

## Human Right to Food and the Indian laws: A study.

By

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Human rights are the rights inherent to all human beings regardless of race, sex, ethnicity, language religion or any other status. Human rights include right to life and liberty, freedom from slavery and torture, freedom of opinion and expression right to work and education and many other such rights. These rights lay down positive and negative duties on states, i.e duty to do certain acts and to refrain from certain acts. General perception about human rights is that they deal only violent acts such as terrorism, torture, repression etc. No doubt these acts constitute violation of human rights, but unfair economic structure, and resultant inequalities also form the content of human rights. The Universal Declaration of Human Rights, 1948 in Article 25, proclaimed the right of every human being to a standard of living adequate to health and well being of himself and of his family including food, clothing, housing, medical care and necessary social services. However, there is a dismal record behind implementation of Article 25 at universal level. According to world bank indicators in 2016 about 750 million people around the world live in extreme poverty i.e below 1.90 \$ per day. According to Unicef report around 46% of those living in extreme poverty are children.

Human Rights constitute the norms regarding treatment of individuals or groups by the state or non-state actors. These are the ethical principles regarding what society considers as fundamental to a decent life. Human Rights norms are incorporated in international law and Municipal legislation of States. Thus, these rights depend on moral sentiments and are culturally determined. Human rights, before they are codified emerge from people or societies suffering from injustice. One thing common in human rights is ethical concern about the just treatment of human beings. Amartya Sen the famous Economist also considers human rights as “ethical claims”, which, like other ethical claims demand acceptance.

In India, Protection of Human Rights Act, 1993 created National Human Rights Commission and State Human Rights Commission with the object of “better protection of human rights” The commission has taken the view that freedom from hunger is a basic human right, and therefore, starvation constitutes a gross denial of the human rights. So if a public servant does any act or omission in breach of his duty, resulting in hunger or starvation, the commission may take action as per the provisions of the act.

Poverty is generally considered to be lack of income and resources. However, it is established in Human Rights instruments that poverty is deprivation of social and economic rights. The Human Rights approach to poverty considers poverty a consequence of denial or deprivation of rights. Thus, low income is merely a consequence of denial of rights and social exclusion. Amartya Sen suggests that “poverty is a human condition” for which “deprivation of resources, capabilities, choices, security and power necessary for enjoyment of an adequate standard of living, and other, civil, cultural, economic and social and other political rights”

In other words, poverty is not merely an economic issue. Poverty has multiple dimensions and it is directly concerned with deprivations of various human rights. Poverty itself is violation of human right as it denies a person his basic capacity to live in dignity. Thus, poverty is cause and consequence of human rights violations. Persons living in poverty are generally those who suffer from denial of dignity and equality.

The International covenant on Economic and Cultural Rights, 1966, in its preamble categorically stated that the ideal of free human beings enjoying freedom from fear and want, as laid down in the Universal Declaration of Human Rights, 1948 can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.

The social exclusion and discrimination is related to deprivation and poverty in multiple ways. It excludes the individual or group from the power structure and thereby minimising his chances for access to resources. In India, such trend is visible in caste and ethnicity based exclusion. Schedule Castes, Schedule Tribes and Other Backward Classes citizens represent socially excluded group in India. These classes are, at the same time most deprived sections of society. In the market discrimination framework exclusion may operate through restrictions on entry into market and through selective inclusion but in unequal treatment in selected market and non-market transactions.

Positive acts of Human Rights Violations by Governments may be direct cause of poverty. These rights include forcible exclusion for land without adequate compensation and due process deprives citizens of livelihood. Failure of Governments to prevent violations by corporations may result in grave poverty. For instance poisoning of water and land by corporations effects utilisation of land which is often only source of livelihood for a large section of population. Corruption i.e deliberate utilisation of public money for personal benefits is another instance of human rights violation directly effecting prosperity of large section of population. Thus poverty reflects violation of human rights when it is direct consequence of Government policy or is caused by failure of Government to Act.

Traditionally, basic needs of human being are accepted to be threefold-food, clothing, and shelter. The right to life is guaranteed in any civilised society. This right will take within its sweep the right to food, the right to clothing, the right to decent environment and reasonable accommodation to live in. The right to food has been defined as right to have the “right to have regular, permanent and unrestricted access” to food which is both “quantitatively and qualitatively adequate and sufficient food according to the cultural

tradition of the people” Such food should ensure “fulfilling and dignified life free of fear”. The existence of right to food among citizens, imposes certain correlative obligations upon States, these obligations include the obligation to respect the right to food of citizens and not to arbitrarily deprive citizens of their valuable right by land acquisition etc. Another obligation of more positive nature is to protect the right of people and prevent its violation. The State also has duty to “fulfil” or promote the right to food which requires state to take measures to ensure that basic needs of citizens, which they cannot fulfil by their own efforts, are satisfied. Thus, States have obligation to educate citizens about nutrition.

The essential elements of right to food include adequacy, accessibility, availability and acceptability. Adequacy refers to quality and quantity of food, in terms of food safety and nutrition value. This must be determined using prevailing social economic and cultural, climatic, ecological and other conditions. It also refers to dietary needs of an individual from health perspective. Adequacy refers to non-nutrition based value of food. Accessibility takes into account both economic and physical accessibility. Economic accessibility means that individual or household must have adequate economic means to access the food without compromising their basic necessities. Availability refers to possibility of feeding oneself from produce of land or by purchasing food from market

The right to food is complex in multiple ways. Right to food may be interpreted as limited to providing minimum calories required for subsistence. Thus, Government may restrict its responsibility as restricted merely to prevent famines. Ideally, as provided in directive contained in Article 47 of the Constitution of India, the responsibility may extend to taking care of “nutrition” in the food. However, directive principles are not justiciable in court like fundamental rights even though these principles are fundamental in the Governance of the Country. The duty to raise the level of nutrition and standard of living, which is a “primary duty” of the state under Article 47 of the constitution also requires the state to regulate the consumption of liquor, drugs or other intoxicating substances.

The right to food is directly concerned with availability of food. In this regard, Article 48 of the Constitution of India provides that state shall take state shall endeavour to organise agriculture and animal husbandary on modern and scientific lines and take steps, to improving and preserving the breeds, and prohibiting the slaughter of cows and calves and other milch and draught cattle.

Right to food is not only limited to current availability of food. Deprivation of food and resultant hunger is a form of oppression and therefore violation of human right. Thus, it cannot be said that right to food has been realised as nobody is hungry any more. Thus, right to food not only means that hunger and malnutrition are eradicated. It further implies, that if in future there is denial of food due to oppression it may be eradicated by court action or other such mechanism.

Right to water is co-related to right to food and any study regarding right to food cannot be complete unless right to water is an integral part of such study. The fact that water, along with food, is a basic human necessity is too obvious to be emphasized. However, more than one billion people around the world do not have access to safe drinking water. Whereas,

right to food, shelter and employment find mention in different international instruments of United Nations, there is no express mention of Human Right to access safe drinking water. International community, State Governments and other organisations have failed to provide safe and adequate drinking water to people. Therefore, an argument has been advanced that right to water, which is currently implicit in various treaties and instrument should be made an explicit human right in International Human Rights Jurisprudence.

The violation of right to food, or hunger, may be either short term or transitory or it may be long term. Long term hunger is associated with people in the trap of vicious circle of poverty. Temporary hunger may result from natural or man- made disasters such as famine or war etc. Majority of people suffering from hunger, live in rural areas of developing countries such as India. Generally, people suffering from long term poverty are unemployed or partially employed people, landless farmers or farmers having very small land holding and labourers in the trap of debt.

India is a party to the International Covenant on Economic Social and Cultural Rights which is main international covenant protecting the right to food. India has also ratified various other treaties related to the right to food including International Covenant on Civil and political rights . The Convention on Rights of the Child and the Convention on Elimination of all forms of Discrimination Against Women. Thus, under its international commitments India is under obligation to respect, protect and fulfil the right to food of all Indians without any discrimination.

India is among those countries in the world which have highest number of recorded under-nourished people. Nutritious food is vital not only for individual but for nation as a whole. If a pregnant woman is undernourished she gives birth to undernourished child who may likely not survive. Those who survive suffer from various health disorders during various stages of their life. Since those who suffer from undernourishment are poor, they cannot bear the cost of treatment.

At the time of independence from colonial rule in 1947, India faced number of serious challenges and one of them was to feed her population. The agricultural production was much less than required quantity of food. The Industrial form of agriculture, termed as “green revolution” was adopted, primarily, to attain self- sufficiency as regards production of food grain was concerned. In the decade of 1960s green revolution contributed in substantial increase in production of food in the country. Green revolution meant departure for traditional farming and adoption of technology, heavy irrigation and fertilizer based farming. Green revolution was contributed by high yielding seeds with promise to double or even triple the production. Green revolution was meant to provide a solution to food scarcity and end the problem of hunger. The increase in food production, however, was at the cost of various social and environmental problems. The adoption of most profitable crop resulted in monoculture which reduced the fertility of soil. Excessive use of pesticides and fertilizers resulted in contamination of food cycle.

Thus, poverty and food insecurity has persisted despite success of green revolution. Technology could not reach at all sections of landholders. Among the reasons responsible for

poorly developed credit market, slow growth in non-farm economy, discriminatory government policies etc. The distribution of benefit from green revolution was gender biased. Few measures were taken from the point of view of women farmers. The policies of Government, adopted at the time of initial years of Green Revolution, such as subsidy on fertilizers, ground water extraction, and minimum support price only for food grain, have remained unchanged despite the fact that these policies have failed to eliminate hunger and created imbalanced nutrition. Even public distribution system is biased towards providing calorie based food staple like wheat, rice and sugar rather than pulses etc.

Right to Food is inherent to right to life and dignity. The sweep of Right to life conferred by Article 21 of the Constitution of India is wide and far reaching. It does not merely mean that life cannot be extinguished or taken away, for example, by imposition or execution of death sentence, except according to procedure established by law. That is only one aspect of right to life. Right to livelihood is, for instance, equally important because no one can live without means of livelihood. Therefore, Human Rights Commission of India has expressed the view that Article 21 of the constitution of India which guarantees a fundamental right to life and personal liberty, should be read with Article 39-A and Article 47 of the Constitution. Article 39(a) of the Constitution requires state to direct its policies towards securing that all its citizens have adequate means to livelihood. Article 47 of the Constitution imposes a duty on state to raise the level of nutrition and standard of living of its people as a primary responsibility. Thus, Right to Food is a guaranteed fundamental right which can be enforced by availing remedy under Article 32 of the constitution of India.

Food and Agriculture association of United Nations has stressed that it is vital to recognise social security as a human right. The organisation has further observed that even though right to food is a recognised human right, millions of people remain food insecure throughout the world. Social security can play significant role in relieving people from the fear of poverty and deprivation. The Apex Court of India, in a number of cases, has held that the concept of social security is inherent in the provisions of the constitution. In *C.E.S.C. Ltd. v. Subhash Chandra Bose*, Supreme Court held that the right to social justice is a fundamental right. Right to livelihood springs from the right to life guaranteed under Article 21. The health and strength of a worker is an integral facet of right to life. Right to human dignity, development of personality, social protection, right to rest and leisure are fundamental human rights to a common man. Right to life and dignity of person and status without means are cosmetic rights. Socio-economic rights are, therefore, basic aspirators for meaningful right to life. Right to social security and protection of the family are integral part of the right to life. Right to social and economic justice is a fundamental right". The Court further held that "right to medical care and health for protection against sickness are fundamental rights to the workmen". In *Consumer Education & Research Centre v. Union of India*, it was unanimously held by a bench of three Judges of the Apex Court, that right to health to a worker is an integral facet of meaningful right to life and have not only a meaningful existence but also robust health and vigour without which worker would lead life of misery. Lack of health denudes his livelihood. Compelling economic necessity to work in an industry exposed to health hazards due to indigence to bread-winning to him and his dependents should not be at the cost of the health and vigour of the workman. Facilities and

opportunities, as enjoined in Article 38 of the Constitution of India, should be provided to protect the health of the workman. Right to human dignity, development of personality, social protection are fundamental rights to the workmen. Medical facilities to protect the health of the workers are fundamental rights to workmen. It was, therefore, held that "the right to health, medical aid and to protect the health and the vigour of a worker while in service or post retirement is a fundamental right under Article 21 read with Articles 39(e), 41, 43, 48-A of the Constitution of India and fundamental human right to make the life of workmen meaningful and purposeful with dignity of persons". Thus, it is well settled law that the Constitution of India in Preamble, Chapter of Fundamental Rights and Directive Principles accords right to livelihood and meaningful life, social security and disablement benefits are integral schemes of socio-economic justice to the people and in particular to the middle class and lower middle class people.

There is a close link between human rights and sustainable environment. All human beings depend on environment in which we live. Thus, our basic needs such as water, food, health, to be more specific our right to life depends on clean environment. Without protection of environment it is not possible to secure a life of human dignity. At the same time, protection of human rights involves citizens in decision making process, resulting in protection of environment.

There are problems which are Global in nature and require humanity to come together for resolution. Climate Change is one such problem which knows no borders. Burning of fossil fuel in one country, or part of a country adversely affects people of another country due to the phenomenon of Climate Change. Climate Change, unless mitigated, is projected to have profound effects on billions of people by the end of 21st century, although its effects in the form of natural disasters are already visible throughout the world. The United Nations Framework for Climate Change Treaty, 1992 is an international agreement dealing with Climate Change. The Framework contains several principles to guide the achievement of objectives of United Nations regarding emission standards.

In India, food security is based largely on wheat and rice production. Agriculture provides employment to over 65% of population in India. Due to human activities, world climate has registered increase of over one degree centigrade in temperature. Climate change is further expected to increase temperature in many parts of the country. It may affect agriculture production adversely. Wheat requires cool and moist weather followed by warm weather. The dependence of large population on wheat makes it essential for survival of humans. Intergovernmental Panel on Climate Change has observed that climate change due to global warming may adversely affect the production of several crops including wheat, rice and maize and it may also reduce nutritional quality of these crops. While wheat crops are vulnerable to hot weather, paddy is vulnerable to downfall in temperature. In India, agriculture in a great measure depends on monsoon. Scientific predictions have suggested that increase in CO<sub>2</sub> is likely to negatively impact the yields.

Thus, climate change is a great threat to food security as it will have direct impact on availability of food grains vital for survival of humanity. Less production will essentially result in increase in prices making food less accessible to poor. Fish is an important source of

protein to large section of population throughout the world including India. Climate change is one of the biggest threats to sustainability in fish production. Change in climatic conditions and extreme events like melting of glaciers, change in sea level, which are associated with climate change may result in changes in aquatic ecosystem, adversely affecting the production of fish and sea food.

Air pollution is also a hidden threat to food production. The direct effect of high level of pollution may reduce the yield and make the crop less appealing to customer. Air pollution may cause several kinds of physiological, chemical and anatomical changes in the crop which may not be directly visible but may be cause of reduction in optimal growth of the crop. The social and economic implication of yield reduction in developing countries may be much greater due to increased demands of food by increasing population.

Thus, it is submitted that environment pollution and its consequences are major factor having adverse effect on realization of right to food. The national and international law and policies dealing with environment pollution, therefore, have direct bearing on the right to food.

The Right to food is also associated with Good Governance. The term “Good Governance” implies process of decision making, implementation of decisions and existence of rule of law. The enforcement of human rights depends upon Good Governance in a society. Good Governance also implies participation of people in decision making. Good governance also implies effectiveness in dealing with corruption and establishing institutions to deal with the menace of corruption effectively. Good Governance, therefore, leads to equality and justice leading to realisation of human rights .

### **Conclusion**

It is submitted by researcher that in a welfare state the policies intended to benefit poorest section of society can be effective only with efficient system of governance including lack of Corruption.

Right to Food is established as a Human Right both in International Law and is recognised as a Human and Fundamental Right in the Constitution of India. India has achieved self-sufficiency in food production but a major part of its population is deprived of basic human right of food. The Apex Court in India has taken proactive role in securing right to food and other allied rights such as right to livelihood and nutrition. The Court has given wider interpretation to right to life in this context.

The question of sufficiency of food is closely related to rights of labourers and farmers. The question of Environment Protection and Climate Change is also relevant in this regard. Unsustainable growth affects environment which in turn affects quality and quantity of food that we consume. The question of accessibility and viability of Right to Food is a question of policy and its legal regulation can be only factor for securing food to millions of poor and hungry people. Globalisation policy may have given strength to economy and increased gross domestic product but it has failed to remove poverty. Despite years of

globalisation, Government had to revert to the policy of Social Welfare such as National Food Security Act, 2014.

The Public Distribution System and Mid-Day meal schemes have certain positive results but these measures have certain limitations in terms of reach and adequacy. However, legal recognition granted to the rule enables Constitutional Courts to direct positive measures to be taken by Appropriate Governments. Corporations earn profit by utilising social resources. Therefore, they have responsibility to pay back to the society. The responsibility has been given legal colour by the legislature. There is however scope to make companies more active participant in realisation of right to food.

Food safety is an integral aspect of Human Right to Food. It is responsibility of state to provide adequate and safe food free from contamination and protect people from frauds and adulteration. Legislative measures in this regard are appreciable but there are several loopholes or gaps in implementation. For instance, the food sold at local markets often escapes the scrutiny from authorities and law enforcement agencies.