

ENSURING RIGHT TO FOOD AS A HUMAN RIGHT IN TIMES OF GLOBAL PANDEMIC: A STUDY IN RELATION TO COVID-19 IN INDIAN CONTEXT

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ABSTRACT

Covid-19 pandemic has highlighted the problem of food Security and livelihood when four weeks of national lockdown was announced, distressing stories of hunger and despair have been emerging across the country. Right to Food concerns the development of the notion of access to food as a right. As a right it sets obligations on the state and community of states. These obligations have been established as 'enforceable' through centuries of social struggle for a democratic state in the service of the people. But the Covid-19 pandemic affected people's right to access to food and small-scale producers, farm producers, farm workers and informal and migrant workers livelihood. This means that Covid-19 will likely to move from health crisis to a food crisis if we don't act urgently. The idea of the human right to food is to establish procedural and legal means for seeking remedies against authorities when they fail to guarantee access to food. Even after much hue and cry globally about hunger related deaths, the number seems to be rising. In spite of international instruments and domestic safeguards being provided with respect to the right, global violations continue. Many people are already experiencing restricted access to food due to loss of incomes or closure of markets. The pandemic could bring a lot of disruption to the food system over the months or maybe years to come back. Bearing in mind that pre-COVID-19, 821 million people were already living with hunger, we must work to advance solutions that additionally address the underlying injustices and vulnerabilities within the food system

INTRODUCTION

In 1996, at the World Food Summit, Heads of State and Government reaffirmed “*the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger.*”ⁱ The eradication of hunger is clearly reflected in the target set at the World Food Summit, 1996 to reduce the number of undernourished people to half their present level no later than 2015 and as agreed by the Millennium Summit to “*halve the proportion of people who suffer from hunger*” by the same year.ⁱⁱ The declaration of the World Food Summit: five years later, in June 2002, reaffirmed the importance of strengthening the respect of all human rights and fundamental freedoms and invited “the FAO Council to establish an Intergovernmental Working Group to develop a set of Voluntary Guidelines to support Member States’ efforts to achieve the progressive realization of the right to adequate food in the context of national food security”.ⁱⁱⁱ An Intergovernmental Working Group was established in November 2002 and working relationships, in particular with the Office of the High Commissioner for Human Rights and the Special Rapporteur on the Right to Food, were strengthened. After two years of intense and constructive negotiations and discussions among members of the Intergovernmental Working Group and its Bureau as well as representatives of stakeholders and civil society, the Voluntary Guidelines were adopted by the FAO Council in November 2004.^{iv} In response to the invitation by the World Food Summit, and following several international consultations, the Committee on Economic, Social and Cultural Rights adopted General Comment 12, which provided its experts’ views on the progressive realization of the right to adequate food.^v

HUMAN RIGHTS AND RIGHT TO FOOD

Human rights are the fundamental inherent rights of all human beings to which people are entitled simply by virtue of being born into the human family. While, on the one hand they limit the power of the State to arbitrarily interfere with people’s free exercise of their rights, on the other they require the State to take positive measures to create an enabling environment in which people may enjoy these rights. Governments and other duty bearers are under an obligation to respect, protect and fulfil human rights, and are responsible for ensuring legal entitlements and remedies in case of non-fulfillment.^{vi}

From a legal standpoint, human rights are the individual and collective rights recognized by States and enshrined in their constitutions and in international law. A functional protection system requires not only the ratification of the relevant human rights treaties but, arguably, also their constitutional protection and further implementation, as necessary, through the enactment of appropriate legislation.^{vii} The human right to adequate food is recognized and reaffirmed in a number of binding and non-binding international instruments. Among the most relevant of these are:

- Universal Declaration of Human Rights (UDHR): Article 25 recognizes the right to an adequate standard of living, including food;
- International Covenant on Economic, Social and Cultural Rights (ICESCR): Article 11 recognizes the right to an adequate standard of living, including adequate food, and the fundamental right to be free from hunger as a separate right (160 States Parties);
- Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which recognizes in Article 12 the right of pregnant and lactating women to special protection with regard to adequate nutrition and in Article 14 the right of rural women to equal access to land, water, credit and other services, social security and adequate living conditions (186 States Parties); and
- Convention on the Rights of the Child (CRC): Article 25 recognizes the right to the highest attainable standard of health, and Article 27 the right to an adequate standard of living which, in both articles, includes food and nutrition (193 States Parties).

The normative content, state obligations and implications of the right to food have been explained in a number of reports and publications by the Food and Agriculture Organization of the United Nations (FAO), the Committee on Economic, Social and Cultural Rights (CESCR) and the Office of the High Commissioner for Human Rights (OHCHR), amongst others. The key points are summarized here below:

The right to food is defined by the UN Special Rapporteur on the Right to Food 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 ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.

The general obligation of the State Party is to take steps including, in particular, legislative measures to the maximum of available resources, towards the full realization of the right to food and to ensure non-discrimination (Art. 2 ICESCR). The CESCR has adopted an analytical framework for the description of the obligations to respect, protect and fulfil (facilitate and provide) the right to food.^{viii}

As part of its follow-up to the adoption of the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (hereinafter referred to as 'Right to Food Guidelines'), FAO has developed seven implementation steps for States, as follows:

- (1) Identifying and targeting the hungry and the poor;
- (2) Conducting a thorough assessment of existing policies, institutions and laws;
- (3) Adopting a sound food security strategy;
- (4) Elaborating a framework law;
- (5) Allocating institutional roles and responsibilities;
- (6) Monitoring progress towards established benchmarks; and
- (7) Establishing recourse mechanisms.

Steps four and seven are directly related to the issue of constitutional and legal protection of the right to food.^{ix}

ARGUMENTS FOR STATES PARTIES' OBLIGATION TO INCORPORATE THE RIGHT TO FOOD INTO THEIR CONSTITUTION AND NATIONAL LEGISLATION

The right to food is binding on States that have ratified the relevant treaty.^x However, in order for it to be effective for individuals within that State, national legislation must reflect the right in such a way as to make it applicable. Depending on a country's legal and constitutional

system, the international treaty's provisions can become domestic law either by '*automatic incorporation*'^{xi}, whereby they have the force of law directly and immediately, or by '*legislative incorporation*', whereby the treaty provisions must be implemented by national legislation to have binding effect. In some other states, domestic implementation of a ratified international treaty occurs through the method of transformation that is, by amending relevant domestic laws to make them consistent with treaty obligations. Some countries also follow a mixed dualist/monist approach (e.g. Germany). In its General Comment (GC) 3^{xii}, the CESCR considered that in many instances' legislation is highly desirable and "*may be even indispensable*" in order to give effect to the rights guaranteed in the ICESCR (Para 3).^{xiii}

There are three main complementary levels of legislative action for implementing the right to food at the national level:

- (i) incorporation of the right into the national constitution;
- (ii) adoption of a framework law relating to the right to food; and
- (iii) A comprehensive review of all or the most relevant sectorial laws affecting the enjoyment of the right to food for their compatibility with human right.

State obligations with regard to the ICESCR include, according to Article 2, '*particularly the adoption of legislative measures*. However, international human rights law does not formally oblige States Parties to incorporate ICESCR provisions literally into domestic law. Ultimately, it is for each State Party to the ICESCR to determine the legal status to be given to its provisions - in this case, the right to food within that legal system.

Flexibility with regard to implementation strategies refers to the ability of individual States to determine how best to implement treaty obligations within the framework of domestic making procedures and constitutional constraints law. It also responds to the need to respect the sovereignty of the State over the law applicable in its territory as well as deference to diversity in domestic legal arrangements employed by States participating in International Human Rights treaties. The language of article 2 (1) of the ICESCR supports this flexible position.

On the other hand, the CESCR considers that in many instances legislation is highly desirable and '*may be even indispensable*' in order to give effect to the rights guaranteed in the ICESCR.^{xiv} Indeed, some scholars would go even further and proclaim the existence of an obligation to provide constitutional protection.^{xv} The following general and specific arguments

support the incorporation of human rights such as the right to food in domestic law, in particular in the Constitution:

- *Principle of good faith:* The principle of good faith supports the proposition that failure to incorporate the right to food, as also other human rights stipulated by international human rights treaties, into domestic law, including constitutional law, could be viewed in theory as a violation of international law.
- *Effet utile:* Another relevant principle is that of effectiveness (*'effet utile'*), which supports reading international treaties in a manner designed to give effect to their provisions. In democracies committed to the rule of law, domestic courts often function as the most accessible and effective human rights enforcers. This is because the familiarity of such courts with local conditions facilitates the issuance of politically acceptable decisions. Furthermore, their judgments are routinely enforced by the executive branch, and proceedings before these courts are widely perceived as legitimate.^{xvi} Domestic procedures concerning the right to food could be deemed effective from an international human rights law perspective only if individuals are able to invoke the right as recognized internationally before domestic courts. Hence, the incorporation of right to food standards into domestic law, especially constitutional law, goes a long way towards ensuring its effectiveness.
- *Effective right to remedy:* It is difficult to envisage how provisions on an effective right to remedy (*'second order'* right) can be met without first of all incorporating substantive primary rights (*'first order'* rights)^{xvii} into domestic law. Such incorporation shall provide for adequate, effective, prompt and appropriate remedies. Hence, it must enable individuals to approach domestic courts in the event of a breach of IHR treaty norms, such as the right to food - a process that must lead to an enforceable remedy.
- *UN bodies support this view:* The need to incorporate IHR law, including the right to food, into domestic legislation, in particular constitutional law, finds support in case law and as good practice in periodic reports of the UN treaty bodies.^{xviii}
- Whereas the ICESCR refers to *'legislative measures'* in general with regard to the implementation of human rights recognized therein, the Right to Food Guidelines refer to *'State constitutions'* specifically, in the context of the right to food.

As right to food violations are often the product of domestic legislation, an incorporation strategy that fails to offer adequate constitutional remedies might be viewed as inappropriate and ineffective. It is also questionable whether constitutional law that fails to incorporate the right to food in a meaningful way can ‘ensure’ future implementation, i.e., provide the human right to food with the necessary degree of security and protection from future legislative encroachment.^{xix}

Most international treaty provisions on the right to food may be considered none self-executing that is, they cannot be given effect without incorporating legislation. In addition, the crosscutting and complex nature of the right to food and its interrelationship with other human rights calls for legislative action, even where the ICESCR and other relevant human rights treaties are directly applicable within the national legal order.^{xx} Therefore, it is always advisable for countries to have clear and explicit constitutional provisions, a framework law on the right to food, and adequate sectoral legislation.^{xxi}

CONSTITUTIONAL RECOGNITION OF THE RIGHT TO FOOD

A country’s Constitution plays a fundamental role in the realization of the right to food because it is the supreme law of the land^{xxii} and the source of all political power within a nation. It is a body of rules that establishes and regulates a government by stipulating checks, balances and limitations of governmental authority. The constitutionality of every law and act of Government is one of the most important political principles of democracies and universally accepted rule of law norms. The logical consequence of the superiority of the constitution is that it supersedes all acts of the legislature contrary to it. Consequently, such acts will not bind either the courts or the citizens. Constitutional provisions are also binding for the executive so all administrative authorities are equally limited by its provisions. Any executive or administrative act that contravenes the provisions of the constitution must be considered void and the courts must invalidate it. On the basis of a right to food provision in the constitution, the constitutional court or the highest court of a country has the power of judicial review. This means that it declares certain laws unconstitutional if they violate the right to food provision, and the person whose rights have been breached may have a right to remedy. This has an enormous impact on the realization of the right to food because a successful claim may lead to

the reform of legislation or policies found to violate that right. There have not been many court cases involving the right to food so far.^{xxiii}

TYPES OF CONSTITUTIONAL RECOGNITION OF THE RIGHT TO FOOD

Many national constitutions take into account the right to food or some of its aspects. Constitutional recognition of the right to food can be divided into four broad categories:

A. Explicit and direct recognition of the right to food

Twenty-three countries recognize the right to food explicitly as an individual human right. It is necessary to distinguish between the different ways in which this recognition takes place. Nine of these countries recognize the right as an independent right applicable to everyone.

Of the 23 countries that recognize the right to food as a human right, ten stipulate the right to food for a specific category of the population only, such as children or prisoner. For example, Constitution of Colombia (1991), Article 44; The following are basic rights of children: life, physical integrity, health and social security, a balanced diet, their name and citizenship, to have a family and not be separated from it, care and love, instruction and culture, recreation, and the free expression of their opinions.^{xxiv} Five countries have constitutional provisions that stipulate the right to food explicitly as being part of another human right. This is often worded in ways similar to Article 11.1 ICESCR as part of a human right to an *adequate standard of living, to a quality of life or to development*.

For example, Constitution of Republic of Belarus; Article 21 provides that every individual shall exercise the right to a dignified standard of living, including appropriate food, clothing, housing and likewise a continuous improvement of necessary living conditions.^{xxv}

Some constitutional rights protect aspects of the right food and refer explicitly to the right to food component of the main right in question.

B. The Right to Food is Implicit in a Broader Human Right

There are many countries whose constitutions do not make explicit reference to ‘food’ or ‘nutrition’ but guarantee other human rights in which the right to food is implicit, according to their normal meaning in international law. These rights include the right to an adequate or decent standard of living, to well-being, to a means necessary to live a dignified life, to development, and to a standard of living not below the subsistence level. This type of protection is granted by 24 countries. The Constitution of Ethiopia provides one such example:

Article 43. The Right to Development

(1) The Peoples of Ethiopia as a whole, and each Nation, Nationality and People in Ethiopia in particular, have the right to improved standards of living and to sustainable development....

(4) The basic aim of development activities shall be to enhance citizens’ capacity for development and to meet their basic needs.

Rights such as the right to a minimum wage ensuring existence compatible with human dignity,^{xxvi} to social security, assistance for the destitute, special assistance and protection of (orphaned) children,^{xxvii} aid for (working) mothers before and after child birth, and for the disabled and the elderly, all necessarily provide implicit protection of aspects of the right to food. Some constitutions even stipulate special protection in the case of loss of the family breadwinner.^{xxviii}

C. Directive Principles of State Policy

Many of the countries that do not recognize the right to food explicitly in their substantive provisions or bills of rights refer nonetheless to the right to food or food security, or to raising the level of nutrition and standard of living in the provisions that set out the objectives or directive principles of state policy. Directive principles are statements of principle. They often represent the values to which a society aspires although at the time of drafting they may not reflect a broad societal reality. Very often these constitutional provisions guide governmental action, particularly in the socioeconomic field, but are not considered providing for individual or justiciable rights. Of course, such directive principles include implicit reference to the right to food in many, if not most, Constitutions by referring to general wellbeing or social justice objectives, one such example is Ghana:

Article 36 (1) The State shall take all necessary action to ensure that the national economy is managed in such a way as to maximize the rate of economic development and to secure the maximum welfare, freedom and happiness of every person in Ghana and to provide adequate means of livelihood and suitable employment and public assistance to the needy.^{xxix}

There are many countries whose Constitutions' guarantee other human rights in which the right to food is not necessarily implicit. This is the case in particular with regard to the right to life and the right to be free from torture and degrading treatment. Thus, the absence of direct recognition of the right to food in a state constitution does not mean that the right to food is totally unprotected in the country. Depending on a country's legal tradition, other human rights can be interpreted as including the right to food. A combination of other constitutional provisions together with general state policy commitments or directive principles may be used to advance the implementation of this right. For instance, there may be state policies on the promotion of well-being, the right to work and the right to social security (in cases of unemployment or inability to work) which can be relied upon in combination with constitutional rights. For example, in Ireland,^{xxx} in the case of *G v. An Bord Uchtála*^{xxxi} before the Irish courts, judges referred to the right to life as necessarily implying "the right to be born, the right to preserve and defend, and to have preserved and defended that life and the right to maintain that life at a proper human standard in matters of food, clothing and habitation."^{xxxii}

In other cases, courts can give a broad interpretation of civil (and not just economic and social) rights, some of which are widely guaranteed under domestic law, such as the right to life, the right not to be subjected to cruel or degrading treatment and the right to human dignity, even without referring to directive principles of state policy. In a case arising in Fiji^{xxxiii} involving a person whose prison rations were reduced as a form of punishment for having escaped from custody, the High Court of Fiji referred to Article 11.1 of the ICESCR and considered that such action amounted to degrading and inhuman treatment prohibited by the Constitution, The Court wrote that "[a]ny reduction in rations... was not conforming to the Republic of Fiji undertaking to provide its people with adequate food...To reduce prison rations as a form of punishment... contravenes section 25(1) of the Constitution as amounting to degrading and inhumane treatment"^{xxxiv}.

The experience of a number of countries has shown that governments can indeed be held to account for ensuring the effective exercise of the right to food under constitutional provisions

on other human rights. However, the extent to which indirect invocation of other human rights (civil and political rights or other economic and social rights) can lead to effective protection of the right to food at the national level will ultimately depend on judicial interpretation of the State constitution and whether a given human right (e.g. the right to life) will be broadly interpreted so as to also include the right to food. For this reason, the study does not attempt to provide a headcount of countries where such rulings are possible. However, note is taken of the existence of court cases in Botswana^{xxxv}, Fiji^{xxxvi}, Ireland^{xxxvii}, Lesotho^{xxxviii}, Nepal, the United Kingdom^{xxxix}, and the United States of America,^{xl} all of which have protected the right to food through constitutional rights to life, or to be free from torture or cruel and degrading treatment.

RIGHT TO FOOD: AN INDIAN PERSPECTIVE

Constitutional and Legal Framework

The Indian Constitution does not expressly recognize the fundamental right to food. However, Article 21 of the Constitution of India guarantees a fundamental right to life and personal liberty.^{xli} The expression 'life' in this Article means a life with human dignity^{xlii} and not mere survival or animal existence.^{xliii} The Right of Food is inherent to a life with dignity, and Article 21 should be read with Articles 39 (a) and 47 to understand the nature of the obligations 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, fundamental in the governance of the country, requires the State to direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means to livelihood. 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. The citizen's right to be free from hunger enshrined in Article 21 is to be ensured by the fulfillment of the obligations 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.^{xliv} Therefore it is the obligation of the state to be proactive in strengthening

people's access to food. The state must fulfill the right directly whenever an individual or group is unable, for reason beyond their control to enjoy the right to adequate food with the means at their disposal. The state's role in strengthening the food security is more prominent in ensuring availability of food and ensuring access to the households, particularly for poor households. And also, it is the duty of the state to improve the food through its policies. The Report of National Commission to Review the Working of the Constitution (NCRWC) stated that; "particularly significant has been the increase in agricultural production between 1650-2000, the index of agricultural production increased more than four-fold. Between 1960-2000, wheat production went up 11 million tons to 75.6 million to 89.5 million tones. This is no mean achievement for a country that relied on food aid until 1960s."^{xliv} Therefore the subject of hunger and food security has the highest priority in social sciences research. To meet the scourge of persistent hunger formulation of food policy to be practical to relieve suffering is necessary. Amartya Sen 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."^{xlvi}

In May 2001, the *People's Union for Civil Liberties (PUCL)*^{xlvii} filed a landmark public interest petition in the Supreme Court. The case revealed that over 50 million tons of food grains were lying idle in the premises of the Food Corporation of India (FCI), although there was widespread hunger in the country. The petition alleged that the State was negligent in proving food security. It was argued that the public distribution system (PDS) was restricted to families living below the poverty line (BPL). The Supreme Court found as a fact that surplus food stocks were available and, at the same time, that deaths from starvation were occurring in a number of locations. The Supreme Court passed an interim order on 28th November 2001 demanding that large stocks of food grains in Food Corporation of India (FCI) warehouses be released with immediate effect. This is an immoral neglect of the constitutional obligation, against the Article 21 of the constitution, which gives a right to protection of life from deprivation. While moving the objectives resolution Nehru observed, in constituent assembly that, "Most important question is how to solve the problem of the poor and the starving. Wherever we turn, we are

comforted with this problem. If we cannot solve this problem soon, all our paper Constitution will become useless and purposeless”^{xlviii}

Jean Dreze and Amartya Sen say that, when millions of people die in a famine, it is hard to avoid the thought that something terribly criminal is going on. The law which defines and protect our rights as citizens, must somehow compromised these dreadful events. Unfortunately, the gap between the law and ethics can be a big one.^{xlix} Further, they emphasized that; “hunger is however intolerable in the modern world in a way it could not have been in the past. The enormous expansion of productive power that has taken place over the last few centuries has made it, perhaps for the first time, possible to guarantee adequate food for all, and it is in this context that the persistence of chronic hunger and recurrence of virulent famines must be seen as being morally outrageous and politically unacceptable. If politics is ‘the art of the possible’ then the conquering world hunger has become a political issue in a way it could not have been in the past.”

Article 47 of the Constitution imposes on the state to regard as among its primary duties, the raising the levels of nutrition and the standard of living of its people and the improvement of public health in particular to bring about the prohibition of the intoxicating drinks and drugs which are injuries to the health except for medical use. The health of the majority of human beings depends more on their food security and nutrition. The problem of insecurity of food, malnutrition is widely prevalent across the various socio-economic groups, particularly among those who are living below poverty line, landless agricultural labour, people in slum and remote tribal areas, those who are affected by constant calamities like drought are more vulnerable to this. National Commission to Review the Working of Constitution (NCRWE) pointed out that, “Over 260 million people living below poverty line in India are chronically hungry. Hunger and poverty forces families to make trade-offs, trade-offs between hunger and meeting other basic needs. Trade-offs for who goes to school and who doesn’t. In such trade-offs women and children are often the sufferers. Poorly-fed and malnourished pregnant women give birth to stunted and unhealthy babies who are prone to diseases...The Scheduled Castes, Scheduled Tribes and Backward Class are an easy prey of poverty, hunger and women of these categories are its worst victims.”

PUCL and the Journey Beyond

The Supreme Court Order dated 28 November, 2001, was related to the eight nutrition related programmes including the Targeted Public Distribution System (TPDS); Antyodaya Anna Yojana (AAY); Mid-Day Meal Scheme (MDMS); National Old Age Pension Scheme (NOAPS); Annapurna; Integrated Child Development Scheme (ICDS); National Maternity Benefit Scheme (NMBS) and National Family Benefit Scheme (NFBS). The same order also directed Doordarshan and All India Radio (AIR) to adequately publicize various schemes and this order.¹ In the order dated 27th April 2004, the Supreme Court directed that no scheme covered by the orders made by this Court should be discontinued or restricted in any way without the prior approval of the same Court.^{li} In other words, it means that till further orders, the schemes would continue to operate and benefit all those who are covered by the schemes. The schemes covered under the right to food case envelop the entire life cycle of a human being, from the time when the child is in Mother's womb to the time when a person becomes incapable of doing any hard labour for his survival. The assistance provided under the NMBS scheme to women during pregnancy is based on the premise that it would be used for the nutritional support of women during pregnancy which would be good for the yet to be born child's health.^{lii} The ICDS programme addresses the needs of children under six years, pregnant and lactating mothers and adolescent girls.^{liii} The Mid-Day Meal programme covers all the school going children.^{liv} The Sampoorna Grameen Rozgar Yojana (now replaced by NREGA) provides work to all the adults in rural areas of India. The National Family Benefit Scheme provides families with lump sum cash assistance on the death of the primary breadwinner.^{lv} The Antyodaya Anna Yojana scheme, launched in 2000, is aimed at providing food-based assistance to destitute households.^{lvi}

Similarly the pensions provided under Indira Gandhi National Old Age Pension Scheme, all the old people above 65 who are BPL are being assisted.^{lvii} The Supreme Court orders like the universalization of ICDS services among all children under six years, pregnant and lactating mothers and adolescent girls and the one asking for the universalization of hot cooked meals to all the school going children have had large impacts on the allocations, coverage and utilization of schemes. The allocations for ICDS have increased from 11684.5 crores in 10th plan to 46000 crores for 11th plan. Similarly, the allocations for midday meal have increased from 5900 crores in 10th plan to 48000 crores in 11th plan. The coverage under ICDS has

similarly increased from 3.7 crores in 2001-02 to 5.8 crores in 2006-07. Also, the allocations and off-take of food grains under PDS have increased almost four times over the years since the time case has started. In general, the Supreme Court orders have improved significantly the food security of millions of people living with hunger. In line with its obligation to fulfil the right to food and the Right to Food Guidelines, India has set up several safety nets for poor and food insecure people. For instance, the 2005 National Rural Employment Guarantee Act (NREGA)^{lviii} guarantees 100 days of unskilled work for people who live in rural areas.^{lix} Local governments are obliged to implement this law by setting up a Rural Employment Guarantee Scheme. Under the Scheme, work should be provided to applicants within 15 days, and if work is not found, an unemployment allowance should be paid.^{lx} Other provisions of the Act state that workers should receive the minimum wage and that these wages need to be paid in a timely fashion.^{lxi} National Food Security Act, 2013 has been enacted by the Parliament with an objective 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.^{lxii}

CHALLENGES IN IMPLEMENTING RIGHT TO FOOD IN TIMES OF GLOBAL PANDEMIC

The number of people in the world living with hunger soared last year to 821 million, due to factors such as climate change and other human rights related conflict. However, this will only intensify in coming future. The global spread of Covid-19 has made it difficult to access food, access markets and also access to daily wages. Accordingly, many people in the world will not be able to meet their daily calorie needs, or even two square meals a day. The numbers will be catastrophic. The most marginalized section of society, especially women, children and migrant are most affected by any food crisis, whether it is linked to price inflation, the locust attack, human rights conflicts, climate change or pandemic^{lxiii}. Our food production and distribution system are already failing to provide food. The question is how many more must suffer from hunger and malnutrition? Some measures have been announced in India, such as the provision of supply of additional rice or wheat, pulses and oil at no cost, as well as Rs. 1,000 in cash for the purchase of other essential goods through the public distribution system

(PDS)^{lxiv}. However, the Indian government's relief program, the Pradhan Mantri Gareeb Kalyan Yojana (PMGKY), arrived much late and is insufficient to fulfill the need of poor. On top of that, the benefit has not yet reached the people. Several economists, as well as rights-based campaigns, have argued for the universalization of the public distribution system (PDS) in the current environment, especially given the extraordinarily high level of food grain stocks of over 75 million tons (MT) in the referrals from the Food Corporation of India (FCI)^{lxv}. However, the PMGKY offers to provide free additional 5 kgs of cereals per person and 1 kg of dal per household for three months to approximately 80 crores individuals to those covered by priority ration cards or Antyodaya Anna Yojana (AAY) under the National Food Security Act (NFSA). This restriction excludes many people from relief, both because the population estimates currently used is exceeded as well as because many people are excluded from the PDS for multiple reasons such as lack of documents like Aadhaar, exceeding quotas, etc.^{lxvi}

In Delhi, for example, a cardholder without rationing must first register online by entering their phone number and obtaining an OTP, they must then upload their Aadhaar and a family photo. Once done, they will receive an SMS with a link to the e-coupon. Beneficiaries are supposed to have smart phones through which they open e-coupons when they get their rations. It is also unclear whether this exercise will need to be repeated every month until the lockout ends or whether it is just a one-time verification^{lxvii}. Therefore, the assumption is that each person has not only access to a Smartphone but also the technical capacity to fill out forms online. While there was a system where MPs, NGOs and other volunteers were supposed to help people fill out these forms, the experience on the ground level was that this process was very cumbersome. In addition, after a launch day, the site was unavailable for more than three days due to overload. There was also a fake website claiming to issue ration cards. Despite all these problems, the government claims that around 15 lakh people have requested the e-coupons and more than 3 lakhs have received cereals. While these numbers reflect the magnitude of the problem, hundreds of thousands of people are still believed to be left behind because they were unable to access the system^{lxviii}

There are other challenges as well that are faced by People due to global pandemic

1) Impact on food Producers: -

Pandemic prevented farmers and farm workers to access farms or crops, farmers hence, are facing harvest difficulties due to fear of the virus, the shortage of labour and lack of transportation, which means that many had to let the crops rot in the fields. Lockdown also lead to closure of local and territorial public markets like street markets. Farmers experience post-harvest food loss due to their inability to access the market. A lot more countries have issued a related warning that they might be facing similar problem like this in the near future. Restaurant closings are also affecting farmers, especially those who channel their products through direct sales.

Many countries are now reporting that food is lost. Vegetables and cereals rot not harvested from fields, cattle are killed and buried, and the milk is thrown away. National lockdown coincided in India with the country's peak harvest season of a variety of seasonal crops. Summer vegetables and fruit were ripe and ready to be sold; wheat, paddy and barley crops were ready for harvest. But in many cases, crops were left standing on the fields without labour to harvest or markets to sell.^{lxxix} Governments fail to guarantee everyone adequate access to food in good form, quantities and price. Citizens were left at the mercy of the market or individual initiatives to guarantee access to food. So, food insecurity is increasing rapidly and can even lead people to break the lockdown conditions, or even lead to food riots and civil unrest.^{lxxx}

2) Long term Impact:

Loss of income and economic uncertainty for small food producers means that many may not want to lose a second season of investment or are unable to pay the costs of planting for next season, threatening lack of food supply in the longer term and extending the duration of the food crisis.^{lxxxi}

3) Impact on children

Children who depend on their school to provide their main meal of the day, can also face hunger at home as families struggling to feed them^{lxxxii}.

Preventing the current Covid-19 crisis from becoming a full-blown longer-term food emergency, it is essential to work on current food supply system. The food crisis has a lasting impact on our health and well-being, our productivity and, especially in cases of children and young people. The stakes couldn't be higher. It is more urgent than ever to support health workers and food producers, many of whom are women at the forefront of this crisis.

From the crisis comes opportunity. We now have an opportunity in which we can reverse the trend and start repairing our broken food system - the one that produces hunger and obesity simultaneously, working against it rather than nature - and a just feminist transition in the world. That will ensure that we can all enjoy the abundance of nature.

CONCLUSION

Legal protection is a necessary step for the realization of the right to food as a right. While food security is a situation where all people at all times have access to sufficient, safe and nutritious food for an active and healthy life can be achieved in theory without the adoption of legal measures, the addition of legally enforceable rights makes the future of food security more secure. The rule of law continues to be evasive in many countries throughout the world, and legislation frequently gathers dust on shelves while life goes on as before. Therefore, it is not enough to recognize the right to food constitutionally and to enact law on same; such law needs to be 'owned' by those who are most in need of its enforcement. Successful legislation should be employed after a thorough process involving all stakeholders, government and civil society alike. Legislation also needs constant follow up from all sides, in order to be effective. Furthermore, judges and lawyers need to be fully cognisant of the right to food if cases are to be brought to court and dealt with successfully.

But Covid-19 pandemic has highlighted the problem of food Security and livelihood when four weeks of national lockdown was announced, distressing stories of hunger and despair have been emerging across the country in order to tackle this problem govt need to work on following factors

1) Universalization of PDS system

The survey was conducted by the Centre for Labour Research and Action (CLRA), Habitat Forum (INHAF) and the NGO Mashal, with Dr. Shruti Tambe from the department of sociology, Savitribai Phule Pune University, Pune, as its lead researcher. Among the key recommendations is the need to universalize the PDS. "Mounting evidence suggests that workers lack ration cards even as almost all have Aadhaar cards, which serve little purpose in accessing food grains under the current system. We must

therefore universalize PDS.^{lxxiii} While a lot has been spoken about direct benefit transfer of financial aid, the report and data indicate that half the labourers do not have bank accounts. “We suggest cash relief with an appropriate mechanism of doorstep delivery for stranded workers and for those who have reached their villages due to loss of wages.^{lxxiv}

Therefore, given the urgency of the situation currently, universalizing in a manner where there are minimal procedures and every person can access rations is the best option. Such a principle has been recognized even by the Supreme Court, where in the context of drought it stated:

“No household in a drought affected area shall be denied food grains as required under the NFS Act only because the household does not have a ration card. The requirement of a household having a ration card is directed to be substituted by an appropriate identification or proof of residence that is acceptable to the State Government.” *Swaraj Abhiyan v. Union of India (2016)*

Universalisation of the PDS is desirable even under normal circumstances as it has the benefits of ensuring minimal exclusion errors, can reduce leakages as well as contributing to overall food security^{lxxv}.

- 2) *Food / monetary aid for informal workers, small food producers and agricultural workers*^{lxxvi}
- 3) *Minimum income support allowing farmers and farm workers to continue producing until the next season to prevent the crisis from escalating, allowing them to produce the next crop*^{lxxvii}.
- 4) *Strengthen food processing and storage facilities* closer to farms to ensure that food producers are able to add value to their products and increase the shelf life of perishable foods through better storage, including by means of solar dryers, etc. The control and management of these facilities should be entrusted to the users, including women food producers and their collectives^{lxxviii}.
- 5) Replacement school meals should be provided for school children missing out on their main meal of the day during lockdown.^{lxxix}
- 6) Minimum income support for women and men, smallholder farmers and farm workers, should be provided, so that they have enough income to cover their and their families’

basic needs at this critical moment, and to plant for the next season, preventing the crisis from escalating further^{lxxx}.

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