

## Right To Food – A Basic Human Right

Sachin Bhardwaj; bhardwajs1992@gmail.com; 9818297064 (Author)  
Assistant Professor, School of Law, Lovely Professional University, Jalandhar

Adv.Gunjan Sharma, Delhi High Court (Co-author)  
gunjansharma21364@gmail.com

### **Abstract**

*Right to food a right which is the basis of human existence. Food has been a big concern from time immemorial in every regime. State has a responsibility to provide an enabling environment in which an individual can appreciate his right through his capacity and ability but what about those people who are unable to attain this right and state is also not helping in providing accessibility, availability and adequacy for it. Then it becomes a requirement to a right to be a justiciable right. Justiciability means that an individual can invoke the jurisdiction of judicial courts or other quasi-judicial body in case of the violation of right and it becomes essential when the right is related to the essential ingredients of life.*

### **INTRODUCTION**

It is a well-known truth that food is essential for the existence of human lives and nutritious food make their lives more efficient. “Recurrent famines as well as endemic undernourishment have been persistent features of history.”<sup>1</sup> We can observe from various famines like Irish Potato Famine in late 1840, Ukraine Famine in 1932-1933, Chinese “Great Leap Forward” Famine in 1959-1961, Famine of North Korea and South Africa that the problem of food security is prevalent all over the world.<sup>2</sup> If we see the present condition in a report 2015 “The State of Food Insecurity in the World” by FAO where it is claimed that conditions of hunger and undernourishment has improved<sup>3</sup> but there is minimal improvement in addition to the lack of sufficient nutritious food. Asian and African countries have especially faced such problems on a regular basis. Now the question arises that what are the implications of the right to food on every individual in such adverse conditions and what are the responsibilities of states in recognising the problem and finding the solutions for it. The

---

<sup>1</sup> JEAN DREZE AND AMARTYA SEN, *HUNGER AND PUBLIC ACTION*, 1 (2008)

<sup>2</sup> Howard D. Leathers and Phillips Foster, *THE WORLD FOOD PROBLEM*, 7-21 (4<sup>th</sup> ed., 2014).

<sup>3</sup> Food and Agricultural Organisation of the United States, *The State of Food Insecurity in the World*, Meeting the 2015 international hunger targets: taking stock of uneven progress (Dec. 13, 2015, 02:59 PM) <http://www.fao.org/3/a4ef2d16-70a7-460a-a9ac-2a65a533269a/i4646e.pdf>

paper will discuss the credibility of right to food and the state's efforts with special reference to the India and South Africa in terms of justiciability. First we will have a light upon the right to food and its origin and recognition in general.

## **RIGHT TO FOOD**

### **(a) A Historical View**

“Historically, functional governments have always prioritized food issues in their public policies.”<sup>4</sup> Sometimes famine and scarcity of food had been the basic reasons behind change in political control over states. In times of famine or food shortage, the ancient Egyptian government lowered its national taxes on food; local officials also delivered "food from areas of plenty to nearby areas where people were starving".<sup>5</sup> Similar was the case in different parts of the world but no concrete recognition was given to right to food as exclusive right. “Although there is no solid requirement that the States ensure their people's sustainable and adequate access to food, the States have made it their general practice, naturally, because this particular pattern of behaviour can affect their economic, social, and political interest.”<sup>6</sup> As the Right to food has a very close connection with other human rights it has always been a core concern of states and has evolved into a legal responsibility of the welfare state.

### **(b) The right to food internationally**

Presently only 25 of the 198 countries in the world explicitly incorporate the right to food in their constitutions<sup>7</sup> which are Belarus, Colombia, Congo, Cuba, Czech Republic, Ecuador, Guatemala, Guyana, Haiti, Honduras, Iran, Italy, The Democratic People's Republic of Korea (North Korea), Moldova, Nepal, Nigeria, Panama, Paraguay, Seychelles, Sierra Leone, South Africa, Suriname, Switzerland, Uganda, Ukraine. The Right to food is not an isolated right but it has a close relation with other human rights. This is the primarily because in other countries it is mentioned implicitly under different human rights like Right to Self Determination, Non- Discrimination Provisions, Right to Health, Right to Life, Right to Social Security and the Right to Food is also implicitly or explicitly mentioned in a thematic

---

<sup>4</sup>*Id.*

<sup>5</sup>*Id.*

<sup>6</sup> Ying Chen, *The Right to Food*, 17

[http://heinonline.org/HOL/Page?handle=hein.journals/ejlr12&div=17&start\\_page=158&collection=journals&set\\_as\\_cursor=49&men\\_tab=srchresults](http://heinonline.org/HOL/Page?handle=hein.journals/ejlr12&div=17&start_page=158&collection=journals&set_as_cursor=49&men_tab=srchresults)

<sup>7</sup> Chen, *Supra.*, note 4, 177

context.<sup>8</sup> In India it is implicit in the Right to life and Personal Liberty under Article 21 of Indian Constitution and it has also been incorporated under the Directive Principles of State Policy by our constitutional makers in the form of Article 47 as an aim to be achieved by the state in the future. “United States ensures its people's right to continuous access of nutritiously adequate food without a relevant constitutional provision.”<sup>9</sup>“Even though the US government has consistently carried out a food assistance policy at home and abroad, it opposes a legal right to food as inconsistent with the US Constitution.”<sup>10</sup>

### **(c) Content of the Right to Food**

*“The right to food is an inclusive right. It is not simply a right to a minimum ration of calories, proteins and other specific nutrients. It is a right to all nutritional elements that a person needs to live a healthy and active life, and to the means to access them.”<sup>11</sup>*

According to the Committee on economic, social and cultural rights in factsheet no.16 of OHCHR “*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*” and in factsheet no.27 it is like “*The right to have regular, permanent and free 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 fear.*”<sup>12</sup>

In terms of justice with right to food accessibility, availability and adequacy of food is very important. Quantity, quality and appropriateness are three main essential elements without which right to food is incomplete. “The right to food is not a right to be fed, but primarily the right to feed oneself with dignity.”<sup>13</sup> Individuals have to fulfil the needs by their own efforts and hard work. Any individual can get food using the ability and capacity through various means. Responsibility of the government is to provide enabling environment for the people to appreciate their efforts with satisfactory results. Right to food does not mean that government

---

<sup>8</sup> Otto Hopes and Irene Hadiprayitno, *Governing Food Security*, 49 (2010).

<sup>9</sup> Chen, *Supra.*, note 4, 179

<sup>10</sup>*Id.*

<sup>11</sup> United Nations Human Rights, *The Right to Adequate Food*, Fact Sheet No. 34, (Dec. 13, 04:33PM) <http://www.ohchr.org/Documents/Publications/FactSheet34en.pdf>

<sup>12</sup>*Id.*

<sup>13</sup>*Id.*

would feed the people and the same does not slow down the role of state in assisting the people to the accessibility, availability and adequacy of the food. State must always work for the future sustenance and proper implementation of all instruments.

**(d) Right to food and Jurisprudential theories**

“In the theory of freedom legal philosopher Immanuel Kant held that freedom is the inborn right belonging to a man by virtue of his humanness.”<sup>14</sup>“As the right to food is a freedom from want or hunger therefore a person by virtue of his birth possess the right to freedom from hunger.”<sup>15</sup> Similarly in some other jurisprudential theories like doctrine of living law, theory of justice, theory of distributive and corrective justice, theory of interest and neo liberal theories put directly or indirectly emphasis upon the responsibility of state to provide proper availability, accessibility and adequacy of food according to their interest, culture, justice and its obligation to focus on proper distribution of food and resources with the remedies if to solve the difficulties if come in the way of realisation of the right to food.<sup>16</sup>

**(e) The Evolution of Right to Food under International Law and its recognition which tries to provide this right a justiciability on international level**

Early in the 11<sup>th</sup> century England, Magna Carta read as *"no one shall be 'amerced' (fined) to the extent that they are deprived of their means of living."* Right to food was recognised by various international instruments after the 2<sup>nd</sup> world war in 1945, when the United Nations was founded with the main goal of peace and security. The Commission on Human Rights was created at the first meeting of the Economic and Social Council, mainly as an organ of advice to help the ECOSOC fulfil its task which spent first three years of existence writing the Universal Declaration of Human Rights (UDHR) which was adopted by general assembly on the 10<sup>th</sup> of December in 1948.<sup>17</sup> The expression of the right to food is first found in Article 25 of UDHR<sup>18</sup>. Article 25<sup>19</sup> of UDHR is in two parts, first part is Article 25(1) which

---

<sup>14</sup>Shodhganga, Introduction to Right to Food, (Dec. 14, 03:51PM), [http://shodhganga.inflibnet.ac.in/bitstream/10603/29218/9/09\\_chapter%201.pdf](http://shodhganga.inflibnet.ac.in/bitstream/10603/29218/9/09_chapter%201.pdf)

<sup>15</sup>*Id.*

<sup>16</sup>*Id.*

<sup>17</sup> Otto, *Supra*, note 8, 44

<sup>18</sup>Chen, *Supra*, note.4, 165.

<sup>19</sup>“(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

provides right of standard of living adequate for health and well-being which includes food, cloth, house, medical care and other necessary social service with security in cases of unemployment, sickness, disability, widowhood, old age or other lack of livelihood and second part, Article 25(2) provide same protection for mother and children. Because ratification of the UDHR was not a compulsory requirement when it was proclaimed, it was accepted with no binding effect.<sup>20</sup>

After that, the right to food was reiterated in The International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 11 of ICESCR<sup>21</sup> was very concrete and strong rather than the UDHR. It creates more binding obligation on the state to take action for realisation of right to food. It emphasis the responsibility of state to improve the condition of food like production, conservation and distribution. From part 2 we can observe that this article also includes “right to be free from hunger”. Thus the right to food is wider concept than the right to be free from hunger. Intention is very clear and firm from the Article 11 of ICESCR that state has to play a major role in providing adequate food to people and take into account every problem related to equitable food distribution.

On international level forums like International Court of Justice, Food and Agricultural Organisation and instruments discussed above provide the right to food a full justiciability but the problem is the accessibility to these forums because a hungry does not have money to afford food then how can he approach to these big international organisation without political support. It seems very difficult to provide the real justiciability for the right to food.

---

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.”

<sup>20</sup>Chen, *Supra*, note.4, 165.

<sup>21</sup> “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.”

**RIGHT TO FOOD IN INDIA**

**Judicial Recognition of the right to food in India**

The provision for the right to food is not explicitly mentioned in the Indian Constitution but is implicit in the directive principles and more importantly has been held to be a fundamental right by the Supreme Court of India in the case of *People's Union for Civil Liberties v. Union of India & Others (PUCL)*.<sup>22</sup> Article 47 being a part of Directive Principles of State Policy (DPSP) mentions explicitly "*duty of the State to raise the level of nutrition and the standard of living and to improve public health.*" However, in the light of the fact that Directive Principles are non justiciable and non-obligatory, the inclusion of right to food as a fundamental right was an important landmark in India's fight against hunger and starvation.

This landmark judgement marked the shift of the right to food from a non-justiciable status to that of a justiciable one. It also signifies the intention of the Supreme Court of equating economic, social, and cultural rights like the right to food with civil and political rights. It is only through judicial interpretation that socio-economic rights have been included in the wide purview of the Right to Life under Article 21. This has thus transformed the food programs and campaigns into judicially enforceable entitlements.<sup>23</sup>

Severe conditions of drought in Rajasthan resulted in the filing of this Public Interest Litigation. The government failed miserably in providing food and employment to the people and failed to implement its obligations under the Famine Code of 1962. A staggering estimation of 73.6% people of Rajasthan being affected by the drought explains the gravity of the situation.<sup>24</sup> The National health survey conducted by the National Human Rights Commission also stated that almost half of the population of the State was living below the poverty line.

These governmental failures were duly noted by the Supreme Court which then took the monumental step of including the right to food as a constitutional right. This proactive step enhanced the interpretation of Article 21 and added to the plethora of human rights approach based precedents set by the apex court. PUCL has laid down the foundational basis for a

---

<sup>22</sup>2002 AIR 2112; 2002 (3) SCR 294

<sup>23</sup>Birchfield Lauren, Corsi Jessica, "*Between starvation and Globalization: realizing the Right to food in India*" 31 Mich. J. Int'l L. 691 2009-2010.

<sup>24</sup>Memorandum of Scarcity, 2056 dated November 1999.

potential fiduciary relationship between the governmental authorities and civil society which could together solve the menace of acute hunger and poverty. The very fact that the writ petition was filed by People's Union for Civil Liberties is India's which is India's largest and oldest Human Rights organisation portrays the importance of the role played by civil society and nongovernmental organisations in tackling socio economic problems of the country. The ethical aspect of the problem is generally ignored by the governmental agencies which leads to poor implementation of welfare schemes and campaigns. Thus, it is important to recognize the moral aspect of the right to food and the collective responsibility of the society in consolidating on the legal precedent set by the Supreme Court.

### **Public Policies and Food Security**

Economic access to food is one of essential component of food security. In India due to glaring income inequalities, poverty, wide spread unemployment, a sizeable number of population does not have economic access (i.e. purchasing power) to adequate food. The famous work of AmartyaSen on poverty and famines also revealed that lack of purchasing power was one of the prominent factors of the Bengal famine (Sen, 1981). Government of India has adopted a number of public policies and programmes to achieve food security. The prominent policies are classified into four categories. First set of policies relate to Minimum Support Prices (MSP) for procurement; buffer stocks and the Public Distribution System (PDS). The second category of policy in the form of Right to Food Security Act, 2013 is the most important milestone in the field of food security. Third category public policies promoting food security in India are Food for Work and wage employment schemes like Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA). Fourthly, in addition to these direct policies aiming to improve food security in India, the government has taken initiatives affecting food security. These include policies and programmes for improving quality of drinking water, sanitation, public hygiene, quality of elementary education and health including immunization, antenatal care, etc.

### **The National Food Security Act (NFSA), 2013**

Out of all the public policies, the National Food Security Act, 2013 is a revolutionary policy aiming to ensure food security to around 69 % of Indian population. Enacted in September 2013 to come into force on July 5, 2013, NFSA derives its reference from Article 21 of the Indian Constitutions i.e. the right to life to all the citizens of India and also include Right to

Food. The international treaties signed by India namely, the UDHR, 1948 and ICESCR, 1966 also make it obligatory for the state to make provision of adequate food to its citizens. One of the Millennium Development Goals of the United Nations also states eradicating extreme poverty and hunger thus works as another rationale for enacting NFSA. NFSA came as a response to these constitutional obligations, international treaties and also from the pressure of civil society.

In spite of the promulgation of the Act in September 2013, it has not come into force as its implementation deadline has been extended thrice. The third extension is up to October, 2015. Only 11 states and Union territories out of 36 so far have implemented the Act (The Hindu, 2015).

### **From justiciability to moral duty: A possible solution**

"These constitutions, statutes, judicial decisions and treatises are numbered by thousands. They are almost unknown to the mass of men; they are at least imperfectly known to lawyers; and yet it is true that any man who in good faith obeys the dictates of a pure and honest heart, whose civil conduct towards his fellow-men is guided by the sense of justice and right which is graven on his heart by the Supreme lawgiver, will find such a course of conduct, except in the rarest instances, to be in perfect conformity with the requirements of the laws of his country. This is the convincing, the conclusive proof of the essential ethical nature of our laws."<sup>25</sup> Law is generally looked at from the rights based perspective which lays immense stress on legal enforcement and entitlement. This approach with regards to socio-economic rights such as the right to food is incomplete as the ethical arguments behind those entitlements remain in the background and do not get the level of importance that they deserve. This is the reason why voluntary organizations which are not politically motivated play a better and more efficient role in providing food to those who need it the most. These ethics may emerge from religious beliefs as well as belief systems which respect basic human moral obligations towards the society. The community's role cannot be underestimated and it would be fruitful to approach the right to food not just from the angle of rights but also from the angle of common moral legal duties.

---

<sup>25</sup>Law and morality.28 Am. L. Rev. 510 1894

## **CONCLUSION AND POLICY PRESCRIPTIONS**

### **1. Improving Nutrition Security**

As stated earlier, availability of food is a necessary condition for ensuring food security, the sufficient conditions requires availability of quality of food. In other words, there is a need to develop a balanced approach in food security by emphasizing both on the adequate quantities of food as well as dietary quality and diversity. Owing to persistent income inequalities, poverty, unemployment, food inflation, lack of awareness about the benefits of quality and diet diversity, the nutritional status of the Indian population falls below the laid down norms. The nutritional security being a vital component of food security, therefore it is essential to improve the quality of food from nutritional point of view.

### **2. Revamping Public Distribution System**

For making National Food Security Act, 2013 a game changer in the field of food and nutritional security, public distribution system holds the key. The existing PDS suffers from many deficiencies specially poor targeting, leakages, corruption and mounting costs. Mitigating these ailments is essential for meeting the goals of NFSA. NFSA itself has suggested a number of measures to restructure PDS. Making the Targeted Public Distribution System could be a way forward.

### **3. Improving Economic Access**

Indian economy is amongst the largest economies of the world. During post-economic reform period it has experienced very impressive rate of growth. The rate of growth of GDP was high as 9.57 % during 2006-07. Notwithstanding the high growth trajectory, the fruits of high growth have not trickled down. The evidence suggests that high growth rate is accompanied by glaring income inequalities. The incidences of poverty and unemployment are also very high in India. Deaths caused by hunger are also reported in the country. These and other factors collectively truncate economic access to food specially of the poor and socially disadvantageous groups like SCs, STs, OBCs and women. Improving economic access to food deserve highest priority in India

**4. Augmenting Food Grains Production**

Availability of food grains lays the foundation of food security. India has experienced a phenomenal growth in food grains production since independence particularly during post-green revolution period. In the recent past specially during post economic reform period (i.e. 1991 onwards) the rate of growth has decelerated. Stepping up public investment in agriculture sector for strengthening research and extension activities, improving agricultural infrastructure, arresting land degradation and erosion in other environmental resources related to agriculture sector etc