

A Realization towards Right to Food in Modern Legal India

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Abstract

Right to Food is one of the most essential element of survival which in turn is directly related to Right to Life. India being a third world country and that to the second most populous one suffers from critical level of Food Scarcity and lack of Food Security. The right to food is indivisibly related to his dignity of the person and is the basic human right. With the independence of the world biggest democracy there has been a problem to feed it. The right is also very much interlinked to social justice, which requires the proper measures of appropriate economic, social policies, and environmental protection at the international and national levels which are purported for the purpose of eradication of poverty, measures to control population explosion and basic fulfilment of the all human rights. The United Nations, nongovernmental agencies, governments, have all been actively participating in providing a foundation for international and national efforts on behalf of the right to adequate food for all. This understanding of food security includes the idea that access to food includes not just physical availability and affordability but also requires that individuals do not face social barriers in feeding themselves which is a major source of concern in India. This paper is an attempt to ponder upon the problem within the current scenario of Right to Food in India.

Keywords:

**Poverty;
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Introduction

In 2009 there were more than 1 Billion undernourished people in the world and the person suffering from hidden hunger i.e. the deficiency of micronutrient required for physical and intellectual growth in children was a whopping 2 billion.[1] This is a reflection towards the problem of food security and the implementation problem of right to food. The most significant reason and challenge for malnutrition is the population explosion where the production of food grains is not proportional to the growth of human population. An immediate look towards the issue of food security and food scarcity is needed at the international level as most of the third world Nations are suffering from the problems related to it. The problem of food security is not an independent one but is generally dependent upon the agricultural, geographical, economy, environmental status of the country. The problem related to economy and geography is self explanatory as a country missing out on either of these front is bound to suffer from food scarcity. The geography of country is what it is born with so measures need to be taken to implement such processes which enhance production and satisfy the needs of the people.

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The Right to Food shall not be thought as an obligation where whosoever can ask for food from the state whenever he/she wants but the right only empowers the people to have an access of basic food necessity not dependent on number of calories towards the state whenever the people fail to acquire themselves because of several reasons. The right to food has a presence historically as it was recognised as a negative right in the 13th Century England's Magna Carta in 1215 as "no one shall be 'amerced' (fined) to the extent that they are deprived of their means of living." [2] The problem of Food Security is dealt internationally and was recognised under the UDHR as matter of Human Rights under Article 25 of the Declaration. The right to food was recognised as a proper right in the year 1966 where in Article 11 of the ICESCR the concept of adequate food for all was discussed. The initiation by the South American and South East Asian countries has been significant. These countries are some of the nation in the world where Legal Framework on the matter of Right to Food and Food Security has already been established. The impact of WTO has also been significant on the matter of right to food where it has called upon for international cooperation for the fulfilment of Food Scarcity among nation and member state. In the year 2009 there was an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights which makes the right to food justiciable right at the international level. [3] In the year 2012, the Food Assistance Convention was accepted, making it the first and foremost legally binding international instrument on food aid. The right to food is recognized in various international instrument such as Convention on the Elimination of All Forms of Discrimination against Women, [4] Convention relating to the Status of Refugees and Convention on the Rights of the Child. [5]

Right to Food as a Statutory Right

The jurisprudential development of right to food as a basic statutory right has taken a hit because it being a socio-economic right in nature rather than being civil and political right. With the advent of the United Nations the International law it has observed that the development of the Civil and Political right has taken predominance over the institution and implementation of the social and economic right. [6] The basic concern all around the world in terms of Food Security was generally related to Child Health and Nutrition Level. [7] But the ground reality is that these are first world or second world problems, the Third world countries faces a more serious concern of Starvation of people because of food across all ages. These countries are in severe need to provide Food Security to all. India faces a similar situation as its supports the second most population in the world the cases related to starvation of people due to lack of food is not novel.

i) The Legislative and executive intent towards Right to Food

The framers of the constitution took a similar approach and tabled the problem of Food into the directive principle rather than making right to food a part of the fundamental right because of lack of production of grains and the economic condition of the country. [8] The various debate considered the state role in increasing the level of nutrition among the citizen but as these principles lack the justiciable authority [9] and it failed miserably because of the lack of the political will and vote bank politics. It is easy to understand that a person who even does not have food to eat how they can vote and this notion of thinking has led to the exploitation of the poor masses. [10]

The Indian Constitution has provided for Food Security under the Directive Principles of state policy where under Article 47 [11] the state has the obligation of raising the level of nutrition and improving the Public Health. The DPSP are seen to be guiding principles for the state to frame laws on these subject matters which would be then be legally binding. But the Indian state is in a sorry state of realisation of these directive principles to which our forefathers had thought would be legally justiciable with passage of time. Uniform Civil Code is an example where the state has been reluctant to take any initiative for uniform the civil laws. Even Nepal the neighbour of India has an older legal framework on Right to Food than India. Food Rights was also on the similar path until in the early 21st century there arose a drastic need of Food Security among Adults and Children and the programme of MNREGA and Mid-Day Meal were launched. The Indian Law on Food Security was an initiative of the Supreme Court Judgement [12] which identified the right to Food as Fundamental Right under Article 21. India serves to the second most populated area in the world where the standard of living of most of the people is either on standard or substandard level. The country is hard hit by famines historically and the examples of the same can be seen through the works of Kautilya an associate of Chandragupta Maurya in the Mauryan Empire. [13] India has covered a long path before formulating the law on Food Security and making it legally binding on itself to provide the basic necessity of food for all.

The international law on Food Security and Right to Food has shown recent trends of development. [14] The impact is reflected on the Indian Scenario where due to the recent evolved law on Right to food the country has shown a progressive step and also included the Right to Food as a statutory right under National Food Security Act, 2013. Article 39 (a) [15] and 47 [16] of the Indian Constitution provided the responsibility on

state to raise the level of nutrition but the same cannot be demanded as a matter of right by the citizens. The law commission report has also looked into the issue at the level of children and provided for the need of right to food and level of nutrition firstly be realised for children.[17]

ii) **Judicial Interpretation of Right to Food and Impact**

The court intervention in matter of food right has changed from time to time and result of these judgement has created an impact on the realisation of right to food as a statutory right. The court like government has shown reluctance on the matter of right to food and food security. The concept of starvation and imminent need of food had been rejected by the courts in the past and judicial intervention to include right to food as a basic right is recent phenomenon. The change is because of the broader interpretation of Article 21 where the past judgement considered this Fundamental right in narrow sense but after the Maneka Gandhi's case[18] a broader interpretation was accorded to this article.

In *Francis Coralie v. Union Territory*[19] of Delhi the right to livelihood was held to be a fundamental right under Article 21 which was later reaffirmed by the supreme court in *Olga Tellis v. Bombay Municipal Corporation case*[20] where the matter pertaining to pavement dweller the court observed that right to livelihood is a fundamental right and it also included the amenities required for survival such as food, air and water. It was taken a step further in the case of *State of Himachal Pradesh v. Umed Ram*[21] where the court said that the basic need should only not be limited to bare survival but a quality of existence is included under Right to life. The first famous judgement in regard to the severe problem of Food Security and necessity of Right to Food was observed in *Kishen Pattnayak vs. State of Orissa*[22] where the petitioner through a letter invoked the drastic condition of starvation of people of Kalahandi in Orissa. The people there were dying in hundred and they were even selling their children to procure the basic necessity of food requirement. Here the judgement by the apex court was a narrow interpretation of Article 21 where immediate relief to the problem was not given and rather the concentration was provided to the increase in production of Food Grains through various irrigational projects and agricultural methods and asked the government to introduce measures to guarantee fair selling price of paddy and appointing of a Natural Calamities Committee. It further issued notice to the state government to make effort that no one should die of starvation. The analysis of this judgement provided that rather looking into the immediate emergency of the people the court and government were looking for long term method which rather than affecting the suffering masses took in mind the futures prospect.[23]

In the case of *Chameli Singh v. State of Uttar Pradesh*[24] the apex court while discussing the matter of right to shelter further reiterated that right to food cannot be recognized as a specific right even under the circumstances of starvation. This was a setback for the people as in condition of extreme poverty also the right of food cannot be realised against the state. Later in the landmark judgement of *PUCL v. Union of India*[25] or the right to food case the Supreme Court first time categorically recognised Right to food as a fundamental right under the purview of article 21 and paved the way for right to food to become a statutory right.

The notion of Food Security and Right to Food are often used interchangeably in the Indian Scenario. But the same is very different as one gives a right for the basic need of food to be provided at an effective rate so that the everyone in the country can realise the right to food while Food Security relates to the mechanism through which the infrastructure of food grains could be strengthen so that the basic requirement of food could be available to all. Food Security is the mechanism through which Right to Food can be realised.

Right to Food came to be a statutory right by the application of national food security act, 2013. The basic hindrance for it to become a justiciable right was that in nature the right to food is a socio-economic right meaning this right if made realisable would make the resources available to one's country to be utilised in a sincere manner. This implication has a direct impact to nation budget and can create severe pressure to the resource in a country like India which is heavily populated. The reluctance of the past government was based on this notion of thinking and India being a poor country due to lack of this law was not responsible for providing food to poverty ridden people.

Problems related to realisation towards Right to Food

a) **Limited and past data analysis being used in present times**

The application of limited and old data being used by the government to determine the quantity of food grains have also seen the criticism from various activists and agencies. This rhetoric has been keenly observed that the data analysis of the time frame 1990's is being used for the distribution of food grains in the 21st Century.[26] The problem pertaining to this is serious as no correction to the quantity limit of the food grains and quality of the same has always been in question. Recent report of various activist states that the

quantity of the food grains is not at the level of international norms. A retired bureaucrat of Tamil Nadu has pointed out this issue that 35 kg of food grains per month per family for below poverty line people seems to be in shortage and requirement for bare survival.[27] The revision of these scheme is required at the earliest to which the government is in denial as this has a direct impact on the financial structure of the budget.

b) Quality vs quantity debate

The quality versus the quantity debate in Food security is a prominent issue as the duty of state to only provide food as a matter of quantity for its subject is not the objective of the law. Quality along with the quantity is serious concern for the citizen as the apex court through its various judgement has provided that right to life and livelihood also includes a quality of life and not just that which is required for survival.[28] But the issue is a mammoth task for the government to apply at the ground level. It is easier said than done for the state to promise that a quality of Food Grains will be provided for all who are poor but on implementation the story tells a different tale. Various reports are seen regularly where the quality of food grains provided through these schemes are always in question. Even the report of health problem to children through the mid-day meal scheme is also very common. Report in Bihar and Uttar Pradesh of Children falling ill due to the quality of food prepared for these children is not new. The incident of villages of different state have been reported where the government has been unable to provide the subsidised food to poor.[29] An incident of a village in Orissa has been reported where only rice was provided as food grains and no wheat. This shows the failure of the mechanism through which the food grains are distributed. This issue has been a laidback in the mission of Food Security and to realise the Right to Food for the poverty ridden people.

c) Effectiveness of the PDS scheme

The mechanism of distribution of Food Grains in India is through the Public Distribution Scheme (PDS) where the central and state government through authorised centre dispatch and distribute Food Grains among the poor and needy. But the scheme has come under scrutiny for its transparency and functioning several times. The distribution centre are generally opaque to the distribution mechanism and several reporting about maligned function of these centre has been reported over the year.[30] The National Food Security Act, 2013 is also dependent on these centre for distribution of Food Grains which again question the intention of the government and the confidence shown by them in these centre. The various programmes also launched by the government for the underprivileged class in matter of Food Security needs to be analysed critically as their claim of success of these programmes seems to be different from the ground reality. A better and transparent means to analyse these Distribution mechanism is the need of the hour. The new law has also empowered the governments to give cash pay-outs in lieu of subsidy for buying of food grains but no proper supervising scrutiny mechanism is provided for the same.

d) Mid day meal programmes and its execution

The Mid-Day Meal Programmes is one the mechanism through which the government has tried to ensure and resolve the problem of Food Security among Children. The programme launched in the year 1995 was a starting point by the central government to look into the problem of food security among children. Though popularised by the Sarva Siksha Abhiyaan it has inherent fallacy among itself. The programme measure the level of nutrition on the basis of calories intake. The problem which is prevalent at the grassroot level is that the level of nutrition in India is measured through the lens of calories intake which turns the status of a person into a commodity where the bare minimum calories intake requirement is thought to be the level of nutrition which is needed.[31] The various report and survey concluded by the government is generally dependent on the factors of calories which has been looked negatively in the international arena. The level of nutrition required by each child is different and generalising them is not a fruitful exercise.

e) Export of Food Grains

India being a self-sufficient country in food grains still suffers from the problem of acute malnutrition among people and specially children and women. Though India produces excess food grains but news of people suffering from starvation due to lack of resources is common. But still India has an aggressive policy of exporting food grains India is one of the largest producer food grains and still it's 75% of population requires security under national food security act 2013.[32] India at several occasions has exported put food grains to two African Nations but at the same time its population was suffering from starvation. This has been seriously criticised by many and thought of it as Immoral where the responsibility should take predominance towards the citizens of the country. Similar situations were even found in the late 19th and early 20th century in the European Nations where several Nations were exporting food grains rather than providing the same to their population.[33] But India has to understand that the situation of the European Nation and India is totally different as it suffers from various natural disasters such as famine and floods so a preventive measure to

tackle the problem of food security for its population is required must. At various instances it has been reported that India had to cancel its consignment because of the problem in the various states of the country. So, a proper mechanism of Food Security to all should be effectively be made to tackle the problem related to it.

Conclusion

Right to food is not an easy right to realize as it is plagued with various intrinsic problems. The right to food is generally interpreted in a narrow sense of calories, proteins and specific nutrients rather than implementing it on the notions of one own adequate needs. In India the right to food is a statutory right though through judgements the courts have recognised it to be a fundamental right but the national food security act 2013 has only made it statutory right. The act has given the responsibility to the government to provide for the needs of the poor. In practicality it is very difficult for huge country like India which supports the second most population in the world and providing the food security to all. In general the economic factor of the country and the states play a very important role in realising this right. The problem with the empirical data study in Food Security is that they are dependent on the data collected which is different from study to study and it gives a discretion to the government and according to facts they choose the realization of that particular right suffer. The same is the case with food security where the calories intake rule is still of the 1990's and no dynamic changes have been brought forward which are significant in nature. So a better mechanism and approach is required towards the humungous problem of Food Security and measures need to be taken to tackle the problem of Starvation, Poverty and Population Growth.

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