

THE HUMAN RIGHT TO FOOD IN INDIA

George Kent
University of Hawai'i
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The website of the Indian Embassy in Washington, D.C. offers an account of “Agriculture & Rural Developments” in India. Its first paragraph describes “A Saga of Success”:

From a nation dependent on food imports to feed its population, India today is not only self-sufficient in grain production, but also has a substantial reserve. The progress made by agriculture in the last four decades has been one of the biggest success stories of free India. Agriculture and allied activities constitute the single largest contributor to the Gross Domestic Product, almost 33% of it. Agriculture is the means of livelihood of about two-thirds of the work force in the country.

It is true that the country now produces enough food to feed all of its people. When there are rapid increases in hunger in some parts of India, it is now usually attributed to short-term natural events such as hurricanes or droughts. These are described as transitory, episodic events, temporary deviations from normal. India no longer suffers through large-scale famines as it has in the past.

However, this upbeat version of the food situation in India neglects the reality of widespread chronic malnutrition in the country. Temporary disruptions in the food system by natural calamities are disastrous for so many people only because they live so close to the edge of disaster under normal conditions. India could feed all of its people, but it doesn't. The chronic conditions—the conditions that are normal—for many millions of people in India are unacceptable in terms of the basic requirements of human dignity.

The problems are not rooted in the vagaries of natural phenomena, but in deeply embedded political and economic patterns. There are massive governmental programs--or “schemes” as they are called--for feeding poor children, providing subsidized foods, etc.--but still the problems persist. Enormous amounts of money are spent on such programs. Yet, somehow, the benefits don't reach the people who need them most.

There is a story now unfolding that helps us to understand how things can go so wrong. The central government of India has been storing many millions of tons of grain while people are starving. That is not new. What is new is that a nongovernmental organization in India, the People's Union of Civil Liberties (PUCL), has challenged this practice in the Supreme Court of India. Light is being shined into places that had been well hidden, and the scandal is being thoroughly aired in India's media.

The case is being tried on the basis of India's constitution and its federal and state laws, especially its famed *Famine Code*. This review shows how the case fits into the framework of emerging international human rights law on food and nutrition. Viewing the case in this larger

context, we can see that this case is relevant to food assistance programs in every country, and to international humanitarian assistance as well.

THE SUPREME COURT CASE

On April 16, 2001, the PUCL submitted a “writ petition” to the Supreme Court of India asking three major questions:

1. Starvation deaths have become a National Phenomenon while there is a surplus stock of food grains in government godowns. Does the right to life mean that people who are starving and who are too poor to buy food grains free of cost by the State from the surplus stock lying with the State particularly when it is lying unused and rotting?
2. Does not the right to life under Article 21 of the Constitution of India include the right to food?
3. Does not the right to food which has been upheld by the apex Court imply that the State has a duty to provide food especially in situations of drought to people who are drought effected and are not in a position to purchase food.

Article 21 of the constitution, entitled “Protection of life and personal liberty”, says, in its entirety, “No person shall be deprived of his life or personal liberty except according to procedure established by law”.

As a result of the ongoing proceedings, the Supreme Court has been issuing orders calling upon government agencies to identify the needy within their jurisdictions, and to assure that they receive adequate food. On July 23, 2001, the court said:

In our opinion, what is of utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them. In case of famine, there may be shortage of food, but here the situation is that amongst plenty there is scarcity. Plenty of food is available, but distribution of the same amongst the very poor and the destitute is scarce and non-existent leading to mal-nourishment, starvation and other related problems.

On September 3, 2001, the court directed that 16 states and union territories that had not identified families below the poverty line must do so within two weeks, so that those families could be provided with food assistance. After two weeks, on September 17, 2001, the court reprimanded them, saying, “we are not satisfied that any such exercise in the right earnestness has been undertaken.” They were then given another three weeks to comply with the order. The court also reminded the states that “certain schemes of the Central Government are mentioned which are required to be implemented by State Governments”:

These schemes are: Employment Assurance Scheme which may have been replaced by a Sampurna Gramin Yojana, Mid-day Meal Scheme, Integrated Child Development Scheme, National Benefit Maternity Scheme for BPL pregnant women, National Old Age Pension Scheme for destitute persons of over 65 years, Annapurna Scheme, Antyodaya Anna Yojana, National Family Benefit Scheme and Public Distribution Scheme for BPL & APL families. The Chief Secretaries of all the States & the Union Territories are hereby directed to report to the Cabinet Secretary, with copy to the learned Attorney General, within three weeks from today with regard to the implementation of all or any of these Schemes with or without any modification and if all or any of the Schemes have not been implemented then the reasons for the same.

All state governments were directed to take their "entire allotment of foodgrains from the Central Government under the various Schemes and disburse the same in accordance with the Schemes". Further, the court required that "the Food for Work Programme in the scarcity areas should also be implemented by the various States to the extent possible".

On November 28, 2001, the court issued directions to eight of the major schemes, calling on them to identify the needy and to provide them with grain and other services by early 2002. For example, for the Targeted Public Distribution Scheme, "The States are directed to complete the identification of BPL (below poverty level) families, issuing of cards, and commencement of distribution of 25 kgs. grain per family per month latest by 1st January, 2002".

FOOD RIGHTS INTERNATIONALLY

The orders issued by the court clearly established that the court understands the right to life, affirmed in article 21 of India's constitution, as implying the right to food. While the court has been guided entirely by national law, it could also draw on recent advances made in understanding the right to food at the global level.

There is increasing recognition worldwide that food and nutrition is a human right, and thus there is a legal obligation to assure that all people are adequately nourished. The articulation of food and nutrition rights in modern international human rights law arises in the context of the broader human right to an adequate standard of living. The *Universal Declaration of Human Rights* of 1948 asserts in article 25(1) that "everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food"

Food and nutrition rights were subsequently reaffirmed in two major binding international agreements. In the *International Covenant on Economic, Social and Cultural Rights* (which came into force in 1976), article 11 says that "The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing, and housing . . ." and also recognizes "the fundamental right of everyone to be free from hunger"

In the *Convention on the Rights of the Child* (which came into force in 1990), two articles address the issue of nutrition. Article 24 says that "States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health . . . (paragraph 1)" and shall take

appropriate measures "to combat disease and malnutrition . . . through the provision of adequate nutritious foods, clean drinking water, and health care (paragraph 2c)." Article 24 also says that States Parties shall take appropriate measures . . . "To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition [and] the advantages of breastfeeding" Article 27 says in paragraph 3 that States Parties "shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing, and housing."

Even if the human right to food and nutrition had not been stated directly, it would be strongly implied in other provisions such as those asserting the right to life and health, or the *Convention on the Rights of the Child*'s requirement (in article 24, paragraph 2a) that States Parties shall "take appropriate measures to diminish infant and child mortality". The human right to food and nutrition has been reaffirmed at the international level in many different settings.

Beginning in the late 1990s, work on food rights at the global level centered on a mandate from the World Food Summit held in Rome in 1996. In the Summit's concluding *Plan of Action*, Objective 7.4 called upon . . .

. . . the UN High Commissioner for Human Rights, in consultation with relevant treaty bodies, and in collaboration with relevant specialized agencies and programmes of the UN system and appropriate inter-governmental mechanisms, to better define the rights related to food in Article 11 of the Covenant and to propose ways to implement and realize these rights

A series of expert consultations, conferences, and studies steadily clarified the meaning of the human right to food. This effort culminated with the publication on May 12, 1999 by the UN's Committee on Economic, Social and Cultural Rights of its *General Comment 12 (Twentieth session, 1999): The Right to Adequate Food (Art. 11)*. This statement by the committee constitutes a definitive contribution to international jurisprudence.

Paragraph 5 of *General Comment 12* observes, "Fundamentally, the roots of the problem of hunger and malnutrition are not lack of food but lack of *access to* available food, *inter alia* because of poverty, by large segments of the world's population." The reference here is to the fundamental distinction between *availability* (is there food around?) and *access* (can you make a claim on that food?). Paragraph 6 presents the core definition:

The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.

GC12 paragraph 7 explains that *adequacy* means that account must be taken of what is appropriate under given circumstances. Food *security* implies food being accessible for both present and future generations. *Sustainability* relates to long-term availability and accessibility. Thus, as explained in paragraph 8, the core content of the right to adequate food implies:

The availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture;

The accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.

Paragraph 14 summarizes the obligations of States as follows:

Every State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger.

Paragraph 15 draws out the different kinds or levels of obligations of the state. These obligations may be sorted into categories as follows:

- *respect* - "The obligation to *respect* existing access to adequate food requires States parties not to take any measures that result in preventing such access."
- *protect* - "The obligation to *protect* requires measures by the State to ensure that enterprises or individuals do not deprive individuals of their access to adequate food."
- *fulfil (facilitate)* - "The obligation to *fulfil (facilitate)* means the State must pro-actively engage in activities intended to strengthen people's access to and utilization of resources and means to ensure their livelihood, including food security."
- *fulfil (provide)* - "Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to *fulfil (provide)* that right directly. This obligation also applies for persons who are victims of natural or other disasters."

General Comment 12 also addresses the issues of implementation at the national level, framework legislation, monitoring, remedies and accountability, and international obligations.

The primary responsibility of national governments is to *facilitate*, which means assuring that there are *enabling conditions* that allow people to provide for themselves. However, where people not able to feed themselves adequately, governments have some obligation to provide for them. While international law does not specify the character or level of assistance that is required, it is clear that, at the very least, people must not be allowed to go hungry. Article 11 of the International Covenant on Economic, Social and Cultural Rights recognizes "the fundamental right of everyone to be free from hunger". Paragraph 6 of *General Comment 12* explains, "States have a core obligation to take the necessary action to mitigate and alleviate hunger as provided for in paragraph 2 of article 11, even in times of natural or other disasters." Paragraph 14 adds, "Every State is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger." Paragraph 17 says, "Violations of the Covenant occur when a State fails to ensure the satisfaction of, at the very least, the minimum essential level required to be free from hunger." There is no ambiguity here.

STARVATION IS NOT THE PROBLEM

To repeat the main definition:

The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.

It is clear that this goal has not been achieved in India. Perhaps even more important, at this stage, is the fact that the realization of the right to food has not been clearly established as the government's goal.

Much of the debate in India has centered on the question of whether there have in fact been large numbers of starvation deaths. Those who say no, and thus defend the government, take a narrow view of the meaning of "starvation". They take it to mean deaths directly attributable to an extreme lack of food, and they focus on adult deaths. In fact, most deaths associated with malnutrition are due to a combination of malnutrition and disease. The immediate, final cause of death, the phrase written on the death certificate, is usually some disease, often an infectious disease, rather than starvation or hunger as such. UNICEF estimates that in the year 2000, about 2,420,000 children in India died before their fifth birthdays. This was the highest total for any country. It was estimated that for the same year about 10,929,000 children died before their fifth birthdays. Thus, more than a fifth of the child mortality worldwide occurs in India alone. The international agencies estimate that about half of these deaths of children under five are associated with malnutrition. Thus we can estimate that more than a million children die in India each year from causes associated with malnutrition. To that number must be added a large but unknown number of adults who succumb for the same reason.

In their data keeping, international agencies such as the United Nations Children's Fund and the World Health Organization do not even keep records on starvation deaths. No one does. Even in the worst of times, few people die immediately and directly from starvation. They die more slowly, from malnutrition in combination with disease. Yes, if one takes a narrow view of the meaning of starvation, there are few starvation deaths in India. But using this trick of language to suggest that there is no serious problem of malnutrition in a country like India borders on the criminal.

India's government agencies at both central and state levels seem to have trouble seeing the massive hunger that characterizes India. This is apparent in the working agenda of the National Institute of Nutrition in Hyderabad. The institute occupies itself with minor technical questions about micronutrients, and does experimental studies on questions that can be addressed quite adequately in developed countries, while practically ignoring the deep and widespread hunger all around the country. Technical research on nutrients avoids facing up to the problem, which is deeply political, not technical. There is no hope of solving the hunger problem if the government and its agencies refuse to see it.

In developed countries, hunger may be hard to see, but in developing countries, the suggestion that there is no hunger can only be a matter of deliberate denial. Some in government in India are suggesting that the poor have no serious problems, while many of the poor are in such deep despair that they are committing suicide.

THE MISSING PIECE IN INDIA'S FOOD RIGHTS

As a party to the *International Covenant on Economic, Social and Cultural Rights* and the *Convention on the Rights of the Child*, India has committed itself to honoring the right to adequate food. Moreover, in response to a question raised in Parliament regarding the status of children's nutrition rights, the Department of Women and Child Development answered as follows, on December 7, 1993 in the Lok Sabha and December 10, 1993 in the Rajya Sabha:

The Government of India has ratified the UN Convention on the Rights of the Child. Appropriate legislative and administrative measures are being taken for implementing the Convention by the concerned Ministries/Departments.

A National Plan of Action on Children has been adopted under which goals have been fixed for the decade 1990-2000. The Plan seeks to cover the programmes in the areas of Child and Maternal Health, Nutrition, Water and Sanitation, Education, Children in difficult circumstances and adolescent girls. All sectors have reviewed their programmes for strengthening keeping in view the goals set in National Plan of Action on Children.

A number of child care programmes for improving the nutritional status of children are being implemented. Integrated Child Development Service (ICDS) Programme is a major intervention for providing a package of services including supplementary nutrition to 1.63 crores children under 6 years of age. Nutrition supplementation is also being provided to children under the scheme of creches (3 laks children) and Balwadi Nutrition (2.29 laks children). A new initiative to improve nutritional status of adolescent girls has been started, on a selected basis, in 507 ICDS Projects. Again, through nutrition education programmes the mothers are also being educated and empowered to look after the nutritional needs of their children better.

While the reply offered in the Parliament discussed the situation with regard to food-related *programs*, more is needed to fully address the question of food *rights*. What are those rights, and where are they stated in the law? Whose rights are they? To what extent are these rights implemented? And what are the mechanisms of accountability for assuring that the law is implemented?

In any rights system there are three distinct roles to be fulfilled: the *rights holders*, the *duty bearers*, and the *agents of accountability*. The task of the agents of accountability is to make sure that those who have the duty carry out their obligations to those who have the rights.

To describe a rights system, we need to know the identities and also the functions of those who carry out these roles. We would also want to know the mechanisms or structures through which these functions are to be carried out. Thus, we would want to know:

- A. The nature of the *rights holders* and their rights;
- B. The nature of the *duty-bearers* and their obligations corresponding to the rights of the rights holders; and

C. The nature of the *agents of accountability*, and the procedures through which they assure that the duty bearers meet their obligations to the rights holders. The accountability mechanisms include, in particular, the remedies available to the rights holders themselves.

These are the three core components, the "ABCs" of rights systems. A rights *system* can be understood as a kind of cybernetic self-regulating arrangement designed to assure that rights are realized. In any cybernetic system, a goal is decided upon, and means are established for reaching that goal. In addition, there are specific means for making corrections in case there are deviations from the path toward the goal. This is the self-regulating aspect of the system. With regard to food rights, the goal is to end hunger and food insecurity.

Any government can say it has such lofty goals. These things may even be promised in the nation's constitution. But we know that there are many cases in which governments go off course and fail to deliver on their promises. In nations where there is an effective rights system, however, there are specific mechanisms for calling the government to account; that is, for making course corrections. The most fundamental of these mechanisms of accountability is for rights holders themselves to have effective remedies through which they can complain and have the government's behavior corrected. This is the missing piece in India's food rights system. Where there are no effective remedies, there are no effective rights.

Intervention by the Supreme Court is a mechanism of accountability, but it is not normally available to ordinary people on a local basis. The present Supreme Court case in India has become necessary because there are no effective mechanisms of accountability available to ordinary people at the local level. Until local people know their rights and know that they have effective means through which to exercise them, there is no effective system of food rights in India.

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