

RIGHT TO FOOD IN INDIA: A CONSTITUTIONAL PERSPECTIVE

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Abstract

Food is a basic human requirement which everyone needs to survive. The right to food is often called the most basic human right and has been universally accepted as such. The realization of all other rights depends on the right to food. 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. Besides Part IV of the Constitution stress on public health and nutrition which embodies within its ambit the right to food. Despite favourable case law from India's Supreme Court, and an intensive Court-run programme designed to force Indian States to distribute food according to the welfare schemes in place, and to legitimizing the right to food and securing it as a legal entitlement by enacting National Food Security Act, there are bothering gaps between laws and commitments on paper and implementing these commitments in practice.

India being touted as one of the fastest growing economies in the world, it is still lagging behind most of the other developing countries in the radar of the Global Hunger Index. According to latest 2014 report of the International Food Policy Research Institute (IFPRI), India climbed to 55th position among 76 emerging economies with a GHI value of 17.8%. Yet the pervasiveness of human hunger unambiguously illustrates the ongoing failure to fulfil the "right to food." It has become a truism in human-rights circles to describe the human right to food as the right which is most often proclaimed and most often violated.

The aim of this paper is to provide an analysis of the current legal and institutional governance structure of the India's human right to food.

Keywords: Human Rights, Right to Food, Food Security, Constitution

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I. Introduction

The right to food is a human right recognised under national and international law, which protects the right of people to access food and feed themselves, either by producing their food or by purchasing it. The right to food is linked to one's right to life and dignity and requires that food be available, accessible and adequate for everyone without discrimination. The human rights approach to the right to food and nutrition is increasingly becoming popular as against policy oriented programmatic approach to development as it introduces normative basis and provides for an element of accountability by virtue of which State can be compelled to protect certain vital interests of subjects.¹ The 'Rights' approach is not always going to be useful to solve the problems that cause hunger and malnutrition because not every hungry and malnourished is a victim of human rights violations.² But violations occurs when States fail in their obligations to *respect, protect or fulfil* the right to food, and such State failure is one of the major causes of the persistence of hunger and malnutrition.

Hunger and malnutrition are the twin problems that plague the world at large and continue to be a blemish on the graph of development. Though many countries have pledged their allegiance to the task of eradicating hunger, so far it has proved to be a utopian dream. Even though food is the most basic requirement for survival, it still seems to be a luxury which millions barely have access to. The only way that hunger can become a thing of the past is to make food security a reality, and to respect every individual's right to adequate food and ensuring that no one is denied the same. There is the need to develop a normative concept of right to food in India because in rural India today, 23 crore people are under-nourished, and 50% of children fall victim to malnutrition. Every third Indian in the age-group 15-49 years is feeble-bodied. The government is presently grappling with the target of 22.8 crore tonnes of grain production; it needs to reach a target of 25-26 crore tonnes by the year 2015. The situation is so grim that today every fourth malnourished global citizen is an Indian.

¹AsbjorneEide, *The Human Rights to Adequate Food and Freedom from hunger'in FAO: Right to food in theory and practice*(Rome: FAO 1998) 1-5

² Henry J. Steiner and Phillip Alston(Eds), *International Human rights in Context*(Oxford: Clarendon Press, 1996), 286

II. Definition, Contents and Obligations of Right to Food

In order to analyse right to food it is significant to be clear about the definition, contents and obligations. Generally speaking, the right to food can be interpreted as a claim of individuals on society (starting but not ending with the State). It is an entitlement to be free from hunger, which derives from the assertion that the society has enough resources, both economic and institutional, to ensure that everyone is adequately nourished.³

Definition

The right to food means that all people have the right to feed themselves and their families with dignity. People must be able to grow or hunt or catch the food they need or earn enough money to buy it. Right to food is a basic human right which cannot be twisted or ignored by the sweet will of the politicians.

As per *special Rapporteur* on the Right to Food, Mr. Jean Ziegler, Right to Food means “the right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of anxiety.”⁴

The right to adequate food and the fundamental right to be free from hunger are recognized by international law, and many countries have food-related rights in their constitutions. According to the *United Nation’s committee on economic, social and cultural rights* “the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the other human rights enshrined in the International Bill of Human Rights. It is also inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies at both the national and international levels, oriented to the eradication of poverty and the fulfilment of human rights for all... The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.”

³Dreze Jean, ‘*Democracy and Right to Food*’. Economic and Political Weekly, April 24, 2004, 1723-1731

⁴Retrieved from www.righttofood.org/work-of-jean-ziegler-atthe-un/what-is-the-right-to-food accessed on 12-09-2015.

Core Content of Right to Food

The core content of the right to food gives rise to minimum core obligations for states. The right to adequate food is a 'relative' standard. In contrast, the right to be free from hunger is 'absolute.'⁵ As a minimum core obligation, States Parties must act immediately "to mitigate and alleviate hunger... even in times of natural or other disasters. The Committee on Economic, Social and Cultural Rights (CESCR) has concluded that the "core content" of the right to adequate food implies ensuring: *Availability, Adequacy and Accessibility* of food.

Availability refers to enough food being produced for both the present and future generations therefore entailing the notions of sustainability, or long term availability and the protection of the environment. Adequacy refers to the dietary needs of an individual which must be fulfilled not only in terms of quantity but also in terms of nutritious quality of the accessible food. Accessibility implies that the financial cost incurred for the acquisition of food for an adequate diet does not threaten or endanger the realization of other basic needs. Right to food cannot be ghettoized from other rights such as right to health, education or life and these rights are interdependent. In order to achieve right to food these rights also need to be reinforced. In 2002, a decision to bring about a paradigm shift from an anti-hunger approach based on food security to one based on the right to adequate food was adopted in World Food Summit, when 179 participating states reaffirmed the right to adequate food and tasked an FAO inter-governmental working group with developing Right to Food Guidelines in order to provide practical guidelines for achieving the goals established in 1996.

Core obligations of States

The right to food as a human right imposes three types or levels of obligations on States: which is now a widely used framework for analysing States' human rights obligations generally.⁶ These are: *the duty to respect, the duty to protect, and the duty to fulfil or facilitate* human rights.

The duty to respect the right to food is essentially a duty of non-interference with existing access to adequate food. It requires States Parties to refrain from measures that

⁵*The Right to Food: Guide through applicable International Law* xviii (Katarina Tomasevski ed., 1987).

⁶Asbjorn Eide, *Strategies for the realisation of the right to food in Kathleen E. Mahoney and Paul Mahoney, Human rights in the 21st century: A Global Challenge* (London: Martinus Nijhoff 1993), 450

prevent such access; The duty to protect the right to food requires States Parties to ensure that enterprises or individuals do not deprive individuals of their access to adequate food;”The duty to fulfil the right to food is a positive obligation that the CESCR has interpreted to include the duty to facilitate and to provide. The duty to facilitate implies that taking positive steps that strengthen people’s access to food and access to resources that enable better nutrition, including, inter alia, land, schooling, jobs and markets.

As expressed above, the normative content of the right to food, and the ensuing obligations of states to those within their territory or jurisdiction, enjoys far greater clarity than when the right was first codified under international human rights law. Indeed, states occupy a central and critical role in ensuring the right to food and should discharge these obligations in a transparent, accountable, and non-discriminatory manner that ensures the participation of those most affected.

Food Security

Food security is a multi-faceted concept, variously defined and interpreted. Concisely food security may be defined as freedom from hunger and malnutrition. Food security was defined in the *1974 World Food Summit* as: “availability at all times of adequate world food supplies of basic foodstuffs to sustain a steady expansion of food consumption and to offset fluctuations in production and prices”⁷ The concept of food security itself is not a legal concept per se and does not impose obligations on stakeholders nor does it provide entitlements to them whereas the right to food places legal obligations on States to overcome hunger and malnutrition and realize food security for all. Food security is a precondition for the full enjoyment of the right to food

III. Legal framework for the Right to Food

International Commitment

Before beginning our discussion on India’s specific jurisprudential progression towards finding and founding a constitutional human right to food, it is important to note that adequate legal guarantees to the right to food existed prior to the establishment of a right to food in India. Indeed, the right to food has been enshrined in international legal documents for over half a century and is a part of the modern international human rights

⁷United Nations. 1975. Report of the World Food Conference, Rome 5-16 November 1974. New York.

agenda that has both influenced and been influenced by India. The international human rights law regarding the right to food relies largely on national action for implementation. That being said, the national and the international human right to food interact and inform each other. Progress at one level can be translated into progress at the other, and so it is important to understand the larger international framework in which the Supreme Court case exists.

The right to food has been part of the international human rights regime since its inception. Access to food was first declared a right in Article 25⁸ of the Universal Declaration of Human Rights (UDHR), 1948, and the right was subsequently codified by Article 11⁹ of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which encompasses two separate but related norms: the right to adequate food and the right to be free from hunger. The Committee on Economic, Social and Cultural Rights has further defined the right to food provided for in the ICESCR in its General Comment 12. Other international legal instruments that India has ratified and that further articulate the right to food in Article 27¹⁰ of the Convention on the Rights of the Child and Article 12(2)¹¹ of the Convention on the Elimination of All Forms of Discrimination against Women. In addition to these legal obligations, India has signed up to such political declarations as the 1996 Rome Declaration of the World Food Summit, thereby pledging its political commitment to ensuring its citizens access to adequate food. Despite declaring that such a right exists, none of these legal texts is particularly specific in defining what a

⁸ Article 25 of the UDHR, 1948 States that “[e]veryone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food”

⁹Article 11 of the ICESCR reads: 1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. 2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed: (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; (b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need

¹⁰ Article 27(1) of the CRC recognizes “the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development”. The States Parties to the Convention have the duty to “take appropriate measures” to assist parents in fulfilling their primary responsibility to implement such right, “particularly with regard to nutrition” (art. 27(3)). Moreover, article 24(2)(c) of the CRC commits States to combat child malnutrition.

¹¹ Articles 12(2) of the CEDAW, States have to ensure to women “adequate nutrition during pregnancy and lactation”.

state party must do in order to ensure the right to food. Thus it is particularly important for states, such as India, to give shape to this right through national programmes.

India's Commitment

The Constitution of India both explicitly and implicitly provides for a right to food, thereby offering healthy national protection that is likely more accessible to Indian citizens than similar safeguards provided by international bodies. Explicitly, Article 47, found in the Directive Principles division of the Constitution, creates a “duty of the State to raise the level of nutrition and the standard of living and to improve public health.” Given the aspirational and non-justiciable nature of the Directive Principles, however, most of the development of the right to food has occurred within the context of Article 21, which includes a right to life and is located within the enforceable and justiciable Fundamental Rights section of the Constitution.

Indeed, the Supreme Court has explicitly stated in various cases that the right to life should be interpreted as a right to “live with human dignity”, which includes the right to food and other basic necessities.¹² Certain directive principles such as right to an adequate means of livelihood under Article 39, right to work, education and public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want under Article 41, living wages for workers under Article 43, and the principle relating to the duty of the state to secure social order for the promotion of welfare under Article 38 are thought to be sufficient to ensure right to food

India's constitutional guarantee of a right to food is perhaps not unique amongst the world's Constitutions. According to the Food and Agricultural Organization of the United Nations, twenty-two national constitutions explicitly mention a right to food that applies to the entire national population, while several other Constitutions provide for a right to food through a right to life with dignity or related social welfare rights¹³

¹² For instance, in *Maneka Gandhi v. Union of India* AIR 1978 SC 597, the Supreme Court stated: “Right to life enshrined in Article 21 means something more than animal instinct and includes the right to live with human dignity, it would include all these aspects which would make life meaningful, complete and living.” Similarly, in *Shantistar Builders v. Narayan Khimalal Totame* (1990) 1 SCC 520, the Supreme Court stated: “The right to life is guaranteed in any civilized society. That would take within its sweep the right to food...”

¹³ FAO, Intergovernmental Working Group for the Elaboration of a Set of Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, Information Paper: Recognition of the Right to Food at the National Level, 25-26, IGWG RTFT INF/2 (Feb. 2004), available at <ftp://ftp.fao.org/docrep/fao/meeting/007/j0574e.pdf>.

Judicial Commitment

The right to food is a vital human right that, if denied, renders human life stunted, painful, or null. A magnificent step was taken by the Supreme Court in expanding the scope of Article 21 when it observed that ‘right to life does not merely mean ‘animal existence’ but living with ‘human dignity’ which include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human self.’¹⁴ Another broad promulgation of the right to life with dignity is found in *Bandhua Mukti Morcha v. Union of India*.¹⁵ The Court observed- “to live with human dignity, free from exploitation. It includes protection of health and strength of workers, men and women, and of the tender age of the children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum conditions which must exist in order to enable a person to live with human dignity. No government can take any action to deprive a person of the enjoyment of these basic rights.

The Supreme Court in *Chameli Singh v. State of Uttar Pradesh*¹⁶ held that the need for a decent and civilized life includes the right to food, water and decent environment. The court has observed in this connection: “In any organized society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. In *Kishen Pattnayak and ors. v. State of Orissa*¹⁷, It was alleged that the people of Kalahandi, Koraput and other districts of Orissa, there are many people dying there due to hunger. Justice P.N Bhagavathi observed that ‘No one in this country can be allowed to suffer deprivation and exploitation particularly when social justice is the watchword of our Constitution’.

The Supreme Court of India has established itself as a champion of food security and committed itself to the realization of the right to food in India. Through its landmark decision in the public interest litigation Petition, *People’s Union for Civil*

¹⁴*Francis Coralie v. Union of Territory, Delhi* AIR 1981 SC 746.

¹⁵AIR 1984 SC 802.

¹⁶AIR 1996 SC 1051.

¹⁷AIR 1989 AIR 677.

*Liberties(PUCL)v. Union of India &Others*¹⁸, explicitly established a constitutional human right to food and determined a basic nutritional floor for India's impoverished millions.

IV. Policies and Programmes for Realising Right to Food

India has demonstrated a commitment to ensuring food security and to realizing the right to food by legally establishing a basic nutritional floor for all citizens. Over the last ten years of this open and ongoing petition, the Supreme Court has not only reconfigured specific government food schemes into legal entitlements, setting out in detail minimum allocations of food grains and supplemental nutrients for India's poor, but has also clearly articulated how those Government schemes are to be implemented and identified which public officials to hold accountable in the event of non-compliance. The Right to Food Case is perhaps the longest continuing mandamus in the world on this issue. The Supreme Court held that the right to food is a justiciable, reviewable, expandable, legally enforceable, constitutional and inviolable- right opened up new avenues both for political discourse and for concrete action. PUCL's case has brought about a marked footprint on the lives of millions of people in India. Never before has the world witnessed such a dynamic character of the judiciary. To ensure proper distribution of food grains, the first major interim order of the Supreme Court in this PIL was issued on 28th November 2001. This order focuses on eight food-related schemes:

- The Public Distribution System (PDS);
- Antyodaya Anna Yojana (AAY);
- The National Programme of Nutritional Support to Primary Education, also known as "mid-day meal scheme";
- The Integrated Child Development Services (ICDS);
- Annapurna;
- The National Old Age Pension Scheme (NOAPS);
- The National Maternity Benefit Scheme (NMBS); and
- The National Family Benefit Scheme (NFBS).

Essentially, the interim order of 28th November 2001 converted the benefits of these eight "schemes" into legal entitlements. This means, for instance, that if someone has an Antyodaya card but she is not getting her full quote of 35 kg of grain per month at the

¹⁸ Writ Petition(Civil) No.196 of 2001

official prices (Rs 3/kg for rice and Rs 2/kg for wheat), she can claim her due as a matter of right, by going to Court if necessary.

Problems and Shortcomings of Governmental Schemes and Policies

Analysis of the various schemes and policies of the government indicate that none of these programmes have been able to exploit their full potential and corruption has seeped in to every nook and corner. The studies on MGNREGP indicate that the programme has encountered several problems in the implementation. They are: wages paid are lower than minimum wages; distressing delays in the payment of wages; demand for work is not properly captured; dated receipts for work applications are not properly given; the payment of unemployment allowance is a rarity; shortage of staff; irregular flow of funds; leakages and corruption, etc are the main problems faced by the state. Recently, India witnessed MGNREGA scam in UP which caused a loss of Rs. 10,000 crore to the exchequer. The scam included payment of wages against fake card holders and fake construction works, creating fictitious purchase invoices, payment to ghost firms against the procurement of various items including hybrid seeds, calendars and publicity material, purchase of instruments used by laborers for construction work and purchase of photocopy machines and computers. UP has received Rs. 20,000 crore under MGNREGA, but only 40 percent of the fund has reached the targeted beneficiaries.

Studies have shown that TPDS has neither benefitted the poor nor has helped in reducing the budgetary food subsidies. Modified targeting has affected the functioning and economic viability of the PDS network adversely and led to the collapse of the delivery system. Large scale leakages from the PDS that is, grain being diverted and not reaching the final consumer is another problem. It was found that 67 percent of the wheat meant to reach the poor ended up missing the target, being pilfered or sold in the open market en route. Many a times, the godown authorities send less grain to the ration shops than they are supposed to get, which forces PDS outlet managers, in turn, to distribute less grain to the card holders, etc. In North India, half of the grain meant for distribution to poor households through PDS system seems to end up in the black market, rising to 80 percent in Bihar and Jharkhand. TPDS has not succeeded in achieving its medium and long-term objective, namely, economic health and sustained food security for the poor. It exploits blatantly the opportunities for renterism that the system provides. The poor complain of being deprived of the benefits of a policy intended to support and help them on a sustained

basis. With TPDS the difference between market price and ration price increased and that may have provided greater incentives for diversion.

ICDS too has many shortcomings. First of all, the coverage of the programme is very low. Funding patterns for obtaining at present and conditionalities make the operation difficult. There is lack of trained staff and helpers; lack of Anganwadi buildings; storage facilities; lack of drinking water, sanitary and electricity facilities; lack of holding of meeting of coordination committees as per the prescribed norms; lack of hundred percent checkup of beneficiaries and lack of involvement of elected persons.

The midday meal scheme was also marred by various scams which have been unearthed recently. On July 16, 2013, 22 students were killed after consuming poisoned midday meal in Bihar. Furthermore, scam involving government schools that siphoned off food grains under the midday meal scheme by faking attendance. The modus operandi of the schools was simple- the attendance register would exaggerate the number of students enrolled in the class. The additional students would not exist- they were 'enrolled' to get additional food grains which were pocketed by the school staff. This shows that even a noble scheme like MDMS has turned into Satan's tool due to corruption.

V. The National Food Security Act, 2013

The latest manifestation of Indian government action on the right to food is the enactment of National Food Security Act. It is a legislative measure of the Government of India to guarantee subsistence and nourishment to nearly 67% of its 1.2 billion populations. This herculean task attempts to secure more than 70 million Indians from the threat of starvation. The hurry in passing of Food Security Act gives rise to the suspicion that it was enacted to suit the political interest and to secure the vote bank. The required groundwork was not completed before the enactment of the Food Security Act. The major concerns for the success of this Act are- (i) the method of dividing the poor into below and above poverty line groups leads to significant errors of exclusion, (ii) the system of cash voucher or transfer in the place of distribution of food sometimes compel the beneficiaries to divert the amount to areas other than food items, (iii) lack of emphasis on access to safe drinking water, sanitation, health care education which are complementary conditions for nutritional absorption, (iv) inadequate budget allocation for the implementation of bill (79,800 crore), which is not even about two-thirds of what is actually needed. (v) A significant shortcoming of the Act is that the scheme could upset the budget with the

subsidies on food doubling to a whopping 23 billion dollars. This will not help India as it won't be able to afford such huge costs. (vi) Another important concern is that the food under this act has to be distributed through India's notoriously corrupt and leaky state owned cheap food ration shops which might prove to be catastrophic.

VI. Conclusion

India is home to a huge proportion of people suffering from hunger, malnutrition and food insecurity in the world today. Nevertheless, there are substantial and ample government schemes and programmes which involve crores and crores of rupees, they are not able to achieve the requisite result and the dream to convert India into a country free from hunger and starvation remains a utopian dream. The reason may be for the same is corruption flowing through the veins of each and every one of these schemes. The food security act plays an important role – that of providing subsidized food grains to approximately two thirds of India's population of 1.2 billion people – but ensuring the right to food requires action on multiple fronts.

The 2014 Global Hunger Index report of the International Food Policy Research Institute (IFPRI) shows considerable improvement in India's hunger index. India now ranks 55th out of 76 countries, but still trails behind neighbouring Nepal and Sri Lanka, yet, India's hunger status is still classified in the category of "serious". This demands "much work still needs to be done" at the national and state levels so that a greater share of the population will enjoy nutrition security.
