

# **The National Food Security Act, 2013: India's Endeavour to End Hunger by Law**

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*Today, India is not only self-sufficient in food production but also has substantial food reserve, still there are widespread hunger, chronic malnutrition and starvation deaths. As the right to food is corollary to food security, initially it appeared that policies and programmes relating to food security were concentrated only on enhancing agricultural production, but ignored household level food security and individual capabilities to acquire sufficient food. Since Independence massive governmental programmes and schemes relating to food security, employment and social welfare were established to eradicate hunger and malnutrition and some of the programmes appear to be innovative and unique in the world. Nevertheless, it comes into sight that there is large-scale violation of human right to food essentially due to the failure of the State to ensure equitable food distribution system, ineffective utilization of funds for social welfare schemes to monitor and administer food security and poverty alleviation programmes. The right to food is operational in India on the basis of India's Constitution and of her obligations under International human rights law. Under these International obligations a framework law has been developed and brought into force in India recently. But the legal framework and the means of producing sufficient food does not imply that food is actually secured for everyone, what it requires is the political and societal will of various stakeholders to overcome the discriminatory situation in order to give the right to food a real meaning.*

## **I Prologue**

Hunger and malnutrition is not a new affliction and they have been persistent features of human history. Life has been short and hard in much of the world, most of the time. "Deprivation of food and other necessities of living have consistently been among the causal antecedents of the brutishness and brevity of human life."<sup>2</sup> Ancient chronicles not only in India, but also in Egypt, Western Asia, China, Greece, Rome and elsewhere documented famines that ravaged ancient civilizations in different parts of the world.<sup>3</sup> The result of such famines was sudden depopulation and frantic

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<sup>2</sup> JEAN DREZE AND SEN, HUNGER AND PUBLIC ACTION 258 (1989).

<sup>3</sup> *Id.* at 82.

migration of people. It is estimated that over three million people died of hunger and starvation in the Great Bengal Famine of 1943.<sup>4</sup> Persistence of chronic hunger in large number of people living without adequate food is different from violent outburst of famines which cause widespread deaths.<sup>5</sup> Access to food is essential to human survival and the right to food is a fundamental human right. Yet pervasiveness of human hunger worldwide starkly illustrates the ongoing failure to fulfil the right to food. Paradoxically, while global per capita food production has arisen to unprecedented levels, hunger remains a pervasive reality in the World today. 868 million of the World's more than 7 billion people are seriously and permanently undernourished and every five second a child is dying of hunger or its complications in the World. Out of 868 million people, 852 million live in developing and 16 million live in developed countries. Majority of them i.e., 563 are living in Asia followed by 239 million living in Africa.<sup>6</sup> Moreover out of total population of undernourished persons, 50% are small farmers, 20% are landless rural dwellers, 10% are nomadic herders and 10% live in urban poverty. Barely 5% are affected by food emergency situations arising from armed conflicts, by exceptional climatic conditions (drought or floods) or violent economic transitions.<sup>7</sup> The causes of undernourishment and of death from hunger and malnutrition are immensely complex and they cannot be simply attributed to war or natural catastrophes. They are primarily due to social injustice, political and economic exclusion and to discrimination.

As far as Right to food in India is concerned, some of the worst violation of the right to food can be seen in India today. India is suffering from alarming hunger, ranking 67<sup>th</sup> position among 84 developing Countries. India is a home to about 217 million undernourished persons.<sup>8</sup> India continues to be a land of mass poverty and despite various poverty alleviation schemes, the disparity between rich and the poor is widening day by day and more so in the aftermath of economic liberalization.<sup>9</sup> Indian Government time and again realised that, in order to achieve food security and right to food, the poor should have sufficient means to purchase it. Poor people cannot afford to purchase the food they need at market prices and

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<sup>4</sup> AMARTYA SEN, POVERTY AND FAMINES 51 (1981).

<sup>5</sup> *Id.* at 46.

<sup>6</sup> United Nations Food and Agriculture Organization, *The State of Food Insecurity in the World*, 2012, 8 (Sept 3, 2012), <http://www.fao.org/docrep/016/i3027e/i3027e.pdf> (last visited on March 22, 2014.)

<sup>7</sup> Christophe Golay and Melik Özden, *The Right to Food*, CETIM GENEVA 3, 1-13 (2010).

<sup>8</sup> *Hunger Report-State of Food Insecurity in the World*, 21 CHRONICLE 8, 1-15 (2011).

<sup>9</sup> Parmanand Singh, *Hunger Amidst Plenty: Reflections on Law, Poverty and Governance*, 48 JOURNAL OF INDIAN LAW INSTITUTE 57, 55-71 (2006).

therefore, social protection programmes are needed. Adequate purchasing power for the poor to buy food can be ensured in two ways. One is to have an employment intensive pattern of growth which can provide remunerative work to poor and enhance their power to purchase food. The other is to increase incomes and subsidize food through social protection programmes. . It is irony that at present India has the largest programmes viz., Food Subsidy Programmes (*Public Distribution System from year 1951, Antodaya Anna Yojana in year 2000, Annapurna Yojana in year 1999*), Feeding Entitlement Programmes (*Mid Day Meal Scheme in year 2007, Integrated Child Development Services Schemes in year 1975, National Food Security Mission in year 2007, Applied Nutritional Programme in year 1973*), Employment Programmes (*National Rural Employment Guarantee Scheme which has now been changed into Mahatma Gandhi National Rural Employment Guarantee Act, 2005, Sampoorna Grameen Rozgar Yojana in 1999*) and many social security programmes but despite these programmes the conditions of hunger, malnutrition and food insecurity continue to be high.

## **II Food Security and Food Policy**

The central thrust of food policy both at nation levels and international levels is to achieve food security for all and food security is achieved when all people at all times have physical and economic access to sufficient (adequate), safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life.<sup>10</sup> But it is estimated that millions of people suffer from lack of access to adequate food and malnutrition. Access, availability and adequacy can be said to be the three key elements in the right to food. Availability requires on the one hand that food should be available from natural resources either through the production of food, by cultivating land or animal husbandry or through other means of obtaining food, such as fishing, hunting or gathering. On the other hand, it means that food should be available for sale in markets and shops. Accessibility requires economic and physical access to food to be guaranteed. Economic accessibility means that food must be affordable. Individuals should be able to afford food for an adequate diet without compromising on any other basic needs, such as school fees, medicines or rent. Physical accessibility means that food should be accessible to all, including to the physically vulnerable, such as children, the sick, persons with disabilities or the elderly, for whom it may be difficult to go out to get food. Adequacy means that the food must satisfy dietary needs, taking into account the individual's age, living conditions, health, occupation and sex *etc.* food should be safe for human consumption and free from adverse

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<sup>10</sup> FAO, RIGHT TO FOOD: IN THEORY AND PRACTICE, 33 (1998).

substances, such as contaminants from industrial or agricultural processes, including residues from pesticides, hormones or veterinary drugs. Adequate food should also be culturally acceptable. For example, aid containing food that is religious or cultural taboo for the recipients or inconsistent with their eating habits would not be culturally acceptable.<sup>11</sup>

The delegates to the World Food Conference, 1974, feared that the world was entering a period of chronic food shortage and most of the discussions in the conference focused on the simple core issue of how global food production could be increased.<sup>12</sup> Accordingly, food policy got concentrated on agricultural production, supply and distribution at national and international levels. This food security was identified with commercial food prices and physical availability rather than with demand and consumption by poor people or nutritionally vulnerable groups.<sup>13</sup> By the year 1984, many of the assumptions made at 1974 conference have proved to be ill-founded. As the crisis atmosphere receded and food supplies worldwide were more than adequate, yet hunger and malnutrition continue to affect large sections of the population in the developing countries. Thus, experts now agree that hunger issues enter either a catastrophic, natural or manmade or chronic problem of food availability among vulnerable groups whose common bond is their poverty.<sup>14</sup> Despite policy shift in favour of vulnerable groups, incidents of hunger and undernutrition increased since 1980s and the World Food Summit, 1996 considered it intolerable that more than 800 million people throughout the world do not have enough food to meet their basic nutritional needs.<sup>15</sup> Now it increasingly recognised that method of dealing with hunger and malnutrition problems has to concentrate on food security for all. The continuance of hunger and malnutrition during self-sufficiency in global food production is attributed to inequitable food distribution rather than non-availability and therefore, food policy should concentrate on household food security. Here begins human rights approach to the problems of hunger and malnutrition because it is believed that

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<sup>11</sup> Dr. Archana Gaddekar, *Right To Food: End Hunger by Law*, in FOOD SECURITY LAW-INTERDISCIPLINARY PERSPECTIVES 156, (Dr. Bimal. N. Patel and Dr. Ranita Nagar ed., 2014).

<sup>12</sup> JAMES PRICE GITTINGER, JOANNE LESLIE, *et. al.*, FOOD POLICY: INTEGRATING SUPPLY, DISTRIBUTION AND CONSUMPTION 11 (1987).

<sup>13</sup> Walter P. Falcon, *et. al.*, *The World Food and Hunger problems: Changing Perspectives and Possibilities 1974-1989*, p 13, CENTER FOR FOOD SECURITY AND ENVIRONMENT (FSE) STANFORD, STANFORD UNIVERSITY, 13, 11-21 (2001).

<sup>14</sup> *Id.* at 17.

<sup>15</sup> United Nations Food and Agriculture Organization, *Report of the World Food Summit 13-17 Nov. 1996*, 32-35 (1997) <http://www.fao.org/docrep/003/w3548e/w3548e00.htm> (last visited on March 22, 2014.)

starvation is the direct consequence of entitlement failure.<sup>16</sup> The focus on entitlements has the effect of emphasizing legal right and now “the law stands between food availability and food entitlements.”<sup>17</sup>

### III Recognition of Right to Food as Human Right

The right to food, and its variations, is a human right protecting the right for people to feed themselves in dignity, implying that sufficient food is available, that people have the means to access it, and that it adequately meets the individual's dietary needs. The right to food protects the right of all human beings to be free from hunger, food insecurity and malnutrition. Human rights are interdependent, indivisible and interrelated. This means that violating the right to food may impair the enjoyment of other human rights and its realisation is essential to the fulfilment of other human rights. The right to food has been recognized as a human right since the Universal Declaration of Human Rights in 1948,<sup>18</sup> in numerous binding and non-binding legal instruments. The right to food received relatively little further attention in 1966, almost twenty years after the Universal Declaration of Human Rights, when the International Covenant on Economic, Social and Cultural Rights (ICESCR) was adopted. It entered into force on 3 January 1976. It deals with the right to adequate food in Article 11(1) and (2). In Article 11, governments committed themselves to taking all measures necessary to ensure: “the right of everyone to an adequate standard of living for himself and his family, including adequate food... and to the continuous improvement of living conditions”.<sup>19</sup> It also recognized “the fundamental right of everyone to be free from hunger”.<sup>20</sup> This provision is to be read in

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<sup>16</sup> AMARTYA SEN, *INEQUALITY REEXAMINED* 155 (1999).

<sup>17</sup> *Id.* at 166.

<sup>18</sup> Universal Declaration of Human Rights, 1948 (UDHR), Article 25 (1) “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”

<sup>19</sup> The International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR), Article 11(1) The state parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States parties will take appropriate steps to ensure the realisation of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

<sup>20</sup> *Id.*, Article 11(2) The State Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed: a) to improve methods of production,

conjecture with Article 3 of Universal Declaration of Human Rights. In 1999, states party to ICESCR were put on notice that they were obligated to “respect, to protect, and to fulfill” the right to adequate food when the United Nations Committee on Economic, Social and Cultural Rights (UN Committee) published “Comment 12” to ICESCR.<sup>21</sup> However, guidance on its implementation was not available until 2004 when, after two years of negotiations under the umbrella of Food and Agriculture Organization, Member States adopted the “Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security”<sup>22</sup>. The Voluntary Guidelines were developed to fight hunger and malnutrition using a rights-based approach.

The right to food is also recognized in other international conventions protecting specific groups, such as the Convention on the Elimination of All Forms of Discrimination against Women (1979),<sup>23</sup> the Convention on the Rights of the Child (1989)<sup>24</sup> and the Convention on the Rights of Persons with Disabilities (2006).<sup>25</sup> The right to food is also recognized in some regional instruments, such as the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, known as the Protocol of San Salvador (1988),<sup>26</sup> the

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conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources; b) taking into account the problems of both food importing and food exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

<sup>21</sup> See U.N. Econ. & Soc. Council [ECOSOC], Committee on Economic, Social, and Cultural Rights, *Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: General Comment 12*, 2, E/C.12/1999/5 (May 12, 1999) [hereinafter *Comment 12*].

<sup>22</sup> Committee on World Food Security, *Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security* (Nov. 22, 2004) <http://www.fao.org/docrep/meeting/008/I3345e/j3345e01.htm>. (Last visited on 26 October 2013).

<sup>23</sup> The Convention on the Elimination of All Forms of Discrimination against Women recognizes the right of pregnant and lactating women to nutrition in article 12 (2) in the context of maternity protection.

<sup>24</sup> The Convention on the Rights of the Child recognizes the right of children to adequate nutrition in article 24 (2) (c) and (e) in the context of the right to health and in article 27 (3) in the context of the right to an adequate standard of living.

<sup>25</sup> The Convention on the Rights of Persons with Disabilities recognizes the right to food in article 25 (f) in the context of the right to health and in article 28 (1) in the context of the right to an adequate standard of living and social protection.

<sup>26</sup> The Protocol of San Salvador recognizes the right to food in article 12. It also addresses it in article 17 in the context of the protection of the elderly.

African Charter on the Rights and Welfare of the Child (1990)<sup>27</sup> and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003).<sup>28</sup> The right to food is also recognized implicitly through other rights. The African Commission on Human and Peoples' Rights has interpreted the right to food as being implicitly protected under the African Charter on Human and Peoples' Rights (1981) through the right to life, the right to health, and the right to economic, social and cultural development.<sup>29</sup> According to the Human Rights Committee, which monitors the International Covenant on Civil and Political Rights (1966), the protection of the right to life requires States to adopt positive measures, such as measures to eliminate malnutrition.<sup>30</sup>

#### **IV Right to food in India: Law and Challenges Ahead**

Preamble of the Indian Constitution promises to secure economic justice to all its citizens. Naturally, economic justice cannot be secured without giving two square meals to its citizens. The Constitution of India both explicitly and implicitly provides for a right to food, thereby offering robust national protection that is likely more accessible to Indian citizens than similar safeguards provided by International bodies.<sup>31</sup> Explicitly Article 47, located in the Directive principles chapter of the Constitution of India, creates a “duty of the State to raise the level of nutrition and the standard of living to improve public health.”<sup>32</sup> Given the aspirational and non-justiciable nature of the Directive principles, however, most of the development of the

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<sup>27</sup> The African Charter on the Rights and Welfare of the Child recognizes the right of children to nutrition in article 14 (2) (c), (d) and (h) in the context of the right to health and health services.

<sup>28</sup> The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa recognizes the right to food in article 15. It also addresses the right of pregnant and breastfeeding women to nutrition in article 14 (2) (b).

<sup>29</sup> The Social and Economic Rights Action Center and the Center for Economic and Social Rights v. Nigeria, communication No. 155/96, para. 64.

<sup>30</sup> Human Rights Committee, General Comment No. 6 (1982) on the Right to life, para. 5.

<sup>31</sup> In general, domestic institutions are literally more accessible, they are geographically closer and their proceedings are conducted in a similar language to the one of the rights holders. The principle of exhaustion i.e., the right holders must exhaust domestic remedies before seeking redress and remedy at the International level also makes domestic institutions a more likely starting point for those pursuing human rights claims.

<sup>32</sup> The Constitution of India, Article 47, the State shall regard the raising of the level of nutrition and the standards of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and of drugs which are injurious to health.

right to food has occurred within the context of Article 21, which includes a right to life and is located within the enforceable and justiciable fundamental rights chapter of the Constitution. The Indian Constitution has a federal structure and is in consonance with the Fundamental Rights and the Directive Principles of the State Policy, Entry 33 of Schedule 7 of List III, *inter alia*, provides that with regard to the supply and distribution of foodstuffs including oils and oil seeds, legislation can be passed by the Union as well as by the State. The Constitutional sources for the right to food are the protection of life and personal liberty,<sup>33</sup> right to work,<sup>34</sup> right to livelihood,<sup>35</sup> freedom from starvation and right to sustenance,<sup>36</sup> provision of adequate nutrition and improvement public health,<sup>37</sup> etc. These Articles in the Constitution leave no doubt that it is among the primary duties of the State to take proper steps to, and base its economic policies on ensuring that there is enough food for all citizens to satisfy their hunger, to raise the level of nutrition and the standard of living and the improvement of public health. Against this background, the Indian Supreme Court recognizes the right to food as a fundamental right.

The Supreme Court in *People Union for Civil Liberties v. Union of India & Ors*<sup>38</sup> popularly known as the right to food case, recognized the right to food under the right to life stipulated in Article 21 of the Indian Constitution, and Article 47, a Directive Principle of State Policy which puts duty on the State on raising the level of nutrition. The court noted the paradox that plenty of food was available in granaries, but that the poor were still starving. The petition filed by NGO assumed the special significance not only because it brought up the issue of starvation deaths before the Supreme Court for the third time in two decades, but also because it brought to the fore starvation on the face of surplus food grains in the Government stocks. The court further held that the poor, the destitute and the weaker sections of the society must not suffer from hunger and starvation and the prevention of the same was one of the prime responsibilities of the government whether Central or State. How this was to be ensured would be a matter of policy which was best left to the Government.

#### **IV.I. The National Food Security Act, 2013**

Recent years have witnessed increased interest in the adoption of framework laws on the right to food. Such laws are often known as food security laws rather than right to food but the effect is similar, as long as the

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<sup>33</sup> *Id.* Article 21.

<sup>34</sup> *Id.* Article 43.

<sup>35</sup> *Id.* Article 39(a).

<sup>36</sup> *Id.* Article 38.

<sup>37</sup> *Supra* note 31.

<sup>38</sup> 2004 (12) SCC 104



right to food is clearly spelled out. The National Food Security Act, 2013 that extend to the whole of India and makes right to food a legal entitlement. In the current scenario and given the way poverty is measured, this law will benefit approximately 800 million people which are about 67 percent of India's population. The preamble of the Act clearly states that it is an Act to provide for food and nutritional security in human cycle approach, by ensuring access to adequate quantity of quality food at affordable price to people to live a life with dignity and for matters connected therewith or incidental thereto. The National Food Security Act gives statutory backing to the Targeted Public Distribution System (TPDS). This legislation marks a shift in the right to food as a legal right rather than a general entitlement. The Act classifies the population into three categories: excluded (i.e., no entitlement), priority (entitlement), and Antyodaya Anna Yojana (AAY; higher entitlement). It establishes responsibilities for the Centre and States and creates a grievance redressal mechanism to address non-delivery of entitlements. Though the motive behind National Food Security Act is very noble, but it seems difficult for government to implement this act without overcoming the governance issues and challenges prevailing in the system.

Chapter II of the Act makes provisions for the food security. Section 3 provides a Right to receive food grains at subsidised prices by persons belonging to eligible households under Targeted Public Distribution System.<sup>39</sup> The legal entitlement to receive food grains by persons will give

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<sup>39</sup> The National Food Security Act, 2013, Section 3 (1) Every person belonging to priority households, identified under sub-section (1) of section 10, shall be entitled to receive five kilograms of food grains per person per month at subsidised prices specified in Schedule I from the State Government under the Targeted Public Distribution System:

Provided that the households covered under *Antyodaya Anna Yojana* shall, to such extent as may be specified by the Central Government for each State in the said scheme, be entitled to thirty-five kilograms of food grains per household per month at the prices specified in Schedule I:

Provided further that if annual allocation of food grains to any State under the Act is less than the average annual off take of food grains for last three years under normal Targeted Public Distribution System, the same shall be protected at prices as may be determined by the Central Government and the State shall be allocated food grains as specified in Schedule IV.

*Explanation—* For the purpose of this section, the "*Antyodaya Anna Yojana*" means, the scheme by the said name launched by the Central Government on the 25th day of December, 2000; and as modified from time to time.

(2) The entitlements of the persons belonging to the eligible households referred to in sub-section (1) at subsidised prices shall extend up to seventy-five per cent of the rural population and up to fifty per cent of the urban population.

(3) Subject to sub-section (1), the State Government may provide to the persons belonging to eligible households, wheat flour in lieu of the entitled quantity of

them the constitutional rights to minimum food security. After this landmark legislation, the State on the other hand, is under legal obligation to ensure the availability of entitled grains to eligible persons. The Act also makes special provisions for pregnant women and lactating mothers<sup>40</sup> and Nutritional support to children.<sup>41</sup> Unlike the previous schemes of the Government, the National Food Security Act adopts the life cycle approach, in the sense; it is an integrated effort to address the food requirement of every phase of human life cycle starting from the infancy to the adult and the parenthood. The take home rations and maternity benefits to pregnant and lactating mothers is a welcome initiative considering the Country's poor record in Infant Mortality Rate and the Maternal Mortality Rate. In order to address malnutrition among children, any child below the age of 14, including those that are out-of-school, may approach any feeding facility such as *anganwadi* centre, school mid-day meals centres for midday meal. The Act ensures the access to food grains through doorstep delivery of food grains by reforms Targeted Public Distribution System.<sup>42</sup> The Act provides for Central and State Governments to endeavour to progressively undertake necessary reforms in the Targeted Public Distribution System in consonance with the role envisaged for them in this Act. Some of the reforms mentioned in the Act include, Doorstep delivery of food grains to the Targeted Public Distribution System outlets, application of information and communication technology tools for end-to-end computerization, transparency in maintenance of records of transactions at all levels and to prevent diversion, leveraging "aadhaar", progressive preference in allotment of Fair Price Shops, diversification of commodities distributed, Introducing schemes such as cash transfer, food coupons to the targeted beneficiaries in order to ensure their food grain entitlements. Provisions for Food Security Allowance by cash transfer in case of non-supply of food grains.<sup>43</sup> In a major shift from the past, the eldest woman in every eligible household who is not less than eighteen years of age, shall be head of the household for the purpose of issue of ration cards. This is done with a rationale of helping the feeding hands to have first right to food grains rather than male member who on many occasions is presumed to divert the grains to black market or liquor shops in villages.<sup>44</sup>

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food grains in accordance with such guidelines as may be specified by the Central Government.

<sup>40</sup> *Id.* Section 4.

<sup>41</sup> *Id.* Section 5.

<sup>42</sup> *Id.* Section 12.

<sup>43</sup> *Id.* Section 8. Right to receive food security allowance in certain cases- In case of non-supply of the entitled quantities of food grains or meals to entitled persons under Chapter II, such persons shall be entitled to receive such food security allowance from the concerned State Government to be paid to each person, within such time and manner as may be prescribed by the Central Government.

<sup>44</sup> *Id.* Section 13

Chapter VII of the Act provides for the Grievance Redressal Mechanism.<sup>45</sup> Every State Government shall put in place an internal grievance redressal mechanism which may include call centres, help lines, designation of nodal officers, or such other mechanism as may be prescribed. The State Food Commission and Central Food Commission will be established under the Act to oversee the effective implementation of the Act. The District Grievance Redressal Officer will look after and address the grievances of the public at every district. According to the provisions of the Act, the State governments are encouraged to undertake a decentralized planning process to procure, store and distribute food grain at local levels from district to *Panchayat*, with a view to minimize transportation costs and losses and provide State governments with the appropriate facilities and incentives. The Act intends to accord preference to community institutions such as Self-Help Groups and Cooperatives or public bodies like Gram Panchayats or nongovernmental organizations and women collectives to establish the fair price shops.<sup>46</sup> All Targeted Public Distribution System related records shall be placed in the public domain and kept open for inspection to the public, in such manner as may be prescribed by the State Government. Every local authority, or any other authority or body, as may be authorized by the State Government, shall conduct or cause to be conducted, periodic social audits on the functioning of fair price shops, Targeted Public Distribution System and other welfare schemes, and cause to publicize its findings and take necessary action, in such manner as may be prescribed by the State Government. The social audit can also be given to independent agencies having experience in conducting such audits. To ensure transparency and proper functioning of the Targeted Public Distribution System and accountability of the functionaries in such system, every State Government shall set up Vigilance Committees who can regularly supervise the implementation of all schemes under this Act.<sup>47</sup>

Thus this Act is a positive step towards providing the legal protection to human right to food and making it a enforceable right. There had been some criticism given the wide scope of this Act and previous bad experiences in poor implementation of different government schemes. Questions have been raised regarding the possibilities of making the scheme universal instead of targeting a certain percentage of the population, since the definition and measurement of poverty are disputed and have changed many people's status overnight, on paper. The current Act has also been criticized by several economists and media professionals on the grounds that it would be very difficult for the government to provide sufficient finances

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<sup>45</sup> *Id.* Section 14 (Internal grievance redressal mechanism), Section 15 (District Grievance Redressal Officer) and Section 16 (State Food Commission).

<sup>46</sup> *Id.* Section 24

<sup>47</sup> *Id.* Sections 27-29.

for the implementation of this Act as food grain requirement for implementing this Act is 612.3 lakhs tons and total Food Subsidy will reach to Rs.124747 crores. There are several challenges this Act will have to face in order to feed such a large percentage of the population. Effective implementation will also depend on pro-activeness of the States. However, if well implemented, its impact on poverty will be vast and visible.

#### **IV.II. Critical Appraisal**

The Act establishes a durable food security system leading to eradication of hunger and malnutrition and it has been asserted that this Act will be the first step in ensuring a hunger free India. The provisions concerning justiciability of certain entitlements relating to expectant mothers, children below six years, mid- day meals for school children up to class 8 persons living in starvation appear to be unique. The provisions relating to enforceable duties, accountability and transparency and the mechanism put in for redressal of grievances in the National Food Security Act, 2013 are in a positive direction for providing food security to people.

Nevertheless there are certain shortcomings of the 2013 Act. The first criticism by the opponents while the Act was still in the Bill form was- this Act provides for empty promises intended to take political mileage by the ruling elite and nothing substantial was going to happen in the near future. The Act laid heavy emphasis on food subsidies and failed to consider other essential factors of hunger alleviation such as rural development and income security. It is said that hunger and malnutrition in India have deep roots, not only in economic insecurity but also in lack of education, gender inequality, social discrimination, skewed property rights and lack of basic amenities.<sup>48</sup> The Act proposes to provide food and nutritional security to people. However, the Act falls short in keeping promise with its own provision as the foods covered are only rice and wheat. To meet nutritional security, the Act should focus on complete dietary requirement to include the pulses, vegetables, milk, meat etc in the food basket.

The Biggest challenge for the food security in India is poverty. The root cause of the food subsidy and National Food Security Act is poverty prevailing in country. For identification of the poor class of the society, poverty line is the thresh hold. Based on the poverty line, Government of India declares the poverty ratio at some interval of time. No doubt that it is difficult to survey entire population frequently, but the poverty line can be related with inflation data declared by RBI so that every year, new priority household can be included. Poverty ratio by the year 2011-12 was 21.9

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<sup>48</sup> Dr. K.R. Aithal, *Towards Justiciable Right to Food*, in FOOD SECURITY LAW-INTERDISCIPLINARY PERSPECTIVES 29, (Dr. Bimal. N. Patel and Dr. Ranita Nagar ed., 2014).

percent and number of poor according to this ratio was 269.30 million but when these figures were compared with the world statistics, it was altogether a different picture. As per the Government of India 21.90 per cent population was poor whereas the World Bank estimates poverty ratio at 25.93 per cent, which was higher by 4.03 per cent as compared to national poverty line. This shows the vast difference between these statistics. As per World Bank, The number of poor people should be 311.11 million instead to 269.30 million (here the Government database shows the gap of 41.81 million number of poor). The Section 3(2)<sup>49</sup> of the National Food Security Act, 2013 claims that the act will cover 75 per cent of the rural population and 50 per cent of the urban population which is Two Third population (67 per cent) of India. As per national poverty line 22 per cent population and as per International Poverty line 26 per cent population is poor. Here question arises that, why government has proposed to cover unnecessary extra population of 41 per cent (67 per cent – 26 per cent). Moreover the National Food Security Act's provision of giving too many grains at too cheap rate to too many people is criticized by many. It is argued that it will bounce back in the long run as it develops 'dependency syndrome' among the people and they lose motivation to work harder to earn their living. The Government's policy of wasting the tax payers' hard earned money on many ineligible people attracted the wrath of industries and working class. Instead, it is suggested, the Government should have considered spending hugely on asset creation and enable people to get access to sufficient food. Though, the argument is not without substance, it is important to realize that, there are huge numbers of people in the age group who are not in the work force like the school going children, the aged, handicapped, women, pregnant women and nursing mothers, destitute, etc. The Act is a major step to help this section of needy population.

Moreover the Act's frame work for the public distribution system rests on a complicated division of the population into priority household and the non-priority household. There is no clarity as to how the priority households have to be identified. The criterion provided by the Central Government appears to be inadequate and not perfect and therefore many eligible householders may be out of safety net. As per section 10,<sup>50</sup> of the

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<sup>49</sup> *Supra* note 38.

<sup>50</sup> *Supra* note 38, Section 10: *State Government to prepare guidelines and to identify priority households* (1) The State Government shall, within the number of persons determined under section 9 for the rural and urban areas, identify—  
(a) the households to be covered under the Antyodaya Anna Yojana to the extent specified under sub-section (1) of section 3, in accordance with the guidelines applicable to the said scheme; (b) the remaining households as priority households to be covered under the Targeted Public Distribution System, in accordance with such guidelines as the State Government may specify:

Act, the State government is responsible to identify the priority house hold. For this purpose the State government can prepare guidelines. As per this section, the targeted population is to be identified by the State government and in section 9<sup>51</sup> of the Act claims to cover 67 percent of the population. When Central government is not having the data of targeted priority households, how can they claim for giving benefit to 67 percent of the population? It is clear that Central Government has just mentioned the targeted population without any proper calculation. As per planning commission 22 per cent population of India is poor, whereas ration card data reveals that there are almost 46 per cent<sup>52</sup> who are coming either in BPL category or in AAY category. This clearly indicates that either the poverty line is not properly defined or the ration card holders are taking undue advantage of the scheme. This clearly reveals that around 24 per cent of the beneficiaries are doubtful. In other words, this is only diversion of the food subsidy to wrong pockets which is the result of corruption or leakage in the public distribution system. The government has failed to identify poor class of the society and still claims to cover two third of the population.

The implementation of this Act and supply of food grains to poor is to be done by the existing Public Distribution System. The analysis which was based on the ration card data of December 2013 and poverty line clearly reveals that, there was a leakage of 24 per cent in the Public Distribution System whereas as according to the Commission for Agricultural Costs and Prices, Department of Agriculture & Cooperation, Ministry of Agriculture,

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Provided that the State Government may, as soon as possible, but within such period not exceeding three hundred and sixty-five days, after the commencement of the Act, identify the eligible households in accordance with the guidelines framed under this sub-section:

Provided further that the State Government shall continue to receive the allocation of food grains from the Central Government under the existing Targeted Public Distribution System, till the identification of such households is complete.

(2) The State Government shall update the list of eligible households, within the number of persons determined under section 9 for the rural and urban areas, in accordance with the guidelines framed under sub-section (1).

<sup>51</sup> *Id.* Section 9: *Coverage of population under Targeted Public Distribution System*- The percentage coverage under the Targeted Public Distribution System in rural and urban areas for each State shall, subject to sub-section (2) of section 3, be determined by the Central Government and the total number of persons to be covered in such rural and urban areas of the State shall be calculated on the basis of the population estimates as per the census of which the relevant figures have been published.

<sup>52</sup> Category wise ration cards as on 31<sup>st</sup> December 2013, APL 54 per cent, BPL 36 per cent and AAY 10 per cent.

Government of India, New Delhi, December 2012<sup>53</sup> there is a leakage of 40.4 per cent in the Public Distribution System. Though one fourth of the money is not reaching to targeted beneficiaries under Public Distribution System, still the Act aims at granting differential legal entitlement of food grains to nearly 800 million people through Targeted Public Distribution System network only. Instead of increasing food subsidy the government should have reduced leakage to achieve better results. The Food Corporation of India has the responsibility of ensuring proper storage of the grains after procurement. However, there are major issues concerned with the storage capacity and the way the food grains are stored by the Food Corporation of India. At present, the Food Corporation of India godowns has food grain stocks more than twice the storage capacity available within them. This is one major reason causing their wastage infested by fungus, rodents and subjecting for pilferage. The quantum of food grains being wasted at Food Corporation of India because of improper storage and unscientific management is a major challenge in making the National Food Security Act successful. Computerization of all Fair Price Shops (FPS) for implementation of communication technology is itself a big challenge because there are 515108 Fair Price Shops. Many of those might be in remote areas where electricity and internet facilities will be required. The Act provides for door step delivery of food grains. This will require well established delivery system having proper database of every ration card holder with their addresses. This type of mechanism requires highly secure and transparent delivery system. Government should be in a position to confirm that the delivery of food grain has reached to the right person else it may increase the scope for diversion of the food grains, before it reaches to the actual beneficiaries. Furthermore, the grievance redressal structure provided appears to be ineffective as the Act fails to provide for effective penal provisions and the National and State Commissions have been deprived of real powers.

## V. Conclusion

In any organised society, right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to life guaranteed in any civilized society implies the realization of indispensable right to food. The right to food is not a right to

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<sup>53</sup> Ashok Gulati, Jyoti Gujral and T. Nandakumar, *National Food Security Bill: Challenges and Options, Discussion Paper-2*, COMMISSION FOR AGRICULTURAL COSTS AND PRICES, 13 (2012) <http://cacp.dacnet.nic.in/ViewQuestionare.aspx?Input=2&DocId=1&PageId=42&KeyId=470> (Last visited on July 5, 2014).

be fed, but primarily the right to feed oneself in dignity. The right to food is a human right that provides entitlements to individuals to access to adequate food and to the resources that are necessary for the sustainable enjoyment of food security. The right to food places legal obligations on States to overcome hunger and malnutrition and realize food security for all. The National Food Security Act, 2013 is a significant step towards establishing a justiciable right to food in India. The Act consists of several well meaning provisions which could be of immense potential for achieving food security for all. The importance of a rights based legislation such as the National Food Security Act is that along with conferring rights, it also imposes a concomitant set of duties on the State. Thus, State actors would be forced to take action to avoid situations where hunger coexists with excess grains rotting undistributed in storehouses. The concerned duty holders would not be able to take recourse to the excuse that they do not have a duty to avoid such wastage once these duties are crystallized under the legislation. The articulation of the right to food alone is not sufficient to ensure the right. To fully realize the right, various well- functioning institutional mechanisms, a highly skilled corps of public interest lawyers, a robust civil society campaign is needed. Moreover there is need for political will, especially at the State's level over the question of implementation of the Act. Time alone will answer whether India is ready to take such a gigantic responsibility to implement this legislation effectively and to end hunger by law.