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A RIGHT TO BE FREE FROM HUNGER – A CONCEPTUALIZATION OF INTERNATIONAL AND DOMESTIC LEGAL AND POLICY MEASURES

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Introduction

Sen (1981: 55-56) argues that poverty can be conceptualised by analysing starvation. Poverty is the inability to secure sufficient food for oneself and one's family (Reutlinger 1984: 881-886). In his book *Poverty and Famine: An Essay on Entitlement and Deprivation* (1981) Sen shows through empirical analysis and the 'entitlement approach'² how the responsibility of starvation and related occurrences such as famine, rest directly on the society. While the latter can be the cause of the former, it is but one of many possible causes. According to him, starvation is the characteristic of some people not having enough food to eat. It is not the characteristic of there being not enough food to eat. If there is still starvation despite adequate food, it is because some people are too poor to afford the necessary and some others have acquired more food than necessary. In Sen's terminology, people starve because they do not have sufficient food entitlements social transfer payments (1981: 881-882), that is, they are unable to produce enough food or other goods and services which would enable them to acquire enough food in exchange (at the prevailing prices).

Despite various specialised governmental schemes and a comprehensive legislation,³ there is a chronic suffering from starvation and hunger related deaths in India. Hunger in India is a multifaceted issue. It is extensive & pervasive in the country and the causes are different across various regions. According to the latest Food and Agriculture

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²Alternative method of analysis developed by Amartya Sen.

³National Food Security Act, 2013

Organization (FAO) report on the State of Food Insecurity in the World, 2015, 194.6 million people are undernourished in India (FAO, IFAD and WFP 2015). By this measure India is home to a quarter of the undernourished population in the world. Also 51% of women between 15 to 59 years of age are anaemic and 44% of children under 5 are underweight. Malnourished children have a higher risk of death from common childhood illnesses such as diarrhoea, pneumonia, and malaria. India is home to one of the largest undernourished and hungry population of the world. Although the statement may sound anachronistic as the country has witnessed tremendous growth in the past two decades, i.e. Gross Domestic Product has increased 4.5 times and per capita consumption has increased three times. Similarly, food grain production has increased almost 2 times (India Food Banking Network, 2016). However, despite phenomenal industrial and economic growth, 15.2% of our population is undernourished, 194.6 million people go hungry every day, 30.7% of children under 5 are underweight and 3000 children in India die every day due to diet related illness (India Food Banking Network, 2016).

The avowed proclamation of Indian political leaders has been to remove the chronic hunger from the general population. It has been the self-confessed and holy goals of every political dispensation to remove hunger. But the irony is that the country where “*Roti, Kapda and Makan*” are considered as the three most important pillars of life, have miserably failed in the first part. India sits in 98th place out of total 118 countries in the Global Hunger Index (GHI)⁴ 2016 report (Grebmer 2016) which is considered as very serious by International Food Research Institute and other International organizations. The GHI measures progress and failures in the global fight against hunger. The irony is that India sits among the large number of sub-Saharan African countries to whom India gives development aid.

Right to Food vis-à-vis Human Rights

The right to food is an all-encompassing and inclusive right. It is not a minimum right for 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. The right to food can be described as, *the right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and*

⁴The Global Hunger Index (GHI) is a multidimensional statistical tool used to describe the state of countries' hunger situation prepared by International Food Research Institute and Welthungerhilfe (2016).

economic access at all times to adequate food or means for its procurement (Grebmer 2016: 103-104).

Human rights are interdependent, indivisible and interrelated rights that have reverberating effects on other facets of human rights. This means that violating the right to food may spoil the satisfaction of other human rights, such as the right to health, education or life, and vice versa.

The following archetypical illustration provides the link between different facets of human rights with the right to food:

The right to life: At the point when individuals are not ready to nourish themselves and face the danger of death by starvation (Agbakawat 2002: 186-187), lack of healthy sustenance or coming about ailments, their entitlement to life would likewise be in question.

The right to health: Sustenance is a part of both the privilege to wellbeing and the privilege to nourishment. At the point when a kid is experiencing diarrhoeal sickness however denied access to medicinal treatment, it can't appreciate a sufficient healthful status regardless of the possibility that he or she has admittance to nourishment (Gutto 1998: 86-88).

The right to education (Guest 1997): Hunger and lack of healthy sustenance weaken youngster's learning capacities and may constrain them to drop out of school and work rather, subsequently, undermining their happiness regarding the privilege to instruction. Additionally, to be free from yearning and lack of healthy sustenance, people need to know how to keep up a nutritious eating regimen and have the right stuff and ability to create or get nourishment as a vocation. In this way access to education, including professional instruction is basic for the happiness regarding the privilege to sustenance (Craven 1995: 15-16).

The right to work and to social security⁵: Cumper (199: 6-7) argues that Employment and social security are regularly urgent method for getting sustenance. Then again, least wages and social security advantages are regularly settled considering the cost of essential foodstuffs in the market.

⁵See Alves (2000: 478, 481). See also Donnelly (1999: 608, 629-630).

Freedom from the worst forms of child labour⁶: Children and adolescents anguish from hunger and malnutrition are frequently more susceptible to being enlisted into the worst forms of child labour to survive (e.g., child soldiers, child prostitution). Understanding their right to food is crucial to prevent this from happening.

The three most important facets of right to food vis-à-vis human rights is food must be available, accessible and adequate in nature. Availability requires from one viewpoint that sustenance ought to be realistic from characteristic assets either through the generation of nourishment, by cultivating land or animal husbandry, or through different methods for getting sustenance. Accessibility requires economic and physical access to food to be guaranteed (Claeys 2012: 844-860). Economic accessibility means that food must be affordable. Physical accessibility means that food should be accessible to all, including to the physically vulnerable, such as children, the sick, persons with disabilities or the elderly, for whom it may be difficult to go out to get food. Adequacy means that the food must satisfy dietary needs, taking into account the individual's age, living conditions, health, occupation, sex, etc.⁷

Right to Food under International Instruments

The international human rights system in contemporary world was born in 1948 when the United Nations General Assembly adopted the Universal Declaration of Human Rights (UDHR)⁸ with the principle of equality and dignity of all individuals. It can be succinctly explained through the following goals enunciated by UDHR i.e., *a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance* (UN General Assembly 1948: 17).

⁶See Momoh and Adejumbi (1999): 211 (questioning the basis, rationale and justification for the existence of the state and its control over national wealth, and its overall responsibility where it fails to live up to its health, educational, employment and other social obligations to the people).

⁷See United Nations Office of the High Commissioner; See also De Schutter (2009) and De Schutter (2011).

⁸Universal Declaration of Human Rights was adopted by United Nations General Assembly on 10 December 1948.

The “Four Freedoms”⁹ as enunciated by United States President Roosevelt, in January 1941, was of exceptional prominence in the ground work preparation of the Declaration, which included ‘*freedom from want*’ as one of those rights which is intrinsically interwoven linked with right to food and freedom from hunger. In his 1944 State of the Union address in the U.S. Congress, Roosevelt had advocated the adoption of an ‘Economic Bill of Rights’, saying, *We have come to the clear realization of the fact that true individual freedom cannot exist without economic security and independence. `Necessitous men are not free men. People who are hungry and out of jobs are the stuff of which dictatorships are made* (Roosevelt 1944).

The considerable commitment of the UDHR is that it extended the human rights stage to grasp the entire field i.e. civil, political, economic, social and cultural and interrelated the different rights, making them mutually reinforcing. The International Bill of Human Rights includes the UDHR and the two Covenants prepared on the basis of that Declaration, the International Covenant on Civil and Political Rights (ICCPR)¹⁰ and the International Covenant on Economic, Social and Cultural Rights (ICESCR)¹¹, both adopted in 1966.

Economic, social and cultural rights constitute three interrelated segments of a more complete bundle, with links to civil and political right. The crux of this philosophy can be attributed to the intrinsically interwoven relationship between these rights. The economic, social and cultural rights are the key to effectively realize the enjoyment of human rights¹². Alves (2000: 478-481) argues that it is imperative that human rights discourse on the indivisible bundle of rights must be put into practice, where these rights are people’s primary means of self defence. The failure to enthrone enforceable

⁹See generally Byrne (2006: 929-953).

¹⁰International Covenant on Civil and Political Rights (ICCPR) is a multilateral treaty adopted by United Nations General Assembly on 16 December 1966.

¹¹International Covenant on Economic, Social and Cultural Rights (ICESCR) is a multilateral treaty adopted by United Nations General Assembly on 16 December 1966.

¹²For an overview of the history behind the two covenants, see Craven(1995: 1-16); See also, Cumper (1999: 6-7).

socio-economic rights compromises civil and political rights¹³. A point very often missed in human rights praxis is that economic, social, and cultural rights (ESCR) “are the only means of self-defence for millions of impoverished and marginalized individuals and groups all over the world”¹⁴. Despite the international rhetoric on the equal relevance, interdependence, and indivisibility of all human rights¹⁵, in practice states have paid less attention to the enforcement and implementation of ESCR, and their attendant impact on the quality of life and human dignity of the citizenry, than other rights¹⁶(De Vos 1997: 67-71).

At the core of social rights is the right to an adequate standard of living (UDHR Article 25; ICESCR Article 11; the International Convention on the Rights of the Child¹⁷ Article 27). The enjoyment of these rights requires, at a minimum, that everyone shall enjoy the necessary subsistence rights - adequate food and nutrition, clothing, housing and the necessary conditions of care¹⁸. Closely related to these rights are the right of families to assistance, the right to property, the right to work and the right to social security, all of which can be found in the international instruments.

According to UDHR Article 25(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, and housing*. Under ICESCR Article 11, the States Parties *recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing*. In paragraph 2 of the same article, the States Parties to the Covenant perceive the essential right of everybody to be free from hunger

¹³*See generally* United Nations ESCOR(1987) (underscoring the indispensability of indivisibility and interdependence); *See also* Guideline 4, International Commission of Jurists (ICJ) (1997)(reemphasizing equality, interdependence and indivisibility of all human rights).

¹⁴*But see* Leckie(1989: 522, 525-26).

¹⁵*See generally*, Agbakwa (2002).

¹⁶*See also* Oloka-Onyango (1995: 1-73).

¹⁷The United Nations Convention on the Rights of the Child is a human rights treaty signed on 20 November 1989.

¹⁸*See also* De Vos(1997). De Vos further elucidates that "starving people may find it difficult to exercise their freedom of speech while a restriction of freedom of speech may make it difficult for individuals to enforce their right of access to housing."

and rundown measures to be taken separately and through worldwide participation so as to convey yearning to an end.

Under CRC Article 27, *States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.*

These rights are firmly connected to the managing rule of the entire human rights framework, that everybody is conceived free and equivalent in nobility and rights and ought to act towards each other in the spirit of fraternity (UDHR Article 1)¹⁹. Under ICESCR Article 2 (United Nations General Assembly 1966b), States Parties have attempted legitimately restricting commitments to make strides, to the most extreme of their accessible assets, to accomplish continuously the full acknowledgment of the economic and social rights in that Covenant²⁰. With regard to the right to food, for example, under ICESCR Article 11(2), the State shall take steps to “*improve measures of production, conservation and distribution of food by making full use of technical and scientific knowledge and by developing or reforming agrarian systems.*”

A series of expert consultations, conferences, and studies steadily clarified the meaning of the human right to food. This effort culminated with the publication on May 12, 1999 by the UN's Committee on Economic, Social and Cultural Rights of its *General Comment 12 (Twentieth session, 1999²¹): The Right to Adequate Food (Art. 11)*. Paragraph 5 of *General Comment 12* observes, “Fundamentally, the roots of the

¹⁹See also Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

²⁰See also Article 2: Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures; The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status; Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

²¹See generally UN Committee on Economic, Social and Cultural Rights (CESCR) (1999).

problem of hunger and malnutrition are not lack of food but lack of *access to* available food, inter alia because of poverty, by large segments of the world's population.” GC12 paragraph 7 explains that *adequacy* means that account must be taken of what is appropriate under given circumstances. Food *security* implies food being accessible for both present and future generations. *Sustainability* relates to long-term availability and accessibility. Paragraph 14 summarizes the obligations of States as each State is obliged to guarantee for everybody under its purview access to the base fundamental sustenance which is adequate, nutritiously satisfactory and safe, to guarantee their opportunity from hunger. Paragraph 15 draws out level of obligation for the State i.e. respect, protect, facilitate and provide. *General Comment 12* also addresses the issues of implementation at the national level, framework legislation, monitoring, remedies and accountability, and international obligations²².

The concept of adequate food and access to food is closely linked with the rights mentioned above²³. The penumbra rights under the all-encompassing features of right to food like availability of food stuffs, culturally acceptable food stuffs, quality and safety of food stuffs is intrinsically linked with these rights (Rae et al. 2007).

The internationally accepted meaning of “food security” is defined in the Plan of Action of the World Food Summit (FAO 1996), which provides that:

“Food security, at the individual, household, national, regional and global levels is achieved when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life”.

The Council of Food and Agricultural Organisation of the United Nations, which includes India as one of the signatory nations, define the right to food as, *The right of everyone to have physical and economic access at all times to adequate food or means for its procurement.*

The UN Special Rapporteur on the Right to Food has enunciated the right to food as follows (De Schutter 2009):

²²See generally Hannum (1996: 287); See also FAO (1999).

²³cf. Rae, Isabella et al. (2007: 457-488).

“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 the physical and mental, individual or collective, fulfilling and dignified life free of fear.”

There are numerous other International Covenants and Instruments, to which India is also a signatory, which refer to the right to food and elaborate it within their own framework and context. These include the Convention on Elimination of All Forms of Discrimination against Women (CEDAW)²⁴. For instance, Article 12 of CEDAW focuses on the right to women to adequate nutrition during pregnancy and lactation. Thus, it is not just the Constitutional scheme of India that binds India to obligations on the right to food, but also a range of international covenants and related instruments which the India has signed.

Right to Food under Indian Constitution

The Indian Constitution does not explicitly perceive the principal ideal to sustenance and right to food. Under Article 21²⁵, the expression “Life” in this Article implies an existence with human poise and not minor survival or creature presence. The Right of Food is inalienable to an existence with nobility; furthermore, Article 21 ought to be perused with Articles 39 (a) and 47 to comprehend the way of the commitments of the State all together to guarantee the powerful acknowledgment of this privilege. Article 39(a)²⁶ of the Constitution, articulated as one of the Directive Principles, central in the administration of the nation, requires the State to direct its approach towards securing that the residents, men and women similarly, have the privilege to a satisfactory intends to livelihood. Article 47 illuminates the obligation of the State to raise the level of sustenance and the standard of living of its kin as an essential duty. The national's ideal to be free from yearning cherished in Article 21 is to be guaranteed by the satisfaction of the commitments of the State set out in Articles 39(a) and 47.

²⁴See generally CEDAW, Article 12, adopted by United Nations General Assembly on 18 December 1979.

²⁵See The Constitution of India, Article 21 – “No person shall be deprived of his life or personal liberty except according to procedure established by law”.

²⁶See The Constitution of India, 1950 with special reference to Art. 39 (a), Art. 32, Art and Art. 47. See also Aneja et al. (2001: 160-165).

The perusing of Article 21 together with Articles 39(a) and 47, places the issue of food security in the right point of view, in this manner making the Right to Food an ensured Fundamental Right which is enforceable by prudence of the sacred cure given under Article 32 of the Constitution. In this manner it is the commitment of the State to be proactive in reinforcing individual access to food (Sen 2002). The State must satisfy the privilege straightforwardly at whatever point an individual or gathering can't, for reason outside their ability to control to appreciate the privilege to satisfactory sustenance with the methods available to them. The State's part in reinforcing the food security is more unmistakable in guaranteeing accessibility of food and guaranteeing access to the families especially for poor family units. Furthermore it is the obligation of the State to enhance the access to food through its strategies²⁷.

The right to food can be seen as an implication of the fundamental "right to life", enshrined in Article 21. Indeed, the Supreme Court has explicitly stated (several times) 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 (Francis Coralie case 1981). The right to life would take within its sweep the right to food in a civilised society (Shantistar Builders case 1990). 'Life' in Article 21 has been judicially interpreted to mean a life with human dignity and not mere survival or animal existence. Article 21 obliges the State to fulfil the minimum needs of a person so as to enable a person to live a dignified life. (Swaminathan 2000: 66-78) These needs include education, health care, just and humane conditions of work, protection against exploitation, etc.

Article 47 of the Constitution creates an implicit force on the State to respect as among its essential obligations, raising the levels of sustenance what's more, the way of life of its kin and the change of general wellbeing specifically to realize the forbiddance of the inebriating beverages and medications which are wounds to the wellbeing aside from restorative utilize. The soundness of the dominant part of individuals depends more on their nourishment security and sustenance. The issue of instability of sustenance, lack of healthy sustenance is generally predominant over the different financial gatherings²⁸, especially among the individuals who are living beneath destitution line, landless

²⁷An example of the right to protection against State neglect is the case *Laxmi Kant vs Union of India*, (1987) 1 S.C.C. 67, in which the Indian Supreme Court held that the right of children to life and livelihood included the right to be protected by the State against emotional and material neglect

²⁸*See for more* Khera (2011).

horticultural work, individuals in ghetto and remote tribal ranges, the individuals who are influenced by consistent cataclysms like dry season are more powerless against these vagaries²⁹.

According to the National Human Rights Commission³⁰, the Right to Food is inherent in a life with dignity. Article 21 should be read with Articles 39(a)³¹ and 47³² to understand the nature of the obligation 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, requires the State to direct its policy towards securing adequate means of livelihood to all its citizens. 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. Directive Principles are fundamental to the governance of the country³³.

The Report of National Commission to Review the Working of the Constitution (NCRWC) (2002)³⁴ stated that, “particularly significant has been the increase in

²⁹See Balani (2013).

³⁰National Human Rights Commission is established under the Protection of Human Rights Act, 1993 (Act no. 43 of 2006).

³¹See also Article 39 (a) - Certain principles of policy to be followed by the State: The State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means to livelihood;

³²See also Article 47 - The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

³³See generally Article 37 - Application of the principles contained in this Part The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

³⁴The Constitution of India completed fifty years of working on 26 January 2000. The BJP led National Democratic Alliance (NDA) government appointed a National Commission to Review the Working of the Constitution of India (NCRWC) under the chairmanship of justice M N Venkatachalaiah, in the light of experience of the past fifty years.

agricultural production in the period of 1960-2000³⁵, the index of agricultural production. Between 1950-2000, the index of agricultural production increased more than four fold. Between 1950-2000, wheat production went up 11 million tons to 75.6 million to 89.5 million tonnes. This is no mean of achievement for a country that relied on food aid until 1960s.³⁶ In commensurate terms, the food production has increased estimates in 2017 stands as 273.38 million tonnes in which the basket of production of wheat stands at 97.44 million tonnes. To meet the scourge of diligent appetite, detailing of nourishment strategy to be common sense to diminish enduring is vital. Sen (1987: 178-180) observed that, “millions of lives depend on the adequacy of the policy response to the terrible problem of hunger and starvation in the modern world. Past mistakes of policy have been responsible for the death of many millions of people and the suffering of hundreds of millions, and this is not a subject in which short cuts in economic reasoning can be taken to be fairly costless.”

The citizen's right to be free from hunger enshrined in Article 21 is to be ensured by the fulfilment of the obligation 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.

Institutions Ensuring Right to Food in India

There are some institutions in India, established by an Act of the Parliament of India, which have special responsibility to implement the Right to Food for the masses. It was held by the Supreme Court that prevention of hunger and starvation is “one of the prime responsibilities of the Government - whether Central or State”³⁷. In regard to the Central Government, it is the Food Ministry, the Ministry of Rural Development, and the Department of Women and Child Development, which are directly responsible to prevent hunger and starvation among these masses. Hunger and starvation can be prevented only by a body which is in direct contact with the people. While these

³⁵The indicative data has been used by the NCWRC to develop its arguments regarding the Right to Food in India. The time period is commensurate to the working of the NCWRC findings and submission of the report.

³⁶*See also* Ministry of Agriculture (2017); *See also* NCRWC Report (2002), Chapter-II Para-2.

³⁷*See* Chameli Singh case (1996) and Kishan Pattnayak case(1989).

institutions have a duty to implement the Constitutional mandate, it is not possible for these institutions to know what is happening at the ground level. Therefore, the responsibility is delegated to an institution which can assess the ground realities and that institution is the Gram Sabha.

Role of the Gram Sabhas

The Panchayat Raj System was introduced by the 73rd Amendment³⁸ of the Indian Constitution to address the issue of rural poverty. The existing structure of government was not considered adequate to deal with the same. The foundation of the Panchayat Raj is to decentralise governance and empower the Gram Sabha or Village Assembly to deliberate on their problems. The village consists of a three-tier structure consisting of the Gram Panchayat at the Village level, the Panchayat Samiti at the Block level and the Zilla Parishad at the District level. All these bodies are filled by elections. These bodies of local self-governance, inter alia, are empowered by the Constitution to conduct social audit and identify the problems of the villagers.

The emerging food scenario underlines the role of Gram Sabha the most powerful constitutional apparatus of democracy at the grassroots level.³⁹ The Gram Sabha can act efficiently to allow the needy to exercise right to food. The most important aspect is that the Gram Sabha draws powers from the constitution. The food security issue can be efficiently addressed by active and empowered Gram sabha, which is expected to be in a leading role in implementation mechanisms of the proposed National Food Security Act (Birner 2009: 287–315). There are a number of reasons how and why Gram Sabha could bring about food security in the needy households. The scrutiny of Below Poverty Line (BPL) families by the Gram Sabha and review the BPL list is the responsibility of Gram Sabha (The World Bank and IFPRI 2010).

The monitoring of functioning of fair price shops and making them accountable to the people are the two major tasks Gram Sabha can easily do⁴⁰. Besides, the needy can be helped to exercise their rights to food. The malfunctioning of fair price shops has often been reported. The Gram Sabha can keep a strict vigil over the fair price shops. It is the

³⁸See generally, The Constitution (Seventy Third Amendment) Act, 1992.

³⁹See also Ministry of Personnel, Public Grievances and Pension (2007).

⁴⁰See generally Mehrotra (2011).

constitutional duty of the Gram Sabha to conduct a social audit into all the Food Schemes (Mathew 2013). They are empowered to monitor the implementation of the various schemes and have access to relevant information relating to, inter alia, selection of beneficiaries and the disbursement of benefits (Dev and Evenson, 2003). The Gram Sabha plays a crucial role in preventing starvation and hunger. The intention of the Parliament to implement the Right to Food through the Gram Sabha is amply clear, however, the Gram Sabah have not been able to carry out their responsibilities successfully⁴¹. Although, Government of India has prescribed a model involve Gram Sabha and Gram Panchayat in the development activities and to reach the Antyodaya, the need for educating the local bodies regarding their rights and duties should be done in war footing.

National Food Security Act, 2013 and its Efficacy

The Act includes within its ambit over two-thirds of the Indian populace and was a result of a long drawn public and judicial battle.⁴²The Act aims to provide for food and nutritional security in human life cycle, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity.⁴³It seeks to make the right to food a legal entitlement by providing subsidised food grains and relies on the existing Targeted Public Distribution System (TPDS) mechanism to deliver these entitlements. Schedule I of the Act provides that eligible households shall be entitled to food grains under section 3⁴⁴ of the Act at the subsidised price not exceeding rupees 3 per kg for rice, rupees 2 per kg for wheat and rupee 1 per kg for coarse grains for a period of three years from the date of commencement of this Act. Schedule II of the Act provides for the nutritional standards for the following:

1. Children in the age group of 6 months to 3 years,
2. Age group of 3 to 6 years, and
3. Pregnant women and lactating mothers.

⁴¹See also Borooah et al. (2014: 52-62).

⁴²See generally Patnaik (2015).

⁴³See Preamble to The National Food Security Act, 2013 (Act no. 20 of 2013).

⁴⁴See The National Food Security Act, 2013, Section 3: "Right to receive food grains at subsidised prices by persons belonging to eligible households under Targeted Public Distribution System."

Besides these groups, the Act also proposes meal entitlements to Disaster affected persons, and Destitute, homeless and starving persons. Schedule III of the Act proposes to strengthen food security by revitalising agriculture and taking adequate measures for procurement, storage and movement of food grains. Schedule IV talks about State-wise allocation of food grains in lakhs of tons.

The Act is an ambitious move by the Legislature to not only fulfil the fundamental right of the poor people but also gives special emphasis on the ‘healthcare’ and ‘adequate nutrition’ of young children and pregnant women. Section 4⁴⁵ has made provisions entitling pregnant women to “meal, free of charge during pregnancy and six months after the child-birth”, through local Anganwadi, so as to meet the nutritional standards specified in Schedule II of the Act (Drèze and Khera 2015). The Act also prescribes definite time periods in various provisions which indicates a strong legislative will to cater to the rights of the people. The Act proposes food grain entitlements to upto 75% of the rural population and 50% of the urban population (Bhattacharyya and Rana2008). However, given the actual size of the targeted population; implementation of the Act seems rather incomplete.

Government Schemes and Their Efficacy

The National Food Security Act was enacted only in 2013. Prior to that there was no comprehensive Act to deal with food security. Food has been supplied to various categories of persons through governmental schemes.

1. The Public Distribution System

The Public Distribution System (PDS) is a means of distributing food grains and other basic commodities at subsidised prices through “fair price shops”. Every family is supposed to have a ration card. In 1997, the PDS became “targeted” and different ration cards were issued to households “Below Poverty Line” (BPL) and those “Above Poverty Line” (APL), and each category has different entitlements. Today, both BPL and APL households are entitled to 35 kg of grain per month, but the issue price is higher for APL households⁴⁶. In fact, it is so high that most APL households do not buy

⁴⁵See also The National Food Security Act, 2013, Section 4: “Nutritional support to pregnant women and lactating mothers”.

⁴⁶cf. NITI Aayog, Development Monitoring and Evaluation Office(2011).

grain from the PDS. In a written reply given to a unstarred question in Lok Sabha⁴⁷, the then Minister of State (Independent Charge) For Consumer Affairs, Food & Public Distribution (Prof. K.V. Thomas) said that

(a): Planning Commission is the nodal agency of the Government of India for estimating poverty at National and State levels. Planning Commission defines poverty line on the basis of Monthly Per Capita Consumption Expenditure (MPCE) as the criterion. For estimating the poverty, Planning Commission uses the defined poverty line based on the methodology suggested by experts in the field. For allocation of food grains (wheat and rice) to States and Union Territories (UTs) under Targeted Public Distribution System (TPDS), Department of Food & Public Distribution uses the number of Below Poverty Line (BPL) families based on 1993-94 poverty estimates of Planning Commission and the population estimates of Registrar General of India as on 1st March 2000 or the number of such families actually identified and ration cards issued to them by State/UT Governments, whichever is less. (b) & (c): Depending upon their availability in central pool and past off take, food grains are being allocated to Above Poverty Line (APL) families at the Central Issue Price of Rs.6.10 per kg for wheat and Rs.8.30 per kg for rice. Presently, the allocations for APL category range between 15 kg and 35 kg food grains per family per month in different States/UTs. In view of special geographical conditions and difficult terrain, allocation at 35 kg/family/month is being made to 13 special category States/UTs including the North Eastern States, Sikkim, hilly States of Jammu & Kashmir, Himachal Pradesh & Uttarakhand and Island UTs of Andaman & Nicobar Islands and Lakshadweep. As regards distribution of sugar to APL families under TPDS, Government has restructured the supply of levy sugar in February, 2001 and restricted its supply to Below Poverty Line (BPL) families except in North Eastern States, Hilly States and Island Territories where universal coverage was allowed to continue.

⁴⁷See Government of India Ministry of Consumer Affairs, Food And Public Distribution Lok Sabha Unstarred Question No 822; Answered on 14.08.2012: Norms For BPL - 822. Shri Prasanta Kumar Majumdar.

Will the Minister of Consumer Affairs, Food and Public Distribution be pleased to state:-

- (a) the criteria presently adopted by the Government for defining the Below Poverty Line (BPL) and Above Poverty Line (APL) categories;
- (b) whether the Government is not providing subsidised ration and sugar to the APL families; and
- (c) if so, the details thereof and the reasons therefor?

Thus, in practice the PDS is restricted to BPL households. Even in years when the APL prices correspond very closely with the market prices, the APL off-take has remained very low since State Governments are not lifting their APL quotas. The Government of India has now reduced the APL quotas for all States and restricted it to the average of the last three years of APL off-take for that particular State. In 2001, Antyodaya cards were introduced as a sub-category of BPL cards⁴⁸. However, the Supreme Court later in an order dated 20 April 2004 stated that the Antyodaya programme should not be restricted to those with a BPL card (People's Union for Civil Liberties WP 2001). Thus, Antyodaya cards have become a separate card, distinct from either BPL or APL. Some households also have other cards, such as Annapurna cards.

In India's Public Distribution System (PDS) subsidized food allocations are differentiated by the poverty status of beneficiaries, namely Antyodaya Anna Yojana (AAY; poorest of the poor), Below Poverty Line (BPL) and Above Poverty Line (APL)⁴⁹. Since its inception the PDS has been criticized for its wastage of grains and corruption⁵⁰. It is commonly held that much of the grain which is supplied to the system is appropriated by bureaucrats and employees⁵¹ rather than reaching the designated beneficiaries (Mundle et al. 2016). The PDS is facing many obstacles including widespread leakages and corruption (Jain 2016)⁵². The problems that are affecting the proper functioning of the Public Distribution System must be looked into and remedial measures must be explored.

2. Antyodaya Anna Yojana

Antyodaya Anna Yojana was launched on the 25th December, 2000. The scheme aimed to ensure food security for all in order to create a hunger free India in the next five years and to reform and improve the Public Distribution System to serve the poor people in rural and urban areas. It is estimated that 5% of population are unable to get two square meals a day throughout the year. Their purchasing power is so low that they are not in a

⁴⁸See also Chakraborty et al. (2012: 41-52).

⁴⁹See Khera (2008: 51-56).

⁵⁰See for more Kumari and Kumari (2015).

⁵¹See generally Puri (2012).

⁵²See also Nawani (1994).

position to buy food grains round the year even at BPL rates. The Scheme was intended for such people.

Today, Antyodaya cardholders are entitled to 35 kg of grain per month, at Rs 2/kg for wheat and Rs 3/ kg for rice. Initially, the Antyodaya scheme covered 1 crore families, but this was later expanded to 1.5 crore families and then 2 crore families. Currently, around 40% of all BPL families are included in the Antyodaya category.

3. Mid-Day Meals

The Supreme Court order of 28th November, 2001 (People's Union for Civil Liberties WP 2001), directed State Governments to start providing cooked Mid-Day Meals in primary schools. Every child who attends a government or government-assisted primary school is now entitled to a cooked, nutritious Mid-Day Meals every day. The provision of cooked Mid-Day Meals in primary schools is an important step towards the right to food. Indeed, Mid-Day Meals help to protect children from hunger (including "classroom hunger", a mortal enemy of school education), and if the meals are nutritious, they can facilitate the healthy growth of children. Mid-Day Meals also serve many other useful purposes (Deaton and Drèze 2009). For instance, they are quite effective in promoting regular school attendance, and in that respect Mid-Day Meals contribute not only to the Right to Food but also to the Right to Education.

Mid-Day Meals also help to undermine caste prejudices, by teaching children to sit together and share common meal. They reduce the gender gap in school participation, provide an important source of employment for women, and liberate working women from the task of having to feed children at home during the day. Aside from this, Mid-Day Meals can be seen as a source of economic support for the poorer sections of society, and also as an opportunity to impart nutrition and education to children. For all these reasons, the Supreme Court order on Mid-Day Meals has been widely welcomed, especially among disadvantaged sections of society (Ramaswami and Dutta 2011).

4. Integrated Child Development Services (ICDS)

ICDS is the only major national programme that addresses the needs of children under the age of six years. It seeks to provide young children with an integrated package of services such as supplementary nutrition, health care and pre-school education. Because the health and nutrition needs of a child cannot be addressed in isolation from those of his or her mother, the programme also extends to adolescent girls, pregnant women and lactating mothers. These services are provided through ICDS centres, also known as

“Anganwadis”. As of 2015 there are more than 13.42 lakhs Anganwadis centres operating in the country, covering 8.06 crore children in the age group 6 months to 6 years.⁵³ This is less than half of all children in the 0-6 age group.⁵⁴ The coverage of ICDS is therefore far from universal. Further, the quality of ICDS services is very low in most of the States (Kapil and Pradhan 2000). The Supreme Court orders on ICDS⁵⁵ are essentially aimed at achieving “universalization with quality” within a reasonable time frame.

5. National Old Age Pension Scheme

This scheme was launched in 1995 to provide “old age pensions” to senior citizens (aged 65 years or more). It is part of the National Social Assistance Programme⁵⁶, which also includes two other schemes: The National Family Benefit Scheme (NFBS) and Annapurna. The National Old Age Pension Scheme (NOAPS) is primarily addressed to old men and women with no assured means of subsistence, but the eligibility conditions vary from State to State, and so does the coverage of the scheme. The pensions are given in cash, with the Central Government contributing Rs 75 per month, often supplemented with a contribution from the State Government (e.g. in Rajasthan the old age pension is Rs 200 per month). The Central Government enhanced its contribution to Rs. 200 per month which is still subsisting as on 2016 for person till the age of 79 years after the person attains the age of 80 years the Central Government Contribution increases to Rs. 500.⁵⁷ One of the main problems with this scheme is its small coverage: there are plenty of applications, but funds are limited.

The fact that many State governments link eligibility under NOAPS to those BPL individuals who are not “supported” by other family members, further restricts the outreach of the programme. In 2002-03, NOAPS was “transferred” to the State

⁵³See generally NITI Aayog, Programme Evaluation Organization (2015).

⁵⁴ Population projections based on 2001 Census data suggest that the number of children below the age of 6 years was around 14 crores in 2006.

⁵⁵See Shagun Mahila Udyogik Sahakari Sanstha Maryadit case (2011).

⁵⁶The National Social Assistance Programme also included the National Maternity Benefit Scheme (NMBS) until the latter was transferred to the Ministry of Health and Family Welfare in 2001-2002.

⁵⁷See Government of India (2014).

Governments (along with other NSAP schemes): from a “Centrally Sponsored Scheme”, it became part of the State plans. This is meant to be a relatively minor administrative reform, whereby the Central Government gives a cash grant to the State Government (under “Additional Central Assistance”) and lets it run the scheme, instead of complementing the scheme with the State Government. In practice, however, this “transfer” tends to have an adverse impact in several ways. First, after a scheme is transferred to the State plans, the Central Government stops monitoring it. Second, the transfer has also terminated the payment of administrative charges by the Central Government, and State Governments often fail to make up for this. Aside from NOAPS, other schemes under the National Social Assistance Programme (i.e. Annapurna and the National Family Benefit Scheme) have also been transferred to the State plans.

6. National Family Benefit Scheme

This scheme, like NOAPS, is part of the National Social Assistance Programme. It provides for lump-sum cash assistance of Rs 10,000 to BPL families on the death of a primary breadwinner, if he or she is aged between 18 and 65 years. A “primary breadwinner” is a household member whose earnings contribute substantially to household income. The amount of assistance is Rs 10,000 for accidental deaths and Rs 5,000 in the case of death due to natural causes. The payment is to be made to the “surviving head” of the household, after a local enquiry.

7. National Maternity Benefit Scheme

This scheme is a timid attempt to introduce “maternity benefits” in India's social security system. It was introduced in 1995 as part of the National Social Assistance Programme, and later transferred to the Health Ministry. Under NMBS, pregnant women from BPL families are entitled to lump-sum cash assistance of Rs 500, up to two live births. The payment is to be made 8-12 weeks before delivery, but in practice there are long delays, partly due to the complex application procedures. Women are often paid for months, if not years, after delivery, and this defeats the purpose of the scheme.

8. Sampurna Gramin Rozgar Yojana

Assured employment at a living wage is the best protection against hunger. In this and other ways, the right to food is closely connected to the right to work. An important step towards the realisation of the right to work was made in August 2005, with the enactment of the National Rural Employment Guarantee Act, 2005. Sampurna Gramin Rozgar Yojana (SGRY) is a centrally-sponsored employment scheme. It was initiated in

August 2001, and officially aimed at generating 100 crore person-days of employment each year. According to the official guidelines: “The SGRY is open to all rural poor who are in need of wage employment and desire to do manual and unskilled work in and around his/her village/habitat” (Government of India 2002). The primary objective of the scheme is to provide additional wage employment in rural areas, thereby provide food security and nutritional levels.

9. Annapurna

The Annapurna Scheme was launched on 1st April 2000. The target group consists of “senior citizens” who are eligible for an old age pension under the National Old Age Pension Scheme (NOAPS), but are not actually receiving a pension. The beneficiaries, to be identified by the Gram Panchayat after giving wide publicity to the scheme, are entitled to 10 kg of grain per month free of cost through the Public Distribution System (special ration cards are issued to them for this purpose). The intention appears to be to provide some sort of emergency food security to elderly persons who are waiting for a pension to be sanctioned to them under NOAPS. However, the coverage of Annapurna itself is very limited. In 2002-03 this scheme was “transferred” to the State Plans, like NOAPS.

Conclusion

The efficacy of the Legislative move to eradicate hunger cannot be sufficiently determined because the legislature has not taken adequate measures to deal with it. But there is no doubt that given the severity of the problem, the Legislature alone cannot deal with hunger. The Executive has taken several steps to eradicate hunger, as is clear from the sheer number of schemes adopted by it. This can also be seen as an attempt to fill the vacuum left by the Legislature. However, it is difficult to determine if this vacuum is deliberate or unintentional. Perhaps, the Legislature has also felt the presence of the vacuum and enacted the National Food Security Act, 2013 as a knee-jerk reaction.

The Judiciary also had to step into the shoes of the Legislature in the Right to Food Case (People’s Union for Civil Liberties 2007) wherein it issued several orders and directions to various government functionaries over the years to enforce the Right to be free from Hunger. Mid-Day Meal Scheme is one of the most beneficial outcomes of the Case. Many NGOs, most notably People’s Union of Civil Liberties, has done a lot of work to curb hunger and starvation. Their work includes door-to-door aid, public interest litigations and implementation of government schemes. Given the national and

international legal framework, the Indian Parliament must take legislative measures to eradicate hunger and curb starvation. It is the need of the hour and very crucial for the success of democracy.

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