

ISSN 2582 - 4805



CMR UNIVERSITY

SCHOOL OF
LEGAL STUDIES, BENGALURU.

**CMR UNIVERSITY
JOURNAL FOR
CONTEMPORARY LEGAL
AFFAIRS**

(Peer Reviewed & Refereed)
Listed in UGC - Care (Group I)

1

Volume 4 | Issue 1 | August 2022

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THE RIGHT TO FOOD AS A HUMAN RIGHT: AN OVERVIEW OF PUBLIC UNDERSTANDING OF THE RIGHT TO SAFE AND NUTRITIOUS FOOD

Prof. (Dr.) B. S. Reddy*

Ms. Ramya. R**

Introduction

The right to food has been identified widely as a basic human right at all levels, national, regional and global. The right to food is fundamental to achieving a world without hunger. On the other side, everyone desires health. As a necessity for the production of highly qualified and nutritious food, food safety is also essential for ensuring the right to food. The majority of states consider the right to food as a fundamental human right. However, there are around 852 million undernourished people in the globe, 815 million of whom are in developing nations. In addition, one child under the age of 10 loses their life to starvation or malnutrition every five seconds. The right to food is a human right and not a political choice and is not open for either acceptance or rejection by governments at will. In the context of India, the notion of dharma places an enormous focus on food production and distribution. Atharvaveda endorses the notion that everyone has equal food and water rights. Thus, the State parties must defend the right to food and prevent third parties from destroying the resources that provide an individual or group of individuals access to food. The “right to food” case in India is illustrative, as a spectacular public interest suit was filed in which the Supreme Court of India derived from

*Professor and Director, Centre for PG Studies, Alliance School of Law, Alliance University, Bangalore.

**Assistant Professor at CMR University, School of Legal Studies. Currently pursuing Ph.D. (Law) from Alliance University.

the right to life a series of requirements detailing how various social programs should be expanded and implemented to ensure that the population is guaranteed a minimum nutritional floor. The government and judicial authorities have made a concerted effort to incorporate the right to food as being a part of the wide array of unenumerated rights interpreted as being inherent in the right of life so as to resolve many of the difficulties surrounding the right to food. But when it is questioned if the right to food encompasses the right to safe and nutritious food, there is a great distance to travel to recover and discover the answer. The government pays the least amount of attention to guaranteeing food safety and ensuring that people live a healthy life, despite the fact that food insecurity has become a worldwide crisis. Therefore, the right to food must incorporate the phrase “The Right to Safe and Nutritious Food.”

Right to Food under Indian and International Scenario:

International Scenario:

As a fundamental human right, the right to food is strongly related to other rights, such as the right to life and the right to health. Access to basic necessities like, healthcare, education, cultural values and the freedom of economic and political organization before they may enjoy the right to food. The right to food finds recognition in the Universal Declaration of Human Rights, 1948 as well. Article 25 assures the right to a standard of living sufficient for healthy well-being of oneself and one’s family as including food. Article 11(1) of the International Covenant on Economic, Social, and Cultural Rights, states that the right to passable food is essential for a standard of living. Hence, being free from hunger is a fundamental right of everyone. The right to adequate food can only be realized when each person by themselves or as part of a community, gains continuous access physically and economically to adequate food or at least

the access to the means for procuring food. At its core this right seeks to imply that, both quantitatively and qualitatively, sufficient food is made available so as to fulfill all the dietary needs of all people, while ensuring that such food is not only within the cultural context it is also free from adverse substances, besides being accessible and sustainable so as to ensure that the same does not come into conflict with the enjoyment of any of the other human rights.¹ According to the GO 12 - Committee on Economic, Social, and Cultural Rights, states are obliged to make sure that everyone living within its jurisdiction have access to minimum essential food which is sufficient, nutritionally adequate, and safe, to ensure their freedom from hunger. The right to food is also recognized by a variety of International Instruments protecting specific groups, such as the Convention on the Elimination of All Forms of Discrimination against Women (1979)², the Convention on the Rights of the Child (1989),³ and the Convention on the Rights of Persons with Disabilities (2006)⁴.

While we look at all these provisions enumerated through various international instruments obligate the state parties to engage in such activities intended to strengthen people's access to all means to ensure their livelihood inclusive of food security. Furthermore, state parties must identify the available resources and take the necessary steps for the progressive realization of the right to food. When the attention has been grabbed here about the safety of food, the World Health Organization reported that about 2 million people of world citizens die each year due to

¹ Committee on Economic, Social, and Cultural Rights General Comment 12. The right to adequate food (article 11) (12 May 1999)

² Article 12 (2).

³ Article 24 (2) (c) and (e) and Article 27 (3)

⁴ Article 25 (f) and Article 28 (1) n

lack of food safety⁵. The Right to Food and the right to health intersect at a point to indicate their dependency on health.⁶ Realizing the human right in a form of the right to food for food safety protection under international law requires national policy to meet with the international policy of food safety⁷. Food safety is assured by the food wealth and assumed as “the right of citizens to get healthy and culturally suitable food which is produced through the sustainable and ecological friendly process, also the right to define their own food and agriculture system”⁸. The wealth of food is one of the requirements for the right to food and acts as the fundamental point of which a state can perform a strong effort in adapting to globalization in food production and distribution. The shift of the food system implicates the meeting point of those rights in national policy⁹.

In 2000, the Special Rapporteur on the Right to Food was established by the Commission on Human Rights, it defined it as the right to have regular, permanent, and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate consistent to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear. According to the UN fact sheet on the Right to Food, it is an inclusive right. It is not simply a right to a minimum ration of calories, proteins, and other specific nutrients. It is a right to all

⁵ Food Safety in the Protection of the Right to Health To cite this article: F N Damayanti and E Wahyati 2019 IOP Conf. Ser.: Earth Environ. Sci. 292 012047

⁶ Steiner HJ, Alston P, Goodman R. 2008. International human rights in context: law, politics, morals. 3rd ed. Oxford: Oxford University Press

⁷ Food and Agriculture Organization of the United Nations, 2015. International Fund for Agricultural Development, World Food Programme. The state of food insecurity in the world. FAO.

⁸ Ramanujam N, Caivano N, Abebe S. 2015. From Justiciability to Justice: Realizing the Human Right to Food. JSDLP Online. 11(1):1–38.

⁹ Guendel L. 2012. Evaluation, public policies, and human rights. In: Kushner S, Rotondo E, editors. Evaluation voices from Latin America. New directions for evaluation, Number 134. Geneva: Jossey-Bass and the American Evaluation Association.

nutritional elements that a person needs to live a healthy and active life, and to the means to access them.

Indian Scenario:

Article 21 of the Indian Constitution protects a basic right to life and personal liberty, which must be read in conjunction with Articles 39(a) and 47 in order to comprehend the nature of the state's obligations to ensure the effective implementation of this right. Article 39(a) of the Indian Constitution stipulates that the states are responsible for ensuring that all of their citizens have access to adequate means of subsistence, while Article 47 mandates that the state's primary responsibility is to improve the nutrition and standard of living of its people. In addition, the Indian Constitution recognizes the Right to Food as a Fundamental Right, which can be enforced under Article 32 of Indian Constitution.

As an active member of the ICESCR, India is required to respect, preserve, and fulfill the right to food for every Indian person. Although there is no express provision in the Indian Constitution recognizing the Right to Food as a basic right, there are equivalent human rights provisions in Part III and Part IV. The Indian Judiciary further expanded its interpretation to include the Right to Food within the scope of Article 21 - Right to Life and to monitor the state's commitments. The Supreme Court of India ruled that the right to life guaranteed in any civilized society entails the right to food, water, a decent environment, education, medical care, and shelter and that the government has a constitutional obligation to ensure that all people have access to adequate food and dignified life. The Supreme Court also held that the basic needs of man have traditionally been accepted to be three – food, clothing, and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep, the right to food, the

right to clothing, the right to a decent environment, and reasonable accommodation to live in.¹⁰

The Support of the Indian Judiciary and the Right to Food:

In the case of PUCL vs Union of India¹¹, the court held that the right to food is a fundamental right of all citizens, and directed that the country's magmatic food storage should be used without any delay to prevent hunger and starvation. The Supreme Court emphasized that the Integrated Child Development Scheme intends to provide supplementary food to children between the ages of 0 and 6 as well as to pregnant women. The court further observed that there are numerous obstacles to ensuring that nutritious food reaches those who are undernourished or malnourished as well as those who are covered by the scheme. The court also ordered the states to ensure the proper operation of the Public Distribution System, the implementation of food-for-work programs, the implementation of a Midday Meal Scheme, etc.¹²

The Indian government has also implemented several food-based programs and food aid programs to combat hunger and malnutrition in the nation. Important food subsidy programs include the Public Distribution System (PDS) and the Targeted Distribution System (TPDS), the Antyodaya Anna Yojana (2000) for the poorest of the poor, the Annapurna Scheme (1998) which provides 10kgs of free food grain to the destitute poor, the Mid-Day Meal Scheme (MDMS-1995) for all primary school children, the Integrated Child Development Scheme (ICDS – 1975) for children under six and pregnant and lactating women.

¹⁰ Shantisar Builders v Narayanan Khimala Totame (1990) 1SCC 520

¹¹ People's Union for Civil Liberties v. Union of India & Ors, (AIR 2003 SC 2363)

¹² PUCL v UOI (SC 2001) Writ Petition No. 196/2001. p. 48

In India, when there has been a violation of a human right or fundamental rights guaranteed under the Indian Constitution, an issue can be raised before the Supreme Court directly. The Classic example to prove this context is when an NGO- the Union for Civil Liberties, which is working for the protection of human rights, in the year 2001¹³, filed a complaint in the names of various community people who were dying of hunger while, several kilometers away, the food stocks of the Food Corporation of India were being eaten by rats. The Supreme court judges while handling this issue, went to the spot in person and handed down several rulings in favor of these communities, all in the name of the Right to Food only. Even in a case, where the Supreme Court ruled against the exhaustive shrimp raising, which has largely impacted the means of subsistence of conventional fishermen and local farmers, to face a loss of access to drinking water for the local residents.¹⁴

The efficacy of existing food safety laws in India:

One of the crucial industries to strengthen India's economy is the agriculture industry. Numerous food sectors operate in a variety of capacities, such as manufacturing, processing, and distribution. These activities have a substantial impact on the food supply chain and heighten the significance of food regulations in India. The Prevention of Food Adulteration Act, passed in 1954 with the intention of advancing food security in India, was the first food safety law. Other six laws, including the Vegetable Oil Products (Control) Order from 1947, the Fruit Product Order from 1955, the Solvent Extracted Oil, DE-oiled Meal and Edible Flour (Control) Order from 1967, the Meat Food Products Order from

¹³ Cf. the internet site of right to food campaign organized by Indian NGOs: <http://www.righttofoodindia.org/>

¹⁴ Indian Supreme Court: S. Jagannath v. Union of India, WP 561/1994 (1996.12.11) (Aquaculture case). <http://www.elaw.org/resources/text.asp?ID=1055&lang=es>

1973, the Milk and Milk Products Order from 1992, and the Edible Oils Packaging (Regulation) Order from 1998, were also passed. However, all of these laws were repealed by the Food Safety and Standards Act of 2006 (FSSA), which went into effect. The Food Safety and Standard Authority of India (FSSAI) is established as the principal body to set the standards for food for ensuring superior quality food. FSSA affords separate packaging and labeling regulations known as Food Safety and Standards (Packaging and Labeling) Regulations, 2011¹⁵. Even the Act controls the advertisement which is in nature misleading or deceiving or contravenes the provisions of the Act. The FSSA also provides the Food Safety and Standards (Licensing and Registration of Food Business) Regulations, 2011¹⁶ to govern the aspect of license and registration of food business operators whereas they have to obtain the license to run the business and ensure the compliance of conditions with regard to safety, sanitary and hygienic requirements, non-compliance of which would attract the penalty of up to two lakh rupees. Presently, the FSSAI has 377 regulations only whereas some countries have about 10,000 foods and detailed standards¹⁷. But the FSSA did not repeal sections 272 and 273 of the Indian Penal Code which punish offenses of adulteration.

In a case, the state government filed an FIR against the Company under Section 272/273 of IPC. This action of the state was challenged by Pepsico India Holding with a contention that sections 272 and 273 of IPC are repealed by FSSA and the Allahabad High Court held that the IPC provisions are inapplicable¹⁸, in another case the Supreme Court held that

¹⁵ <https://www.fssai.gov.in/cms/food-safety-and-standards-regulations.php>

¹⁶ *ibid*

¹⁷ <https://www.foodsafetymantra.com/regulatory-update/consumer-products/the-food-safety-and-standards-amendment-bill-2020/>

¹⁸ *M/S PepsiCo India Holdings private limited and anr. v. State of U.P.* (2010)

“if an act or an omission constitutes an offence under two enactments and prescribes punishment for the same. The offender may be prosecuted and punished under either or both enactments but shall not be liable to be punished twice for the same offence”. Thus, just because the provisions of FSSA mention penalties for the offence, it does not imply that one cannot be prosecuted under IPC¹⁹.

Despite stringent laws on food safety in India, there are many cases have been reported on Food Contamination. In 2015, Nestle- Maggie Noodles case²⁰ where the product was questioned that it had the presence of monosodium glutamate (MSG) and lead contamination which would cause a massive health hazard. There are even many reported and non-reported instances regarding food poisoning are prevalent. These kinds of food contamination may result in an outbreak of untreatable disease and even death. In the case of the Academy of Nutrition Improvement & Ors vs Union of India²¹, The petitioners in these writ petitions are non-governmental organizations representing consumers, salt producers, medical experts, academics, etc. They oppose the compulsory iodization of salt for human consumption.

The adulteration of soft drinks was asserted in a writ petition. According to the Supreme Court, Article 21 of the Constitution protects citizens against dangerous and harmful food products, and Article 47 of the Constitution requires the state to guarantee that these rights are upheld. It was determined that the quantity of insecticides and pesticides present in the food item was above the permissible level, which is bad for children's

¹⁹ State of Maharashtra v. Sayyad Hassan Sayyed Subham (2018)

²⁰ M/S Nestle India Limited vs The Food Safety and Standards ... on 13 August, 2015; Bench: V.M. Kanade
<https://indiankanoon.org/doc/66718388/>

²¹ Academy Of Nutrition Improvement ... vs Union of India on 4 July, 2011; <https://indiankanoon.org/doc/665756/>

health. As a result, the state authorities were instructed to implement the statutory scheme and penal provisions effectively. The food authority was also instructed to periodically monitor the markets for fruits and vegetables while taking into account the established national and international standards and practices²². The court has given certain specified directions to both central and state governments to take appropriate steps to implement the FSSA in a more effective way, where the guideline necessitates that the FSSAI to monitor dairy production and to ensure that all laboratories to obtain NABL²³ accreditation along with having well-equipped lab testing infrastructure and technical persons to handle it.²⁴

To revamp the functioning and jurisdiction of FSSAI, the Ministry of Health and Family Welfare on September 23, 2020, framed a Food Safety and Standards (Amendment) Bill, 2020. The bill was intended to introduce 70 amendments to the present FSSAI act, 2006²⁵. While the government is focusing on ensuring the right to food and food safety, it is having more liability to ensure people's food and nutritional security by assuring access to an adequate quantity of high-quality food at reasonable prices. The National Food Security Act of 2013 aims for the same by giving subsidized food grains to all levels of the population proportionately.

Conclusion:

The realization of the right to health is interdependent with the realization of the right to food and the right to safe food. The right to life and the right

²² Centre for Public Interest Litigation v. Union of India (2013)

²³ National Accreditation Board for Testing and Calibration Laboratories.

²⁴ Swami Achyutanand Tirth & Ors v. Union of India & Ors. (2016)-
<https://www.sceonline.com/blog/post/2016/08/05/directions-for-curbing-milk-adulteration-issued-government-asked-to-evolve-a-complaint-mechanism-to-check-corruption-by-food-authorities/>

²⁵ Comments/Suggestion Regarding Food Safety and Standards (Amendment) Bill 2020. Available at: <https://main.mohfw.gov.in/newshighlights-16>.

to health are inextricably interlinked with the right to food. Nutrition is a component of both the right to health and the right to food. the right to food protects the right of all human beings to feed themselves in dignity, either by producing their food or by purchasing it. The Right to food is both a freedom and an entitlement²⁶. There are still some misunderstandings regarding the right to food, despite the laws and regulations in place to protect it. First off, this right does not require the government to provide food for its citizens, but it does require that it make food accessible to all classes of citizens. Not a shortage of food, but a lack of access to food is what leads to hunger and malnutrition. Second, while having access to food is a fundamental human right, having access to food security is a requirement for all other aspects of that right. Thirdly, the argument is made that the right to food falls within the umbrella of the right to life. Even food security and safety can be discussed in the same breath. The right to nourishment, however, still needs to be given more attention and better implementation methods. Only by guaranteeing the right to nourishment for future generations can we ensure that future generations will be nourished.

²⁶ From Basic Need to Basic Right: Right to Food in Context; Dr. Abdullah Al Faruque Professor & Dean, Faculty of Law, University of Chittagong
http://nhrc.portal.gov.bd/sites/default/files/files/nhrc.portal.gov.bd/page/348ec5eb_22f8_4754_bb62_6a0d15ba1513/From%20Basic%20Need%20to%20Basic%20Right_%20Right%20to%20Food%20in%20Context.pdf