



## Right to Food: A Constitutional Obligation on the State

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### Abstract

*Over the past decade, there have been certain circumstances in India which have brought the question of food security into sharp focus. Vast famine-affected areas versus surplus production and stocks of grains, the impact of globalization and World Trade Organization laws on agriculture and farmers, affected right to food of many people, the Supreme Court of India's strong reaction to the plight of the hungry—all make a case for recognizing the right to food. This paper examines the situation prevailing in India and looks into the obligations and initiatives by the government of India to ensure food security and, makes suggestions for addressing the issue and examines the possible role of civil society organizations in making the schemes workable for the poor.*

**Keywords:** Obligation, right to food, state.

### Introduction

The evolution of the right to food is derived from the larger human right to an adequate standard of living contained in the 1948 Universal Declaration of Human Rights (UDHR). Article 25(1) of UDHR asserts that, 'Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care and necessary social services...' <sup>1</sup> The International Covenant on Economic, Social and Cultural Rights (1966) developed these concepts more fully, stressing 'the right of everyone to... adequate food' and specifying 'the fundamental right of everyone to be free from hunger'.

The Right to Food is inherent to a life with dignity, and Article 21 should be read with Articles 39(a) and 47 to understand the nature of the obligations of the State in order to ensure the effective realization of this right. Article 39(a) of the Constitution, enunciated as one of the Directive Principles, fundamental in the governance of the country, requires the State to direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means to livelihood. Article 47 spells out the duty of the State to raise the level of nutrition and the standard of living of its people as a primary responsibility. The citizen's right to be free from hunger enshrined in Article 21 is to be ensured by the fulfillment of the obligations of the State set out in Articles 39(a) and 47. The reading of Article 21 together with Articles 39(a) and 47, places the issue of food security in the correct perspective, thus making the Right to Food a guaranteed Fundamental Right which is enforceable by virtue of the constitutional remedy provided under Article 32 of the Constitution. Therefore it is the obligation of the state to be proactive in strengthening people's access to food.

**Aims and Objectives of the paper:** This research paper examines the situation prevailing in India and reviews the obligations and initiatives by the government of India to ensure food security.

**Scope of the paper:** This research paper is limited in the sense that it tries to study the ambit and applicability of the right to food in India. Thus, in this research paper the researcher has tried to bring out the rights of an individual in relation to right of food and state obligation.

**Research Questions:** The research question deals with the two basic problems facing the problem of right to food: i. What are the definitions, contents and obligations of Right to food? ii. What is obligation on state in relation to Right to food? iii. What should be done to achieve Right to food to all citizens of India?

### Research Methodology

This paper has largely been written in an investigative and an analytical style using the doctrinal sources. This research paper is done by referring to various books and commentaries and articles relating to right to food and state obligation.

A uniform mode of citation has been used throughout this research paper which is based loosely on the style prescribed in Harvard blue book, 19th edition.

**Right to food:** Right to food is part of an overall goal of achieving right to development. The adoption by the United Nations in 1986 of the Declaration on the Right to Development was the culmination of a long process of international deliberation on human rights which were perceived from the very beginning as an integrated whole of all civil, political, economic, social and cultural rights. The Declaration says "The Right to Development is an inalienable human right by virtue of

which every human person and all peoples are entitled to participate in and contribute to and enjoy economic, social, cultural, and political development in which all human rights and fundamental freedoms can be fully realized, because of its association with justice and equity, the right to development is fundamentally different from conventional policies and progress for development, whether seen as increasing the growth of GNP, supplying basic needs, or improving the index of human development. The rights based approach imposes additional constraints on the development process, such as maintaining transparency, accountability, equity and non-discrimination in all the programs. The individuals must have equal opportunity of access to the resources for development and receive fair distribution of the benefits of development.

**Violation of right to food:** Violation of the right to food includes discrimination in the access to food as well to means and entitlements for its procurement 'on the grounds of race, color, sex, language, age, religion, political or other opinion, national or social origin, property, birth or other status' in a manner that impedes the exercise of economic, social and cultural rights.

A large chunk of population is still deprived of food due to presence of widespread poverty, unemployment, lack of education and other reasons due to which right to provide food comes on the shoulder of the government and the right to food of citizen is violated.

**Government recognizing right to food:** India is an active member of the United Nations and is a state party to International Covenant on Economic, Social and Cultural Rights (ICESCR). Hence there is an obligation to respect, protect and fulfill the right to food for every citizen of India. The Indian Constitution does not expressly recognize the fundamental right to food. However, comparable human right provisions are found in the articles of the fundamental rights as well as the Directive Principles of State Policy. Article 21 of the Indian Constitution provides the fundamental right to the protection of life and personal liberty. This article mandates the state to ensure the right to life of citizens<sup>2</sup>. This includes the right to live with dignity with at least two decent meals a day. Article 47 of Directive Principle of State Policy specifies that 'the duty of the state to raise the level of nutrition and the standard of living and to improve public health'. The orders of the Apex Court of India interpret the right to food as part of the right to life, which is a fundamental right as per the Indian Constitution. The state, however, seems to have forgotten these principles<sup>3</sup>.

**Obligations of the State:** The enjoyment of the right to food depends on several factors, ranging from access to land to sufficient income-earning opportunities<sup>4</sup>. The Committee on Economic, Social and Cultural Rights (ICESCR) has entrusted national governments with the primary responsibility of ensuring the right to food. Under the right to food, there are three different levels of obligation – the obligations to respect,

protect and fulfill the right to food. The obligation to respect, means that State parties should not take measure that would hinder the access to adequate food. In other words, States must not interfere with individual's livelihoods, The States should, at the primary level, "respect the resources owned by the individual and the individual's freedom"

By signing the International Covenant on Economic, Social and Cultural Rights (ICESCR) states agreed to take steps to the maximum of their available resources to achieve progressively the full realization of the right to adequate food. They also acknowledge the essential role of international cooperation and assistance in this context. This obligation was reaffirmed by the Committee on Economic, Social and Cultural Rights (CESCR)<sup>5</sup>. Signatories to the Right to Food Guidelines also committed to implementing the right to food at a national level.

In General Comment no. 12, the CESCR interpreted the states' obligation as being of three types: the obligation to respect, protect and to fulfill.

**Respect** implies that states must never arbitrarily prevent people from having access to food.

**Protect** means that states should take measures to ensure that enterprises or individuals do not deprive individuals of their access to adequate food.

**Fulfill (facilitate and provide)** entails that governments must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security. If, for reasons beyond their control such as at times of war or after a natural disaster, groups or individuals are unable to enjoy their right to food, then states have the obligation to provide that right directly<sup>6</sup>.

**Policies and Programmes for Realising Right to Food:** India has many international obligations to fulfill the right to food with respect to children as well as adults. India became a party in 1986 to the International Covenant on Economic, social and cultural rights, which is the most important human rights instrument for the right to food as it enshrines the right to food and the right to be free from hunger in its article 11. Another major step taken in the case of food was the convention on the Rights of the Child<sup>7</sup>. The Government of India has also committed itself to the Convention on the Rights of the Child in 1990. This convention asserted the right of every child to adequate food and nutrition. As early as 1938, the Indian National Congress constituted a National Planning Committee (NPC) headed by Jawaharlal Nehru, which had declared that the social objective should be "to ensure an adequate standard of living for the masses, in other words, to get rid of the appalling poverty of the people". The Constitution of India has a number of fundamental rights in Part III of the Constitution and are classified under seven broad groups as given below: i. Right to Equality (Articles 14-18), ii. Right to particular freedoms (Arts.

19-22), iii. Rights against exploitation (Arts. 23-24), iv. Right to Freedom of Religion (Arts.23-24), v. Cultural and educational rights (Arts. 29-30).

**What is India's food security bill all about?:** The bill is widely known as The National Food Security Bill, 2013. This is to be passed in the form of ordinance. Most of the Indian population suffers from malnutrition and hunger. With this bill government has stepped in to check this cause and provide better life to its citizen. Therefore the primary objective of the bill is to guarantee cheap food grain to nearly 70% of India's 1.2 billion people. The bill, if passed, would provide subsidized food grain to 75% of India's estimated 833 million rural population and 50% of an estimated 377 million urban population. Moreover Under the program, beneficiaries can get a total of five kilograms of subsidized rice, wheat and coarse grains a month. These can be bought at prices ranging from one to three rupees (approximately two to five U.S. cents) a kilogram, far cheaper than market rates of 20 to 25 rupees. In order to facilitate proper functioning of this bill, the government has planned to spend about \$4 billion a year on the program. For its proper functioning the working is to be administered by the state-run Food Corporation of India, it will distribute subsidized grains through a nationwide network of "fair price shops." In 2011, the latest year for which government data are available, the FCI ran more than 505,000 fair price shops in India. The success and failures of this Ordinance will rest on the states as they need to implement and monitor the scheme. A state level Food Commission will be set up for this purpose. States are free to continue or formulate their own food and nutrition-based plan with their own resources to provide a benefit that is higher than the benefits under this Ordinance.

**Criticism:** Food security bill seems to be boon for most of the Indians. However this bill has many drawbacks. The bill has promised to provide cheap food grains to nearly 70% of India's 1.2 billion people. Government says that it will spend \$ 4 billion a year on the program. Looking at present, India's economy, this seems to be hard task to perform by our government. The annual budget will be highly affected and much pressure will be on the consolidated fund of India. Already, Government expenditure on social spending widened India's budget deficit to 5.2% of gross domestic product last financial year. Even after all the pressure undergone, if Government succeeds in fulfilling its promises then again there definitely will arise a question as to whether it is actually helping the targeted people or the benefits are going to undeserving class of people.

The bill has been also criticized by the opponent party stating that it is just an attempt by the congress party to get support of poor and middle- class voters ahead of federal polls of 2014. This can be the reason why the bill has provided subsidies in such cheaper rates. Under the program, beneficiaries can get a total of five kilograms of subsidized rice, wheat and coarse grains a month. These can be bought at prices ranging from one to three rupees (approximately two to five U.S. cents) a

kilogram, far cheaper than market rates of 20 to 25 rupees<sup>8</sup>. Critics also question how the government will identify the beneficiaries. "Who are the poor? Does anyone know how to identify who deserves food subsidy and who doesn't. since the bill is silent about it<sup>9</sup>. This again leaves an ambiguous picture as to who all should be covered as beneficiaries under this program.

Apart from the above criticism, great concern is shown by the Food security experts in regards to concerns over distributing grains through a state-run channel riddled with irregularities and corruption. There are high chances of misappropriating the food grains and illegal selling of it. In distributing process, under this program, middleman has great role to play. Under India's existing food program, as much as half of the grains procured by the government are siphoned off by middlemen before reaching their intended beneficiaries, according to a report by India's Planning Commission in 2005. Much of the subsidized food, experts say, ends up being sold illegally in markets rather than in fair price shops.

**What can be done?:** The bill seems to be very promising. If properly implemented then definitely it can help large chunk of Indian Population to overcome the poverty and hunger problem. But the question of high importance here is that is this bill going to work out. Looking at the said budget which government has fixed for this plan the lays no doubt that it will for sure affect the annual budget. Therefore government should look into alternative ways which can help to raise fund specially for this scheme and in turn this will help to reduce the Burden on government treasury i.e. consolidated fund of India and Annual budget.

For the proper functioning of this bill, there have also been judicial interventions. In 2011, the Supreme Court directed the Centre to release five million tones of food grains for distribution in 150 poverty-stricken districts and other poorer segments. Earlier, a 2009 report by the Justice Wadhwa Committee constituted by the Supreme Court recommended the adoption of modern technology such as smart cards, and said collusion between fair price shop dealers, transporters and politicians was responsible for the leakages<sup>10</sup>.

Moreover strict guidelines should be set to define POOR. This is of great necessity in order to avoid undue use of this Program by the people who do not deserve it. Moreover to avoid corruption, proper checking of the accounts should be done and specially for this purpose a separate committee should be appointed by the central government, which should only look into the functioning of this program.

## Conclusion

Today, the nation inured to scarcity of food and starvation, the nature of this problem is ironic, in spite of the increasing number of starvation deaths amidst overflowing food grain go

downs of the government. The obvious affirmation to the query necessitates that a single starvation death in the midst of several millions of food grains in warehouses is a blemish on the state and food policy and public distribution system. UPA government proposed to enact Right to Food (Guarantee of Safety and Security) Bill that guarantees access to sufficient food for all people, particularly the most vulnerable sections of society.

India does not seem to have a problem in terms of physical availability, as the production of food grains is more than adequate. As mentioned earlier, corruption is eroding the well-designed schemes, so there is a need to check this practice<sup>11</sup>. Starvation deaths and the high prevalence of hunger clearly show that India needs to wake up. The judiciary cannot monitor the implementation of the schemes forever<sup>12</sup>. The government needs to review policy from time to time and take corrective measures for effective implementation of different schemes and programmed, establish effective mechanisms of accountability and ensure the right to food for all. The right to food is not just a basic human right; it is also a basic human need. Implementation of the right to food does not imply that impossible efforts be undertaken by the states. The obligation to protect and respect the people compels the state to implement the right to food effectively, without recourse to extensive financial means.

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