Health is a part and parcel of the right to life. In its real sense, the court has played a vital role in imposing positive obligations as to maintain & improve public Health and nutrition. Still now no effective steps have been taken to implement the constitutional obligation upon the state to care for the health and strength the of people. It has rightly been said that nutrition, food and health are the inputs accepted for the development of human resources. For achieving the Constitutional obligation and also objectives of Healthcare and nutritious food for all, there is a need on the part of the government to organize nongovernmental organization and the general public so that they can do their best.

SUGGESTIONS

- **Flexible coverage** –There must be Flexible covered and proportionate for entitlement of rural and urban population Based on the trend of urbanization over the period.
- **Identification of priority households**- There should be an identification of eligible households so that target of zero exclusion error and formation of a task force for identification and coverage of destitute and downtrodden people.
- **Transparency and effectiveness** – There must be computerization of the PDS to impart in the functioning of entire PDS.
- **Decentralized procurements**- Procurements Decentralized so that the purchase mechanism of the food grains by leveraging the with the objective of lowering the procurement overhead and incidental expenses.
- **Storage capacity**- Promoting the initiatives the development of for efficient and economically viable storage solutions, using advanced technology. Methods like Augmentation of by developing silos, cold storage chain and indigenous methods of storage of food grains should be used.
- **Promotion of agricultural societies**- Agricultural societies for farmers for production, procurement and storage of the food grains, which may lead to self-sufficiency.
- **Modernization**- Modernization of the packaging, processing and distribution process of the food grains.

- **Food coupons**-Use of as a substitute for the ration cards using which the beneficiaries can purchase the required food grains from the open market at the subsidized prices, and this may reduce pressure on the PDS.
- **Direct cash transfer**-Food security through direct cash transfer may be a cost effective option for the safety net program, which can benefit in exploring more options to the consumers, reduce the risk of distortions and boost investment in agricultural and non-agricultural activities due to improved access to the credit.
- **Education and training**-Education and training is an ongoing process and its role cannot be ignored for the success of the NFSA. For the successful implementation of the NFSA, education and training in every facet of the act is necessary for all the stakeholders of food grain supply chain right from farmers to the beneficiaries.
- **Government helpline** -Setting up of government help lines for farmers and extension centres of agriculture universities/institutes in villages can be of great help in this regard. The operational inefficiencies with the procurement practices, storage and handling of food grains, and distribution can be mitigated by launching tailored educational programs with specific objectives and by giving training on use of information and communication technology to the concerned stakeholders.
- **Training program** - Mass base education and Training program for consumer awareness about the legal aspects of the act as well as issues related to the food security, diet, nutrition and health might lead to suffice the objectives of the NFSA.