

## FOOD AND NUTRITIONAL SECURITY FOR THE POOR: ROLE OF LEGISLATURE, EXECUTIVE AND JUDICIARY

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The bane of poverty is not unknown to India. In spite of our rich past, we find the examples of utter poverty even in Mahabharat period. The concept of poverty and more particularly, the concept of non-availability of nutritious food is not new to India. In our Indian system, our sages and saints who used to live in jungles had only fruits and roots to eat. No wonder then that the said poverty has crept into the lives of the crores of Indians and half of our population lives below the poverty line. Mahatma Gandhi had said that there is enough food for everybody's need, but not for everybody's greed. The words have been proved to be true. We have overcome the food problem inasmuch as in each of the last three decades, India has produced surplus food. In spite of this, what is seen is that sometimes food does not reach the hungry mouths. While in one state the granaries are full and there is no place to store the grains, in another, people die of hunger, but the food does not reach them. Even today half of our population clamours for food and is deprived of the nutritious food. This problem was located in various studies undertaken by Government of India and various other agencies including the NGOs. The media has also played a very major role in bringing to the surface the problems felt regarding the food availability. Otherwise we would not have known about the suicides of hundreds of farmers in Vidarbha. It is really pity that the farmer who should be the first person to be self-sufficient in the matter of food, has to commit suicide. All this speaks about there being an imbalance in our system somewhere. The idea behind writing this paper is not to paint a blue and a black picture, but to realize the stark and bitter truth that the system has failed somewhere.

The problem is not that of availability of food but the access to food. Due to our faulty Public Distribution System, the food does not reach the poor though there are over-flowing granaries in the country. A definite step would therefore, have to be taken by all the three organs, that is, Legislature, Executive and Judiciary at least to see that food reaches the hungry.

The picture presented by the report India Vision 2020 though is a pleasant one in respect of the Food Security wherein it is suggested that in the last three decades, India has grown surplus foodgrains, both on the distribution system and in respect of the nutrition aspect, the picture is not as rosy. It is pointed out in that report that per capita foodgrain consumption and total calorific intake have declined in the recent years among all levels of population. The two reasons cited in the report are (a) reduction in calorie requirement due to a more sedentary life style among both the rural and urban population as also the reduction in physical work because of the facilities of better transport and equipments and (b) the diversification of the Indian diet to include a larger intake of fruits, vegetables, dairy products, sugar, oil and pulses, eggs, fish and meat products, thereby reducing the required intake of calories from cereals. The report however goes on to suggest that though there are sufficient stocks or the availability of the food, the access to the said food is not available to all. Half of the population still suffers from chronic under-nutrition. The most vulnerable amongst the sufferers are the children, women and elderly, specially the lower income groups. There is a high prevalence of mild and moderate under-nutrition amongst the children and poor. Prevalence of micro nutrient deficiencies such as

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anaemia is also very high. Merely by increasing the food production or by accumulation of larger stocks the question of deficiencies in nutrition cannot be addressed. The report does point an accusing finger to the Public Distribution System and suggests that the system has not been able to effectively target the most needy in an effective manner. Therefore, that there would have to be in the long run a programme for ensuring employment opportunities so that the purchasing power of such persons is increased to meet their nutritional requirements. Employment or livelihood security should be the comprehensive goal and should be treated as the highest priority for the nation. One more reason is the low productivity of major crops. India is far below the world average in respect of productivity. The low productivity contributes to low farm incomes and wages and lower employment generation as also relatively high food prices for all Indians. It is pointed out that average yields from tomato cultivation is 76 per cent higher in Mexico and more than four times higher in the USA. Even the average yield of seed cotton is more than four times higher in Mexico and three times higher in USA. The report suggests tapping the full potential of Indian agriculture and more particularly, concentration on the rural sector creating infrastructure of roads, storage capacities, organized markets, farmer education and effective involvement of private sector for providing technology, investment and organizational expertise for commercialization and modification of land regulation to achieve greater production efficiency. There is much which can be done through the legislation in respect of the land Regulations.

Similarly, the report concentrates on the employment generation so as to increase the purchasing power as also to raise the living standards.

Supreme Court has also made good efforts to annihilate the grievances of poor with regard to food and nutrition. In a reported decision in *People's Union For Civil Liberties v Union of India & Ors.*<sup>1</sup>, while dealing with the question of food to children and the malnutrition suffered by them, particularly belonging to the poverty stricken areas, the Court noted that under the Integrated Child Development Services (ICDS), there were five objectives, *viz.* (1) to improve the health and nutrition status of the children by providing supplementary food and by coordinating with State health departments to ensure delivery of required health inputs; (2) to provide conditions necessary for pre-school children's psychological and social development through early stimulation and education; (3) to provide pregnant and lactating women with food supplements; (4) to enhance the mother's ability to provide proper child care through health and nutrition education and (5) to achieve effective coordination of policy and implementation among the various departments to promote child development. It was also noted in that order that the 6 lakhs Anganwadi Centres (AWCS) were sanctioned though the requirement was for 14 lakhs AWCS. However, it was also found that number of sanctioned centres were not operational which was clear from the report made by the Commissioners appointed by the Supreme Court for that purpose. The Supreme Court resented over the apathy on the part of the Government of India in even not filing the affidavit as directed by the Court. The Supreme Court observed:

“We are shocked at the attitude of the Central Government which is in respect of giving nutritious food to all children though in practice it concerns those unfortunate sections of the society who can ill-afford to provide nutritious food to the children of the aforesaid age group.”

The affidavit was sought for to report the time to be taken by the Government for sanctioning the remaining number of 18 lakh AWCS. The Government was also directed to consider the revision of norms for supply of nutritious food worth rupee one to every child. The Supreme Court also further went on to examine

<sup>1</sup> (2004) 12 SCC 104

the working of the sanctioned AWCS and recorded its dissatisfaction. It also observed its dissatisfaction over the fact that only 7429 AWCS were operational where the expenditure of each children was as meager as 42 paise in the State of Jharkhand. The Supreme Court also directed that all the sanctioned AWCS shall be made operational immediately. The Supreme Court also considered the conditions of the AWCS in Uttar Pradesh and took note of the fact that the AWCS which were operating from the private houses were shifted to the primary schools. The Supreme Court then issued the following directions: (1) that the Court would consider the aspect of sanctioning 14 lakh AWCS and also the increase of the norm of rupee one to rupees 2 per child per day; (2) that the efforts shall be made that all SC/ST hamlets in the country should have Anganwadi Centres as early as possible; (3) the contractors shall not be used in supply of nutrition in Anganwadis and preferably ICDS funds shall be spent by making use of village communities, self-help groups and Mahila Mandals; (4) that full data for the ICDS Schemes including where AWCS are operational would be put on their websites by the State Governments and the Union Territories giving complete information about the fund allocated and used; (5) that the fund of Pradhanmantri Gramodaya Yojna would be used by the State Governments and Union Territories in addition to the State allocation and not as a substitute for State funding; (6) as far as possible, the children shall be provided with good food at the Centre itself; (7) that funds shall be allocated for ICDS by all the State Governments on the basis of one rupee per child per day, 100 beneficiaries per AWC and 300 days' feeding in a year; (8) BPL shall not be used as an eligibility criteria; (9) all sanctioned projects shall be operational and provided food as per these norms and wherever utensils have not been provided, the same shall be provided. The vacancies for operational ICDS shall be filled forthwith; (10) the State Governments and the Union Territories shall utilize entire State and Central allocation under ICDS/PMGY and this fund, under no circumstances, shall be diverted or returned to Centre; (11) all States and Union Territories shall make earnest efforts to cover the slums of the ICDS and (12) the Central Government and the States/Union Territories shall ensure that all amounts allocated are sanctioned in time so that there is no disruption in feeding.

The Supreme Court in another case *viz.* *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat & Ors.*<sup>2</sup> again put the blame on the distribution system and thereby and role of executives. It is noted in paragraph 129 that India has achieved the self-sufficiency in the matter of food production which as apparent from the report of *India Vision 2020*, particularly in respect of Food Security and Nutrition. It was noted by the Supreme Court that though this food self-sufficiency was achieved particularly through the green revolution movement, yet the problems lay in the unequal distribution of food. The Supreme Court observed:

“The real problem facing India, is not the availability of food, staple food and protein rich diet; the real problem is its unequal distribution. The real challenge comes from the slow growth of purchasing power of the people and lack of adequate employment opportunities. Another reason for lack of food and nutrient intake through cereal consumption is attributable to changes in consumer tastes and preferences towards superior food items as the incomes of the households increase ..... It is unclear as to how much of the malnutrition is due to an inadequate diet and how much due to the environment”.

The Supreme Court further noted the statistics of food self-sufficiency in 1960s, 1970s and ultimately found that even per capita availability of milk had doubled since independence from 124 gms a day to 229 gms.,

<sup>2</sup> (2005) 8 SCC 534.

a day in the year 2001 and 2002. It then went on to record that there was no necessity of non-vegetarian diet for increasing the level of nutrition because it was found that beef contributed only 1.3% of the total meat consumption pattern. Of course, all these observations were made while the Supreme Court was considering whether the cows-slaughter ordered by State of Gujarat was valid or not.

Even in the last decade, that is in the decade of ninety<sup>3</sup> the Supreme Court out of its sheer concern for the nutrition level of the country and public health observed that the Food Corporation of India being the agency of the State should not allow substandard food grains to reach market for human consumption without treating and upgrading. It expressed its fear in the following words:

“If substandard rice is released and sold in the open market it would be highly injurious to the consumers. Public health would be jeopardized if such rice is consumed by members of public. Poverty in our country is quite rampant and illiterate, ignorant and poor persons would not hesitate to consume such rice if sold at cheap rates ..... What action could be taken against a defaulting dealer who markets the rice without upgrading the same? At the most, he may be blacklisted but the damage or injury caused to the consumers cannot be remedied. Therefore, in addition to the undertaking, some thing more by way of a sanction against misuse seems necessary.”

The Supreme Court then suggested that ideally the Food Corporation of India should itself upgrade the rice before sale. The Court suggested that the concerned Ministry should seriously examine this proposal and also further suggested that the Ministry concerned should evolve guidelines which would secure a fool proof system which ensures that substandard rice does not enter the market for human consumption before it has been upgraded and made fit for human consumption. The Supreme Court ultimately went on to record that if all this was not possible, the substandard rice should be used for cattle feed, chicken feed etc. but not for human consumption. This was a decision from Calcutta High Court where the Court had in the mind of the traders that it is not only criminal to adulterate the food items, but it is morally wrong. Unfortunately, the morals amongst the traders have become the first fatality in their quest for money and more money. The adulteration of the food articles directly hits the nutrition and the food adulteration is rampant in this country without there being any effective control thereupon. The Act undoubtedly has number of salutary provisions to check, find out and punish the criminals who are guilty of adulterating the food articles. However, it is commonly known that the number of prosecutions under the Act are negligible, perhaps because of (1) the lack of motivation in the investigating agency, (2) the lack of manpower to detect the crimes, (3) the lack of infrastructure like the food laboratories at the district, State and national level, (4) the undue delay which takes place in punishing the guilty etc. A vast State of West Bengal has only one district level center for food analysis and only two laboratories at the central level. If the Act is to be effectively implemented, there would have to be more number of state level and central level food laboratories. It is often found that the accused persons get undue benefit on account of the delays in sending the food samples and in getting those samples analyzed from the state level and from the central level laboratories. The increase in the number of Food Inspectors as also the number of laboratories may prove effective in proper implementation of the Act. This also explains the insignificant number of prosecution in the State of West Bengal which is only 1590. Shockingly there are five districts including Calcutta Courts where there is no prosecution pending. This only reflects the utter failure of the Act (Annexure ‘A’).

<sup>3</sup> *Tapan Kumar Sadbukhan v. Food Corporation of India & Ors.*, (1996) 6 SCC 101.

There also would have to be the sensitization and training of the judiciary and particularly, the Magistrate trying the offences under Food Adulteration Act, 1954 for speedy and meaningful disposal of cases. Very strangely, the offences under this Act are still viewed as white collar offences and the traders who face the prosecutions do not even face the public wrath. The judiciary can thus take effective steps.

The second piece of relevant legislation is the Consumer Protection Act, 1986. The sensitisation of the consumer in this country is a must if the nutrition level is to be improved. Concentrated efforts would have to be done by the NGOs, the Government agencies and the social organizations to sensitise the consumers against the substandard food products consumed by them. The special groups would have to be created for this purpose. It is suggested that the punishments in the Prevention of Food Adulteration Act, 1954 should be made more stringent. The Legislature can also think in terms of passing such legislation which would protect the consumer, more particularly of the food articles.

Lastly, the role of executive is very important because the executives are very intimately connected with the Public Distribution System. Presently very little is done in the name of implementing the Essential Commodities Act, 1955. The various circulars, memos, notifications issued under the provisions of this Act provide enough lanes, by-lanes and escape routes for those who exploit the Public Distribution System for their own benefit. It is a common experience that even if a cooperative society is given a license to run a fair price shop, it becomes ultimately the estate of a particular powerful family in the village. The executive will have to be extremely sensitive in respect of the fair price shops. It is a common experience again that the grains meant for the fair price shops finds its way clandestinely to the black market. Again, however, it must be reiterated that the state control in the matter of Public Distribution System and the implementation of its policies is far from being satisfactory. It is undoubtedly a tremendous task to see that every hungry mouth is fed and that too, with not substandard food. However, the task is a must if one wants to see prosperous and healthy India.

<p align="center"><b>Pendency of cases under Prevention of Food Adulteration Act, 1954 in the Magisterial Courts in West Bengal (As on 31.12.2005)</b></p>	
Name of the District	Number of cases pending
Burdwan	121
Birbhum	68
Bankura	67
Paschim Midnapore	45
Purab Midnapore	372
Hooghly	1
Howrah	43
Purulia	58
South 24 – Parganas	79
North 24 – Pargana	212
Nadia	28
Murshidabad	0
Uttar Dinajpur	17
Dakshin dinajpur	0
Malda	1
Jalpaiguri	0
Darjeeling	72
Cooch Behar	4
CMM court	0
City Civil Court	0
MNL. Magistrates Court	402
Small Causes Court	0
<b>Total</b>	<b>1590</b>