

Chapter 5

The Right to Food in India—Entitlements as Government Responsibility to Entitlements as Government Obligation

Karl-Axel Lindgren

Introduction

India has the highest number of hungry and malnourished in the world at 190 million people (FAO et al. 2014), with malnutrition and infant mortality rates higher per head of population than in sub-Saharan Africa (Pillay 2009). The country, despite two decades of sustained economic growth, has failed to deal with economic and social inequalities adequately, with the majority of the population reliant on agriculture and working in the unorganised sector, i.e. low-paying casual labour with no taxes, job security, nor benefits (Pal and Ghosh 2007). Per capita calorie consumption has declined since the 2007–08 economic and food crises, as per capita food availability (Saxena 2011). While hunger and malnutrition has declined in India in the last two decades, it has not done so at an adequate pace, set to miss both the Millennium Development Goal of halving the proportion of hungry and the 1996 World Food Summit goal of halving the absolute number of hungry by 2015 (FAO et al. 2014). Faced with these challenges and the slow reduction of absolute hungry, the Indian government decided in 2009 to expand their public distribution system (PDS) of subsidised cereals and make it a legal entitlement for a segment of its population to demand through the National Food Security Act. How did this Act come to be, and what is the legacy of the right to food in India?

K.-A. Lindgren (✉)
Centre for Food Policy, City University London, Northampton Square,
London EC1V 0HB, UK
e-mail: karl-axel.lindgren.1@city.ac.uk

The Right to Food in India—‘Top-Down’ and ‘Bottom-Up’

India was a signatory of the 1948 UN Declaration of Human Rights, and enshrined the right to life in Article 21 of its constitution. This operated more as a ‘Directive Principle’ on how the Indian government should behave rather than as a legal entitlement that the government was beholden to (Pillay 2009), and was fairly irrelevant to Indian food policy until the beginning of the twenty-first century.

Two significant moments marked the start of an intense debate on the right to food in India, starting with the appointment of the UN Special Rapporteur on the Right to Food in 2000. Jean Ziegler, appointed by the UN Commission on Human Rights, was given the task to report on international progress regarding the right to food, and hold signatories of the UN Declaration of Human Rights accountable in fulfilling three main obligations (UNCESCR 1999):

1. To *respect* the right to food, by not taking any measure in depriving people of their right.
2. To *protect* the right to food, by enforcing laws and preventing individuals and corporations violating the right to food of others.
3. To *fulfil* the right to food, by facilitating and strengthening access to and utilisation of the necessary resources for people to feed themselves.

The international debate on the right to food helped trigger a domestic debate regarding, at the least, the moral, if not legal, duty of the state to feed its population. This activity from the top down was matched by bottom-up pressure to which we now turn.

The Indian government’s primary food security strategy was the PDS, which contributed to household food security by providing subsidised prices on grains, edible oils and other essential commodities, aimed at moderating the open market (Chand 2005). The PDS became universal from 1966 onwards, albeit in theory rather than practice. Due to deep cultural inequalities, in caste, gender, class and communities, the PDS faced operational difficulties in distributing food to the poor and marginalised that needed it the most (Mander 2012).

The PDS was reformed in the mid-1990s into a targeted system as a result of these operational issues. Utilising household income levels, the proposal was to place every household into one of three categories:

- ‘Above Poverty Line’ (APL): Households that have a high enough income to ensure household food security.
- ‘Below Poverty Line’ (BPL): Households that do not have a high enough income to ensure food security.
- *Antodaya Anna Yojana* (AAY): Households considered the ‘poorest of the poor’, receiving a higher allotted amount of subsidised cereals than BPL households.

The aim was to reduce government expenditure and make the system more efficient, but the government had promised the politically influential farmer’s lobby

to not decrease the amount of grain purchased and, coupled with the integration of Indian agriculture with the global market, forced to increase the purchasing price to match the international market (Gupta 2008). Consumers, particularly in rural areas, could not afford the high food prices that resulted (Pal and Ghosh 2007), and an estimated one-fourth of India's annual production of grains accumulated in buffer stocks (Chand 2005).

Resultantly, at the turn of the twenty-first century, the Indian government held large amounts of cereal stocks rotting away in storage facilities while hunger remained a pervasive, widespread issue (Chand 2005; Ghosh 2005).

In 2001, these mounting issues came to a head in a court case known as the 'Right to Food' case (Hassan 2011). Calorie consumption of those classified as BPL had decreased from the 1990s to the current day (Saxena 2011), while grains continued to accumulate to record-breaking stock sizes annually. The Rajasthan branch of the People's Union for Civil Liberties, a human rights body, filed a petition with the Supreme Court of India demanding that the large stocks of grains that the government had accumulated over the years be utilised to feed impoverished people in the state, having suffered from extended drought (Guha-Khasnabis and Vivek 2007).

The court case triggered debates on the right to food as a legal entitlement rather than merely as a moral obligation in the Indian policy sphere. Up to this point, there were no legally binding laws or acts that gave the Indian population the right to demand food (Pillay 2009). The Supreme Court, arguing that Article 21 in the constitution meant that the state had the constitutional duty to ensure that no one went hungry (Pritchard et al. 2014), expanded the scope of the petition to the entire country (Guha-Khasnabis and Vivek 2007), and made the provisioning of food a legal entitlement in the eyes of the judiciary. This was made possible by the Indian judiciary having expanded its authority and power over the last few decades through public interest litigation (PIL), where the court itself, or a member of the public, can introduce litigation rather than a specific aggrieved party. The Supreme Court asserted itself as a "champion" of responsible governance and the rule of law (Mate 2013), arguing that the executive branch had failed to protect the poor. The Court had the jurisdiction to enforce fundamental rights violations and issue orders enforcing these rights. This enabled the Court to undertake judicial activism, actively protecting the poor from corrupt governance and repression of human rights (Mate 2013). Before the right to food case, the Court had played a significant role in policy governance on the environment, government accountability and corruption.

The Court followed the right to food ruling with a series of interim orders that further defined the rights and entitlements of people to food and food-related programmes (see Table 5.1), enabling a rights-based approach in the policy space and spurring a mobilisation of various non-governmental organisations, trade unions, grass-roots movements and other civil societies into the Right to Food Campaign (Hassan 2011; see Box 1). These interim orders made government schemes that had already been enacted into legal entitlements; coupled with the authority of the Supreme Court, as well as pressure from the Right to Food Movement, the government was obliged to implement these laws (Guha-Khasnabis and Vivek 2007; Mate 2013).

Table 5.1 List of interim orders in 2001

Scheme	Original scheme	Interim order
Annapurna	10 kg of free cereals for the aged and destitute without pension	Provisioning of cereals to begin immediately, and eligible beneficiaries identified
Antyodaya anna yojana (AAY)	35 kg of highly subsidised cereals for those considered 'poorest of the poor'	Provisioning of cereals to begin immediately, and eligible beneficiaries identified
Integrated child development scheme (ICDS)	Comprehensive integrated programme concerning health, education and nutrition for children under six, pregnant and lactating women, and adolescent girl	Directing that childcare centres (anganwadis) should be opened in each settlement and existing centres to open immediately. Set a minimum norm for food to be provided
Mid-day meal scheme (MDMS)	School meal programme for children attending government or government-aided primary schools	Ordered that school-going children should be provided with fresh cooked meals at least 200 days a year, on all working days
National family benefit scheme	Social security for the poor	Ordered that in case of death to a primary breadwinner, 10,000 rupees should be provided to the family no later than four weeks after death
National maternity benefit scheme	Scheme for poor pregnant women	BPL women, by their twelfth week of pregnancy for their first two live births, should be provided 500 rupees
National old age scheme	Social security pension for the aged and destitute	Social security pensions provided monthly, and eligible beneficiaries identified
Targeted public distribution system (TPDS)	Subsidised grain for the poor	Provisioning of cereals to begin immediately, ration cards provided, and eligible beneficiaries identified

Source Guha-Khasnobis and Vivek (2007)

Box 1: The Right to Food Campaign

An informal network of NGOs, trade unions and grass-roots movements go under the banner of the Right to Food Campaign, united by the belief that every person has the fundamental right to be free from hunger and under-nutrition, and motivated by the need for a public campaign on the right to food.

The Campaign believes it is the state's responsibility to guarantee these rights, and also desires equitable and sustainable food systems, livelihood security through the right to work and land reforms. More on them it can be found at www.righttofoodindia.org.

The Court also ordered the central government, state governments and state-run radio and television to spread awareness of the rights and entitlements that the public have, and to further support the right to food (Pritchard et al. 2014).

The Supreme Court took three important steps in raising the profile of a rights-based approach and pressuring the government to legislate on the right to food (Birchfield et al. 2010):

1. Identifying the right to life in Article 21 of the Indian Constitution as a right to food
2. Concretely laying out the implication of the right to food in terms of policy
3. Subsequently overseeing the implementation, and continued monitoring, of the court-specified policies.

In 2002, the Court instituted a mechanism independent of the government, in the form of Commissioners, who monitored and reported on the implementation of the Court's orders, as well as suggested ways to promote the right to food of the poor. The Court followed their first major interim orders with increasingly detailed and strengthened interim orders on each specific scheme. As an example, the interim order concerning the Mid-Day Meal Scheme (MDMS) expanded the scheme to all school-going children throughout the country, with precise directions to the government on how it would implement the change (Supreme Court 2001). The Commissioners would monitor the implementation of the new rulings with the Right to Food Movement, who were working in close collaboration with the Commissioners, acting as their on-the-ground 'eyes and ears' (Hassan 2011). The clear direction from the Courts, with specifically defined targets and closely supervised implementation with support from the Right to Food Movement, made the MDMS one of the most successful social assistance programmes, fully available in schools throughout the country by 2005 (Guha-Khasnobis and Vivek 2007).

The Indian National Congress (INC) led centrist coalition called the United Progressive Alliance (UPA) had taken power in 2004. The UPA recognised the populist benefits of a rights-based framework and made promises to revamp existing schemes and programmes, from financing a universal MDMS to legislating on a slew of social protection programmes, such as a rural employment guarantee (right to work) programme. All of these targets had been goals of the Right to Food Movement and part of interim orders by the Supreme Court, and reflected the successful bottom-up pressure that the original Right to Food case created in demanding rights from their government (Pritchard et al. 2014). Crucially, it laid the foundation for the drafting of a right to food bill, named the National Food Security Bill in a manifesto promise of the UPA as they sought re-election in 2009. The 'top-down' international pressure helped contribute, with the FAO releasing the 'Guide on Legislating the Right to Food' in 2009.

The contribution of the Supreme Court, the Right to Food Movement and the commissioners was ultimately hard to concretely measure. While its influence on changing the policy process in India has been praised by many different corners of civil society, academia and politics (Mander 2012; Mate 2013; Hassan 2011), managing to institute a rights-based framework for future legislation and pressuring

the government into drafting and passing rights-based bills,. There was a little accountability by the states for actual compliance, and the Commissioners had little authority on the state level in ensuring that changes were fully implemented (Guha-Khasnobis and Vivek 2007). Having excellent aspirational language on paper is one thing, but ensuring that malnutrition and hunger decline are almost wholly different.

The universalisation of the MDMS can be taken as an example of those mixed results. The Court orders meant that the MDMS went from reaching 33 million children in 1995 to ultimately reaching 120 million by 2010 (GoI 2010), and has been considered “successful” in terms of regularity and scale (Khera 2013). Furthermore, it has been extensively studied in terms of education and nutrition, with a significant positive impact on school enrolment, retention, and attendance, and limited improvement in nutrition (Afridi 2011; Jayaraman and Simroth 2011; Khera 2013). However, fundamental problems remain, including food safety and hygiene concerns, lack of proper infrastructure and staff training, questions over the nutritional value of the food, overall accountability and still-poor indicators on child stunting, wasting and underweight (Global Nutrition Report 2014). In certain states, individuals have monopolised the food supply to schools, enabling them to supply low-quality food for lucrative government contracts (Khera 2013).

The National Food Security Bill

The National Food Security Bill (NFSB) was introduced to formalise policies that the Courts had already implemented. The bill eventually centred heavily on the PDS, with very few provisions for reforming the existing system, stipulating only (in legally non-binding terms) that certain technological innovations would be implemented in making the system more transparent and efficient, although it also acknowledged that technology cannot be the solution to governance (Gulati et al. 2012).

The NFSB went through a multitude of iterations (see Table 5.2). The very first draft was made by the National Advisory Council (NAC), an advisory body set up by the UPA government to directly advise the prime minister. The council, made up of prominent economists, bureaucrats, politicians and activists, emphasised the right to food in their draft, helping set the tone and focus of the NFSB’s original content. The NAC did not have representation from any states, nor did it have an official role within the government, being an independent advisory body (Aggarwal and Mander 2013). The initial criticism of the NAC draft of the bill from the Right to Food Movement was the lack of a universal PDS (Mander 2012; Himanshu 2011), retaining a methodology that was strictly socioeconomic in identifying those eligible for the PDS.

In 2011, the government submitted an edited draft to the Parliamentary Standing Committee on Food, Consumer Affairs, and Public Distribution. The role of the Standing Committee was to collate views from state governments, ministries, MPs,

Table 5.2 Iterations of the NFSB

Year	Draft	Key aspects	Eligibility	Changes from previous draft
2009	National advisory council draft	Provisions for people living in/with: homelessness, destitution, emergencies, disaster zones	90 %	
		Starvation protocol		
		Specific provisions for women and children		
		7 kg per person per month for 'priority' category at 3/2/1 rupees per kg of rice/wheat/coarse grain		
		4 kg per person per month for 'general' category at half of market price		
December 2011	Government draft introduced to Parliament	Provisions for women and children	67–75 % rural and 50 % urban	Removed all provisions for the homeless, destitute, those living in emergencies or disaster zones
		Starvation protocol		
		7 kg per person per month for 'priority' category at 3/2/1 rupees per kg of rice/wheat/coarse grain		Reduced eligibility from 90 to 67 %
		3 kg per person per month for 'general' category at half of market price		Reduced 'general' category entitlements to 3 kg
January 2013	Parliamentary standing committee on food, consumer affairs and public distribution draft	Provisions for women and children	67–75 % rural and 50 % urban	Removed 'general' and 'priority' categories. Uniform entitlements for everyone
		5 kg per person per month at 3/2/1 rupees per kg of rice/wheat/coarse grain		
				Extended provisions for children up to age 16

(continued)

Table 5.2 (continued)

Year	Draft	Key aspects	Eligibility	Changes from previous draft
July 2013	National food security bill/ordinance	Provisions for women and children 5 kg per person per month at 3/2/1 rupees per kg of rice/wheat/coarse grain 35 kg per household per month for AAY households, at 3/2/1 rupees per kg of rice/wheat/coarse grain	67–75 % rural and 50 % urban	Introduced provisions for the poorest of the poor—the AAY

Source Author

researchers and representatives of organisations within food security and present a draft that had taken these perspectives in mind (Aggarwal and Mander 2013). The most significant of the changes by the standing committee was the removal of the starvation relief protocol and the provisions for people living in disaster zones, and emergencies, as well as of the homeless and the destitute, leaving only women and children that received specific entitlements (Aggarwal and Mander 2013). The eligibility criteria were also changed to encompass 67 % of the population rather than 90 %. Aggarwal and Mander (2013) heavily criticised the standing committee draft, arguing that the changes that had been made included removing provisions that the Court had already established. By further limiting who was eligible for food distribution, the policy decision to retain targeted distribution was strengthened, seemingly process-oriented rather than outcome-oriented. The Right to Food Movement, apart from arguing that the right to food should be universal from an ethical perspective, also argued on the practical level of the high administrative costs of targeting, including defining and identifying those eligible, as well as printing ration cards, updating lists, and hiring public officials to ensure that only those eligible received rations (Himanshu 2011; Mander 2011).

To further complicate the matter, the final arbiters of the eligibility criteria were the state governments, who had the responsibility to define the income levels of each category, which created wide variances and a high differentiation in the implementation of the PDS depending on the state (Drèze 2013). Furthermore, price subsidies, range of items covered by the PDS, and volume of how much is subsidised was also delegated to each state government to decide upon (Pritchard et al. 2014).

While the right to food language remained, the eventual act was considered a disappointment that did not go far enough in its legal entitlements (Aggarwal and Mander 2013). Table 5.3 shows the legal entitlements that became part of the National Food Security Act in 2013 as it was passed by parliament.

Table 5.3 The entitlements of the national food security act

Target group	Entitlement
Antyodaya anna yojana (AAY)—‘poorest of the poor’	35 kg of subsidised grain per household, rice/wheat/milletts at Rs. 3/2/1 per kg
75 % of rural and 50 % of urban population	5 kg of subsidised grain per person, rice/wheat/milletts/
Pregnant and lactating women	Free meals during pregnancy and up to 6 months after child-birth, 6 months of maternity benefit of Rs. 1000 per month
Children between 6 months and 6 years old	Daily, free, age-appropriate meals through the local childcare centre (<i>anganwadi</i>)
Children between 6 years and 16 years old	Free mid-day meal every working day in all government and government-aided schools
Children suffering from malnutrition	Free meals through the local childcare centre (<i>anganwadi</i>)

Source National Food Security Act (2013)

To summarise, in 2001, the Supreme Court of India interpreted the constitution to mean that the government of India had the legal obligation to feed its citizens, and that the Indian people had the right to food. The Supreme Court followed by passing interim orders directing policy implementation in lieu of the government acting. Judicial pressure, in collaboration with civil society movements, led the Indian government to adopt a rights-based policy approach in line with the Supreme Court’s interpretation, and drafted the National Food Security Bill in 2009, passing as the National Food Security Act in September (2013). As of February 2015, the NFSA has yet to be implemented. Major criticisms of the NFSA have been its expected economic cost, lack of nutrition security, lack of structural change, and insistence on eligibility criteria (Drèze 2013).

Conclusions: What Are the Implications of the Right to Food?

The significance of the 2001 Right to Food Case has only grown with the subsequent laws that have passed, being a landmark event that has set precedence on the justiciability regarding human rights. The FAO (2009) assert that “the protection of human rights through constitutions is the strongest form of legal protection, as constitutions are considered the fundamental or supreme law of the land...every law in a country must conform to the constitutional provisions and, in cases of conflict, the constitutional norm will always prevail”. Translating constitutional rights into justiciable legal entitlements was a powerful move in ensuring those rights being upheld by the government.

There are three main actors in a rights-based approach (Kent 2000):

- The holders of entitlements (the people)
- Those with the duty to provide the entitlements (the government)
- A neutral institution that, in case of violation, enforces the right (the judicial system)

The Right to Food is a theoretical framework that is based on a moral imperative, on dignity and social justice rather than merely on economic access or food availability, and thus takes a more ‘human-centred’ focus rather than an economic focus. This framework emphasises obligations and entitlements, yet are hollow promises if people are unable to exercise their right, or act to ensure that their rights are met. Chapman (2005) argues that raising awareness of the rights of the population is a key fundamental in realising a rights-based policy framework, built on “participation, empowerment and social change”. The Indian poor are neither aware of most of their rights, nor are properly mobilised to demand that their rights are upheld.

The National Food Security Act makes the right to food a legal right, allowing action to be taken against the Indian government if it fails to provide its selected population with adequate food. This right can be incredibly powerful to hold governments accountable to its population, and would be a driving force for change—yet meaningless if those who are entitled to food are unaware of their rights.

In its global context, the case and ruling by the Indian Supreme Court can be used as an example of a strong judiciary enabling a rights-based framework, and an example of the far-reaching impact the judiciary can have on socioeconomic issues. More specifically, the policy detail in the interim orders of the Supreme Court set it apart from similar litigations in other developing countries. By ruling, giving precise orders and explicit policy directions, and establishing a set of Commissioners, the Supreme Court took the right to food further than simply ruling and relying on the government to implement policy decisions, potentially being a template for other nations in similar positions (Khasnabis and Vivek 2007).

References

- Afridi F (2011) The impact of school meals on school participation in rural india. *J Dev Stud* 47 (11):1636–1656
- Aggarwal A, Mander H (2013) Abandoning the right to food. *Econ Polit Wkly* 48(8):21–23
- Birchfield L, Corsi J (2010) Between starvation and globalisation: realising the right to food in India. *Michigan J Intern Law* 31:691–764
- Chapman J (2005) Rights-based development: the challenge of change and power. Global Poverty Research Group, UK
- Chand R (2005) Whither India’s food policy? From food security to food deprivation. *Econ Polit Wkly* 40(11):1055–1062
- Drèze J (2013) The food security debate in India. *The New York Times*, 9 July. Available at: <http://india.blogs.nytimes.com/2013/07/09/the-food-security-debate-in-india/>
- FAO (2009) Guide on Legislating for the right to food. UN FAO, Rome

- FAO, IFAD, WFP (2014) The state of food insecurity in the world 2014: strengthening the enabling environment for food security and nutrition. FAO, Rome
- Ghosh J (2005) Productivity, incomes and employment in agriculture. ILO Discussion Paper, New Delhi
- Global Nutrition Report (2014) 2014 Nutrition country profile India. IFPRI, Washington, DC
- Government of India (2010) Mid day meal scheme: first review mission. Ministry of Human Resource Development, New Delhi. Available at: <http://mdm.nic.in/Files/Review/Reports/2010/1st%20RM%20Report-UP.pdf>
- Guha-Khasnobis B, Vivek S (2007) Rights-based approach to development: lessons from the right to food movement in India. WIDER Research Paper, No. 2007/04
- Gulati A, Gujral J, Nandakumar T, Jain S, Anand S, Rath S, Joshi P (2012) National food security bill: challenges and options. Commission for Agricultural Costs and Prices, Government of India, New Delhi. Available at: <http://cacp.dacnet.nic.in/NFSB.pdf>
- Gupta D (2008) India's lagging sector: Indian agriculture in a globalising economy. Australia South Asia Research Centre Working Papers, Australian National University
- Hassan S (2011) Rights, activism and the poor in India: Supreme Court and the 'Right to Food case'. Institute of Development Studies, UK
- Himanshu AS (2011) Why not a universal food security legislation? *Econ Polit Wkly* 46(12):38–47
- Jayaraman R, Simroth D (2011) The impact of school lunches on primary School Enrolment: Evidence from India's Midday Meal Scheme. ESMT
- Kent G (2000) Nutrition rights: The human right to adequate food and nutrition. Hawaii: World Alliance on Nutrition and Human Rights/University of Hawaii.
- Khera R (2013) Mid-Day Meals: Looking Ahead. *Econ Polit Wkly* 48(32):12–14
- Mander H (2011) Ending indifference: A law to exile hunger. *Econ Polit Wkly* 46(25)
- Mander H (2012) Ash in the belly: India's unfinished battle against hunger. Penguin Books, New Delhi
- Mate M (2013) Public interest litigation and the transformation of the Supreme Court of India. In: Kapiszewski D, Silverstein G, Kagan R (eds) *Consequential Courts: judicial roles in global perspective*. Cambridge University Press, Cambridge
- NFSA (2013) The National Food Security Act, 2013. Government of India, New Delhi. Available at: <http://indiacode.nic.in/acts-in-pdf/202013.pdf>
- Pal P, Ghosh J (2007) Inequality in India: a survey of recent trends. DESA Working Paper No. 45. UN DESA, New York
- Pillay S (2009) India sinking: threats to the right to food, food security and development in an era of economic growth. *Windsor Yearbook Access Justice* 27(1):127–169
- Pritchard B, Rammohan A, Sekher M, Parasuraman S, Choithani C (2014) *Feeding India: livelihoods, entitlements and capabilities*. Earthscan, London
- Saxena NC (2011) Hunger, under-nutrition and food security in India. Working Paper 44, Chronic Poverty Research Centre, UK
- Supreme Court of India (2001) People's union for civil liberties vs. Union of India and Others, Writ Petition (Civil) No 196 of 2001. Available online: <http://www.righttofoodindia.org/orders/interimorders.html>
- UNCESCR (1999) Substantive issues arising in the implementation of the international covenant on economic, social, and cultural rights: the right to adequate food (art. 11). United Nations, New York