



Food and Agriculture
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State food provisioning as social protection

Debating India's national
food security law

RIGHT TO FOOD STUDY



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**Debating India's national
food security law**

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Food and Agriculture Organization
of the United Nations
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Preface

The international community's new commitment to eliminate hunger in our times, by 2030, begins with the realization that ample food production (conceptualized as availability) alone is not sufficient to eliminate hunger, despite its necessity. Stable, reliable access to food is just as necessary. Hence, reducing poverty and addressing market failures are necessary. Global efforts (such as AMIS) are making progress, but national food security programmes based on the notion of adequate, nutritious food as a human right are often decisive. FAO has supported these programmes, including by defending national food security stocks as part of national sovereignty, but also by widely sharing the rich experiences of countries which have built robust systems to improve and ensure access.

How India debates and addresses food security matters to the world. While India has made modest progress towards its MDG and WFS goals, it still has the largest population of food insecure and hungry people of any country in the world. The world cannot eliminate hunger and poverty without India doing so.

Over the past 70 years, Indian communities and government staff, especially at district and local levels, have explored, created and tested many strategies and tactics to reduce hunger at local level. Each success or failure provides rich lessons to be learned and shared. India has – and has had – the world's largest – both in numbers of persons provisioned and in scale of government investment – public food provisioning programme for decades. This case study reflects this vast experience through the lens of a successful effort to legislate the right to food.

The majority of food insecure people in the world now live in middle income countries like India. These countries have domestic resources for increased food production and to improve food access and utilization.

India's civil society has participated prominently and effectively in the past 15 years of the Right to Food Campaign, in path breaking judicial decisions, debates around the drafting of the National Food Security Act, and the Act's eventual passing, by a broad spectrum of Parliamentary voices, including both the current and the previous ruling coalition parties. Many of these public debates are well documented, including all "sides" of the questions.

The core populations of food insecure citizens in India are Dalits (Scheduled Castes or "untouchables"), Adivasis (Scheduled Tribes or indigenous peoples), widows, disabled people, people with chronic diseases, orphans and abandoned children. The market does not provide adequate access to food for these people, no matter how high the growth rate is. They are excluded, not sufficiently protected by the operating legal system, and thus require public provisioning if their right to food is to be fulfilled. India's unique system of public provisioning exists largely for these especially vulnerable people. Despite structural and operational flaws in that system, India still provides food to more people than any other country.

The book's presentation is pragmatic and dialogic, even dialectical. It concentrates on the debates themselves. Each topic is presented with major arguments on both sides of the central debate. This is most useful for those in other countries facilitating or leading related discussions.

Middle income countries, whose citizens include the vast majority of the food insecure, should take a special interest in India's experience. All countries that are in the process of implementing their citizens' right to food will benefit from this intense look at the debates in India.

The author, Harsh Mander, was a direct participant in government provisioning at district level in one of India's largest states (Madhya Pradesh), in the commission of the Supreme Court that set the direction, in collecting data on the ground in more than a dozen states, to inform decision makers, in drafting the National Food Security Act, and in hundreds of public discussions and debates. After two decades of government service, he resigned and has worked with civil society, serving, empowering and amplifying the voices of marginalized peoples in the capital city and at other key locations in India. His unique and foundational perspective on realizing the Right to Food in what will become the world's most populous country by 2030 adds authenticity, credence and power to this case study.

We would like to thank Harsh Mander, who authored this document, providing deep insights into the numerous rich debates in India. I would also like to thank Peter Kenmore (FAO Representative in India from 2012 to 2014) and Juan Carlos García y Cebolla (FAO Right to Food Team Leader) for their crucial support throughout.

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I am grateful to colleagues in the Department for International Development (DFID) India, especially Daniel Bradley, FAO India's Peter Kenmore and its present head Kevin Gallagher, as well as in IPE Global, especially Indira Khurana who believed in this enterprise and supported and encouraged it in many ways. The book along with a few global dialogues around it has been supported by the Government of the UK's DFID under Knowledge Partnership Programme (KPP). KPP is a South-South cooperation programme promoting knowledge sharing in the areas of food security, resource scarcity and climate change; health and disease control; trade and investment; and women and girls. KPP is managed by a consortium led by IPE Global Private Limited under its Knowledge Initiative. The main objective of KPP is "gathering and uptake of evidence on issues central to India's national development that have potential for replication in LICs and impact on global poverty".

Daniel Bradley and Indira Khurana also read the manuscript closely and offered useful suggestions for improvement. I am grateful that FAO Rome kindly agreed to publish this report for wider usage, and I thank Juan Carlos García y Cebolla, Margaret Vidar, André Croppenstedt, and Frank Mischler of FAO for their detailed, careful and invaluable comments. I am grateful also to Flavio Valente, Secretary General of Food First Information and Action Network, for believing in and partnering with this enterprise.

The debates summarized in this book are based substantially on my participation in, association with, and observation of many of the processes and debates related to food security and the right to food in India over the last decade and more, in many different capacities. These include as the Special Commissioner to the Supreme Court in the PUCL Right to Food Case; as Member-Convenor of the Working Group of the Prime Minister's National Advisory Council (NAC), which was charged with the drafting of the first version of the National Food Security Bill (which in amended form is now a law passed by India's Parliament on 2 September 2013); and as a member of the Right to Food Campaign. I have tried to present herein a brief summary of some of the most significant debates which I heard and discussions in which I participated over these many years.

I am indebted to my learning from many fine comrades in the Right to Food Campaign, including Kavita Shrivastava, Jean Drèze, Colin Gonsalves, Anuradha Talwar, Arundhati Dhuru, Balram, Rupesh Kumar, Gurjeet Singh, Sunil Kaul, Sachin Jain, Samir, and Sulakshana Nandi, among many others; to N.C. Saxena, Commissioner of the Supreme Court on the right to food, and colleagues in the Commissioners' Office Biraj Patnaik, Sejal Dand, Dipa Sinha, Sajjad Hassan, Sandeep Chachra, and Aditya Shrivastava; and to former colleagues in the National Advisory Council with whom I worked on preparing and discussing the early drafts of the National Food Security Bill, including its chair Sonia Gandhi, and M.S. Swaminathan, Jean Dreze, Aruna Roy, Mirai Chatterjee, A.K. Shivkumar, Farah Naqvi, Deep Joshi, N.C. Saxena, Anu Aga, Madhav Gadgil, and Narendra Jadhav, as well as Secretariat colleagues Rita Sharma, K. Raju and Manisha Varma.

Needless to say, whereas so many friends from many parts of the world have contributed to the ideas and debates in this book, the responsibility for all its errors are entirely mine.

We hope that this book will help play a small role in stimulating and informing debates around state food provisioning as a part of social protection in other parts of the world, among policy-makers, social and political leaders, academics, and people living with hunger and malnutrition.

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Abbreviations and acronyms

- BMI** Body mass index
- BPL** Below Poverty Line
- DFID** Department for International Development
- DPSP** Directive Principles of State Policy
- FAO** Food and Agriculture Organization of the United Nations
- GDP** Gross domestic product
- ICDS** Integrated Child Development Scheme
- ICESCR** International Covenant on Economic, Social and Cultural Rights
- MDM** Mid-day meals
- MSP** Minimum support price
- NAC** National Advisory Council
- NFSA** National Food Security Act
- PUCL** People's Union for Civil Liberties
- PDS** Public Distribution System

Glossary

Commissioners to the Supreme Court: A writ petition was submitted in the Supreme Court in April 2001 seeking enforcement of the right to food. This case was brought against the Government of India, the Food Corporation of India (FCI), and six state governments, but was later extended against all the state governments as the case covered a range of issues relevant to right to food, including hunger and malnutrition. The *PUCL vs Union of India & Others or Writ Petition (Civil) 196 of 2001* became public interest litigation and accordingly received a considerable number of interim orders. An interim order dated 8 May 2002 installed Commissioners of the Supreme Court to track hunger and the implementation of interim orders relevant to the Right to Food Case across the country. The Commissioners have the power to investigate violations of interim orders related to the case, and to demand redress.

Directive Principles of State Policy: The Directive Principles of State Policy are guidelines or principles given to the central and state governments of India, to be kept in mind while framing laws and policies. These provisions are contained in Part IV of the Constitution of India but are not enforceable by any court.

National Advisory Council: The National Advisory Council (NAC) was set up on 4 June 2004 by then Prime Minister Manmohan Singh. The United Progressive Alliance (UPA) government set up this advisory body during its first term in office to advise the Prime Minister on several key bills that the government proposed during its term in office. UPA Chairperson Ms Sonia Gandhi headed NAC. The council ceased to exist when Prime Minister Narendra Modi took office after winning the 2014 general elections.

Parliamentary Committees: Parliamentary Committees in India are committees consisting of Members of Parliament. These committees are of two kinds: *Ad Hoc* and Standing Committees. *Ad Hoc* Committees are appointed for a specific purpose, and cease to exist when they finish the task assigned to them and submit a report. The Standing Committees are elected or appointed every year, or periodically by the Chairman of the Rajya Sabha or the Speaker of the Lok Sabha. Each House of Parliament has Standing Committees like the Business Advisory Committee, the Committee on Petitions, the Committee of Privileges and the Rules Committee, etc. These committees are constituted from time to time according to the provisions of an Act of Parliament or Rules of Procedure and Conduct of Business.

Planning Commission: The Planning Commission was set up by a Resolution of the Government of India in March 1950. It formulated India's Five-Year Plans, which included functions like assessing all resources of the country, augmenting deficient resources, formulating plans for the most effective and balanced utilization of resources, and determining priorities. In 2014, Prime Minister Narendra Modi announced the scrapping of the Planning Commission. It was then replaced by NITI (National Institution for Transforming India) Aayog.

Public Distribution System (PDS): Primary mode of distributing subsidized food and non-food items (such as rice, wheat, sugar and kerosene) to poor families, through a network of shops known as "ration shops". This system of distributing subsidized grains has existed in various forms since 1951. The Food Corporation of India conducts procurement and maintains the PDS, while the Ministry of Consumer Affairs, Food and Public Distribution and state governments jointly administer it.

Prime Minister's Economic Advisory Council: The Economic Advisory Council is a non-constitutional, non-permanent and independent body tasked with giving different points of view on economic matters to the Government of India, specifically the Prime Minister. It advises the Prime Minister on a whole host of economic issues like inflation, microfinance, industrial output, etc. The Council is headed by a Chairperson and has a membership of eminent economists.

Ration card: An identity card necessary to collect subsidized commodities from the PDS shops. A single card is issued per household in the name of the head of household. The card indicates the economic category to which the household belongs: Antodaya (among the poorest families), Below Poverty Line, and Above Poverty Line.

Right to Food Campaign: The Right to Food Campaign is an informal network of individuals and organizations committed to the realization of the right to food in India. The campaign began in 2001 as an offshoot of public interest litigation in the Supreme Court,¹ and quickly grew into a country-wide movement.

1 Available at <http://www.righttofoodcampaign.in/legal-action/-right-to-food-case>



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INTRODUCTION

The Republic of India's National Food Security Act, 2013 legally binds national and state governments to extend far-reaching social protection to the country's population. This report attempts to summarize the major debates which transpired during the development and passage of this landmark statute. These discussions unfolded over more than a decade prior to its eventual enactment, and engaged courts, policy-makers, official committees, Parliament, and civil society. It is hoped that this record of debates will prove useful to people within and outside governments, especially in low-income but also emerging economies, who wish to strengthen the programmatic and legal frameworks for food and nutrition in their respective countries.

It is important, however, to open this report with a caveat that the Indian experience is not presented necessarily as a model proposed for emulation by other countries. It is presented as a reference point, not as a prescription.

The broad context for the passage of India's food security law was mounting global evidence that hunger and malnourishment were preventable, and that appropriate policies and programmes at local, national and global levels could reduce and ultimately end hunger and malnourishment. This thrust centre-stage the role that governments play in the growth, or the curtailment, of hunger. The immediate context for the passage of this law was that despite India's sterling economic growth and government warehouses overflowing with food grains, hunger and malnutrition continued to stalk the land, in greater numbers than any other country on the planet (Mander, 2012).

The right to food is the human right of every individual to have assured access to adequate, nutritious, and culturally appropriate food necessary for an active and healthy life. For individuals to have assured access to adequate and nutritious food, they can a) grow; b) buy; or c) receive this food. This report focuses on India's experience with the third of these options, specifically on why and how the food law in India prescribes state duties to provision food.

There are many things that governments should do to prevent hunger and malnutrition. These include ensuring that enough food is grown by sustainable technologies; promoting assured and decent work for all adults; ensuring clean water, sanitation and health care for all people; promoting breastfeeding, early child care and maternity benefits; and advancing greater economic, social and gender equality.

In addition to these, there is also a widely (but not universally) held opinion that the state must play some role in providing food to those who are food and nutritionally vulnerable. This may be through a variety of means, including ensuring subsidized food grains; cooked meals such as those for young children, schoolchildren, pregnant and nursing mothers, and the destitute; and through social protection transfers such as pensions, maternity benefits and income transfers. State provisioning of food is the central subject of this paper, for it is this that India's ground-breaking National Food Security Act passed by its Parliament in 2013 (hereafter described as NFSA or "the food law") legally guarantees.

India's experience in legislating state duties for food provisioning as social protection is located in a long history of public action around food since India's birth, through which the state gradually expanded programmes for food provisioning, from subsidized food rations to young child feeding, school meals, and pensions for the aged. These measures were further deepened through judicial intervention, which converted these programmes into rights and then expanded and universalized them. India's policy strategies for supplying food to its large population through a network of highly decentralized institutions is instructive, because it both shares common ground and departs from the experience of other countries which have adopted large food provisioning programmes.

India's statute for a legal and enforceable right to food was encouraged in significant part by an activist Supreme Court. This marked the culmination of a journey of more than a decade in the courts and Parliament, beginning with the filing of a petition in India's Supreme Court in 2001² for recognizing the legal right to food. This process involved extensive civic organization, historic judicial rulings, progressive political manifestos (in the elections of 2009, parties promised to legislate food security), and wide debates in and outside government.

In brief, what NFSA guarantees is highly subsidized – indeed nearly free – monthly rations of rice, wheat or millets to 75 percent of rural and 50 percent of urban populations (a total of around 800 million people); universal feeding programmes for preschool and schoolchildren, and pregnant and lactating mothers;

and universal maternity entitlements. It also mandates the creation of institutional mechanisms (among them, grievance redress systems) for the enforcement of the law at national, state and district levels.

The first official drafts of NFSA were prepared after extensive discussions for around a year in 2010–2011 within the Prime Minister's National Advisory Council (NAC), which was assigned the responsibility for preparing the draft statute (as a member of the NAC, I was assigned the responsibility of convening the working group in the NAC to draft NFSA). Once the NAC submitted its suggested draft, it was discussed widely in the union and state governments, India's Planning Commission, the Prime Minister's Economic Council, and the ruling and opposition parties, as well as in the Right to Food Campaign, academic writing, and the press. The union cabinet deleted and altered many provisions of the NAC draft, and then introduced their own version of the bill in Parliament. This was referred to Parliament's Standing Committee which further curtailed some provisions, especially those related to very vulnerable populations. The bill was debated in Parliament and finally passed as the National Food Security Act in September 2013. Annex 1 summarizes what was initially proposed in the NAC draft and what was finally passed by Parliament.

The process of developing NFSA stirred a wide range of complex debates. The proverbial "argumentative Indian" participated in these deliberations with vigour and passion; the NAC tried to resolve the debates in one way, the Supreme Court in another, and the Union Government and Parliament in yet other ways. The bill was attacked from both the left and the right, including the Right to Food campaign, the Left Parties, some state governments, ruling alliance partners, the opposition, both left- and right-wing economists, and many others.

The chapters in this report attempt to summarize some of the most important debates which transpired during the four and a half years of the official writing and consideration of the food law. These debates cover several questions about the nature and extent of the state's duties as well as possible strategies for food provisioning as part of a larger framework of social protection. Although these discussions occurred in India in the context of a national food security law, much of the content of these debates would be equally relevant even if states assumed duties to provision food but without resorting to an elaborate binding and enforceable framework of law (as in the Federative Republic of Brazil and the Federal Democratic Republic of Ethiopia).

The Food and Agriculture Organization of the United Nations (FAO) identifies three main complementary national-level strategies of legislative action for implementing the right to food: (i) incorporating the right into the national constitution; (ii) adopting a framework law relating to the right to food; and (iii) comprehensive reviewing of all or the most relevant sectoral laws affecting the enjoyment of the right to food for their compatibility with this human right (FAO, 2009).

It is important to note that India opted not to explicitly incorporate the right to food in its Constitution, although India's Supreme Court held that the right to food was implicit in the fundamental right to

life guaranteed under the Constitution. India also opted not to formulate framework legislation, nor to review all sectoral laws related to the right to food. It instead focused on legislating state duties for those aspects of social protection which are connected with state provisioning of food – such as subsidized cereals or free cooked meals and cash maternity benefits. When India's Constitution was written in the late 1940s, although the spectre of famine still threw ominous shadows over the country's future, the Constituent Assembly accepted the prevailing wisdom of the time that only civil and political rights should be recognized as enforceable fundamental rights, whereas socio-economic rights were included as moral rather than legal claims on the state. India's food security law builds further on its long experience in food provisioning as social protection, and on Supreme Court directions which converted these schemes into entitlements. In the new century, with civic and judicial activism expanding the fundamental right to life to include all that is required for life with dignity, the executive was ready for a law on food provisioning, but perhaps not a framework law which would have covered much wider ground.

The India case study is useful because India decreed an important and ambitious food security and social protection law after years of interventions by the Supreme Court, large-scale civic action, and many heated discussions over a 12-year period, which have few parallels anywhere in the world. Because of these deliberations, the Indian experience may be useful for policy-makers and advocates in other low- and middle-income countries who are contemplating expanding their food security and social protection programmes, with or without a right to food law. Conditions and the resolution of these deliberations would legitimately vary in diverse parts of the globe. Even in India, despite the passage of the law in Parliament, many key debates continue, as may be inevitable in a vast, diverse, federal and unequal country.

The India case study illustrates that developing a strong food protection programme and drafting a right to food law are very complex tasks. The law needs to be clear about precisely what programmes and rights are being created and for whom; who is responsible for ensuring the realization of those programmes and rights and by what institutional and schematic mechanisms; what precise recourse individuals have if their programmes and rights are being violated; and what would be the consequences, both for the victim and the perpetrator, of any violations. These and other related questions are what this report examines.



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CHAPTER 1

DEBATING STATE OBLIGATION

Should the state have the duty to provision food to its populations?

To address the question of whether the state should directly provision food for the social protection of vulnerable populations, India chose to build on its long history of diverse forms of food provisioning – of subsidized rations and child feeding – to expand and legally guarantee these food transfers in its food law. It is important to note that the International Covenant on Economic, Social and Cultural Rights (ICESCR),³ under Article 11, establishes that the state has the duty to provision food (or the means to buy food) to its population. The minimum obligation is to ensure freedom from hunger. But despite the reality of persistent hunger and large incidences of malnourishment, public opinion in India still remains deeply divided about the merits of its food law, which legally mandates public spending for food provisioning.

India, like much of the world, continues to debate the most effective solutions to end impoverishment and want. One influential body of economists and policy leaders are convinced that it is only the rising tide of economic growth which will help overcome poverty. Therefore, the best contribution governments

³ Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

can make is to facilitate private investment while reducing government footprints of public spending and regulation. The alternative view is that even if economic growth is accomplished, disadvantaged populations require direct interventions by governments for redistribution, protection, and public spending to provide for basic human needs like food, education, health care, and social security.⁴

Supporters of the idea of state food provisioning are not necessarily against economic growth. But they point to evidence that despite unprecedented growth and wealth, millions the world over continue to subsist in hunger and want. In 2012–2014, one in nine people in the world – over 800 million people – went to sleep hungry (FAO, IFAD and WFP, 2014: 8). One in three people in the world who are denied enough to eat are found in India. Even after becoming the second fastest growing economy in the world in the first decade of this century, India's endemic hunger and malnutrition have persisted, with one child in two⁵ still malnourished, and according to some estimates 190 million people⁶ going to sleep hungry every night (FAO, IFAD and WFP, 2014: 42).

They stress that it is not at all their claim that the answer to mass hunger is for the state to feed people in perpetuity. Far from it, what is needed is a range of measures to tackle the causes of poverty and hunger. These include not only stimulating economic growth, but also many other steps as well, such as public measures to accelerate sustainable agricultural growth; improving sanitation and clean water; providing health care; increasing social and gender equity; and providing decent and assured employment. But while all of this unfolds, it is economically (and morally) unacceptable for people to be compelled to live with hunger and its consequences, and this is why the state must provision food as long as it remains necessary. Economic growth has not generated employment as expected; in the high noon of India's growth from 2004 to 2010, only 3 million jobs were created, while nearly 60 million people were added to the workforce (ILO, 2013). What is more, most of these jobs were low-end, contract or casualized, and employment in the formal sector actually declined during this period. Furthermore, senior policy-makers in India do not foresee the end of even minimally defined poverty for many decades; one official estimate for the time frame for ending starvation-level poverty is 2040 (BBC, 2007).

Supporters argue that one should see state food provisioning not as a mere undeserving dole, but rather as an investment in ensuring that the working people of India are well fed, which is critical both for their

4 See for instance: Bhattacharya, P. 2013. Everything you wanted to know about the Sen-Bhagwati debate. *LiveMint*, July 20, 2013 (available at <http://www.livemint.com/Politics/zvxkjvP9KNfarGagLd5wmK/Everything-you-wanted-to-know-about-SenBhagwati-debate.html>).

5 Based on the NHFS-3, conducted during the period 2005–06, which found almost 50 percent of children under-five were stunted, showing prolonged undernourishment (available at <http://cbhidgbs.nic.in/writereaddata/linkimages/NFHS-3%20key%20Findings5456434051.pdf>).

6 The information about the percentage and total number of undernourished people in the world is revised regularly by countries. The same holds for population data of the United Nations. Whenever this happens, FAO revises its estimates of undernourishment accordingly. Updated estimations can be found at the website of *The State of Food Security in the World* (available at <http://www.fao.org/hunger/en>).



provisioning and social protection programmes into legal entitlements, expanded and universalized them, and established an independent system of its Commissioners for the enforcement of these entitlements (Mander, 2012).

But many are profoundly dismayed by the legally mandated state food provisioning in India's food law. Their unease stems from many sources. One of these is the high cost of mandated food provisioning, which they fear will inflate deficits and fuel inflation (Economic Times, 2013); to them, this makes the measure profligate and populist. They feel that the law forces the state to transfer unproductive subsidies to the poor.⁷ Another source of unease stems from the belief that the food law is not implementable and the investment would therefore be wasteful, because state administrations demonstrably lack the capacity to actually deliver the promises of the law; this is evidenced even by official studies that confirm enormous leakages of subsidized Public Distribution System (PDS) grains into the black market. These critics fear it will create dependencies and dis-incentivize work.⁸

productivity and their morale. That every second child in India is malnourished means that the brains and bodies of every second young adult are not allowed to be developed to their full potential. There is no disagreement that for poverty to end, far more needs to be done than simply feeding people. But it is the duty of a caring state especially in a rapidly growing economy to ensure that until more lasting solutions are crafted and implemented, people today do not suffer from preventable hunger.

This is also consonant with the views of India's Supreme Court which has held that the fundamental right to life is a positive human right to all that is required for a life *with dignity*. This includes importantly the right to food. India's highest court therefore has converted the range of existing food

7 See for instance: Dhume, S. 2013. New Delhi's Hunger Games. *The Wall Street Journal*, June 20, 2013; and Sinha, Y. 2013. Food Security Bill is proof that PM is happy to go along with Sonia Gandhi's senseless welfarism. *Economic Times*, July 9, 2013 (available at: http://articles.economictimes.indiatimes.com/2013-07-09/news/40469285_1_congress-party-finance-minister-fiscal-deficits).

8 See for instance: Das, G. 2013. Food security bill: Corruption by another name. *The Times of India Blog*, March 31, 2013 (available at <http://blogs.timesofindia.indiatimes.com/men-and-ideas/food-security-bill-corruption-by-another-name>).

Proponents argue that it is not right to assume that the pot of public revenues is fixed and given, and therefore if we spend more on food, we will either have to pull back on other important expenditures or raise deficits. The option exists to raise more taxes considerably, given India's low tax to gross domestic product (GDP) ratio of 10 percent.⁹ Also, too much of India's taxation is indirect, which burdens the poor unfairly (CBGA, 2013). In addition, what is needed is greater integrity in India's tax efforts, rather than a moratorium on public spending for the poor. The rich receive three times as much subsidy as the poor (CBGA, 2013: 13). Furthermore, the costs must be weighed of *not* making these investments – the enormous costs of hunger, preventable diseases and deaths on the morale and productivity of several hundred million working people and growing children.

Sabina Alkire (2013) offers a telling global comparison that India "has a higher proportion of stunted children than nearly any other country on earth, yet spends half the proportion of GDP that lower, middle-income Asian countries spend on social protection and less than one-fifth of what high-income countries in Asia spend." In lower middle-income countries, these expenses are 3.4 percent of GDP. India's is a mere half of that at 1.7 percent, and even this low level is reached largely because of the rural jobs guarantee programme that ensures 100 days of paid work to all poor households in villages. The average for upper middle-income countries is 4 percent of GDP and 10.2 percent for high-income countries. Japan spends 19.2 percent and the People's Republic of China, 5.4 percent. Even the Republic of Singapore spends more than twice as much as India, at 3.5 percent of GDP (ADB, 2013).

Supporters also argue that while systems for delivery of food programmes are often flawed and corrupt, this problem also applies to defence deals, mining, and urban infrastructure, to name a few. Therefore, we cannot selectively veto only programmes for the poor on these grounds. Some states have shown that state delivery systems like the PDS can be credibly fixed. And finally, the poor work hard, and have dreams like the rest of us: they too want a better life for their children, and a better material life for themselves. It is unjust to assume that they will stop working just because their stomachs are fuller.

The supporters of state food provisioning are instead concerned that it does not go far enough: it is not universal, it neglects agriculture, it does not include provisions for the starving and destitute, and it ignores corresponding dimensions of food and nutrition security, such as water, sanitation and health care. It also fails to establish a robust and independent enforcement mechanism critical for the implementation of any rights-based law. These are all questions and debates that this report will address in later chapters.

9 Available at <http://indiabudget.nic.in/ub2014-15/frbm/frbm3.pdf>

CHAPTER 1: DEBATING STATE OBLIGATION

India's Supreme Court recognized that the fundamental right to life was a positive human right to all, and a requirement for a life with dignity. This includes the right to food. The Court therefore converted the range of existing food provisioning and social protection programmes into legal entitlements.

India chose to build on its long history of diverse forms of food provisioning – by expanding and legally guaranteeing these food transfers in its food law. However, public opinion in India still remains deeply divided about the merits of this law.

ARGUMENTS IN FAVOUR

- ◎ Food provisioning is an investment in ensuring that, until more lasting solutions are crafted and implemented, people today do not suffer from preventable hunger that affects their capacities to work and learn
- ◎ Hunger can be prevented by food provisioning, and not doing so is morally unacceptable
- ◎ The rich receive three times as much subsidy as the poor
- ◎ Problems of corruption also apply to other programmes, and need addressing; but this is no reason to cut pro-poor programmes
- ◎ Well-nourished workers work harder and more productively

ARGUMENTS AGAINST

- ◎ Economic growth is a basis for broad impacts on poverty reduction
- ◎ Risk of dependency and dis-incentivizing work
- ◎ High cost of mandated food provisioning
- ◎ Corruption and lack of state capacity



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CHAPTER 2

CHOOSING BETWEEN BREAD AND FREEDOM

Should the duties of the state to provision food as social protection be embodied in law, and be justiciable in a court of law?

India's journey towards a law embodying state duties to provision food involved a mixture of civic activism, political engagement, significant court rulings expansively interpreting India's Constitution, and relevant international covenants.

The starting point for this discussion is the wide acknowledgment globally of the equal intrinsic worth and dignity of every human being, regardless of where they are born; their gender, wealth or social standing; their colour, caste or ethnicity; what they produce; and whether they fit the norm. This ethical and political global consensus is reflected in the Universal Declaration of Human Rights adopted by the General Assembly in 1948,¹⁰ and in the non-discrimination principle (Article 2) of the ICESCR.¹¹

10 Available at <http://www.un.org/en/documents/udhr>

11 Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

Being equal in human dignity, all human beings merit certain rights. However, the predominant view which held sway in liberal democracies through the second half of the 20th century was to treat legally enforceable civil and political rights, and not socio-economic rights, as constitutionally guaranteed. In other words, many opposed the idea of embedding in constitutions and sometimes in law the duty of the state to provision food and other social and economic goods. But it is important to underline that even without clear constitutional provisions, many liberal democracies established social security and social protection legislation, providing for unemployment benefits, free primary education, health services, pensions that were both contributory and non-contributory, and other welfare legislations where entitlements were legally guaranteed.¹²

Even today, some oppose state food provisioning altogether, as discussed in the opening chapter. There are others who accept that the state may provision food as a part of social protection, but still oppose its inclusion in law because they are convinced that the law should not encroach on the jurisdiction of the executive, which is tasked with deciding the scale of revenues and what they should be spent on. Still others do not oppose the principle of the law, but are more concerned about the limits of state capacity to deliver these entitlements, given its rampant corruption and leakages.

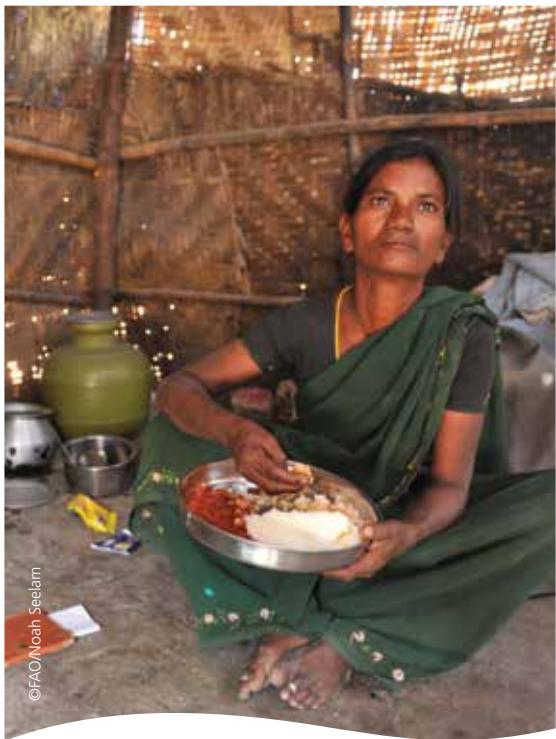
Those opposed to embedding duties (such as provisioning food) in statutes object on the grounds of the finite availability of fiscal resources, and also the limits of state capacity. They believe that decisions regarding the amount of tax that should be imposed, on whom these burdens should fall, and how these resources are to be invested, should legitimately be political decisions of the executive. For a long period, the Courts and constitutions tended to concur: although they sometimes advanced these rights, it was with the careful caveat that rights involving substantial state expenditure should be progressively realized only to the extent (and at the pace) that was considered fiscally feasible by the elected government of the day.

When the Indian Constitution was written in the late 1940s, it accepted that civil and political freedoms alone, like protections against illegal detention and freedoms of expression and association, should be enforced through the courts. It listed these in a chapter on fundamental rights. It reserved another chapter called Directive Principles of State Policy¹³ for social and economic rights, which were morally but not legally binding.

What this meant in practical terms to me if I was an impoverished citizen was that if my brother died because he was tortured in a police station, public officials would be held criminally liable for his death. But if my daughter died from starvation because the government did not take steps to ensure that I could find work with decent wages, that food was locally available at affordable costs, that she was

12 See for instance: Gough, I. 2008. *European Welfare States: Explanations and Lessons for Developing Countries*. Paper presented at World Bank Conference on New Frontiers for Social Policy: Development in a Globalizing World, December 12–15, 2005 (available at <http://siteresources.worldbank.org/INTRANETSOCIALDEVELOPMENT/Resources/Gough.rev.pdf>).

13 Available at <http://mhrd.gov.in/directive-principles-of-state-policy>



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treated in a functioning local hospital for malnutrition, and so on, the public officers responsible could not be punished for crimes under existing law in most countries. This is what is meant in technical language when it is asserted that liberal democracies believe that civil and political rights should be enshrined in constitutions and enforced in courts of law, but social and economic rights are mainly morally binding; some are backed by specific statutes but without the overarching weight of the constitution. Socialist countries, on the other hand, uphold social and economic entitlements, but refuse to guarantee civil and political rights. A human being is forced to choose, as it were, between bread and freedom.

India's Supreme Court upheld the alternative side in this debate by declaring that socio-economic rights – and in particular the

right to food – could be both mandated and enforced by the courts. In a ground-breaking petition demanding a legally enforceable right to food, the court converted food and social protection programmes into legal rights, expanded and universalized them, and created an independent mechanism for their enforcement (Mander, 2012). The basic question the petitioners had raised in the court was whether the right to food should be considered part of the constitutional right to life, as a poor person who suffers from hunger because she does not earn enough to buy food, and who may also be denied cheap rations through the PDS (owing to incompetence, corruption and discrimination), has little hope of living a dignified life.

India's highest court vastly expanded the frontiers of fundamental rights. Article 21 guarantees that "No person shall be deprived of his life or personal liberty except according to procedure established by law".¹⁴ By holding that this right is not just a negative right, but also a positive right to all that is required to enable a life with dignity, the Supreme Court recognized several socio-economic rights (including the right to food, right to housing, and right to work) as enforceable rights. Because life is biologically impossible without regular nutrition, the right to food was recognized by implication as a core fundamental right.

14 Available at <http://lawmin.nic.in/coi/coiason29july08.pdf> (p. 10).

This also conformed to several international agreements, to which India is party, which recognize and define the right to food. The UN's ICESCR (Article 11, General Comment 12), for example, defines the right in terms of the state's duty to respect, protect, and fulfil (facilitate and provide) the individual's physical and economic right to food.¹⁵ But much progress in the right to food in India was made possible by human rights principles located in the country's own Constitution, and also by the Supreme Court's interpretation of the right to food as essential in the context of Article 21's right to life.

Debates outside Parliament continued to contest the idea of a law which legally mandated public spending for food provisioning, on grounds discussed in the last chapter. There was also fear that the state machinery lacked the capacity to deliver these entitlements, and therefore the law would remain a dead letter.

It was argued in defence that even though the state may lack capacities to deliver all entitlements initially, the law would create pressures for it to perform, as was observed with other rights-based laws such as the right to information, education and work. From the early drafts, its provisions were trimmed at various stages of the consideration and passage of the law. But at no point was the *idea* of the law officially contested by any political party. Therefore, in terms of *declared* policy at least, India's political consensus seems to support a law to ensure food security.

15 Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

CHAPTER 2: CHOOSING BETWEEN BREAD AND FREEDOM

Despite the **global consensus** on the equal intrinsic worth and dignity of every human being, the idea of embedding in constitutions and in law the state duty to provision food and other socio-economic rights has been highly debated in the past. Liberal democracies have tended to focus on civil and political rights, while socialist countries have focused on social and economic entitlements.

In the Indian Constitution (1950), only civil and political rights were recognized as enforceable fundamental rights, while socio-economic rights were included as moral rather than legal claims on the state.

India's Supreme Court: In the context of **Art. 21's right to life** ("no person shall be deprived of his life or personal liberty except according to procedure established by law"), the right to food was recognized as a core fundamental right, because life without dignity is impossible without food and nutrition.

1. Food and social protection programmes were converted into legal rights, broadened, and universalized.
2. An independent mechanism for the enforcement of these rights was created.

ARGUMENTS IN FAVOUR

- ◎ Socio-economic rights – including the right to food – should be both mandated and enforced by courts, because state failures constitute violations of the fundamental right to life
- ◎ The law would create pressure for it to invest and perform

ARGUMENTS AGAINST

- ◎ The law should not encroach on the jurisdiction of the executive when deciding tax and budget policies
- ◎ Limited state capacity to deliver these entitlements

Today, India's political consensus seems to support a law to ensure food security.



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CHAPTER 3

GOING BEYOND THE RIGHT TO FOOD

Should the food security law be restricted to state food provisioning, or incorporate all dimensions of food and nutrition security?

Another question that arises is whether a law assuring food security should be restricted to the duties of the state to provision food (in either cash or kind) as social protection, or should also cover duties to protect a household's capacities to grow or buy sufficient food. An additional question relates to the fact that nutrition security involves more than consuming adequate food. It requires also the absorption of this food, which in turn requires *inter alia* clean water, sanitation, and health care. Should a law on food security then also contain guarantees for these necessary conditions for nutrition security? India chose to restrict its food security law to only state duties to provision food, and left out concerns such as farmers' rights, livelihoods, water, and sanitation (although it listed some of these in an annexure that is not legally binding).¹⁶

16 Government of India. 2013. *The National Food Security Act, 2013*, p. 17 (available at <http://indiacode.nic.in/acts-in-pdf/202013.pdf>).

Receiving food transfers from the state is only one of the ways a household's food rights can be secured. Other ways, as already observed, include growing one's own food or buying food. Therefore the question arose whether the food law should also include duties to enhance capacities of households to grow and buy food. There is a strong body of civic opinion in India that a food security law is incomplete if it does not contain guarantees for farmers to sustainably grow food. Since the 1991 economic reforms, farmers have experienced a decline in farm income, consumption, employment, and credit availability.¹⁷ Farmers suffer from displacement, landlessness, chronic hunger, and unemployment or declining wages in comparison with other sectors of the economy; most of India's 190 million hungry people¹⁸ live in rural areas and depend on some form of agricultural work to survive. Additionally, farmer suicides and the below subsistence food expenditures of farm households illustrate the depth of the crisis in agriculture.¹⁹

Therefore it is argued (especially by the Right to Food Campaign and the Left parties) that legislating food provisioning without protecting sustainable food production is like wiping the floor while leaving the tap running. For food security, farmers require equitable access to land, water, and affordable inputs. They also require land reforms; a minimum support price guarantee; income protection; access to cheap credit, crop insurance and technical assistance; increased productivity of small farms and dryland farms; efforts to prevent the diversion of land and water from food production; enhanced public investments in agriculture, research and development; extension; micro- and minor irrigation; and rural power supply. Many commentators also regard protections for food sovereignty to be crucial, such as farmers' control over inputs like seeds, as well as promoting decentralized food production, procurement and distribution systems (Shiva, 2004).

There are of course differing views about critical aspects of land reforms, farm technologies or food sovereignty. But in the context of the food security law, the principal disagreements are not about whether such measures are critical to ensure food security; few would disagree that sustainable food systems need to be revived and developed, and that the crisis in agriculture needs to be addressed. Rather, the debates are about whether these measures should be part of a single omnibus food security law. Those who believe that the law should not contain these measures usually believe that the measures are still of critical importance for long-term food security. Their disagreement is more practical: as there is already a law that incorporates many entitlements, adding several more would make it very difficult

¹⁷ Pal and Ghosh (2007) show through NSSO data that "per capita food-grain consumption declined from 476 grams per day in 1990 to 418 grams per day in 2001, while aggregate calorific consumption per capita declined from just over 2 200 calories per day in 1987–1988 to around 2 150 in 1999–2000."

¹⁸ Updated estimations can be found at the website of *The State of Food Security in the World* (available at <http://www.fao.org/hunger/en>).

¹⁹ The NSSO (59th Round) report indicated that the average monthly per capita consumption expenditure of farm households was Rs 503 in 2003. See: Bello, W. 2007. Why Small Farmers Deserve Protection from Free Trade, *Global Asia*, April 2007. Bello discusses how WTO trade liberalization, characterized by the removal of tariffs and quantitative restrictions in India, has resulted in what Utsa Patnaik calls "a collapse of rural livelihoods and incomes." According to reports of the National Crime Records Bureau, the total number of farmer suicides in India crossed 270 thousand in the period 1995–2011. Also see: Sainath (2012).

to implement, and put it in danger of collapsing under its own weight. In response, those demanding inclusion of legal guarantees for farmers and agriculture argue that at least the law then should not be named a law for food *security*, but instead for food *entitlements*.

There are few who demand inclusion of measures related to the second mode of household food security, namely defending the capacity to *buy* food. This is because it is better acknowledged that this requires above all employment guarantees and labour protections, which are and must remain the subject of distinct laws.

The other major debate about extending the scope of the food security law beyond state food provisioning relates to measures which are critical to ensuring not just food but also nutrition security. This derives from evidence that causes of malnutrition go beyond the mere lack of access to sufficient food. Even if a person eats enough, she may still be malnourished if the food she consumes is not nutritious, if she is unable to absorb the food she eats because she suffers repeated infections (e.g. from fouled water and poor sanitation), or if she lacks access to health care services to treat these infections.

Regarding nutritious food, it is argued that the PDS supplies only rice and wheat, which provide calories but not many other kinds of nutrition. To remedy this, one proposal was to include millets, which are much richer in nutrients than in the PDS guarantees; this has been done in NFSA, with millet prices set lowest at a token one rupee per kg as an incentive. The other proposal was to include protein-rich pulses in the PDS guarantees of the law, but this was not accepted because of practical considerations of budgetary implications.

On the question of including non-food measures for nutrition security in the law, proponents argue primarily that the law should also contain guarantees for clean water supply, public sanitation, and health care. Once again, the disagreements are more practical than in principle. One is the worry of burdening one law with too many diverse and distinct (even if complementary) rights. Just as germane are concerns about how a law can best guarantee the food security of infants and young children, as research confirms that malnutrition sets in most irreversibly in the first 1 000 days from conception (UNICEF, 2009). For the first 6 months, a child's nutrition is best secured with exclusive breastfeeding (Government of India, 2004). An impoverished woman worker in the informal sector usually has no option but to return to work soon after childbirth, leaving her child in the care usually of an older sibling. The infant child then suffers a double nutritional whammy, of being deprived of breastmilk and of becoming vulnerable to repeated infections through insanitary oral intakes.

To support the nutrition of the newborn child, the mother requires maternity benefits that enable her to rest and stay at home, as well as crèches near her workplace that allow her to regularly breastfeed her child. Many experts and activists wished to write both of these into the food security law. The final law contains provisions of near-universal maternity benefits for the first time in the country (leaving out only women who work in government or private employment, which already provide these entitlements). The second requirement, for workplace crèches, was not incorporated. However, once again, its exclusion was based not on principle but on budgetary calculations.

The overall debate between opting for a holistic or pragmatic approach in defining the scope of the food law can draw on the experience of other countries. Brazil's law chose only to establish broad political priorities and institutional arrangements. The Republic of Nicaragua and the Republic of Ecuador are examples of country laws that not only try to address a lot of issues related to structural causes of food insecurity, poverty and marginalization, but that also try to fill institutional gaps; in addition, they contain detailed provisions on institutions, policies, and even implementation mechanisms. The result is a heavy law, satisfying in text, but difficult to implement. India has settled for a lighter law, restricted to direct food entitlements, but still with plenty of implementation challenges.

CHAPTER 3: GOING BEYOND THE RIGHT TO FOOD

An important debate arises on whether a food security law should be restricted to state food provisioning or incorporate all dimensions of food security and nutrition, including livelihoods, land, water, sanitation, and farmers' rights.

ARGUMENTS IN FAVOUR OF A BROADER LAW

- Deep crisis and decline in the agricultural sector, reflected by high rate of suicide and below-subsistence food expenditures
- Food security cannot be assured to farmers without access to land, water, and affordable inputs
- Provision of nutritious and adequate food to address malnutrition, as well as clean water supply, public sanitation and health care, are also essential for the right to adequate nutrition

ARGUMENTS AGAINST

- Agricultural crisis, water, sanitation, health care and many other such measures need to be addressed, but these measures should not be part of a single food security law
- Adding many entitlements and sector policies to a food security law will make it very difficult to implement
- Concerns about budgetary implications and sustainability

Current Indian food security law is restricted to direct food entitlements, based on the duty of the state to provision food and social protection.



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CHAPTER 4

CASH VERSUS FOOD

Should states provision food or cash transfers, or a combination?

Even if it is accepted that the state should provision food to some or all of its people, there are still heated debates about whether it is more beneficial as food or as a cash transfer, and also (less hotly debated) whether food should be cooked or delivered as grain, or a combination of both. India has chosen against substituting food transfers with cash, but the language of the law leaves open some possibility to make this change in the future. It currently provides for grain supply through the PDS and cooked food for children, complemented by cash transfers in the form of maternity benefits for pregnant women.

The proponents of cash transfers mostly focus on just one segment of the NSFA, namely the PDS. Critics rarely suggest substitution of cash for other food transfers mandated by NSFA, namely school meals and young child and maternal feeding (the other major element of India's NFSA is near-universal maternity benefits, and these in any case are cash transfers). But they believe that the PDS is an inefficient mode of transfer of subsidies, one that is prone to enormous leakages. Indeed, studies confirm very high leakages into the black market, gross mis-targeting, and high waste in the costs of transferring subsidies in the form of food transfers (Gulati and Saini, 2015).

Cash transfers in lieu of the PDS would involve the transfer of money directly into bank accounts of Below Poverty Line (BPL) card holders; the amount of cash transferred would then be the difference between the market and subsidized price of the grain. Instead of going to their local ration shop to purchase subsidized grains, recipients would withdraw this money to buy the food of their choice from the market.

The arguments in favour of replacing food with cash include the conviction that providing subsidies in the form of cash directly to the poor would enable them to access goods currently denied them by a PDS beset by corruption. Further, it would enable people to buy the food of their choice from the open market and not be restricted to items sold in the PDS, which are often inferior in quality and very limited in range. People could also buy better-quality food, as the food in the open market is sold at market price and subject to competition (Basu, 2011).

Providing subsidies directly to the poor would both bypass brokers as well as reduce the waste and holding costs of storing grains in government silos. The amount of grain actually required for India's buffer stock needs (for price stabilization) could be held in better quality warehouses, eliminating waste and rotting. Cash transfers would help reduce the fiscal deficit by curbing the amount of expenditures earmarked for the PDS that are siphoned off through corruption, as well as avoiding the substantially higher costs of transferring food rather than cash.

Most opponents of cash transfer clarify that what they oppose is not the principle of transferring cash to people, but the *substitution* of food transfers with cash. After all, many forms of important social protection involve cash transfers, including maternity benefits and old age pensions.

They are unconvinced that cash transfers would bring about drastic reductions in leakages in welfare programmes, as there is nothing intrinsic to cash transfers which renders them less vulnerable to leakages: empirical irregularities are already found to be high in existing cash transfer programmes. There are also practical concerns that India's banking system will take a long time to be genuinely inclusive of people in remote rural regions. When the nearest bank or post office branch is distantly located from a village, each cash withdrawal entails additional cost and time requirements, and thus the process could turn out to be more burdensome than current modes of food transfers.

Proponents favour cash transfers because it enables people to use cash to buy whatever they want, and also to improve their nutrition by diversifying their diet. However, it is also possible for people to spend cash transfers on non-food items, which would decrease the amount of household money left for buying food. Research confirms that decisions relating to cash in households tend to be made by men, who may or may not spend the money on food. Decisions relating to food are culturally made by women in almost all cultures, and these are more likely to end up as food in the child's stomach.

Opponents of cash transfers further favour the PDS as it provides rations at a constant price, irrespective of the fluctuations in market prices. This therefore provides a shield against inflation, a benefit that cash transfers cannot match.



Finally, the PDS requires the government to procure food from farmers. It is feared that replacing this with cash transfers would dismantle this obligation of government, with adverse impact on agriculture and farmer protection. Indeed, the guarantee of minimum support price (MSP) purchase by the government for wheat and rice is the most important instrument for protection of farmers' income in India, and this would become unfeasible if the government could not offload a lot of this grain back through the PDS.

Coming now to the second debate of whether food should be transferred as grain or cooked food, there is wide consensus across governments and political parties for relying on a well-functioning PDS for household transfers of uncooked cereals. Faith in the PDS – when it works well – derives from several decades of experience with the food rationing system, which has remained the paramount instrument

for ensuring MSP support to farmers (mainly for cereals); for price stabilization, by moving grains from surplus areas to those with shortages; and for ensuring the provision of cheap grain to millions of households. Critics on the other hand argue that the purchase of food in surplus areas for transfer to those with shortages may also weaken supply response in those shortage areas (through lower demand and lower prices).

Experts estimate that average calorie requirements translate into 50 kg of cereals for a family of five per month: NFSA assures half this amount, assuming the household is able to grow or buy the rest. Critics suggest that high poverty levels dictate that the amount should be raised. They also feel that NFSA should guarantee not only *food* security, but also *nutrition* security. Therefore, instead of restricting PDS entitlements to rice and wheat, these should also include millets, pulses and oil. Millets are indeed included, but fiscal prudence prevents the inclusion of pulses and oil.

Critics focus on corruption and poor targeting of the PDS, which is confirmed even by official studies. But states in India like Tamil Nadu and Chhattisgarh demonstrate that given political will, the PDS can be reformed. These reforms include *inter alia* expansion in coverage, reduction in prices, doorstep delivery of grains to ration shops to enhance transparency, and end-to-end computerisation.

However, there is no way of ensuring that the food rations bought by a family under the PDS are distributed equitably within a household. Governments, courts and experts agree therefore that cooked food transfers are effective for those who have special nutritional requirements – children, adolescent girls, pregnant women, lactating mothers, and those who are unable to cook, such as the homeless and destitute.

The debates connected with cooked food transfers have dealt mainly with micronutrient fortification and commercial supply of complementary food to children below 3 years. Some policy-makers and experts suggest that it is only high-end factories which can prepare meals with the correct mix of micronutrients. Others suggest that local women's groups can best produce both complementary food and hot-cooked meals for older children, with greater local transparency and accountability than factory-produced, ready-to-eat meals. They are convinced that nutritionally the best meals for children are hot, fresh, culturally appropriate and balanced meals, rather than any commercially prepared packaged food. This has also been the view of India's Supreme Court, but it has been strongly contested by commercial interests and some experts.

CHAPTER 4: CASH VERSUS FOOD

Two important debates relate to 1) whether states should substitute food transfers with cash, and 2) whether food should be provided cooked or as grain.

The Indian system currently provides for grain supply through the Public Distribution System (PDS) as well as cooked food for children.

1) CASH TRANSFER

ARGUMENTS IN FAVOUR

- ◎ The PDS is an inefficient and expensive system, liable to high leakages; cash transfers are less prone to corruption and cheaper to deliver efficiently
- ◎ Cash transfers allow for dietary diversity and better quality food for poor people
- ◎ Cash gives households greater choice

ARGUMENTS AGAINST

- ◎ Cash transfers also can be affected by leakages and irregularities, and could be difficult to implement in remote rural areas
- ◎ The PDS provides rations at a constant price, protected against inflation
- ◎ Cash would not necessarily improve diets as cash may be used for non-food priorities in households
- ◎ Opposition is not to cash transfers, but to replacing food with cash

2) UNCOOKED FOOD

ARGUMENTS IN FAVOUR

- ◎ Provides support price to farmers and contributes to price stabilization
- ◎ Packaged food allows for micronutrient fortification

ARGUMENTS AGAINST

- ◎ Transfer of food from surplus areas to those with shortages may weaken supply response in these areas
- ◎ Nutritious, fresh, and balanced home-prepared meals are much better nutritionally than packaged food
- ◎ Cooked food schemes are more effective for groups with special nutrition requirements



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CHAPTER 5

DOES UNIVERSAL MEAN "UNIFORM"?

If policy-makers agree that states should provision food as social protection (with or without the backing of a law, and in kind or in cash), the next question which logically arises is: Who in the population resident in the country should fittingly receive this food? In particular, should food provisioning be restricted only to citizens or provided to all residents, regardless of citizenship, and should these rights be universal or targeted at officially identified vulnerable populations? India's Parliament finally voted to secure food to all people and not just citizens, for a non-universal but greatly expanded PDS, covering nationally 75 percent of rural and 50 percent of urban households. In the poorest states, because allocations are based on state poverty levels, this would result in near-universal PDS in their rural regions.

India has a large number of both legal and undocumented migrants, a majority of whom are economic refugees escaping poverty in their native country. No explicit legal framework exists to determine the rights of non-citizen residents to public services. Should socio-economic rights (which involve budgetary implications) be restricted to legal citizens?

The constitutional position in India on this is debatable. Some legal scholars suggest that fundamental rights under the Constitution extend to all residents, but other rights such as socio-economic rights apply only to citizens. They are right that in a strictly textual sense, the right to food is not explicitly listed as a fundamental right. But as we have seen earlier, the right to life has been interpreted by the Indian Supreme Court to include the right to food (and other rights essential for a life with dignity). If this is accepted, then the right to food also would extend to non-citizen residents because it is a fundamental right. The ICESCR also speaks of ensuring the right to food of "everyone" within or under jurisdiction of the state, and explicitly bars discrimination on the basis of nationality, among other grounds.²⁰

If we scan the debates in official bodies and Parliament, we find that no serious case has been officially made to restrict this right only to citizens. The language of the law refers to "people", "children", and "women", without the caveat anywhere of the requirement of citizenship, thereby implicitly accepting its application also to non-citizens and unregistered migrants.

But during implementation, problems of exclusion of people of contested citizenship remain, especially for some immigrants, homeless populations, forest dwellers, and those residing in remote areas. These vulnerable populations often lack any kind of citizen documentation, which is frequently sought by officials even if the law does not require them to do so.

There are also practical arguments, on the basis of large and uncertain budgetary burdens, against including non-citizens. These arguments apply more generally to the second debate in this chapter on the question of whether these rights should be applied universally or targeted. Experts argue that budgets and grain are both finite, and if they are provided to all, to the wealthy and poor alike, it will result in high wastage of both public money and food. Thus in the end the poor will get a much smaller share of public resources and subsidized food (Subbarao, Braithwaite and Jalan, 1995; Parikh, 1994). Countries in North Africa which have experimented with universal approaches have found that this vastly increases the cost of the programmes.

A powerful argument against universalization is made by critics on grounds of equity. Universal social security programmes have been criticized for lacking an element of affirmative action. Vulnerability and denials of food vary hugely between households, and many have asked if "universal" also means "uniform" entitlements. They question the justification of giving a rich landlord or wealthy businessperson subsidized grains in the same quantity and price as a destitute landless widow or homeless disabled beggar. But universal rights need not be uniform rights, and the law may recognize that whereas everyone has a right, the needs as well as the barriers to that right may vary for different segments of the population, and therefore it may well entail different programmes for diverse groups within the framework of a universal right.

20 Available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>

Supporters of a universal PDS also argue that the state has a moral duty to provide basic public goods to all citizens, or residents within a jurisdiction; therefore, considerations of fiscal discipline and efficiency are untenable in this framework. Building on the idea that each person has a fundamental human right to life with dignity, it is argued that a constitutional democracy must guarantee a set of basic rights – or what are sometimes described as basic public goods – to all people under the constitutional and statutory scaffolding of universal socio-economic human rights, including the rights to food, health care, education, and social security. Some leading economists estimate that a full contingent of these universal rights would cost an additional 10 percent of GDP. India's tax to GDP ratio remains low at about 10 percent;²¹ even if it were enhanced to 20 percent, it would be still less than that of the United States of America.

This ethical argument for universal entitlements is bolstered by the dismal empirical experience of targeting, which has been found to exclude delivery to those most in need. Official studies themselves admit that if you are poor, there is often a greater chance that you will not be included in official BPL lists (Hirway, 2003; Sen, 1995; Krishna, 2007). The criteria for poverty identification are often defective and opaque, leaving great scope for official discretion at the lowest levels and for high rent-seeking. The poorest households also are unable to understand and negotiate the official processes for identification, all of which lead to grave exclusion errors and skewed targeting away from the poor. Due to the various benefits of the poverty reduction programmes, many non-poor try to get selected as officially poor by manipulation or deceit (e.g. a wealthy farmer who manipulates land records to prove that his adult sons are landless).

Other practical arguments are that a universal PDS has been found to perform better than a targeted PDS. States with a universal PDS show the best performance, followed by states with near universalization, in turn followed by states with an expanded PDS. The performances of the states with targeted PDS are the worst.

Further, targeting does not consider the dynamic nature of poverty. Instead, it assumes that a fixed pool of disadvantaged people exist at any given point in time, thereby leading to the false belief that disadvantaged people can be identified accurately and affordably (Krishna, 2007). This is a compelling argument against targeting, especially in the most vulnerable countries: those that are exposed to frequent shocks and have very limited capacities. Proponents of universal schemes also argue that "self-selection", where people from higher socio-economic strata choose not to avail themselves of food security schemes because of the lower quality of foodstuff available, would reduce actual offtake and expenditure on such schemes. But at the same time it can open the door to other diversions and leakages, like "ghost" beneficiaries and diversions to feed livestock.

21 Available at <http://indiabudget.nic.in/ub2014-15/frbm/frbm3.pdf>

It is important to note that the debate of targeting applied only in the context of the PDS. India went in finally not only for a greatly expanded but non-universal system, but also a system that had two grades, with greater entitlements for those considered most vulnerable. It therefore tried to incorporate affirmative action for the poorest within a greatly expanded but non-universal set of entitlements. But it left to the states the crucial questions of how to identify those to be covered and excluded by both the expanded and “poorest of the poor” entitlements.

It is significant that there were no serious debates on the targeting of other NFSA entitlements like preschool and pregnant mother feeding, school meals, and maternity benefits. They are virtually universal for public schools and child centres, for all those who seek it. In other countries, universal programmes have worked in practice as regressive targeting, with remote rural areas being left out in practice. In India as well, there is in practice low coverage of these universal programmes in rural settlements of disadvantaged-caste and tribal communities, and also urban slums. In addition, other problems of de facto targeting remain, such as out-of-school children who cannot access school meals. This will be discussed in a later chapter.

CHAPTER 5: DOES UNIVERSAL MEAN “UNIFORM”?

India’s food security law provides food to all residents, regardless of citizenship. The PDS is not universal but has been greatly expanded, covering the majority of rural households. An important question arises on whether socio-economic rights, including the right to food, should be provided to all residents and not only to targeted categories of citizens.

ARGUMENTS IN FAVOUR

- ◎ As interpreted by the Indian Supreme Court, the right to food is a part of the fundamental right to life which applies to all people, including non-citizen residents
- ◎ Universal does not mean uniform, and the law may entail different programmes for different groups
- ◎ Current criteria for poverty identification and targeting are defective

ARGUMENTS AGAINST

- ◎ Budget and grain resources are limited; therefore the focus should be only on those most in need
- ◎ States have duties to legal citizens and not to undocumented immigrants
- ◎ Universal application could exclude or weaken the idea of affirmative action for those most vulnerable to hunger and malnutrition
- ◎ No justification for feeding the well-fed
- ◎ Needs may vary for different population groups



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CHAPTER 6

PROTECTING CHILDREN

What forms of state provisioning best secure the food and nutrition security of children?

This chapter briefly covers some major debates about which food provisioning duties should be specifically provided for children’s food and nutrition in a right to food law. India’s food security law contains universal feeding entitlements for preschool and schoolchildren, but it effectively excludes strong guarantees for infants, children lacking families who can take care of them, out-of-school children, and malnourished children.

Children are especially vulnerable in accessing their right to food, being physiologically and psychologically dependent on adult protection and care, for food as well as a range of other survival needs and rights. Children also have special food requirements. Inadequate consumption of nutritious food, especially in the first 1 000 days from conception (including poor nutrition of the mother while the child is still in the womb), can have devastating life-long consequences on health and future development²²

22 Fifteen percent of children are estimated to be stunted at birth and 58 percent at 23 months. See: Cronin, A.A., Rah, J.H., Ngure, F.M., Odhiambo, F., Ahmed, S., Aguayo, V. and Coates, S.J. 2014. *Water, Sanitation, Hygiene (WASH) and the Nutritional Status of Children in India: Understanding the Linkages and Structuring the Response*. A UNICEF and Ministry →

(UNICEF, 2009). The role of the state in ensuring adequate child nutrition is critical, especially for children whose families are challenged or unable to secure their full nutritional needs.

Because the damage done by malnutrition at this age is very difficult to correct later, the first question to arise relates to what, if anything, the law should do to protect and promote the food rights of children during the first 1 000 days of their lives. Up until 6 months, exclusive breastfeeding provides total food security to the baby,²³ and is also a bacteriologically sterile source of nourishment. NFSA mandates the state to promote exclusive breastfeeding until the age of 6 months. This reflects a consensus in principle, but practical debates remain. One agreed-upon duty is nutritional counselling to educate mothers about the importance of breastfeeding. But others point out that many impoverished mothers have to labour (even right before and after pregnancy) at work sites without crèches or child care services, which is why they cannot breastfeed their children. Infants are often left in the care of older siblings, who being young themselves cannot provide sanitary food, water or conditions. Therefore, crèche or child care services along with maternity entitlements are key to addressing malnutrition early in an infant's life, but the food law does not contain these obligations.

Breastfeeding is important after 6 months up until 2 to 3 years, but this age requires complementary feeding as well.²⁴ NFSA provides for "meals" for children after 6 months up until 6 years in feeding centres, and until 14 years in schools. There is debate over whether or not to use packaged food, given its merits of micronutrient fortification.

Many senior Indian state ministers and officials have advocated ready-to-eat packaged food in place of hot-cooked meals for children below 6 years,²⁵ and in some cases even in schools. Their argument is that even a mild micronutrient deficiency can adversely affect a child's development, immune system, and growth; therefore packaged food with specified micronutrient fortification is the best defence against malnutrition. They argue further that the neediest segment of children – in the critical 6–36 month age group – may not be able to come to the feeding centre daily to eat food. Cooking in poor hygienic conditions and keeping leftover food may also result in bacterial contamination; packaged food provides a worthy alternative.

The alternative view is that locally, hot-cooked, culturally appropriate food is a far more robust guarantee of child nutrition than micronutrient-fortified ready-to-eat food. Many charge that the pressure to introduce

← of Women and Child Welfare Rapid Survey of Children showed that under-five stunting was at 39 percent in 2013–2014 (compared with 48 percent in the NHFS-3, in 2005–2006) and under-five wasting was at 15 percent (compared with 20 percent according to NHFS-3 data).

23 WHO breastfeeding information (available at <http://www.who.int/topics/breastfeeding/en>).

24 Ibid.

25 See for instance: Sethi, N. 2013. Child Development Scheme may become Monopoly of contractors, packaged food manufacturers. *The Hindu*, August 20, 2013 (available at <http://www.thehindu.com/todays-paper/tp-national/child-development-scheme-may-become-monopoly-of-contractors-packaged-food-manufacturers/article5040459.ece>). See also: Raman, A. 2007. Hard to swallow. *Outlook India*, December 10, 2007.



packaged food is influenced by commercial and not children's interests. Economist and Nobel laureate Amartya Sen wrote to the Prime Minister to dissuade governments from serving packaged foods to children, stressing that private contractors may jeopardize children's health while pursuing their commercial interests (Menon, 2008). Commercially and centrally produced food is also seen to hinder self-reliance in food security, creating unnecessary dependence on products upon which families and communities have little control. Critics suggest instead the usage of self-help groups of women and mother committees to cook meals, which allow for local control and accountability.

NFSA takes an ambiguous position on this issue by only prescribing "meals" to children from 6 months to 14 years, and by defining a "meal" as "hot-cooked or pre-cooked and heated before its service meal or take-home-rations,

as may be prescribed by the central government". Once again, it is the Supreme Court which has been far more explicit in its support of hot-cooked meals rather than contractor-driven packaged food.²⁶

Another set of debates relate to the precise guarantees that food programmes and the law should contain for malnourished children. The state's view, reflected in NFSA, is to restrict the requirements in the law to providing an additional meal to these children. However, experts consider this to be entirely inadequate, and among the most serious shortcomings of the law. They say that NFSA does not define malnutrition, and therefore even the small guarantees (of an additional meal) it provides are nebulous. Defining malnutrition is admittedly a technically contested territory, and the law could have retained the definition in the NAC draft which defined it as a "condition that develops when the body, over a prolonged period of time, does not receive or absorb adequate and appropriate calories, proteins and other nutrients required for good health, growth and maintenance of the human body and mind".²⁷ Others argue that it may have been useful for the draft to define malnutrition as "stunting", "wasting" or "underweight" for children, and having a body mass index (BMI) of less than 18.5 for adults.

²⁶ Supreme Court Order of November 28, 2001 in WP (C) No. 196 of 2001 (available at <http://www.righttofoodindia.org/orders/nov28.html>).

²⁷ NAC (National Advisory Council). 2011. *National Food Security Bill, 2011*, p. 5 (available at http://www.indiaenvironmentportal.org.in/files/nfsb_final.pdf).

Even if spot-fed double rations as NFSA provides, undernourished children (even those in the 3–6 year age group) cannot consume all the food at one sitting in the centre.

Critics also argue that children may fall prey to malnutrition despite being able to access adequate quantities of nutritious food. This could occur when they are unable to absorb the nutrients in their food because of infectious diseases such as diarrhoea and other maladies, thereby triggering a vicious cycle, with unsanitary living conditions and unclean water leading to repeated infections that result in malnutrition. Inadequate access to health care prolongs the duration and severity of the infections, which exacerbates further the inability of the body to absorb nutrients. An additional meal is meaningless in addressing malnutrition if these other services are not guaranteed, at least for children. The law also does not provide for treating malnutrition, whether in communities or in institutions.

Finally, there is debate on what special protections there should be for children who are most excluded, such as children without adult protection, street and working children, and the children of migrants and homeless parents. There are vastly varying statistics on their numbers – it is a very difficult population to count – but indisputably they run into several millions. These children either don't have families or have families who are unable to provide for their food needs, either because the children are in exploitative and often unsafe work, or because they accompany impoverished parents into distress migration. These children are often regarded as the subject of specific child protection laws and schemes, and not of a food security law. But critics point out that the law cannot be silent and indifferent to the special food needs and vulnerabilities of these children and in fact debar them from accessing feeding programmes in schools. These excluded children require much stronger guarantees, such as being in protected and open residential schools. Incidentally, even the other major rights-based law for children, that guaranteeing free and compulsory education, similarly contains no guarantees for these children, who critics believe should be the first concern of any rights-based law.

CHAPTER 6: PROTECTING CHILDREN

An important question arises on what forms of state provisioning should be provided for children in a food security law, including the kind of entitlements and guarantees for infants, the most vulnerable, and malnourished children.

For infants, the Indian National Food Security Act (NFSA) promotes exclusive breastfeeding until the age of 6 months.

ARGUMENTS IN FAVOUR

- ◎ Provides total food security and a sterile source of nourishment

ARGUMENTS AGAINST

- ◎ Not effective for the most vulnerable, owing to lack of child care facilities and maternity entitlements

For children after 6 months, NFSA provides for "meals". Packaged food is still being debated; the Supreme Court favours hot-cooked food.

ARGUMENTS IN FAVOUR

- ◎ Packaged food with specific micronutrient fortification can address malnutrition

ARGUMENTS AGAINST

- ◎ Hot-cooked, culturally appropriate food is healthier and not influenced by commercial interests

For malnourished children, NFSA provides for an additional meal. This provision is however considered weak, owing to lack of a definition for the concept of malnutrition, as well as the limited impact of an additional meal.



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CHAPTER 7

GENDER-JUST FOOD SECURITY LAWS

What forms of state provisioning best secure food entitlements for women and girls?

After children, women are the largest population group which suffers from food deprivation and malnutrition, including that which is due to intra-family inequities. Therefore, the next set of important debates relate to what measures food programmes and the law should contain to ensure gender-just food entitlements. NFSA designates women as heads of households for PDS ration cards, and provides for universal maternity benefits for expecting and nursing mothers.

Women play a crucial role in guaranteeing their families' nutrition security. Those who are able to access livelihood opportunities are more likely to spend a greater part of their income on the family's nutrition than men.²⁸ However, because of the various forms of discrimination endured by women

28 Quisumbing *et al.* point to several studies from the 1980s and later that confirm differences in spending patterns of men and women. For instance, in the Republic of the Philippines, the share of female incomes has a significant positive effect on calorie availability for the household, among other things. In the Republic of Rwanda, no female-headed households had severely malnourished children and a less than proportional number had calorie-deficient children, although men's earnings were greater by about ten times. In Brazil, women's incomes were found to have four times the impact of men's incomes on child weight-for-height. See: Quisumbing, A., Brown, L., Feldstein, H., Haddad, L. and Pena, C. 1995. *Women: The key to food security*. Washington, DC, IFPRI, pp. 9–11. Analysts posit that higher rates of malnutrition in South Asia →

and girls, including those within the family – in owning land and other means of production and in accessing livelihood opportunities – a large proportion of them are highly vulnerable to food insecurity.²⁹ Women and girls also face barriers in accessing education, health care, clean drinking water and sanitation, all of which are essential for nutrition security. On the other hand, recent evidence points to no significant food and nutritional differences between boys and girls; but a higher proportion of women have mild, moderate or severe anaemia,³⁰ and tend to eat least and last.³¹

One important measure for gender justice contained in NFSA – supported across parties and groups without debate – is to designate the eldest adult woman in every household as the household head for the purpose of issuing ration cards; only in cases where a household does not have an adult female is the eldest adult male member of the household considered the household head. If such households have girls less than 18 years of age, they assume the status of household heads upon becoming adults.

Other measures in NFSA include take-home rations during pregnancy and up until 6 months after child birth for pregnant and lactating women, as well as 6 months' maternity entitlements. Pregnant and lactating women have enhanced nutritional requirements to facilitate the growth and development of the foetus and the infant, as well as for maternal metabolism and tissue development specific to reproduction. Therefore pregnant and lactating women are particularly vulnerable to malnutrition. Nutritional deficiencies among pregnant women are a leading cause of maternal and child mortality, and can also cause irreversible damage in the development of foetuses and infants (UNICEF, 1990).

There is however still debate on whether take-home rations provided in the law should actually be fed specifically to pregnant women, or just added to the family pot. Culturally the latter is much more likely to be the case. Some argue therefore that the provision should instead be a hot-cooked meal in the Integrated Child Development Scheme (ICDS) centre. There are practical doubts about the feasibility of pregnant women physically visiting the centre daily in the middle of chores at home or at the work site. But states like Chhattisgarh,³² where this has been adopted, demonstrate that many women do eat at

← compared with sub-Saharan Africa, despite higher income and economic growth, can be partly attributed to the lower status of women. See: Smith *et al.* 2003. *The importance of women's status and child nutrition in developing countries*. Washington, DC, IFPRI.

29 See for instance: Quisumbing *et al.*, 1995. Op. cit.

30 National Nutrition Monitoring Bureau (NNMB). 1975–2006. NNMB Reports. National Institute of Nutrition (cited in <http://www.wcd.nic.in/research/nti1947/7.11.1%20Anaemia%20deficiency.doc6.2.08%20pr.pdf>).

31 See for instance: Ramachandran, N. 2014. *Persisting undernutrition in India: Causes, consequences and possible solutions*. New Delhi, Springer, p. 52.

32 The *Fulwari* scheme is implemented through *Anganwadis* existing under the ICDS, where children aged between 6 months and 3 years get three hot-cooked meals a day, and pregnant and lactating women get one meal a day, with the stipulation that oil and green vegetables must form a part of each meal and eggs are to be provided to each child at least twice a week. Each *Fulwari* centre is managed by women from the community. Initiated in one district of Chhattisgarh in 2012, by 2014 over 2 700 such centres had been opened in the state. The expansion was based on a study conducted by a medical college in Chhattisgarh and UNICEF, which found that malnutrition declined from 45 to 30 percent in enrolled children (available at <http://dprcg.gov.in/1534e-25-08-14>).

the centre, and at least to the extent they visit the centre the food augments their nutrition, and is not just an addition to the household food pot.

Along with ration cards issued in the name of women, the most progressive feature of NFSA from a gender perspective is the near-universal provision of maternity benefits for pregnant and nursing mothers. For the first time, this law provides women in the unorganized sector, including those doing unpaid work at home, maternity benefits of Rs 1 000 a month for 6 months. This will hopefully give women a greater chance to rest at home, enjoy greater quantities of nutritious food, and breastfeed their children.

The actual provisions in the food law still raise many questions. First, there is the amount of the maternity benefit. Critics argue that, as maternity entitlements are provided as wage compensation to enable women to quit work and stay at home, they should be equivalent to the minimum wage and indexed for inflation. Even if it is half the regular monthly minimum wage for unskilled workers³³ of around Rs 9 000, it should be at least around Rs 4 500 a month.³⁴ Furthermore, as women require adequate rest and nutrition for a healthy delivery, some suggest that maternity benefits should be provided for 9 months, starting from 3 months before the expected date of delivery (Dand and Agarwal, 2014).

Second, there are worries that, given the low decision-making power of women within families, this cash amount will only augment the family income, rather than change the food and nutrition situation of women in any way. Micro-level studies indicate that indeed at least some of this money has led to better food and rest for women,³⁵ but this undoubtedly needs further study.

The debates about conditionality are discussed in a later chapter. Finally, in a highly unequal society there are practical worries about the ways that all pregnant women will actually be reached with maternity benefits, especially those on the margins, such as Dalit and tribal women; women in remote forest habitations, urban slums and streets; those in stigmatized occupations like sex work; and nomads and migrants.

Critics also point out the absence of any food entitlements for women who are not in the reproductive cycle, such as single and older women. In predominantly patriarchal societies such as that of India, women are viewed as reproducers, caregivers, sexual outlets, and facilitators of a family's prosperity. Hence, single women are characterized by the absence of male "protection" in their lives, which in most instances is actually an absence of male "control". This erodes the social status of women who

33 Delhi Government's stipulated monthly minimum wage for unskilled workers is Rs 8 632. Accessed from http://delhi.gov.in/wps/wcm/connect/doit_labour/Labour/Home/Minimum+Wages

34 Available at http://www.delhi.gov.in/wps/wcm/connect/doit_labour/Labour/Home/Minimum+Wages

35 See for instance: SEWA Bharat and UNICEF. 2014. *A little more, how much it is – Piloting basic income transfers in Madhya Pradesh, India* (available at http://unicef.in/Uploads/Publications/Resources/pub_doc83.pdf); and SEWA Bharat. 2012. *An experimental pilot cash transfer study in Delhi- Executive Summary* (available at <http://www.undp.org/content/dam/india/docs/poverty/Final-study-results-SEWA-PDS.pdf>).

are widows, divorced, separated, abandoned, or never married (Singh, 2013). Although widows in India have a legal right to their deceased husband's property,³⁶ few of them are able to exercise this right; even in cases where widows establish their rights, they may be unable to actually control the property. Women who leave their husband's families or are abandoned by their husbands are sometimes turned away even by their parents, leaving them with nowhere to go. Suggestions that the law should automatically include single women-headed households for coverage under the PDS, and pensions for single and aged women, were not accepted.

Critics also worry that NFSA is completely silent on issues of livelihoods for women. They feel that the law should have looked at the issue of land rights for women and provided women legal entitlements to other factors of food production. Others again argue that this is beyond the scope of a law for food provisioning. However, given the importance of equitable access to land, water and other inputs required for agriculture; the feminization of poverty; and the agrarian crisis in the country that burdens women especially, a separate legislation guaranteeing these entitlements should be considered. Again, the practical arguments of not making the law too heavy to implement are cited as reasons for excluding this from a food law; the importance of women's livelihoods to enhance household food security is largely undisputed.

Related to the issue of livelihoods of impoverished women, another point raised by some critics is that NFSA does not mandate a supply of cooked food (whether in child feeding centres or schools) by self-help groups of women, as was done in the Supreme Court. Some suggest that methods for preparing cooked food should be left to the executive, and not mandated by law. But others argue that if the law were to make such a provision, it would secure the livelihoods of hundreds of thousands of poor women. They are convinced that this option could have additional positive spinoff impacts, such as empowering women; strengthening their capacities in terms of nutrition knowledge, hygiene and food safety good practices; and improving the nutritional status of other members of the household. States like Andhra Pradesh, Odisha, and Tamil Nadu have already demonstrated these benefits.³⁷

36 Hindu Succession Act, 1956. Act No. 30 of 1956. 17 June 1956 (available at http://chanda.nic.in/htmldocs/elibrary/new/e_percent20Library/hindu_percent20succession_percent20act-1956.pdf); Hindu Succession (Amendment) Act, 2005. Act No. 39 of 2005. 5 September 2005 (available at http://www.hrln.org/admin/issue/subpdf/HSA_Amendment_2005.pdf).

37 Community-assisted and supervised day care centres are run in Andhra Pradesh; cooks are members of local Self-Help Groups (SHGs) and meals are supplied at Rs 30 per day per person. Village Organizations (VO) maintain a vegetable garden (which subsidizes running costs for the centre) and also manage the centre. Nutrition and Health Education (NHED) sessions are held for pregnant women and those with children under two years. The VO and centre are responsible for mobilizing labour collectives at the centre and ensuring that they get the compulsory 100 days of work under the NREGS, which helps them pay a part of the cost of the meal. The convergence of these various systems has led to a decrease in malnutrition and low birth weight. In Tamil Nadu, municipal corporations run canteens selling highly subsidized food (for prices as low as Rs 3–5) with the help of SHGs across cities in the state. SHGs in Odisha monitor and manage the MDM in schools. A survey of schools in a particular district of the state illustrated that as representatives of the SHG purchase provisions for meals, hire and pay cooks/helpers, cook meals themselves when the regular cook is absent, and also monitor the quality of rations, the MDM continues uninterrupted.

CHAPTER 7: GENDER-JUST FOOD SECURITY LAWS

Owing to inequities – including various intra-family forms of discrimination – a large proportion of women and girls are highly vulnerable to food insecurity.

SPECIFIC PROVISIONS FOR GENDER JUSTICE

- ◎ The eldest adult woman in every household is designated as the household head for the purpose of issuing ration cards
- ◎ Entitlement to take-home rations during pregnancy and up until 6 months after childbirth, plus 6 months' maternity entitlements
- ◎ Near-universal provision for maternity benefits for pregnant and nursing mothers, including those doing unpaid work at home

GAPS AND CRITIQUES

- ◎ Due to low decision-making power of women within families, transfers will just augment the family income, rather than change the situation of women
- ◎ Longer duration and higher payments would be required to effectively protect women's right to food during the maternity period
- ◎ Absence of any food entitlements for women who are not in the reproductive cycle shows an instrumental approach that only recognizes women's reproductive role



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CHAPTER 8

THOSE AT THE EDGE

What forms of state provisioning best secure the rights of vulnerable groups?

This chapter looks at debates on how food programmes and the law should best address the food denials of those groups who are most food insecure and vulnerable, beyond provisions for broad categories of women and children. Who are the populations most vulnerable to hunger, and what should be the special strategies of the state to prioritize the right to food of the most marginalized communities? Earlier drafts³⁸ of India’s food law contained many detailed provisions for this, but the final law excluded all these provisions.

Some believe that the entitlements already contained in NFSR are sufficient, if properly implemented, to secure the right to food of the most food vulnerable segments of the population (Goel and Kumar, 2013). Others argue (as we have already seen) that only if the PDS is made universal will the food entitlements created by the law actually reach those who need it most (Ramakumar, 2010), as any targeting tends to

³⁸ For a summary of provisions in previous drafts, see: http://www.righttofoodindia.org/data/right_to_food_act_data_July_2011_comparison_nac_govt_draft_nfsr.pdf

exclude the most powerless who lack the skills and social capital to negotiate official procedures to get listed for these programmes.³⁹

Still others argue that even universal programmes could bypass the most vulnerable because of the extremely high social and economic barriers to access which they must confront (Dreze, 2010). Therefore, any food guarantee law must contain special provisioning entitlements – often distinct from those which are adequate for other less vulnerable populations – which take into account the special social and economic burdens and barriers to food and nutrition access that they encounter.

FAO asserts that "all individuals have an equal right to food, but people's differing circumstances mean that different actions are required of the government in order for that right to be realized by *all* people ... A rights-based approach demands that those who are most vulnerable, for whatever reason, be sensitively and justly identified and empowered to claim their rights. It equally demands that any discriminatory processes in governance and power structures be detected and corrected" (FAO, 2006).

There are debates about the nature of special measures that each vulnerable group requires. It is not possible to list exhaustively in this brief review all of these groups, nor the suggested range of special entitlements for each. But a few illustrations will suffice.

Prominent among other vulnerable groups are the aged.⁴⁰ Owing to their diminished capacity to work, the aged earn less than younger generations. This not only threatens to decrease their access to food, but also makes them more vulnerable to poverty, homelessness, untreated illness, and violent abuse,⁴¹ which in turn further undermine their right to food.⁴² People with disabilities⁴³ also face huge educational, social and physical barriers, and hence are at a significant disadvantage with regard to employment and therefore assured and dignified access to food. When disabled people are also members of other highly disadvantaged social categories like tribal or Dalit people, their challenges to secure work and

39 See for instance: Hirway, I. 2003. Identification of BPL Households for Poverty Alleviation Programmes. *Economic and Political Weekly*, Vol. 38 No. 45 – Nov. 8.

40 For a detailed report on the socio-economic characteristics of the elderly population in India, see: http://mospi.nic.in/mospi_new/upload/elderly_in_india.pdf

41 A survey conducted by an NGO on the condition of elderly individuals in India found that over a third had experienced some form of abuse. Verbal and emotional abuse was reported by 60–70 percent of respondents in some cities, and physical abuse by about a fifth of respondents in several cities (<http://www.helpageindia.org/pdf/surveysreports/elderabuseindia2010.pdf>).

42 Studies on the effect of pensions report that while they help meet costs for food and other basic needs, they are inadequate for health and family needs (http://www.righttofoodindia.org/data/pensions/Old_Age_Pension_Scheme_in_Jharkhand_and_Chhattisgarh.pdf). In this context, the direct provisioning of food would have a significant positive impact. In September 2014, the government of Uttarakhand announced a food security scheme for elderly women which proposed to provision free food grains to all women over 60 in the state. At the time, it was estimated that the scheme would target about 500 000 beneficiaries. It went on to instate a midday meal scheme for the group, to be implemented through the Anganwadi system.

43 For a discussion on the prevalence and particulars of disability in India, see: http://mospi.nic.in/Mospi_New/upload/disability_india_statistical_data_11mar2011/Chapter%204-Dimension_Disability.pdf

food are compounded. Single women who are widowed, divorced or unmarried face various social restrictions and find it extremely difficult to secure gainful employment. Even when they are able to find jobs, they may be paid very low wages and forced to work long hours. To sustain themselves and their children, single women often have to mortgage or sell their assets in distress, or resort to undignified options such as sex work, begging, and sending their children to work.

For all of these groups, many commentators suggested inclusion of adequate unconditional monthly pensions in the food law, and early official drafts did so.⁴⁴ But these entitlements were eventually eliminated from NFSA, presumably not for any significant reason of principle, but for fiscal considerations.

Migrants constitute a large proportion of destitute and homeless people in cities across India (Rohit, 2013). These men, women and children often adopt circular patterns of migration, from the countryside to cities and back, and may usually be concentrated in certain vulnerable occupations and unsheltered environments. In their struggle for survival, these individuals experience significant economic distress in cities where they are exploited as cheap labour (Deshingkar and Akter, 2009). In such circumstances, they become vulnerable to multiple deprivations and face great difficulty in accessing social security programmes along with basic facilities for food, health, housing and education. A major challenge is also the absence of portability of food rights, especially of PDS and pensions, but also admission into child feeding centres and even schools.

Advocates for these groups argue therefore that it is crucial for the state to recognize the portability of socio-economic rights for migrants who are seasonally on the move; they should be able to access their entitlements unconstrained by their physical location. But this was not accepted in the food law, perhaps because of unstated fears about larger movements of rural populations into cities. However, subsidized meal programmes supported by public funding could become an important intervention to raise the nutrition status of urban homeless women, men and children. This would also free up a good portion of their daily incomes which they are currently forced to invest in relatively expensive street food, which is low in nutrition and hygiene.

Early drafts of NFSA contained such provisions for destitute feeding, and community kitchens to supply affordable food to homeless people and poor residents.⁴⁵ Debates were first about whether this should be left to private charity, but evidence was mustered about how both religious and secular feeding charities have declined to negligible levels.⁴⁶ Questions arose also about how these should be organized, and suggestions ranged from extending the mandate of child feeding centres to mandating religious and social charities with official support. There were discussions also about the desirability and feasibility of

44 See for instance: NAC. 2011. Op. cit.

45 Ibid.

46 For a case study on the nature of food provisioning by religious charities, see: <http://centreforequitystudies.org/wp-content/uploads/2012/08/Religious-charities-in-Delhi.pdf>

gatekeeping for these centres. Whereas it was considered feasible to prepare such lists in rural contexts, gatekeeping in the anonymous and highly mobile urban context, even if desirable, was not practical. On the other hand, the opening of these centres to non-poor people would enhance the dignity and quality of the services. The Parliamentary Standing Committee opposed destitute feeding and community kitchens because it feared that "it would be difficult for the administration to identify destitute and homeless people, and that it would break the social fabric as non-earning members of the family may be pushed out of homes to feed themselves."⁴⁷ Supporters of the measures felt that these objections unjustly stereotyped the poor as charity-seekers without basic dignity, and were dismayed that these arguments came from lawmakers (Mander, 2013).

A major problem faced by many of these most vulnerable populations is that they lack proof of identity and registration, and therefore in effect are not recognized as citizens. In India, this is a major concern for urban slum and homeless populations, migrants, and also forest dwellers, who often lack basic identity documents and are therefore barred from accessing their rights, including entitlements under food security law. Therefore, although it is beyond the scope of a food and nutrition security law, the strategies for poverty reduction and food security and nutrition in many countries also include registration programmes. This may be controversial, as it is sometimes seen as an attempt to control marginalized groups. In India there have been official efforts for providing biometric identity cards to all people, and for linking food security and other entitlements to these cards, but this has been opposed by critics for extending the reach of what they fear may become a surveillance state (Ramakumar, 2013).

Some argue that people who live with starvation should have first claim under a food law.⁴⁸ Amartya Sen (1982) argued famously how democracy is the strongest defence against famines. But it seems powerless against endemic individual starvation. Governments in India (as in most parts of the world) typically deny the existence of starvation. In early drafts state governments were obliged to establish protocols for preventing starvation, providing effective and adequate relief in case of starvation, investigating starvation deaths, assigning accountability, and preventing non-recurrence. But eventually these entitlements were excluded from the purview of the law.

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- 47 Government of India. 2013. *The National Food Security Bill, 2011*. Standing Committee on Food, Consumer Affairs and Public Distribution (2012-13). New Delhi (available at <http://www.prisindia.org/uploads/media/Food%20Security/SC%20Report-Food%20Security%20Bill,%202011.pdf>).
- 48 See for instance: Parulkar, A. 2012. Starving in India: The forgotten problem. *The Wall Street Journal – India*, 9 April 2012 (available at <http://blogs.wsj.com/indiarealtime/tag/starving-in-India/>).

CHAPTER 8: THOSE AT THE EDGE

Most marginalized communities and vulnerable groups suffer from specific constraints that would require particular measures. Discussions on the best way to guarantee their right to food involve difficult trade-offs, and also addressing the degrading stereotypes of the most vulnerable.

ARGUMENTS IN FAVOUR OF SPECIFIC ENTITLEMENTS

- ◎ Even under a universal entitlement approach, aged and disabled people, Dalits, and tribal groups would need specific unconditional support
- ◎ Destitute feeding programmes and community kitchens could provide a cohesive solution for homeless and poor residents as well as single migrants
- ◎ Out-of-school child labourers and street children are left out of the school meal programme, despite being the most vulnerable; they should be allowed to access all feeding programmes unconditionally
- ◎ Portability of rights would be required for seasonal migrants

ARGUMENTS AGAINST

- ◎ Budgetary and administrative complexity concerns
- ◎ Prohibitively expensive without targeting; but targeting the most vulnerable would require complex identification systems
- ◎ Implementation should be improved, instead of creating additional mechanisms
- ◎ Universal food schemes and/or overall economic growth would also ensure needs of vulnerable groups are met
- ◎ Portability would encourage unsustainable levels of migration to urban areas

Earlier drafts of India's food law contained many detailed provisions on these issues, but the final law excluded most of them.



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CHAPTER 9

STRINGS ATTACHED

Should state food and cash transfers have conditionalities attached?

An important debate centres on whether the state’s duties to provision food and social protection should be conditional on certain socially beneficial actions being undertaken by the recipients. Barring school attendance for school meals, India’s law contains few conditions (although conditions for maternity benefits are ambiguous).

During the formulation of the law, there was no serious proposal for imposing conditionalities on PDS grain transfers and on young child and pregnant mother feeding entitlements. However, there is a strong belief among many state officials that maternity benefits should be conditional on age of marriage, family size, ante- and postneonatal checkups, vaccinations, and institutional deliveries. There is also conditionality implicit in school meals – that of school enrolment (but not of school performance).

Conditionalities imply that in order to become eligible for certain social security schemes, potential beneficiaries must fulfil certain socially beneficial conditions. In support, a World Bank-sponsored study argues that (poor) families do not behave as rational individuals with perfect knowledge, and as a result make suboptimal investments in human capital; thus governments “... ‘know better’ what is privately

good for poor people than do the poor themselves, at least in some realms" (Fiszbein *et al.*, 2009). It states further that because conditional schemes reward and encourage "good behaviour" practices, they are more acceptable to taxpayers and other lobbying groups (Fiszbein *et al.*, 2009). Critics argue that this premise of conditionality is problematic, as it assumes that the poor are incapable of making good decisions independently; thus their behaviour has to be conditioned by penalizing them if they fail to take socially beneficial decisions (Yanes, 2011).

In India, the debate about conditionality is so far unresolved for maternity benefits. Many state officials as well as a section of reproductive health experts believe that these benefits should be subjected to the following conditions: the mother should be over 19 years old, she should receive benefits for two live births only, and she should undergo antenatal and postneonatal health examinations, in addition to institutional deliveries.⁴⁹ Such conditions were already applied in schemes covering smaller populations before NFSA. The debates about whether these conditions should apply to the near-universal maternity benefits mandated by NFSA were not carried into Parliament (most of the Parliamentary debates around NFSA concentrated on the PDS, and not on the other major entitlements including maternity benefits). NFSA also does not resolve these questions in a categorical way, as it guarantees near-universal maternity benefits to pregnant women based on the scheme prepared for this by the central government, without clarifying whether this scheme should or should not have conditions.

But these issues were contested keenly instead in the Supreme Court. Prior to the passage of NFSA, the central government ran a scheme for maternity benefits for poor pregnant women who fulfilled only two conditions, being 19 years of age and having up to two births. But the central government subsumed this within a larger scheme subject to the entire range of conditions described above (Srivastava and Tiwary, 2009). The petitioners as well as the Supreme Court Commissioners, in what is popularly described as the Right to Food Case, opposed these conditions in the Supreme Court. The court rulings broadly agreed with the views of the petitioners and Commissioners.⁵⁰

The central government argued strongly in support of the conditions, pointing to the need to incentivize a higher age of marriage for the health of mothers (in a situation where the median age of marriage for girls hovers around 16.5 years) and to promote checkups, inoculations, institutional deliveries, and fewer births. Indeed, there is evidence that the imposition of these incentives was followed by improved maternal and neonatal health. Studies show an increase in rural institutional deliveries from 29.8 percent in 2002–2004 to 37.8 percent in 2007–2008 (IIPS, 2008), and a reduction of about four perinatal deaths (death of the foetus or newborn) and two neonatal deaths per 1 000 live births (Dandona *et al.*, 2010), although attribution is contestable. Moreover, the central government argued in the Court that if maternity benefits were not restricted to women 19 years and above and for up to

49 See: <http://mohfw.nic.in/WriteReadData/l892s/file28-99526408.pdf>

50 Supreme Court Order of 27 November 2011 in *PUCL vs UOJ* in WP(C) No. 196 of 2001 (available at www.righttofoodindia.org/data/2007nov11scorder.doc).

two live births, the scheme would discourage family planning and contravene the legal age for marriage. The Supreme Court asked the state to continue to provide maternity benefits to all BPL women, but also asked the government to consider these issues.

In response, the argument is first that these studies do not establish without a doubt that these positive health outcomes occurred directly because of the conditionality (Hanlon, Barrientos and Hulme, 2010). Other arguments against conditions to access maternity benefits do not contest the benefits of higher age of marriage, fewer births, regular checkups, inoculations, and institutional deliveries. But, as the Commissioners argued, the purpose of maternity benefits is distinct: to provide some form of social security to pregnant women, and to enable them to access better nutrition during pregnancy. Making the cash entitlement contingent on the site of delivery would defeat its purpose.

The prevalence of anaemia increases with the number of children born, which indicates that women who have more children require more nutritional support (IIPS and Macro International, 2007). Malnutrition, including anaemia, contributes to a significant number of maternal deaths. Field evidence suggests (although admittedly stronger evidence is required) that cash transfers for pregnant women, if provided in time, are used in many cases towards food and/or health expenses during pregnancy (PHRN, 2010). A ministry official commented that excluding women who already have two children or more would deprive 60 percent of women targeted under the scheme of this benefit (Raman, 2011). This would be tantamount to putting their lives at risk and contributing further to the high rate of maternal mortality. Furthermore, it is argued that these conditions penalize the mother, who is most often powerless in making decisions about her reproductive health; there may also be constraints on available public infrastructure.⁵¹

Even in global discussions, an important critique of conditionalities is that, paradoxically, they punish people for not being able to fulfil conditions because of their disadvantaged and vulnerable position. There is also the possible paradox that conditionalities may indeed on occasion protect children rights, but at the same time may have a mixed effect on adults (mainly women), who are burdened with transaction costs and exposed to abuse by health staff or teachers who report on the fulfilment of conditionalities. Poor households face high opportunity costs along with economic, social, and even physical barriers in meeting the conditionality of cash transfers. In these circumstances, besides being unethical, conditionalities may perpetuate the circumstances that prevent the family from improving its standard of living. But in some countries like the United Mexican States and the Dominican Republic, as a complement to the conditional cash transfer programme, governments allocated resources to foster capacity and quality of the health and education system and to fill gaps (Basset, 2008; World Bank, 2013). They used information on the failure to fulfil conditionalities in order to assess the functionality of the public service facilities and improve them. They then established mechanisms to avoid penalizing families that failed due to poor quality of the services or remoteness.

51 Supreme Court Order dated 11 November 2007 in *PUCL vs UOI* in WP(C) No. 196 of 2001.

Exactly the same worries riddle the NFSA restriction of midday meals only to children who study in schools (government and government-aided). Thus, implicitly, the law imposes the conditionality of school attendance for receiving midday meals, which deprives children who are unable to attend school from benefiting from nutritious hot-cooked meals. Once again it is argued that this penalizes the most vulnerable children, who suffer a double whammy of being deprived of their rights to both education and food. The argument here is that whereas every effort should be made to enrol out-of-school children into school, they should not be barred on any ground if they arrive at a feeding centre and seek food.

No other entitlement under NFSA has any conditions. The Act does not explicitly impose conditionality on maternity benefits, but arguably leaves the window open for these in case they constitute part of the central government's "scheme". But school meals clearly impose the condition of school attendance, which excludes those children who are the most vulnerable.

CHAPTER 9: STRINGS ATTACHED

Barring the requirement of school attendance for school meals, India's law contains few conditions. Conditions for claiming maternity benefits are ambiguous. However, the debate is still open, as the discussion about conditionalities has a lot to do with effectiveness and changes in behaviour. It is also important to consider whose rights are being protected.

ARGUMENTS IN FAVOUR OF CONDITIONALITY

- ◎ Induces poor families to avoid suboptimal investment decisions in human capital
- ◎ Increases taxpayers' support for social programmes
- ◎ Programmes can use failure to fulfil conditionalities in order to assess the functionality of public service facilities, and allocate resources to improve them

ARGUMENTS AGAINST

- ◎ Unjustly punishes most vulnerable people for not being able to fulfil conditions because of their disadvantaged and vulnerable position
- ◎ Constraints on available public infrastructure also limit the capacity of vulnerable people to comply
- ◎ Limits rights of the most vulnerable, especially women and out-of-school children



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CHAPTER 10

ENFORCING RIGHTS

How can citizens hold the state accountable for ensuring their right to food?

This final chapter deals with the question of enforcement, grievance redress, and penalty systems related to food provisioning rights recognized by the law. India's food law creates grievance redress mechanisms at the district, state and national levels, but these are appointed by state and central governments, and are therefore not functionally independent of government. The law also contains provisions for monetary fines as civil consequences for violations of rights created by the law.

Traditionally, three kinds of mechanisms are deployed for redressing grievances. First are administrative remedies,⁵² in which any official action which violates rights can be challenged before a higher

52 The Right to Public Services legislation (comprising statutory laws to guarantee the provisioning of certain public services, such as the issuing of electricity connections; ration and voter cards; land records; and caste, birth, marriage, and domicile certificates) has been implemented in a number of Indian states recently. Appeals against non-delivery or rejection of certain public services can be made before district and subdivisional administrative officials. The grievance redress mechanism does not, however, contain provisions on approaching authorities for the quality of services provided. Significant variation exists between states in how the legislation is actually implemented and monitored, and how grievances are addressed (see: http://www.undp.org/content/dam/india/docs/report_on_national_consultation_on_strengthening_delivery_and_accountability_frameworks_for_public_service.pdf).

administrative authority. Administrative remedies typically involve bureaucracy made up of permanent civil servants appointed by the central and state governments. Second, remedies of failures of the permanent bureaucracy to meet a right can lie with local government-elected representatives.⁵³ Third, remedies for denials of the right to food can lie with the judiciary.⁵⁴ In addition, more recently there are advocates of independent citizen oversight mechanisms like ombudsperson offices and autonomous tribunals.⁵⁵

The effectiveness of these mechanisms may be evaluated against benchmarks of independence, integrity, accountability, and accessibility. Administrative and local body remedies rate low on all these grounds, because the duty to enforce various aspects of the right to food are assigned to these same bodies. In effect, this requires the person with a grievance to approach the same official bureaucracy and local government against which she has a complaint. There can be little faith that this same system will redress her grievances with integrity, effectiveness and accountability. In addition, vulnerable groups such as beggars, forest dwellers, slum residents and commercial sex workers are often unwilling to approach grievance redress mechanisms located within government, because of their own contested legal status. In general, conventional grievance redress mechanisms often remain inaccessible to the poor and marginalized, as these populations have a high degree of distrust of civil servants and elected representatives, who they perceived to be corrupt, oppressive, insensitive, and hostile to their needs.

The judiciary – especially the higher judiciary – tends to not be treated with the same distrust of its independence and integrity, nor to be considered implacably hostile to the poor. When citizens access the higher judiciary when rights are violated, courts are known to order recognition, restitution of the right, cessation of the violation, rehabilitation, compensation, punishment for the violator, or to order broader, systemic remedies to prevent non-repetition. As we have seen, higher courts increasingly regard socio-economic rights as an extension of the fundamental right to life, and have offered on occasion significant and far-reaching redress on many counts.

But the judiciary suffers from significant concerns related to accessibility. The Indian court system, all the way down to the subordinate courts operating in each district, is insufficiently decentralized to address

53 Local governments include elected bodies known as Panchayati Raj Institutions at the village level. The power to plan, implement, and disburse allowances under the National Rural Employment Guarantee Scheme is vested with the Panchayat.

54 Courts have intervened in some cases pertaining to socio-economic rights. For instance, for bonded labourers in *Bandhua Mukti Morcha vs Union of India*, the Supreme Court drew upon the right to life with dignity in the DPSP and directed state governments to fulfil their constitutional obligations with respect to bonded labourers. However, in certain other cases, it has relegated the role of guaranteeing these rights to policy, for example in the case of providing alternate employment for government-employed village officers in the state of Tamil Nadu whose posts were scrapped (see: http://delhcourts.nic.in/ejournals/Social_Rights_Jurisprudence.pdf).

55 In 2013, the Indian Parliament passed the Lokpal Act, which established an independent body (known as a Lokpal) along with similar bodies at the state level (known as Lokayuktas) to investigate cases of corruption against government officials (including Members of Parliament and Ministers, but excluding the Prime Minister). The Act was passed after widespread protests against corrupt practices by the state. The body is elected by an independent selection committee and ratified by the President.

the large volume of complaints at the subdistrict and village level in an effective manner. The judiciary also has at all levels an extremely high backlog of cases.⁵⁶ Combined with reliance on formal procedural laws and technical rules for the presentation of evidence, grievance redress through the courts is likely to be a confusing, expensive, and time-consuming process.

Within most recent socio-economic rights legislation in India, there is therefore an increasing preference for innovating with quasi-judicial grievance redress mechanisms, such as state human rights institutions, ombudsman offices and tribunals.⁵⁷ These typically have some powers of the judiciary, but with limited mandate and jurisdiction. Given their specific focus, quasi-judicial bodies are likely to be more efficient and effective in dealing with grievances related to their allotted area. Their advocates argue that well-designed, quasi-judicial mechanisms can overcome a number of concerns around all three conventional approaches to grievance redress. They operate independent of governmental and administrative influence, and are less prone to problems of corruption and lack of accountability. Quasi-judicial proceedings can also be more accessible, speedy and cost-effective than the judiciary, owing to greater decentralization, access to specialized technical knowledge, and a more flexible and informal nature of functioning. Rather than restricting themselves to the particular circumstances of a specific case, they can also investigate the broader systematic causes and consequences of such violations, thereby playing an important role in shaping relevant policies.

However, all these benefits assume independent, transparent and fair selection of members of these bodies, as well as systems that are funded to ensure their independent functioning. It is argued that in the interest of greater transparency, selection should occur through a public selection process. This would include adequate publicity of available positions, adequate diversity within the committee responsible for selecting the officials, and full public disclosure of the selection proceedings. This could help minimize political interference and ensure that members are selected solely on the basis of their qualifications and competence. Provisions requiring public participation in the nomination and selection of members would advance the independence and fairness of their selection. The bodies would also be independently and adequately funded.

Enforceable rights also entail consequences and reparations when they are withheld or violated. During discussions on NFSA, it was debated whether there should be penalties for violations under the Act, and whether these should be civil or criminal in nature. One set of arguments was that if denial

56 For a detailed report on backlogs, pendency and rates of disposal in the Indian judicial system, see: Law Commission of India. *Arrears and backlog: creating additional (wo)manpower*. Report No. 245 (available at <http://lawcommissionofindia.nic.in/reports/Report245.pdf>).

57 For example, the Right to Free and Compulsory Education, 2009, assigns the second tier of grievance redress to the autonomous and quasi-judicial State Commission for Protection of Child Rights and the National Commission for Protection of Child Rights. Likewise, the three-tiered quasi-judicial framework of the Consumer Protection Act involves the District Consumer Disputes Redressal Forums, State Consumer Disputes Redressal Forums, and a National Consumer Disputes Redressal Commission, with a right to appeal decisions by the National Commission before the Supreme Court.



of food rights results in violations of the right to life, its consequences should be of criminal liability including imprisonment. Those who opposed this argued first that it is hard to pinpoint the level at which the failure occurred: a child could be denied food at a feeding centre for many reasons, ranging from the fact that the worker had malaria to budget cuts made by the union Finance Minister. Debates covered the question of how to ensure that liability is fixed at senior and command levels, and not merely at the junior-most peg in the wheel. For this, it was suggested that detailed job charts containing the responsibilities of various officials at various levels should be drawn up, making it easier to identify the official responsible for the entitlements under the Act not reaching the intended beneficiaries, and to impose penalties.

Second, practical concerns prevailed about damaging staff morale with criminal liability. India opted to include modest fines in NFSA, which are civil in nature (also because criminal penalties can usually only be levied by judicial bodies). Critics are dissatisfied that this does not ensure genuinely independent and effective enforcement and grievance redress mechanisms, including penalties which constitute real deterrence. But to create a consensus for the law, it was left to the states to appoint the officials offering redress at the district and state levels, and to ensure modest civil fines as penalties for violations of the law.

In India, as in every country in the world, the effectiveness of rights laws – beyond the provisions of rights-based statutes – is found to depend a great deal on the extent to which organizations at the grassroots level inform people about their rights and organize them to demand these rights and oppose violations.

CHAPTER 10: ENFORCING RIGHTS

Last but not least: what should be the enforcement, grievance redress, and penalty systems related to food provisioning rights recognized by the law?

Traditionally, three kinds of mechanisms are deployed for redressing grievances:

- ◉ The first two relate to 1) administrative remedies, in which any official action violating rights can be challenged before a higher administrative authority; and 2) remedies that lie with local government-elected representatives.
- ◉ Administrative and local government remedies are close to the problem, but this proximity limits their independence and incentive to address the problem. Additionally, illegalised and officially targeted vulnerable groups such as beggars, slum residents, homeless people, indigenous people, and commercial sex workers are often unwilling to approach grievance redress mechanisms located within government.
- ◉ The third remedy is the judiciary, which in India tends to not be treated with the same distrust, but suffers instead from significant accessibility-related concerns.
- ◉ There is increasing reliance on a fourth mechanism of non-state monitors and ombudsperson offices, but there are unresolved challenges of independent and fair selection, support for independent work, and accountability of these monitors.

Enforceable rights also entail consequences for officers and those involved in violations. During discussions on NFSA, practical concerns led to limit the penalties to civil fines, even if failures resulted in a violation of the right to life.

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ANNEX 1 COMPARISON: NAC DRAFT OF FOOD SECURITY BILL AND NFSA

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COMPARISON: NAC DRAFT OF FOOD SECURITY BILL AND NFSA

ISSUES ADDRESSED UNDER FOOD SECURITY	NAC BILL, 2011	NFSA, 2013
Entitlements of pregnant and lactating women	<p>Take-home rations or nutritious and freshly cooked meals, free of charge, during pregnancy and up to 6 months after delivery through local anganwadi.</p> <p>Maternity benefit of Rs 1 000 per month for 6 months.</p> <p>Women employed with the government, public sector undertakings, and state public sector undertakings not entitled to these benefits.</p> <p>Support for exclusive breastfeeding for 6 months, along with counselling on breastfeeding.</p>	<p>Every pregnant and lactating woman to get free meal during pregnancy and up to 6 months after child birth through local anganwadi.</p> <p>Maternity benefit of no less than Rs 6 000 in instalments.</p> <p>Women employed with the government, public sector undertakings, and state public sector undertakings not entitled to these benefits.</p>

ISSUES ADDRESSED UNDER FOOD SECURITY	NAC BILL, 2011	NFSA, 2013
Entitlements of children from birth up to 6 years of age	<p>Nutritious take-home rations and/or local and freshly cooked meals throughout the year, through the anganwadi, to all children in the age group of 0–3 years.</p> <p>Local and freshly cooked meals, for at least 300 days per year to children in the age group of 3–6 years.</p> <p>Services like supplementary nutrition, immunization, health checkups, referral services, growth monitoring and promotion, and preschool education to all children in the age group of 0–6 years.</p>	<p>For children below the age of 6 months, exclusive breastfeeding to be promoted.</p> <p>Children between 6 months and 6 years of age to get appropriate meal, free of charge, through local anganwadi.</p>
Midday meals to children	<p>All children in the age group 6 to 14 years to be provided at least one freshly cooked, nutritious midday meal in all schools run by the local bodies, plus in government and government-aided schools up to class 8 and beyond, every day of the year except on school holidays.</p> <p>Midday meal shall be locally appropriate.</p> <p>Schools to have facilities for hygienic cooking and drinking water.</p>	<p>Children between 6 to 14 years of age to be provided one midday meal, free of charge, in schools run by local bodies and in government and government-aided schools, every day except on school holidays.</p> <p>Every school and anganwadi to have facilities for cooking meals, drinking water and sanitation.</p>
No denial to any child	<p>Any child below the age of 14, including those out of school, shall not be denied a freshly cooked nutritious meal. They can approach any anganwadi centre, school midday meal centre, destitute feeding centre, etc.</p>	No mention in the Act.

ISSUES ADDRESSED UNDER FOOD SECURITY	NAC BILL, 2011	NFSR, 2013
Prevention and treatment of child malnutrition	<p>State government to identify children who suffer from all or any grades of malnutrition, as well as those experiencing growth faltering or nutritional deterioration.</p> <p>Parents or guardians of every malnourished child to be provided nutrition counselling and therapeutic foods, health checkups, and referral services free of charge.</p> <p>All severely underweight, undernourished or sick malnourished children to receive therapeutic foods free of charge and special care at Nutrition Rehabilitation Centres.</p>	<p>Local anganwadis to identify and provide free meals to malnourished children.</p>
Entitlement of special groups	<p>Destitute people: at least one freshly cooked meal every day, free of charge, at a location close to their home, or if they are homeless, close to the place they are ordinarily found.</p> <p>Homeless people: state to ensure that urban homeless and other needy people have access to affordable meals through community kitchens.</p> <p>Migrants: migrants and their families to be able to claim access to all entitlements (sec 4 to 12) at any location in the country.</p> <p>All people affected by emergency or disaster situations to be provided subsidized food grains at priority quantities and rates (as in section 24) immediately for a period of one year. ↴</p>	<p>Special focus in ensuring food security to be given to needs of people of vulnerable groups living in remote and difficult areas, such as hilly and tribal areas.</p>

**ISSUES ADDRESSED
UNDER FOOD SECURITY**

NAC BILL, 2011

NFSA, 2013

☒ All destitute people, pregnant and lactating women, senior citizens, and children affected by emergency or disaster situations to be provided two freshly cooked meals every day, free of charge, for a period of three months after the disaster.

All households to be assured 200 days of wage employment for one year at minimum wage, or equivalent income in case wage employment is not available or family members are not capable of working for wages.

Rights of people living in starvation

All people, households, groups or communities living in starvation to be immediately provided:

- ▶ freshly cooked meals at least two times a day, free of charge, to pregnant and nursing women, children and destitute people;
- ▶ Rs 2 000 maternity benefit to pregnant and nursing women;
- ▶ subsidized food grains of twice the amount specified for priority households, free of charge, for a period of 6 months;
- ▶ 200 days of wage employment for two years at minimum wage, or equivalent income in case wage employment is not available or family members are not capable of working for wages.

No mention of this in the Act.

ISSUES ADDRESSED UNDER FOOD SECURITY	NAC BILL, 2011	NFSR, 2013
Starvation protocol	<p>Within 6 months of the Act, the state governments shall establish a Starvation Protocol for investigating starvation and interventions for relief, prevention and accountability.</p> <p>When investigating starvation deaths, enquiry to be based on whether the person was living in prolonged food deprivation and not on the postmortem report.</p>	No protocol to identify and investigate people and communities affected by starvation.
Subsidized food grains to rural and urban households	<p>Priority households (rural and urban): minimum 7 kg of food grains per person per month at a price not exceeding Rs 3 per kg for rice, Rs 2 per kg for wheat, and Rs 1 per kg for millets.</p> <p>Single-member households shall receive a minimum of 14 kg of grain per month at the same price.</p> <p>General households (rural and urban): minimum 4 kg of food grains per person per month at a price not exceeding 50% of MSP for paddy, wheat and millets.</p> <p>Single-member households shall receive a minimum of 8 kg of grain per month at the same price.</p> <p>No less than 46% of all rural households shall be designated as rural priority households.</p> <p>No less than 28% of all urban households shall be designated as urban priority households.</p> <p>Ninety percent of all rural households shall be entitled to subsidized food grains.</p> <p>Fifty percent of all urban households shall be entitled to subsidized food grains.</p>	<p>Priority households: 5 kg of food grains per person per month at a subsidized price specified in Schedule I.</p> <p>Antyodaya Anna Yojana (AAY) households to be entitled to 35 kg food grains per household per month at prices specified in Schedule I.</p> <p>Entitlements to be extended to 75% of rural population and 50% of urban population.</p> <p>Food security allowance to be given to people if food grains or meals are not supplied.</p> <p>Within 365 days of commencement of the Act, the state shall identify eligible households.</p>

ISSUES ADDRESSED UNDER FOOD SECURITY	NAC BILL, 2011	NFSA, 2013
Procurement and storage of food grains	<p>Decentralized procurement, storage, and distribution from districts to panchayats to be expanded in states in order to minimize transportation costs.</p> <p>Procurement centres to be opened within a radius of 10 km, with spot payment provided to farmers.</p>	No details on procurement and storage of food grains.
Fair price shops	<p>Fair price shops to be set up within 3 km of a habitation.</p> <p>Preference for licences to be given to community institutions such as self-help groups and cooperatives or public bodies such as gram panchayats or Non-governmental Organizations.</p> <p>Wherever possible, daily management of fair price shops to be done by women or women's collective.</p>	<p>Preference for shop licences to be given to public institutions or public bodies such as panchayats, self-help groups, and cooperatives.</p> <p>Management of fair price shops to be done by women or women's collective.</p>
Ration cards	<p>Ration cards to have clear entitlements page with details of food grain entitlements, helpline numbers, and grievance redressal mechanism.</p> <p>Ration cards to be issued in the name of an adult woman of the family.</p> <p>Ration cards to be issued within one month of survey.</p> <p>Ration cards to be checked periodically for bogus cards.</p>	Ration cards to be issued in the name of an adult woman of the family.
National Food Commission	<p>At least half the members of the Commission to be those who have never held any public office.</p> <p>To monitor conditions of people living in starvation and advise state governments on appropriate action. ↘</p>	No mention of National Food Commission in the Act.

ISSUES ADDRESSED UNDER FOOD SECURITY	NAC BILL, 2011	NFSA, 2013
	<p>☒ To identify areas affected by natural or human-made disasters or emergencies that threaten food security of residents, and recommend to central and state governments or to national disaster management authority for notification of said area.</p> <p>Penalties to be imposed in accordance with Section 87 of this Act.</p> <p>While enquiring into complaints under this Act, the commission shall have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908.</p>	
State Food Commission	<p>A minimum of half the members to be people who have never held any public office.</p> <p>To monitor conditions of people living in starvation and advise state governments on appropriate action.</p> <p>To identify areas affected by natural or human-made disasters or emergencies that threaten food security of residents, and recommend to state governments or to national disaster management authority for notification of said area.</p> <p>Penalties to be imposed in accordance with Section 87 of this Act.</p>	<p>Only members who hold positions in public offices can be part of the State Food Commission.</p> <p>The State Food Commission has no power to impose penalties.</p>
Grievance redress	<p>Central and state governments to designate nodal officers who will maintain a website with a link to the Centralized Public Grievances Redress and Monitoring System, and publish details of grievances received and action taken on the website. ↘</p>	<p>All state governments to have internal grievance redress mechanism which may include call centres, helplines, and designation of nodal officers.</p> <p>No time frame given for addressing grievances. ↘</p>

**ISSUES ADDRESSED
UNDER FOOD SECURITY****NAC BILL, 2011****NFSA, 2013**

- ☒ Districts to set up Block Facilitation Centres in every block.
- Central and state governments to create a toll free telephone helpline to register grievances under this Act.
- Any person has a right to make a grievance regarding entitlements under the Act to the Block Facilitation Centre orally, in writing, by using various electronic means, and through the telephone helpline.
- Complaints to be addressed within 15 days. In cases related to starvation, action will commence within 24 hours.

- ☒ No mention of how starvation cases will be addressed and in what time frame.
- No mention of complaints received and action taken on them in the public domain.



Graphic designer: Daniela Verona

This publication provides an overview on the main issues debated during the development and passage of the India's National Food Security Act (2013), which legally binds national and state governments to extend far-reaching social protection to the country's population. It raises many lively and pertinent debates that may be useful for policy-makers and advocates, especially in low-income countries but also emerging economies, who wish to strengthen the programmatic and legal frameworks for food and nutrition in their respective countries.

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