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

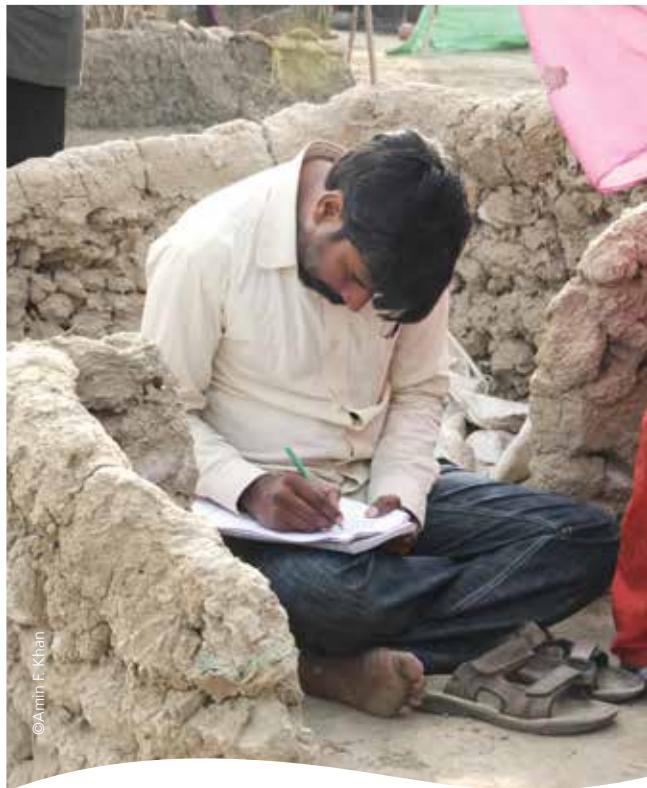
Last but not least: what should be the enforcement, grievance redress, and penalty systems related to food provisioning rights recognized by the law?

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

- ① 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.
- ② 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.
- ③ 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.
- ④ 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.

## ENFORCING RIGHTS



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,<sup>1</sup>

in which any official action which violates rights can be challenged before a higher 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.<sup>2</sup> Third, remedies for denials of the right to food can lie with the judiciary.<sup>3</sup> In addition, more recently there are advocates of independent citizen oversight mechanisms like ombudsperson offices and autonomous tribunals.<sup>4</sup>

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

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2 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.

3 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://delhicourts.nic.in/ejournals/Social\\_Rights\\_Jurisprudence.pdf](http://delhicourts.nic.in/ejournals/Social_Rights_Jurisprudence.pdf)).

4 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.

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1 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](http://www.undp.org/content/dam/india/docs/report_on_national_consultation_on_strengthening_delivery_and_accountability_frameworks_for_public_service.pdf)).

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 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.<sup>5</sup> 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.<sup>6</sup> 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



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5 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>).

6 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.

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 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.

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