



## **Human Rights To Adequate Food**

**Kanchan Dwivedi**

Research Scholar, Singhania University,  
Rajasthan, India

### **Abstract:**

*Access to adequate food is fundamental for the right to adequate food. Accessed food must be adequate in terms of quality and quantity. Access to adequate food has been defined in terms of intake of nutrients, calories and proteins. Hunger and malnutrition are the consequences of lacking access to adequate food. The consequences of food deprivation can be diagnosed with considerable medical precision. Malnutrition need not be under nutrition (lacking quantity of food intake), but could also be due to lack of quality food. Both are often the results of poverty and discrimination, in particular gender-based discrimination. Precise indicators for food intake and malnutrition are less important for the description of the right to food than might be expected. A breach of a state's obligations can normally be detected without counting calorie intake or having the victimized person go through a medical examination. Adequate food may also refer to socioeconomic and cultural circumstances. Similar to an adequate standard of living, adequate food means different things under different cultural circumstances. Nevertheless, there is a minimum standard universal under all (cultural and other) circumstances. This minimum has even been spelled out in article 11(2) of ICESCR as the fundamental right to freedom from hunger.*

*The Right to Food is a guaranteed Fundamental Right, enforceable by the virtue of the Constitutional remedy provided under Article 32 of the Constitution. The requirements of the Indian Constitution mentioned above are consonant with the obligations of the State under the 1966 International Covenant on Economic Social and Cultural Rights to which India is a party. The Covenant, in Article 11, expressly recognizes the right of each individual to an adequate standard of living, including adequate food. There are definitions for hunger and malnutrition in terms of intake of nutrients. It is possible to establish minimum dietary requirements as well as a minimum income necessary to prevent hunger and malnutrition and deprivations of other basic needs for deprived groups. This has often been called the "absolute poverty line" or "basic needs line," whereas the income necessary for an adequate standard of living according to article 11(1) is called the "relative poverty line." Absence of absolute poverty can be seen as the minimum standard under the right to an adequate standard of living. In terms of income the relative poverty line is normally defined as a percentage of average per capita income in the country. Most social scientists would agree that anything below 40 percent of per capita income is generally seen as relative deprivation. Therefore the 40 percent mark would be called the "relative poverty line" or "adequacy line."*

## Introduction

The preamble of the WHO constitution projects a vision of the ideal status of health as an eternal and universal goal. It illustrates the indivisibility and interdependence of rights as they relate to health. It recognizes the enjoyment of the highest attainable standard of health as a fundamental right of every human being.<sup>1</sup> With increasing awareness of nutritional status, an important index of quality of life, there is an overall positive trend in nutritional outcome during the past few decades. But the gain is more in the reduction of severe varieties of malnutrition rather than improvements towards the international standards. The quantitative and qualitative dimensions of the challenge of achieving a hunger-free India are daunting. The incidence of poverty, endemic hunger, communicable diseases, infant and maternal mortality rates, low birth weight children and stunting and illiteracy is high. There are however many examples where progress in the elimination of poverty-induced hunger has been rapidly because of a symphonic approach in dealing with the multi-dimensional problem of hunger and malnutrition. Successful experiences in the elimination of hunger and poverty have shown that synergy between political will and action and strategic partnerships can help local communities to achieve seemingly impossible tasks<sup>2</sup>. Poverty and starvation are indeed a violation of human rights. Starvation and poverty undermine human rights by fuelling social unrest, violence and an increase in the precariousness of social, economic and political rights. World Food Program of UN describes hunger as the main cause of poverty. Hunger causes poverty by denying its victims opportunities to enhance their lives. It debilitates people physically, physiologically and psychologically. Those who are weakened by hunger find themselves trapped in a vicious cycle of hunger.<sup>3</sup> In the overall macroeconomic picture, the country has been food sufficient or surplus but it has not translated into food security at the individual level. Despite the tremendous increase in agricultural production, reaching adequate standards of food security and nutrition at the household level is still a goal to be achieved. Food security relates to the fulfillment of the 'want of food' of the society, which is difficult to achieve due to inequalities, discrimination, oppression and exploitation. The injustice can be understood as the concept of 'paradox of hunger amidst plenty'<sup>4</sup>, as expressed by Jean Dreze and Amartya Sen. Hence, public pressure and state action has been far less successful in overcoming

<sup>1</sup> Health and Human rights, New Delhi, 2001, report and recommendation

<sup>2</sup> Dr. M.S. Swaminathan's 12 point programme towards a Hunger Free India (2002-03)

<sup>3</sup> Human rights and poverty in India, edited by S.N. Chaudhary, 2005, New Delhi

<sup>4</sup> Refer to Dreze and Sen (1999) "Hunger and Public Action" (Oxford University Press, New Delhi) for a detailed understanding of the various issues regarding hunger and famine, and the required public action.

endemic hunger or enduring denials to adequate nutrition, necessary not just for survival but a healthy and active life. This is because of the economic powerlessness, invisibility, political irrelevance and lack of organization of people who live with hunger and malnutrition. Even though there has been a reduction in severe grades of malnutrition like kwashiorkor, marasmus, pellagra, lathyrism etc. the stubborn and shameful persistence of child and woman malnutrition and mortality at levels far more grave than in much poorer countries in India, underlines the enormity of the still unmet challenges.

### **Food Security In India Through The International Perspective**

The preamble of the WHO constitution projects a vision of the ideal state of health as an eternal and universal goal. It illustrates the indivisibility and interdependence of rights as they relate to health. It recognizes the enjoyment of the highest attainable standard of health as a fundamental right of every human being. India at present has a long way to go especially in comparison to its international counterparts. India had reached self sufficiency in grain production years before china, but even today it is home to 35% of all the underweight children in the world. According to UNICEF, India has 57 million children suffering from malnutrition compared to only seven million in China.

As a cumulative outcome of state interventions, as well as autonomous social and economic transformations, there has been a substantial decline in the most severe grades of under-nutrition in India, especially amongst children. However, India still has a worse record than some of the poorer counties in the South Asian Association for Regional Cooperation (SAARC) region, and indeed globally, excluding Sub Saharan Africa. According to the UNICEF report (2005), the percentage of infants of low birth weight in India (1998-2003) was 30, as compared to 21 and 9 per cent in Nepal and Bhutan which are much poorer countries.

### **The Indian Constitution: Directives For Food Security**

The right to food is a natural implication of the fundamental "Right to Life" as enshrined in Article 21 of the Indian Constitution. The Constitution also highlights other critical aspects of the responsibility of the State towards ensuring the realization of this right. Article 38 requires the State to secure a social order for the promotion of the welfare of the people, in which justice – social, economic and political – shall inform all the institutions of the national life. Also, Article 39(a) requires the State to direct its policy towards securing that all individuals have the right to an adequate means of livelihood.

Article 43 states that the State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. Further, Article 47 makes it clear that one of the State's primary responsibilities is to raise the level of nutrition and the standard of living of its people. Hence, the right to food has been expressed in a holistic manner, involving livelihood security, employment security, etc. The directives of the Constitution remain crucial for the Indian State especially as they are supported by International agreements ratified by India, such as the 1966 International Covenant on Economic Social and Cultural Rights. It expressly recognizes "the fundamental right of each individual to be free from hunger and malnutrition" as well as "the right to an adequate standard of living, including adequate food" (Article 11). The Declaration of the Rights of the Child (Article 24, 27) recognizes the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development. By ratifying these legal instruments, India has recognized its obligation to respect, protect and fulfill the progressive realization of these rights, especially the right to adequate food. The interim order of October 29, 2002, has directed that the "Chief Secretaries" of the concerned states would be held responsible for any persistent default in compliance with orders. In another order, the Supreme Court invoked the procedure of the D.K. Basu protocol for the right to food and stated that "Failure to comply with the requirements herein above mentioned shall apart from rendering the official concerned liable for departmental actions also render him liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in any High Court of the country having territorial jurisdiction over the matter". Hence, the policy changes at the national level have to be implemented in a focused manner through legal and bureaucratic interventions. Lack of political and administrative will should no longer be allowed to continue as a reason for neglect of hunger and morbidity. In order to establish an independent mechanism to ensure compliance by the state and central government, the Commissioners of Supreme Court have been appointed, through an interim order on May 8, 2002. Through their reports, the Commissioners have highlighted pertinent issues of non-compliance, hurdles in implementation, etc. Through the mandatory response required from the central and state governments, the system has become more streamlined to address the issues of hunger. The Commissioners operate through a network of honorary state and national advisers to monitor the progress of the food

schemes; suggest reforms in the laws, policies and programs pertaining to the Right to Food and, wherever necessary, get directions from the Supreme Court and, take action against erring state/central government officials. Hence, they are also empowered to move contempt of court charges against chief secretaries and other senior state/central government officials when the non-compliance is willful and deliberate. The Joint Commissions of Enquiry (JCEs) established by the Commissioners enquire into charges of malfeasance by government officials in food schemes. These commissions are presently working in the states of Chhattisgarh, Assam, West Bengal and Madhya Pradesh. Their enquiries have led to the dismissal of a few officials, departmental enquiries against some, and suspension from service for others. Through them the grievances of the society regarding implementation of food schemes are finally being addressed. With the active involvement of the Supreme Court, the bureaucracy, and the intellectual community many milestones have been achieved. There is no dearth of schemes at present; however, the administrative will is required to ensure that each scheme realizes its objectives and goals. The stakes are high as they deal with human life and dignity. Without a human rights conscious administration, many of the schemes and community initiatives will not be able realize its full potential. Hence, the onus lies on the governments at all levels to take inspired actions to make sure that the want of food is satisfied of all individuals. In order for the Right to Food to have any meaning for its subjects, two conditions must be fulfilled: food must be available and accessible. Accessibility encompasses both physical and economic ease of access whereby the economic accessibility implies that the personal or household financial costs associated with the acquisition of food for an adequate diet should not be so high as to endanger the accessibility of other basic needs. Physically food must be accessible to everyone in a reasonable reach from their respective home, at a reasonable time under reasonable conditions. Also, an element of sustainability should be observed, which means that the long-term availability and accessibility of food must be safeguarded.

### **Discrimination**

Right to Food and the state's obligation and capacity to give meaning to the Right to Food, this overview regarding food-related matters in India would be incomplete without referring to severe discriminatory practices which can be observed on a daily basis. As a customary system of social and economic governance based on graded hierarchy, caste in Indian society lives in tension with the legal system of the Indian state, which is based

on ideals of liberty and equality. In response to the growing Right to Food movement of recent years, the Supreme Court has required the central government, when introducing new food-related schemes in response to drought, unemployment, starvation, and so forth, to include specific provisions to prevent caste discrimination and exclusion in the implementation of these programs. Conventional caste forces, however, are often able to subvert, evade, hijack or manipulate the progressive legal framework of the state, nullifying the transformative potential of its anti-discriminatory measures. Even in government schemes designed specifically for the welfare of communities traditionally discriminated against, members of those communities often find themselves excluded both from participation/partnership in the implementation of the scheme, as well as from the material or other benefits of the scheme. This is notably the case in Right to Food-related government programs such as the Midday Meal Scheme (MMS) and the Targeted Public Distribution System (TPDS). There has been a contradictory situation in India, with persistent and chronic hunger existing despite the mounting food grain stocks. The food grain stocks available with the Food Corporation of India (FCI) have stood at an all time high against an annual requirement for ensuring food security. Still, an estimated 200 million people are underfed and 50 million have been on the brink of starvation, even resulting in starvation deaths. The paradox lies due to inherent flaws in the existing policy and the implementation bottlenecks. Hence, their success lies in linking them together as a means towards a development that is people oriented and not target oriented. The District Magistrate can play a vital role by utilizing his power to ensure proper implementation of schemes. In order to ensure food security at the individual level, it is important to ensure equality and justice in distribution, allocation, universal access as well as full capacity utilization of all schemes. The issues of hunger and starvation can be handled by meeting the representatives from the local bodies on a regular basis and addressing any discrepancies on a priority basis. A scheme or an Act and a special focus committee, etc. are not ends in themselves; rather they are a medium for a humanitarian state to be accountable to its people.

However, considering the endemic hunger that is there in the country, the food security programs should first get full attention on a priority basis. Efforts need to be made to establish and support participatory food governance. Afterwards the food security measures should be integrated to other vital issues of water harvesting, micro credit support, and employment guarantee schemes, etc. so these measures do not remain narrow based or detached from the bigger picture. Food security needs to be

institutionalized and implemented at various levels. There needs to be an effective flow of information across all levels especially in the form of regular feedback and appraisal. The goal is to establish a forum for advocacy of right to food in a public context. For this to be successful, the need for participatory form of governance at the grassroots level is crucial. The '*right-cum-duties*' approach needs to be used in this context. The people need to be sensitized to the fact that food is their basic right, and they need to take full advantage of all government support available to them. Alongside the local government has to admit and realize their responsibilities towards the regular hunger and endemic undernourishment that is there in the country.

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