

Fruition of Right to Food Vis-À-Vis Notion of Justice: a Roadmap for Contemporary Legal Foundation

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Abstract

The Right to Food (RTF) and food security is the foundation of a decent life and an integral part of fundamental rights. The impulse of justice and human rights in connection to the right to food has its foundation deeply rooted in jurisprudence. Thus, the main aim of this paper is to study law and social transformation in providing, protecting and promoting RTF, from the evolution of this concept to the envisage of its prosperity in the contemporary era. Hence, this paper will trace the evolution of RTF from the ancient period of Dharma, Shrutis-Smritis, and Chandragupta Dynasty to the modern period of pre-independence and post-independence where there was recognition of this right which further modified. The paper will further deal with the International Jurisprudence which is protecting RTF and the comparative analysis of the various jurisprudential theories in implementing and protecting RTF which help adopt policies and mechanism to achieve success towards RTF. It concludes with the ideas that will strengthen the RTF.

Key words: Food, Rights, Evolution, History, Jurisprudence, National, International

Introduction

*"Food and nutritional security are the foundations of a decent life"*¹

-Secretary, General Ban Ki-moon

Everyone has the right to life, liberty, and security of person.² The term 'life' used here is meant to be something more than mere animal existence. The inhibition against its

¹ Ban Ki-moon, *Food, Nutritional Security 'Foundation of a Decent Life' Says Secretary-General at Headquarters Event*, UN Press Release SG/SM/12496 (September 26, 2009) <http://www.un.org/press/en/2009/sgsm12496.doc.htm>

² Universal Declaration of Human Rights, 1948, Article 3

deprivation extends to the enjoyment of life's limbs and faculties. The Higher Courts and various legal instruments have explained on numerous occasions that protecting right to life is nothing but protecting various aspects of right to life. As per interpretation of Article 21 of Constitution of India, the Supreme Court has held various aspects like right to livelihood, medical care, shelter, health, etc as the components of right to life including the Right to Food. There is no doubt that without food no life is possible and therefore right to food is an aspect of right to life. It is necessary to find out its legal status or its statutory recognition³.

Right to Food

The 'right to adequate food' is at a much higher standard, it includes not only absence of malnutrition but also the full range of qualities associated with food, including safety⁴, variety and dignity; in short all the elements which are needed to lead an active and healthy life.

The Special Rapporteur on the Right to Food in 2002 defined it as, "*The right to have regular, permanent and unrestricted 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 ensure a physical and mental, individual and collective, fulfilling and dignified life free of fear.*"⁵ This definition entails all normative elements explained in detail in the General Comment 12 of the ICESCR, which states, "*...the right to adequate food is realized when every man, woman and child, alone or in community with others, have the physical and economic access at all times to adequate food or means for its procurement.*"⁶

The right to food is about being guaranteed the right to feed oneself, which requires not only that food is available (the ratio of production and the population to be sufficient), but also that which is accessible i.e., that each household either has the means to produce or buy its own food. However, if individuals are deprived of access to food for reasons beyond their control,

³Right To Food As A Human Right, <http://www.legalserviceindia.com/articles/food.htm>

⁴ https://en.wikipedia.org/wiki/Right_to_food

⁵ Special Rapporteur on the Right to Food, U.N. Doc. A/HRC/6/L.5/Rev.1 (Sept. 8, 2008) (by Olivier De Schutter)

⁶ UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant), 12 May 1999, U.N. Doc. E/C.12/1999/5 available at: <http://www.refworld.org/docid/4538838c11.html> (accessed 22 January 2016)

like in instance because of an armed conflict, natural disaster or due to detention; the recognition of the right to life obliges States to provide them with sufficient food for their survival.⁷

Jurisprudence and Historical Developmant

Human Rights

A right consists of five main elements- the holder (the subject of a right) who has a claim to some substance (the object of a right), which he or she might assert, or demand, or enjoy, or enforce (exercising a right), against some individual or group (the bearer of correlative duty), citing in support of his or her claim some particular ground (the justification of a right).

Black's Law Dictionary has stated, “*The freedoms, immunities, and benefits that, according to modern values (esp. at international level), all human beings should be able to claim as a matter of right in the society in which they live.*”⁸

Jurisprudential Aspect

i. Jean Jacque Rousseau

He has talked about the absolute supremacy of community. According to him, there is a social contract by which an individual merge into a community and becomes part of ‘General Will’. The ultimate norm of the society or a social life is the protection of inalienable right of person. He believed in collective general will where individual is a subject to will of community e.g. security of Food.

ii. John Finnis

According to him, natural law is set of principles of practical reasonableness required for order in human life and human community. He pointed out 7 goods for development; life, knowledge, play aesthetic experience, sociability/friendship, practical reasonableness and religion. If a society wants development, these goods should be applied to the society. There

⁷ https://en.wikipedia.org/wiki/Right_to_food

⁸ BLACK'S LAW DICTIONARY 758 (8th ed. 2004)

are 3 methodological ways or requirements and these are; need, function and capacity. Therefore, 7 goods and 3 requisites are the core of Natural law in achieving justice. Similarly, life needs food for functioning of the body and to work and earn for development of life.

iii. Sociological Jurisprudence by Roscoe Pound

Law is an instrument to serve the needs of individuals in society and the task of law is social engineering. There is need of balancing the conflicting interests in the society and thus he propounded the *Social Engineering Theory*. According to this theory, there are 3 steps;

- Identification of Interest (Individual, Public, and Social)
- Classification of Interest
- Balancing of Interest

Together, there is a harmonious balance of various conflicting interests is created. Pound also stated that these interests are overlapping and the classification cannot be placed in a watertight compartment. As RTF includes interest of individual, public and social as well therefore we need to balance these.

iv. Martha Nussbaum

She mainly deals with Greek and roman philosophies with the political and ethical factors attached to it. As a modern philosopher, she has connected these philosophies to the present situation. Her work on cultivating humanity and social justice is important from right to food point of view as well.

The Constitutional Right

Right to life is the most fundamental of all human rights, and any decision affecting human life, or which may put an individual's life at risk, must call for the most anxious scrutiny.⁹ The sanctity of human life is probably the most fundamental of the human social values. It is recognized in all civilised societies and their legal system and by the internationally recognized statements of human rights.¹⁰ The object of Art.21 is to prevent encroachment

⁹ Bugdaycay v. Secretary of State, (1987) 1 All ER 940 (U.K)

¹⁰ R (Pretty) v. DPP, (2002) 1All ER 940 (U.K)

upon personal liberty by the executive, save in accordance with law.¹¹ Right to life is one of the basic human rights and not even the State has the authority to violate that right.¹²

Right to Food and Its Components

According to various studies and reports there are three main elements of the right to food, which are; availability, adequacy, and accessibility of food.

- 1) *Availability* refers to enough food being produced for both the present and the future generations, therefore entailing the notions of sustainability, or long-term availability, and the protection of the environment.
- 2) *Adequacy* refers to the dietary needs of an individual which must be fulfilled not only in terms of quantity but also in terms of nutritious quality of the accessible food. It also includes the importance of taking into account non-nutrient-values attached to food, be they cultural ones or consumer concerns.
- 3) *Accessibility* (economic) implies that the financial costs incurred for the acquisition of food for an adequate diet does not endanger the realization of other basic needs. Physical accessibility implies that each and everyone should be ensured access to adequate food.¹³

International Regime

The International Framework includes laws protecting Right to Food viz. Constitutional laws of various countries, International laws, laws by various International Organs/ Institutions/ Instruments.

Constitutional Law

¹¹ G. Gurunadha Reddy v. A.P. Road Transport Corporation, A.I.R. 1999 A.P. 179 (India)

¹² State of A.P. v. Challa Ramakrishna Reddy, A.I.R. 2000 S.C. 2083 (India)

¹³ <https://www.righttofood.org/work-of-jean-ziegler-at-the-un/what-is-the-right-to-food/>

There are various ways by which any Constitution can take the right to food or some aspect of it into account. As of 2011, 56 constitutions protect the right to food in some form or another. The three main categories of constitutional recognition are: as an explicit right, as implied in broader human rights or as part of a directive principle¹⁴. In addition to those, the right can also indirectly be recognised when other human rights are interpreted by a judiciary.

Applicable via International Law

In some countries international treaties have a higher status than or equal status to national legislation. Consequently, the right to food may be directly applicable via international treaties if such country is member to a treaty in which the right is recognised.¹⁵ Such treaties include the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). The right to food is protected under international human rights and humanitarian law¹⁶

International Law

The right to food is recognized in the 1948 Universal Declaration of Human Rights (Article 25) as part of the right to an adequate standard of living, and is enshrined in the 1966 ICESCR (Article 11).¹⁷ The 2009 Optional Protocol to the ICESCR makes the right to food justiciable at the international level.¹⁸ In 2012, the Food Assistance Convention is adopted, making it the first legally binding international treaty on food aid¹⁹.

International Instruments

It is also recognized in many specific international instruments as varied as the 1948 Genocide Convention (Article 2), the 1951 Convention relating to the Status of Refugees (Articles 20 and 23),²⁰ the 1989 Convention on the Rights of the Child (Articles 24(2)(c) and

¹⁴ https://en.wikipedia.org/wiki/Right_to_food

¹⁵ https://www.wikizero.com/en/Right_to_food

¹⁶ <https://www.righttofood.org/work-of-jean-ziegler-at-the-un/what-is-the-right-to-food/>

¹⁷ UN Human Rights Council, Report of the Special Rapporteur on the Right to Food, Olivier de Schutter : Addendum, Mission to Canada, 24 December 2012, U.N. Doc. A/HRC/22/50/Add.1, available at: <http://www.refworld.org/docid/511cb0422.html> (accessed 22 January 2016)

¹⁸ Ibid

¹⁹ Supra 14

²⁰ Ahluwalia Pooja, *The Implementation of the Right to Food at the National Level: A Critical Examination of the Indian Campaign on the Right to Food as an Effective Operationalization of Article 11 of ICESCR* (Centre For Human Rights And Global Justice Working Paper Economic, Social And Cultural Rights Series, Number 8, 2004)

27(3)), the 1979 Convention on the Elimination of All Forms of Discrimination against Women (Articles 12(2)), or the 2007 Convention on the Rights of Persons with Disabilities (Articles 25(f) and 28(1))²¹

Regional Instruments

The right to food is also recognized in regional instruments, such as the 1988 Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights or "Protocol of San Salvador" (Article 12), the 1990 African Charter on the Rights and Welfare of the Child, the 2001 African Commission on Human and Peoples' Rights recognition that the right to food falls under the African Charter on Human and Peoples' Rights,²³ and the 2003 protocol to the African Charter on Human and Peoples' Rights of Women in Africa or "Maputo Protocol" (Article 15). There are also such instruments in many national constitutions.²⁴

Other Documents

In 1993, the *International Food Security Treaty* was developed in USA and Canada.

In 2010, a group of national and international organisations create a proposal to replace the European Union Common Agricultural Policy, which is due for change in 2013. The first article of The New Common Food and Agriculture Policy "considers food as a universal human right, not merely a commodity."²⁵

Right to Food Guidelines are the Non-legally binding instrument important in protecting RTF. United Nations Organisation as well as the Food and Agricultural Organisation are conducting various programmes all over the world to overcome the problem of hunger. The framework and conventions are putting obligation on the states in providing and protecting right to food of every individual. World Bank as a financer also plays an important role in eradication of hunger. As right to food include dietary, safety, etc rights, the World Health Organisation has its role to play.

²¹ Supra 15

²² Ibid 14

²³ African Charter on Human and Peoples' Rights, art. 26

²⁵ Ibid 14

National Regime

Constitutional Provision

The relevant Articles of the Constitution are as follows:

Article 21: “No person shall be deprived of his life or personal liberty except according to procedure established by law.”²⁶

Article 39(a): “The State shall... direct its policy towards securing that the citizen, men and women equally, have the right to an adequate means of livelihood...”²⁷

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...”

Article 32(1): “The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.” Article 32(1) applies to the rights conferred in Part III of the Constitution, known as “fundamental rights”. Article 21 appears in Part III, but not Articles 39(a) and 47. These appear in Part IV, under “Directive Principles of State Policy”.²⁸

The PUCL Petition

In April 2001, People’s Union for Civil Liberties (PUCL) filed a writ petition on the right to food in the Supreme Court. The petition goes on to highlight two specific aspects of state negligence; the breakdown of the public distribution system (PDS), and the inadequacy of drought relief works. The PUCL petition on right to food has given orders directing the government to protect and secure the right to food. It provides a legal foundation to the right to food. After PUCL, various orders were given by the Supreme Court of India. Government is also making the plans and schemes to protect right to food.

National Instrument

Supreme Court Orders

²⁶ <https://www.quora.com/What-is-Article-21-in-the-Indian-Constitution>

²⁷ <https://www.jagranjosh.com/general-knowledge/directive-principles-of-state-policy-1437132636-1>

²⁸ <https://www.quora.com/What-is-Article-47-about-in-the-Indian-constitution>

It talks about responsibility of the Chief Secretaries of the concerned states for compliance,²⁹ giving accountability to *Gram Sabhas* to conduct a social audit into all food/employment schemes and report to the respective implementing authorities,³⁰ access to information by *Gram Sabhas* to monitor the implementation and have access to relevant information relating to it,³¹ and full utilization of grain quotas.³²

The Food Security Act, 2013

The Food Security Act, 2013, the recent Act which legally sanctions the right to food with the creation of various rights and duties in context with the right to food. Though it has been criticised, the need of the day is the efficient implementation of this Act.

This Act seeks “*to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and for matters connected therewith and incidental thereto*”.

It further provides good Public Distribution System (TPDS), Children’s Entitlements, Entitlements of Pregnant and Lactating Women. The identification of eligible households is left to state governments, subject to the scheme’s guidelines for *Antyodaya*, and subject to guidelines to be “specified” by the state government for Priority households³³. The Act provides for the creation of State Food Commissions, a two-tier grievance redressal structure, involving the District Grievance Redressal Officer (DGRO) and State Food Commission, Mandatory transparency provisions, Penalties and Compensation. It also provides with PDS Reforms and obligation of Government and local authorities. The Act provides with schedules which will play an important role in development and implementation of Food Security.

²⁹ PUCL vs Union of India and others, Writ Petition (Civil) No. 196 of 2001, (Supreme Court, Order 29/10/2002)

³⁰ PUCL vs Union of India and others, Writ Petition (Civil) No. 196 of 2001, (Supreme Court, Order 08/05/2002)

³¹ *See id*

³² PUCL vs Union of India and others, Writ Petition (Civil) No. 196 of 2001, (Supreme Court, Order 17/09/2001)

³³ <https://byjus.com/free-ias-prep/summary-of-the-national-food-security-bill-2013/>

Comparative Analysis

To compare, we can analyse various factors where the Indian policies and frameworks are lacking and thereafter find solutions by taking into consideration the work of the government and the society of other nations, which we can adopt to achieve the goal of a hunger free society.

Brazil has adopted a Zero Hunger Policy in 2003 and has achieved success. A separate budget exists for the same. The reporting of all hunger related issues is done directly to the President. A separate ministry i.e. Public Ministry has been set up. Similarly, in India, certain policies have helped to curb hunger the Act of 2013 is the recent one, it gives hope in achieving zero hunger. Indian budget recently started with separate sanctions in budget for food for all. Formation of social communities, forming urban vegetable gardens and agrarian reform in Brazil are the excellent steps taken by the society and Indian citizens should and need to adopt such steps.

In *Switzerland*, before constitution right to food could be found to be a justiciable claim and after constitution art 12 gives right to food under necessary means for existence of Human Dignity. Similarly, in India, the constitutional provisions and judicial interpretations make right to food a basic fundamental right.

In *South Africa*, the Constitution under chapter 2, makes the right to food and the right to water a constitutional right along with its respect, protection, promotion and fulfilment. In India, though it has become a right via interpretation, the new Act provides a legal status to the right to food. But Indian framework does not include the protection, promotion and fulfilment.

Bangladesh provides Employment Generation Programme, similarly the Indian Government also has programmes to provide employment.

Mozambique policies have been proved to be better policies to tackle the hunger problem. 5 pillars– production & availability, access, use & utilization, food safety and stability are the best devices which are taken into consideration by the government. India lacks these policies. Unlike India, the Mozambique Government focuses more on increasing and improving the infrastructure and services related to the food chain.

Nicaragua focuses more on social programmes. Government programme seeks to empower rural women heading households by providing them with a productive voucher which provides them with farm animals, plants, seeds and other inputs so that they can improve their ability to produce food, and in time, set up cooperatives with other producers. There can be an adoption of this programme in India with the help of *Gram Panchayats* and *Zilha Parishads*. *Panchayat Raj* system of India can help to a large extent by curbing hunger.

I. CONCLUSION

Countries in every continent are now recognizing the right to food and taking action to help their people realize this right. The unanimous adoption of the Right to Food Guidelines by FAO was one of the most revolutionary steps in the history of the right to food. The guidelines bridge the gap between legal recognition and effective realization of the right, providing a coherent set of policy recommendations for governments, civil society and other partners. As we are dealing with right to food, the situation today is a warning to act in furtherance. International regime is taking steps to provide, protect and secure the right to food by various means and instruments. India is also having all the solutions over the RTF but lacking only into 'PROPER' implementation. Therefore, there exists a need to adopt the policies as discussed in this paper to overcome the issue of hunger.