

Implementation of Access to Food as a Legal right- A Critical Analysis

Dr. Ajay Sonawane, Sr. Assistant Professor, Faculty of Law, University of Delhi

Dr. Anjay Kumar, Sr. Assistant Professor, Faculty of Law, University of Delhi

Abstract

World Food Day is celebrated on October 16 to respect the anniversary of 194 member specialized agency of the United Nations, the Food and Agriculture Organisation (FAO). The main effort of FAO is to end hunger and to better nutrition, enhance agricultural productivity, hike the standard of living in rural areas, and impart global economic growth. The FAO works with governments and technical agencies in the fields of agriculture, forestry, fishing, and water and land management. All civil, political, economic, social, and cultural rights, culminated in the United Nations' 1986 adoption of the Declaration on the Right to Development. The Declaration States, "Every human being and all peoples have the right to participate in, contribute to, and enjoy economic, social, cultural, and political development in which all human rights and fundamental freedoms can be fully realized. "The right to development is an inalienable human right." The right to food is life-or-death rights-based, even though all rights are life-sustaining. According to Article 25 (1) of the 1948 Universal Declaration of Human Rights (UDHR). "Everyone has the right to a standard of living appropriate for the health and well-being of himself and his family, including food, clothing, and housing," The right to food is acknowledged as a component of the right to a sufficient quality of life in a number of other international instruments, with particular attention paid to the necessity of preventing starvation. Although the right to food is not expressly stated in the Indian Constitution, Article 21 of the document recognizes it as a fundamental right. In India, malnutrition affects over half of children under the age of five. The government is trying its best by implementing food distribution schemes to make India hunger free. In 2013 the National Food Security Act, 2013 was passed to address the problem of food security at the family level. The Supreme Court and National Human Rights Commission (NHRC) acted as an catalyst to achieve the Constitution's obligation to have the right to food. The paradox is India is food secured but the Indians are not. The objective to this research is to analyse right to food in the International and Indian context and analysis of National Food Security Act , 2013 with judicial attitude.

Key Words: National Food Security Act, Food and Agriculture Organisation, UDHR, National Food Security Act, NHRC

Introduction

The right to food is recognized in the 1948 Universal Declaration of Human Rights, 1948 recognized as part of the right to an adequate standard of living, and elaborated in the International Covenant on Economic, Social and Cultural Rights, 1966. The constitutions of almost every country impinge with the right to food expressed or impliedly. Every country has its policy to take action against hunger and malnutrition.

The nature of Right to food is comprehensive as it includes many things. It is not limited to calories, proteins, nutrients etc. It includes every thing which is needed for a dignified, healthy and active life, along with access to them. It is right in the physical and economical capability to access and acquire adequate food. The capability must be continuous both quantitatively and qualitatively.

The nexus between the right to food and other rights: Human rights are ‘interdependent, indivisible and interrelated’. The infringement the ‘right to food’ may deflower the enjoyment of right to health, education, life. When the people are not in a position to get ‘roti’ *i.e.*, food it leads to violation of right to life. The ‘Right to water’, ‘right to adequate housing’, ‘right to education’ are tripartite important rights for effective and efficacious enjoyment of ‘right to food’. Hunger and malnutrition are number one enemies of the foetus and kids. The right to employment and job are decisive instrumentation of getting food.

The right to food in international law: The right to food is a human right recognized by international human rights law (IHRL). The Universal Declaration of Human Rights (UDHR) accept it as an ‘adequate standard of living’, that: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food.”¹

International Bill of Human Rights (IBHR): The International Covenant on Economic, Social and Cultural Rights, International Bill of Human Rights, recognizes the right to adequate food as an essential part of the right to an adequate standard of living (art. 11 (1)).

International Covenant on Economic, Social and Cultural Rights, Article 11 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 cooperation based on free consent”.

It also explicitly recognizes “the fundamental right of everyone to be free from hunger” (art. 11 (2)). The States Parties to the present Covenant, recognizing the fundamental right of

¹ TH UDHR, 1948 art. 25

everyone to be free from hunger, shall take, individually and through international cooperation, 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”.

The Rome Statute , 1998: Article 8 (2) (b) (xxv) of ICC, 1998 declares starvation method of warfare as War crime.²

The Food and Agriculture Organisation (FAO) : “FAO has issued comprehensive guidelines for the safe and equitable distribution of a wide range of assets and resources, such as human capital, agricultural land and genetic resources, water, and services. In order to ensure that the poor in both rural and urban areas have access to food, it is essential that other human rights, such as the freedom from forced eviction, the right to participate in rural development and public affairs, the right to freely associate with others, the right to work and other labor rights, the right to education and information, and the right to social security, are realized.”

Malnutrition and starvation are more common among indigenous communities. Malnutrition and hunger have their foundations in the backdrop of marginalization. The acquisition and consumption of food are deeply ingrained in their culture.³

“International Labour Organization (ILO) and Indigenous and Tribal Peoples: ILO’s effort led to creation of protection of **Indigenous and Tribal Peoples in the form of** Convention No. 169. This rests on the premise that indigenous and tribal communities have the inherent right to decide for themselves how to organize themselves politically, economically, linguistically, and religiously, within the boundaries of the states in which they are located. International regimes for intellectual property rights must strike a balance between indigenous peoples’ traditional knowledge and resources and the Trade-related Aspects of Intellectual Property Rights (TRIPS). In order to “prevent the erosion of and ensure the conservation and sustainable use of genetic resources for food and agriculture,” as well as to safeguard traditional knowledge and promote equitable benefit sharing. Indigenous peoples have the right to preserve, manage, safeguard, and advance the products of their knowledge, culture, and science, including seeds, genetic material, and information about the characteristics of plants and animals (art. 31) according to the UN Declaration on the Rights of Indigenous Peoples.”

The right to food in international law: In the context of maintaining an adequate level of living, the UDHR affirms that: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food,...” (article 25).

“An adequate standard of living includes the right to sufficient food, as stated in article 11 (1)

² “<https://www.icc-cpi.int/sites/default/files/Publications/Elements-of-Crimes.pdf>”

³ “The United Nations Declaration on the Rights of Indigenous Peoples, 2007”

of the International Covenant on Economic, Social and Cultural Rights, which is a component of the International Bill of Human Rights. Article 11 (2) further states that "the fundamental right of everyone to be free from hunger" and is thus explicitly recognized."

"International Covenant on Economic, Social and Cultural Rights, article 11

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 cooperation 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 cooperation, 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."

The right to food and international conventions for protecting specific groups: Women, Children: Women are the dominant role player in food security as they constitute half of the population of the world. But they are subject to hunger, food insecurity and poverty and discriminated against in right the means and access to adequate food.

The CEDAW ensures that women can have equal access to food by protecting their equal rights to work, own property, have access to credit, earn income, and participate in social security.. Article 14 lays out specific steps to end gender discrimination in rural areas, making it possible for women to exercise their right to food in such settings.

Both Article 13 (b) and Article 11 guarantee women's equal access to economic opportunities. Equal protection under the law for women in the workplace is guaranteed by a number of International Labor Organization conventions, including those dealing with the eradication of discrimination in the workplace (Conventions Nos. 100 and 111).

"Women should be able to access food in an environment free from discrimination, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) lays out specific steps in that direction." For instance, in order to guarantee women's rights in rural areas, State parties must implement the following:

"To participate in the elaboration and implementation of development planning at all levels;

To have access to adequate health-care facilities, including information, counselling and services in family planning:

To benefit directly from social security programmes;

To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, *inter alia*, the benefit of all community and extension services, in order to increase their technical proficiency;

To organize self-help groups and cooperatives in order to obtain equal access to economic opportunities through employment or self employment;

To participate in all community activities;

To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.”

Children: The Convention on the Rights of the Child (1989): Article 24 (c) “To combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution”

Infant mortality is just one of the many devastating effects of malnutrition. As an example, babies thrive on breast milk, which promotes optimal growth and development. A mother's ability to breastfeed her baby optimally is compromised when breast-milk substitutes are promoted and marketed in an improper manner, which in turn reduces the amount of food that infants have access to. “Regarding this matter, the Committee on the Rights of the Child has repeatedly urged states to support breastfeeding as a means of safeguarding children's right to fundamental health and welfare and to adhere to the International Code of Marketing of Breast-milk Substitutes put forth by the World Health Organization.”

“The Convention on the Rights of Persons with Disabilities (2006)”: Article 28 - “Adequate standard of living and social protection States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability”.

The objective of the Indian Constitution is socio-economic justice, which is elaborated in non-justifiable DPSPs. These are fundamental for the governance and guidelines for the policy making⁴.

The DPSPs "shall not be enforceable by any court," as stated in Article 37. Aspirational long-term state goals are DPSPs, and they will be gradually realized, so they are not justifiable. Right to food is directly addressed by a small number of DPSPs. Ensuring that every citizen, regardless of gender, has access to sufficient means of subsistence is the stated goal of the state's policy, as stated in Article 39(a). “The State shall consider improving public health,

⁴ *The Constitution of India, 1950, art. 37*

raising the level of nutrition, and the standard of living of its people as among its responsibilities, as stated in Article 47. The early 1980s marked the beginning of the Supreme Court's enforcement of the Directive Principles of State Policy. Article 21 of the Indian Constitution guarantees the right to life, and this was accomplished by incorporating DPSPs into that right. Directive principles shall not be enforceable by any court," as stated explicitly in Article 37."

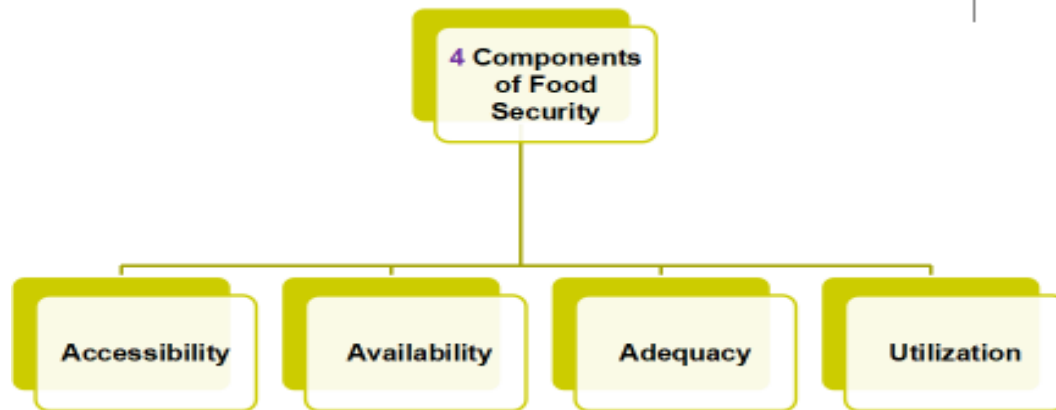
Article 21, 39, 41, 42, 43, 47 are guaranteed access to food in India's constitution. "Article 21 of the Indian Constitution" guarantees everyone the right to exist, including the right to food, according to the 2001 decision of the Supreme Court of India in the case of PUCL v. Union of India. The Supreme Court's interpretation of Article 21 in a string of decisions during the 1980s and 1990s expanded its protections against arbitrary death punishment to include the right to live with dignity. This decision expanded upon that interpretation. Article 21 now justifies a number of Directive Principles of State Policy, which were previously not enforceable by any court according to Article 37 of the Indian Constitution."

"In the *Francis Coralie Mullin Case* the Court interpreted that Article 21 of the Constitution safeguards both the right to life, but also a more expansive right to live with dignity. In *PUCL Case* (2001) in as response to a PIL the Apex Court issued continuing mandamus and declared right to food as fundamental right under Article 21 and passed the direction to the government to implement a number of schemes e.g., the Mid-day Meal Scheme, National Maternity Benefit Scheme. The Court gave interpretation to enforce a number of new socioeconomic rights within the right to live with human dignity.⁵ Right to life does not just animal being, but human dignity, which includes the right to the necessities of life as well as the right to engage in activities and functions that constitute the bare minimum expression of the human self, it expanded the scope of Article 21 by extrapolating the Right to Food".⁶

Accessibility, Availability Adequacy 3A and Utilization: **Accessibility** needs to ensure both financial and physical access to food. The food needs to be inexpensive. The people can afford to eat well without cutting back on other essentials. To achieve this goal, the state should pay livable wages. Food must be physically accessible so that all people, including children, the sick, the disabled, and the elderly, can easily access it. To be considered "available," food must be readily available, either at the point of production or in stores and marketplaces, and priced reasonably..

⁵ "*Francis Coralie v. Union of Territory, Delhi AIR 1981 SC 746*"

⁶ *Ibid.*



Adequacy: The food must conform to dietary needs, as per the age, climate, living situation, health, occupation, sex, religion and culture. The example of inadequate food non-nutrients, low-nutrient, energy-dense and low-nutrient. Food should be hygienic and free from pesticides and chemicals. Adequate food should also be culturally acceptable.

Evolution of access to food: The journey of food security started in 14th January 1945 during 2nd World War to save the people from hunger. It is general entitlement Scheme, poor as well as rich. In 1951, India continued PDS continued as major social welfare scheme in five year plan. In 1965 the creation of Food Corporation of India and Agricultural Prices Commission established. Buffer stock created. Agricultural Prices Commission fixes the rate on the basis of which minimum support given to the farmers.

1997: Targeted Public Distribution System (TPDS): The PDS was revamped to target poor households- BPL, APL

“2000 : Antyodaya Anna Yojna (AAY) was launched on 25th December 2000. This yojana is part of the National Food Security Act, 2013. **The AAY** covers the poorest of poor families from amongst BPL families covered under targeted PDS within states.”

2001: Supreme Court of India in its interim order in *PUCL v. Union of India*, declared "right to food" as an extension to fundamental right to life

2009: Congress party in its election manifesto promised to implement "right to food"

2013: National Food Security Act (NFSA) came into effect on July 5, 2013

National Food Security Act (NFSA)-2013: “National Food Security Act (NFSA) came into effect on July 5, 2013. First through ordinance and was enacted on 10 Sept, 2013. The preamble provides "The purpose of this act is to guarantee that all people, at all times, can afford to eat a sufficient quantity of healthy food so that they can maintain their dignity and quality of life, and to address other issues related to this goal.”

Those poor, oppressed, and vulnerable Indian citizens have a legal "right to food security". The Act guaranteed food grain subsidies “to 75% of India's rural population and 50% of the country's urban population.” Mothers, children, students (up to eighth grade), and malnourished children will all receive nutritious meals. By guaranteeing that all people, at all

times, have access to sufficient quantities of high-quality food at reasonable prices, we can promote food and nutritional security across the lifespan and help people lead dignified lives (GOI 2013). They can use the Food Security Allowance if they aren't getting enough food to eat.⁷

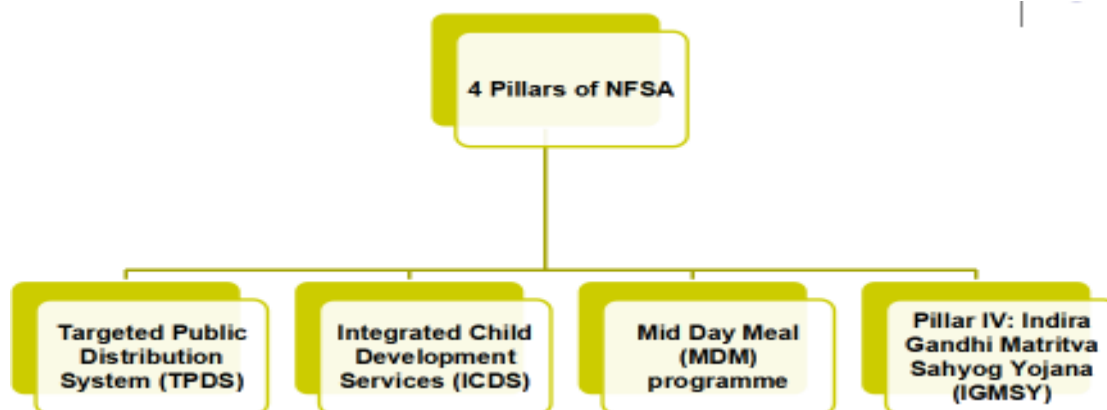
Four Pillars of NFSA: TCoverage and entitlement under the Targeted Public Distribution System, state-wise distribution, subsidized prices under the TDPS, and their revision are the most notable features of the Act. Household Identification Providing nutritional assistance to children and women, Expenses associated with transporting and handling food grains within a state, as well as the margin made by FPS dealers, maternity benefits, and food security allowances etc.

Pillar 1: “Targeted Public Distribution System (TPDS)”

Subsidized food-grains-Rice, Wheat, Coarse grain- to about 800 million people.

Pillar II: Integrated Child Development Services (ICDS)

free meal at the 'Anganwadis' kids



Pillar III: Mid Day Meal (MDM) programme: “Free mid-day meal for all school-going children up to class VIII (or age 14)”.

Pillar IV: “Indira Gandhi Matritva Sahyog Yojana (IGMSY)”: Maternity benefit of Rs 6000 for pregnant and lactating (until six months after childbirth) mothers. One hot meal to them during pregnancy and until six months after childbirth.

Features of NFSA-2013: NFSA is primary welfare instrument. There is Clear division of roles responsibilities between States and center: There is division of domain of the Centre and States. Centre-Guidelines, rules, food procurement, transportation, storage, supply to States, and assistance to state

- a) **State:** Intra-state transportation, door step delivery to FPS. Beneficiary identification - issue of ration cards, FPS license, implementation, monitoring, grievance Redressal payment of food security allowances.

⁷ Section 8 of The National Food Security Act, 2013

- b) **Revamping and reforming “Targeted Public Distribution System(TPDS)”**: Only two categories of beneficiary under TPDS: Antyodaya Anna Yojana (AAY) households and Priority households other than (Antyodaya Anna Yojana)AAY. There no APL/BPL division.
- c) **Food and Nutritional security of poor, marginalized, disadvantages, vulnerable people**
- d) Prescribed Nutritional standard for meals under ICDS, MDM, and pregnant and lactating women/mothers
- e) **Women Empowerment**: Ration card shall be issued in the name of eldest women of the household
- f) **Community participation**: in management and vigilance of FPS/PDS
- g) **Clear Accountability and Transparency**: There is a penalty upto Rs 5000 to erring public official, social audit, open records, vigilance committee.
- h) **Grievance Redressal**: “District Grievance Redressal Officer”
- i) **The Commission on State Foods**- review, monitor, and implementation of NFSA. Vigilance Committee at State, District, Block, and FPS level
- j) **Food Security Allowances**: there is provision of allowance.

Reforms in TPDS under NFSA

- a) Doorstep delivery of food grains to FPSs (Ration Shops)
- b) Application of Information and Communications Technology (ICT): The end-to-end computerization of TPDS, Transparency of records, minimizing leakage/diversion.
- c) Leveraging Aadhaar for targeting and authentication of beneficiaries
- d) Diversification of items distributed through Ration Shops
- e) Introducing Direct Benefit Transfer (DBT)- Cash transfers and food coupons

Critique of Implementation of NFSA: Eligible beneficiary coverage increased, exclusion error decreased, purchase entitlement ratio (PER) rose, and leakage and diversion decreased. Among the changes are the simplification of criteria and the improvement of grievance redress mechanisms, as well as the door-to-door delivery of food grains and the computerization of TDPS from procurement to transportation and distribution.

Delay in implementation: of the NFSA. Only by Nov 2016 all states started implementation.

Poor Implementation: Stamping of old ration cards, no-women empowerment. No doorstep delivery at FPS by many States. Poor digitization, Aadhar authentication problems, delay or no online grievance Redressal system. Poor quality of food grain, bribe for obtaining ration cards, issue of birth/death registration, no portability of ration. The little focus on other three pillars-Nutritional requirements of mother, child, and students (ICDS, IGMSY, MDM). There is also decline in budget allocation to these schemes. Financial burden on State Govt

Multiple implementation agency- There is lack of coordinated effort; Basically became a revamped TPDS

Conclusion: Freedom from Hunger – a Fundamental Right:

“Article 21 of the Indian Constitution” guarantees the right to life and personal liberty, and when read in conjunction with Articles 39(a) and 47, which highlight the nature of the State's obligations to ensure the effective realization of this right, it becomes clear that the right to food is an inherent component of the right to live with dignity. One of the Directive Principles in the Constitution, Article 39(a), states that the state must ensure that all citizens have access to sufficient means of subsistence. Another primary responsibility of the state, outlined in Article 47, is to improve the nutrition and living conditions of its citizens. As a result, Article 32 of the Constitution establishes the Right to Food as a fundamental right that can be enforced.”

The right to be free from hunger is fundamentally violated and disaffirmed by starvation. People experiencing extreme poverty and food insecurity frequently experience chronic malnutrition. When grain storage facilities are full, the situation becomes much more painful. And rodents like rats and mice ruin grains kept in FCI godowns. To guarantee that the Right to Food is not just a theoretical concept but actually protected, the amount of aid provided to those in need must match the nutritional requirements of the right to food. The prevalence of starvation should be seen as a necessary condition of the continuum of distress. We need to move this from the realm of charity to the realm of citizen rights. "Claim holders" refer to economically disadvantaged individuals. Poverty and hunger are intolerable because they violate fundamental human rights and wreak havoc on global harmony.