

Significance of TPDS in the Light of Indian Legal Regime - An Overview

Dr. Pratim Sarkar¹

Abstract

Poverty, hunger and food insecurity omnipresent reality in India. Government has implemented many programmes, schemes and policies to control poverty and foster development. Right to food is a basic human right and deeply linked with right to live with dignity. Articles 21, 39(a) & 27 of the Constitution mandates the states to provide adequate means of livelihood, raise the level of nutrition and standard of living of the citizens. As per the data report of national and international agencies, a large number people in India are suffering from malnutrition, undernourished, underweight and stunted. In many cases Indian Judiciary has taken serious concern about the socio-economic offences. Targeted Public Distribution System is a major and wide-ranging poverty alleviation programme in India that leads towards the socio-economic welfare of the people. Essential foodstuffs like rice, sugar, wheat, kerosene and other goods are supplied to people through this system at a cheap price. Though it is commendable step to ensure food security to the needy people but could not achieve its desired results because of widespread corruption, leakage of funds and other reasons.

Key Words: *Human Development, Constitution, Malnutrition, Hunger, Judiciary, Targeted Public Distribution System, Corruption, Leakage.*

I. Introduction

Poverty and lack of development have been the main fact of human history. Poverty is a perpetual feature of Indian society and economy. Poverty reduction is the supreme objective of development planning in India. Since independence, our Government at different point of times has undertaken many programmes, schemes and enacted legislations for poverty alleviation as well human development, taking into considerations many factors like infrastructural development, development in health and education sector, creating scope for participation of women labour force, asset creation etc.

¹ Assistant Professor, Haldia Law College, Haldia, West Bengal

Human rights are considered as inherent and inalienable for the existence of human being. The basic objectives of human rights are to protect human life and liberty, to preserve dignity of people, promoting healthy environment, maintaining equality etc. the right to food is one of the basic human rights strongly linked to the right to life. The 1990 UN Global Consultation on the Right to Development as a Human Right, stated that the right to development is an inalienable human right with the human being as the central subject to the right and that all the aspects of the right to development set forth in the Declaration of the Right to Development are indivisible and interdependent and these include civil, political, economic, social and cultural rights. India has been committed to ensure the protection and preservation of these rights.

II. Objective of the Study

The present study has been undertaken with the following objectives-

1. To know the some important provisions of NFS Act and EC Act in relation to Targeted Public Distribution System.
2. To highlight the important features of TPDS.
3. To the study and understand the Constitutional provisions and Judicial response in respect with PDS System.
4. To study and understand the impact of this System on the socio-economic welfare of the people in India.

III. Methodology

The methodology adopted in this study is mainly doctrinal. The study is based on secondary sources of data such as books, records, official documents of Governments, journals, magazines, News Paper Reporting and official websites etc.

Public Distribution System (PDS) is one of the significant and extensive poverty alleviation programmes in India that contributes towards the socio-economic welfare of the people. Essential commodities or foodstuffs like rice, sugar, wheat and kerosene are being supplied to the people through the PDS at reasonable prices. PDS is considered to be a sound policy for the people living below the poverty line. But this system could not achieve its desired results because of widespread corruption, leakage of funds and other reasons.

With the objective of reducing the financial burden of food subsidy and targeting it better and helpful to the really needy people, the Government of India adopted and re-launched the Targeted Public Distribution System from June 1997. The basic purpose of this TPDS is to provide food grains to people below poverty line at highly subsidized prices from the PDS. Under the TPDS, states are directed to formulate and implement proper and well built arrangements for the identification of the poor for delivery of food grains.

Under the TPDS, the Central Government is responsible for procurement, allocation and transportation of the food grains upto the selected store of the Food Corporation of India. The residual responsibility of the State Governments and Union Territories is that to distribute the food grains received from the Central Govt. to the eligible beneficiaries.

IV. Right to Food – A Constitutional Obligation

The Right to Food is inevitable element to life with dignity. Article 21 of the Constitution of India guarantees fundamental right to life and personal liberty. The conjoint reading of Articles 21, 39(a) and 47 explains the nature and obligations of the state in order to ensure the effective realization of this right. Article 39(a) of the Constitution, embodied as one of the Directive Principles which is fundamental in the governance of the country, requires state to direct its policies towards securing that all its citizens have the right to an adequate means of livelihood, while Article 47 talks about the duty of the state to raise the level of nutrition and standard of living of its people as a primary responsibility. Thus, from the above provisions it can be said that Constitution makes the right to food a guaranteed Fundamental Right which is enforceable by the strategy of the constitutional remedy provided under Article 32 of the Constitution.

A. Statistical aspects of Poverty

As per United Nation's Millennium Development Goal (MDG) Programme 270 million or 21.9% people out of 1.2 billion of Indians lived below poverty line of \$ 1.25 in 2011-12. This number is expected to reduce to 20.3% or 268 million people by 2020.²

According to the latest report of the Planning Commission, the number of people living below the poverty line has shrunk to 21.9 percent in 2011-12 from

²Poverty in India, (04 May 2016) http://www.en.wikipedia.org/wiki/Poverty_in_india.

37.2 percent in 2004-05 because of increase in per capita consumption. The latest numbers on poverty levels are dramatic, they show that the numbers of people below poverty line (as mentioned by the Tendulkar Committee) has shrunk from 37 percent of the population to 22 percent, in the seven years to 2011-12. This is an unprecedented diminish in poverty levels, some 40 percent of those who were poor in 2004-2005 were no longer poor seven years later.³

India's position in the achievement of global food security is not commendable. According to FAO 2018 report, 195 million people are undernourished populations in India. About 41 percent of the world's underweight children live in India, says UN Hunger Taskforce.⁴ One in every four people in India is hungry and every second child is underweight and stunted. According to the Global Hunger Index 2018 Report, India is among 45 countries that have serious level of hunger. India has ranked 55th among 77 countries in the Global Hunger Index.

B. Relevance of the Essential Commodities Act, 1955

The Essential Commodities Act, 1955 enacted by the Parliament to ensure the supply and distribution of certain commodities or products like foodstuffs, drugs, fuel, fertilizers, petroleum products, steel, paper etc. The Central Government can include new commodities as and when the necessity arises and excludes any item if the situation improves. The object of the Act being control of production, supply and distribution of such commodities, trade and commerce therein, in the interest of the general public, the supplies of such commodities to be maintained or increased securing the equitable distribution and availability thereof to the general public at fair prices are within the scope of the Act.⁵ Section 7 of the Act prescribed the punishment and it says that if any person

³ Government of India Press Information Bureau. Poverty estimates for 2011-12, (12 April 2016, 6:50 pm)

http://www.planningcommission.nic.in/pre_pov2307.

⁴The State of Food Security and Nutrition in the World. Safeguarding Against Economic Slowdowns and Downturns. Food and agricultural Organization of the United Nations, UNICEF, International Fund for Agricultural Development, World Health Organization, World Food Programme, 2019, (12 April 2016, 6:50 pm)<http://www.fao.org/3/ca5162en/ca5162en.pdf>.

⁵ B. K. SHARMA & VIJAY NAGPAL, *Treaties ON ECONOMIC & SOCIAL OFFENCES*, ALLAHABAD LAW AGENCY, 2007, p. 173

violates any provisions of Section 3 in relation to production, supply and distribution of essential commodities, he shall be punished with the maximum imprisonment seven years and also liable to fine.

V. The Importance & Significance of the NFS Act, 2013

The National Food Security Act, (NFSA) 2013 has enacted in the year 2013 marks a paradigm shift in the approach to food security from welfare to rights based approach. The primary objective of this law is to provide food and nutritional security by making food accessible both quantitatively and qualitatively at cheap rate to the unprivileged households with a hope to provide them proper nourishment.

The Act legally entitles upto 75% of the rural population and 50% of the urban population to receive subsidized foodgrains under Targeted Public Distribution System. About two thirds of the population therefore is covered under the Act to receive highly subsidised foodgrains⁶.

Under this Act, foodgrains is allocated at the rate of 5 kilogram per person per month for priority households category⁷ and at the rate of 35 kilogram per family per month for AAY families at a highly subsidized costs of Rs. 1/-, Rs. 2/- and Rs. 3/- per kilogram for nutri-cereals, wheat and rice respectively. Presently the Act is being implemented in all 36 States/Union Territories and covers around 81.35 crore persons. The annual allocation of foodgrain under

⁶ Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution, Govt. of India, (23 December,2019), <https://dfpd.gov.in/nfsa-act.htm>.

⁷Prior to the implementation of NFSA, there were mainly three types of Ration cards issued by the State Govt. such as APL, BPL and Antyodaya (AAY) Ration Cards. According to NFSA 2013, APL group and BPL group have been re-classified into two categories – Non-Priority and Priority. Thus NFSA prioritizes household's needs considering not only their income but other socio-economic imbalances in the society. "NFSA Ration Card Categories-Antodaya(AAY), Priority (PHH), Non-Priority (NPHH), State Priority, (23 December,2019), <https://www.lopol.org/article/nfsa-ration-card-categories>.

National Food Security Act and other Welfare Schemes is about 610 lakh metric tons.⁸

VI. Status of TPDS

In order to prevent the violation of the provisions of TPDS (Control) Order 2015⁹ and NFSA 2013, the Department of Food & Public distribution has implemented a Scheme on 'End-to-End Computerization of TPDS Operations' under 12th Five Year Plan (2012-2017) on the basis of cost sharing between Central Govt. and States/UTs. The activities mentioned in the Scheme such as digitization of ration cards and other databases of beneficiaries, computerization of supply-chain management, setting up of transparency portals and grievance redressal mechanisms and installation of ePoS (Electronic Point of Sale) devices at fair Price Shops and issuance of foodgrains through biometric authentication. Apart from this, all States/UTs have been also directed to insert the Aadhaar numbers in the ration Card database. The scheme would facilitate the removal of bogus or ineligible ration cards and better targeting of food subsidy, make availability of foodgrains to intended beneficiaries at Fair Price Shops (FPS), check leakage and diversions of foodgrains etc. As on 24th January 2017, 100% digitization of ration cards and 72.97% seeding of Aadhaar has been achieved and 1.78 lakh ePoS are currently operating¹⁰ at Fair Price Shops.¹¹

⁸ National Food Security Act" Ministry of Consumer Affairs, Food & Public Distribution, Press Information Bureau, Government of India, (23 December,2019), <https://pib.gov.in/newsite/PrintRelease.aspx?relid=191101>.

⁹ MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION (Department of Food and Public Distribution) ORDER New Delhi, the 20th March, 2015 G.S.R. 213(E), (30 December,2019), s<https://dfpd.gov.in/nfsa-act.htm>.

¹⁰ 75% of the rural population and up to 50% of the urban population receiving highly subsidized food grains, Ministry of Consumer Affairs", Food and Public Distribution, Distribution of Food grains under TPDS. Government of India, Press Information Bureau, 03-Februray -2017 15:26 IST., (23 December,2019), <https://pib.gov.in/newsite/PrintRelease.aspx>.

¹¹ A Public Distribution Shop is also known as Fair Price Shop (FPS), is a part of India's Public Distribution System established by the Government of India which distributes rations at a subsidized price to the poor. Locally these are also known as Ration Shops or Public Distribution shops and mainly sell wheat, rice, sugar, kerosene and essential commodities at a price lower than the market price. In order to purchase goods from

A. Issues relating to Irregularities in TPDS

As per the report of various studies made by the academicians, organizations and other agencies it has been revealed that targeting mechanisms such as PDs are prone to large inclusion and exclusion errors. TPDS suffers from large leakages of food grains during transportation to and from ration shops into the open market. In an evaluation of TPDs, the erstwhile Planning Commission found 36% leakage of PDS rice and wheat at the all-India level¹².

The Food Corporation of India is the main government agency which is authorized to store the food grains in the central pool. FCI does not have adequate storage capacity to accommodate the huge food grains. As a consequence, Food Corporation hires space from government agencies and private parties. In one occasion, the Comptroller and Auditor General (CAG) stated that there is sub-optimum utilization of the existing storage capacity available with FCI and states. It is noticeable that inadequate storage will result in wastage of food. Therefore, proper infrastructure of storage is much required for logistic management. The FCI officials have sincere responsibility to perform their duties in regard to inspections and preservations etc. of food grains¹³.

A study conducted by the Planning Commission itself, it is revealed that, leakages from the Targeted Public Distribution System are higher than those under the Public Distribution System(PDS). Leakages and diversion to unintended beneficiaries have indicated that only 42 percent of the subsidized grain released from the central pool actually reach to the poor people under

these shops beneficiaries should have valid Ration Card. These shops are regulated throughout the country jointly by Central & State Govt. it is the largest distribution network in the world. For details see, "Public Distribution System", (23 December,2019) https://en.wikipedia.org/wiki/Public_distribution_system.

¹²Public Distribution System, functioning, limitations, revamping, (23 December,2019) <https://www.civilserviceindia.com/subject/General-Studies/notes/public-distribution-system-functioning-limitations-revamping.html>.

¹³Public Distribution System, functioning, limitations, revamping (23 December,2019) <https://www.civilserviceindia.com/subject/General-Studies/notes/public-distribution-system-functioning-limitations-revamping.html>.

TPDS. Various estimates have shown that leakages under the PDS at 31-37 percent.¹⁴

As per the statement of Planning Commission Official, “Certain kind of leakages, however, cannot be captured and actual leakages may well be above the 58 percent that the study found”.¹⁵

VII. Judicial Observations

A good number of cases reveal that the judiciary in India has taken a serious concern of socio-economic offences. In *PUCL (PDS Matters) v. Union of India*,¹⁶ the Supreme Court focused on the Wadhwa J CVC report, the report mentioned that PDS which is the largest food distribution network in the world suffers due to corruption. The apex court directed the Governments to give immediate measures so that poor people can get benefit out of this system.

In *Swami Achyutananda Tirth v. Union of India*,¹⁷ a PIL filed to frame a comprehensive policy on the production, supply and safety of healthy, hygienic and natural milk. The Supreme Court showed concern about adulteration of milk and its hazardous effect on public health.

In a significant case of *Nimmagadda Prasad v. CBI*¹⁸, while refusing to grant bail to the accused, the apex court held that economic crimes unlike other crimes are committed with cool calculations and deliberate design with an eye on personal profit regardless of consequences to the community. Keeping in mind that economic crimes are a class apart and those involved are big shot people, the decision of the Court is appreciable.

VIII. Conclusion

Crimes in whatever form or category they may fall in impact mankind in multifarious ways. Socio-economic crimes signify mainly such kind of crimes

¹⁴PDS leakage more in targeted scheme”, Mamata Singh, New Delhi, Last updated February 6, 2013, (23 December,2019) <https://www.business-standard.com/article>.

¹⁵ Ibid.

¹⁶ (2013) 2 SCC 663.

¹⁷ 2013(5) SCALE 23.

¹⁸ (2013) 7 SCC 466.

and which affect the health and moral principles of the public and affect the economy of the country. Some examples can be unfair completion, black marketing, breach of contracts, adulteration of food and drugs etc. The most fundamental of all socio-economic rights is an individual's right to food. Food is inevitable for survival and basic right for all individuals. The plight of poor people is miserable, where protection of rights and interests of each and every individual is priority. The Targeted Public Distribution System is a commendable effort of government responding to nutrition and food security for the needy people. If implemented effectively this system may reduce the levels of hunger and malnutrition in India.