

Right to Food

SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

Among the two recommendations on the right to food during the 2012 UPR, India accepted recommendation no: 136 (Saudi Arabia) calling on the country to introduce a strategy to promote food security. India also accepted in revised form recommendation no: 168 made by Iran to continue efforts and undertake measures to adopt the bill on food security and strengthen the Public Distribution System (PDS).

India has taken several policy measures to address the issue of food safety for poor people. India enacted the National Food Security Act in September, 2013 bringing under one umbrella several existing and new entitlements aimed at providing food security. National Rural Employment Guarantee Act (NREGA) of 2005 guarantees 100 days of unskilled work for people in rural areas. India operates Public Distribution System (PDS), the largest distribution network of commodities in the country which facilitates the distribution of food grains to a large number of poor people through a network of Fair Price Shops (FPS) at a subsidized price on a recurring basis. Despite relatively high rates of economic growth India has failed to reduce hunger and under nutrition. Experts claim that despite abundant production of grains and vegetables, entrenched corruption and inefficiency in the distribution chain prevents the benefits from reaching the poor. The result is that India tops the world hunger list with 194.6 million (over 15 per cent of the country's population) of undernourished people.

NATIONAL LEGAL FRAMEWORK

The Constitution of India provides for explicit as well as implicit provisions for realizing the right to food. Article 47 (explicit provision) calls on the State to raise the level of nutrition and the standard of living and to improve public health. The Supreme Court of India has recognized that Article 21, which guarantees the fundamental right to life to all persons, implicitly contains within it the right to live with human dignity, and this includes the right to adequate food and nutrition.

National Food Security Act 2013

On 12th September 2013, the Indian Parliament enacted the National Food Security Act (NFSA) which addresses the problems of hunger and malnutrition. The Act introduced several new and existing entitlements on food security and considered women as head of the household for the purpose of distribution of BPL cards- a landmark step towards gender parity. The new law has created a broad framework of legal entitlements for 67 percent of the Indian population. Priority households are entitled to 5 kgs of food grains per person per month, and 2.43 crore 'Antyodaya' households to 35 kgs per household per month. The combined coverage of Priority and Antyodaya households (called eligible households) extend up to 75% of the rural population and up to 50% of the urban population.

The Right to Food Case

A public interest litigation (PIL) was initiated by the People's Union for

Civil Liberties (PUCL) in 2001 before the Supreme Court of India which is known as the "right to food case". The petition was aimed at seeking legal enforcement of the right to food following the occurrence of starvation deaths in the State of Rajasthan while at the same time there was a national surplus of food grains, which was left to be unused instead of being distributed to the people. Initially, the case was brought against the Government of India, the Food Corporation of India (FCI), and six state governments, in the specific context of inadequate drought relief. Subsequently, the case was extended to the larger issue of chronic hunger, with all states and union territories as respondents. It was argued in the petition that the right to food is an implication of the fundamental "right to life" enshrined in Article 21 of the Indian Constitution.

Regular hearings on this case has been held since April, 2001. Although the Court is yet to announce its final judgement on the matter, it has issued over 150 interim orders that have treated the right to food as a justiciable human right. The Interim orders have led to new and better-implemented government programmes which include mid-day meals for school children, integrated child development services, food entitlements in childcare centres, subsidized food for a number of specific vulnerable groups and changes to the subsidies directed at all persons below the official poverty line.

CHALLENGES

Hunger and malnourishment due to non-inclusive growth. Higher economic growth has not been fully translated into higher food consumption.

Limitations of National Food Security Act 2013.

Corruption, inefficiency and discrimination in distribution of food grains under Public Distribution System (PDS).

ISSUES AND IMPACTS

According to the Global Hunger Index 2016, India ranks 97 out of the world's 118 countries and even further behind some of its neighbouring South Asian countries. India's health indicators are not reflective of the economic strength of the country. Lancet India's Health Report says about 50 per cent of all childhood deaths are attributed to malnutrition. India has the world's highest number of malnourished and hungry children, 51% of women are anaemic from age group 15-49 years and 44% of the children under five are underweight.

The new law has created a broad framework of legal entitlements for 67 percent of the Indian population. The term priority household remains the bone of contention as the Indian Planning Commission (now the Niti Aayog) has not yet reached to a reflective definition of poverty and identification has been left to the discretion of the state governments. An expert group set up in 2009 to advise the Ministry of Rural Development estimated that about 61% of the eligible population was excluded from the Below Poverty Level (BP) list. Various Committees have been established with different estimates of the poor. Whenever targeted benefits are provided to certain sections of the population, significant inclusion and exclusion errors have taken place in the past. So far, NFSA has been implemented only in 33 states and union territories, still some states are seeking extension.

The Committee headed by Supreme Court Justice D P Wadhwa in its report on August 2007 reported that the whole system of procurement and distribution of food grains under Public Distribution System (PDS) is built on corruption and its benefits to the poor are low. The system lacks transparency, accountability, monitoring and enforcing. The report observes "Bogus cards are in abundance. Immediate measures are required to reduce the diversion of food grains". Moreover, the shift from universal to targeted applicability in 1997 —providing subsidised food only to Below Poverty Line (BPL) cardholders—excludes genuinely poor households through targeting errors. The TDPS suffers from large leakages of food grains during transportation to and from the

CHALLENGES

Agrarian crisis and spate of farmer's suicides.

ration shops into the open markets. In an attempt to curtail and dismantle the PDS system, the Shantha Kumar High Level Committee appointed by the government of India openly recommended in 2015 that the coverage of the NFSA be reduced from 67% to 40% of India's population and recommended to introduce cash transfers in the place of PDS.

Agrarian crisis and farmer's suicide is a growing social emergency in India. It is estimated that more than a quarter of a million Indian farmers have committed suicide in the last 16 years— possibly the largest wave of recorded suicides in human history. A great number of those affected are cash crop farmers, and cotton farmers in particular. Statistics compiled by the Indian government reveal that 241,679 farmers in India committed suicide between 1995 and 2009. Maharashtra state - with 60,000 farmer suicides - tops the list. A staggering 3,228 farmers committed suicide in Maharashtra in 2015, the highest since 2001, according to data tabled in the Rajya Sabha on March 4, 2016 - that is almost nine farmers every day.

ISSUES AND IMPACTS

RECOMMENDATIONS

Expand ambit of National Food Security Act (NFSA) by focusing on individual empowerment to feed oneself and family in dignity and focus beyond welfare schemes; promote access to natural resources; support production and utilisation of coarse grains grown by local communities for the PDS.

Include nutrition in all PDS and promote local procurement of all food grains from small and marginal farmers in order to ensure culturally acceptable food, reduce food wastage in transportation and empower local communities.

Ensure conformity of the NFSA 2013 with India's human rights obligations and Supreme Court orders and constitutional provisions.

Expand ICDS centres to counter malnourishment and provide child care as per Court's orders including converting existing centres into crèches and appointing a second worker.

Increase in the quantity of food grains instead of restricting to 5 family members, knowing the fact that the majority of Indian households are large.

New entry should not be frozen as it denies the right to food to a child born after the census till the next census, for 10 years which is the most crucial time for child's mental and physical growth and needs adequate attention and nutrition

A complete balanced diet should include proteins, carbohydrates, vitamins and fats which go beyond wheat, rice and include edible oils and pulses as well.

The Act must be sensitive to the migrants and the NFSA does not include migrants as a beneficiary, violating the Article 21 of the Indian constitution.

REFERENCES

A.K. Sen, Poverty and Famines. An Essay on Entitlement and Deprivation, Oxford University Press, 1981

Jean Drèze (2004a), Democracy and the right to food, Economic and Political Weekly, Vol.39 No. 17, 24-30 April, pp. 1723-1731.

S. Mahendra Dev, 'Right to Food in India', Working Paper, No. 50, August, 2003

Reetika Khera, 'Food Security Act: One step forward, one step back?' Seminar No. 634, June 2012

FIAN, Advancing the Right to Adequate Food at the National Level - Some Lessons Learned (March 2010)
<http://www.fian.org/resources/documents/others/advancing-the-right-to-adequate-food-at-the-national-level>

Writ Petition (Civil) No. 196/2001 People's Union for Civil Liberties v. Union of India & Others

Justice M. B. Shah, 'The Indian Supreme Court acknowledges the Right to Food as a Human Right', Agriculture and Rural Development, 2006

'Supreme Court Orders on the Right to Food: a Tool for Action, October 2005'

State of Indian Farmers: A Report (2014), Centre for the Study of Developing Societies (CSDS), Delhi

Fact-Sheet prepared by FIAN India, (Member WGHR) for Working Group on Human Rights in India and the UN (WGHR)