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“No right has a meaning or value once starvation strikes. It is an ultimate deprivation of rights, for without food, life ends, and rights are of value only for the living”.<sup>1</sup>

MAN'S QUEST for food was a potent force and laid seeds for people to work, invent and attain the heights of civilisation. Right to food is a basic and a vital right for physiological and psychological well being of human-beings. It is not only valuable in itself but it is a precondition for the enjoyment of all other human rights. A prospective society must have healthy subjects and good health cannot be achieved without adequate good food.<sup>2</sup> The level of a country's progress and development is estimable based upon its ability to save its people from starvation.

However, history records unacceptable levels of infant mortality due to malnutrition, which in addition curtails growth and cripples mental and physical developments of millions of living infants. It contributes to 60% of the child deaths in India.<sup>3</sup> UNICEF estimates that fifteen million children die

every year from malnutrition and related infections.<sup>4</sup> Statistics reveal that 400-450 millions people are malnourished and struck with hunger.<sup>5</sup>

In spite of universal recognition and agreement over the acuteness and magnitude of the problem of malnourishment there exists palliative neglect in recognizing right to food as a basic human right. Apparent affirmations of recognition of that right in Declarations, Conventions and Covenants on international plane or Statutes or Regulations at national levels transmuted into reality as concavities. Contrary to the expectations, and strategies adopted by various national and international organizations and governments, the problem of malnourishment increased.<sup>6</sup> If the grains produced worldwide are converted into calories they significantly exceed the nutrient needs required for human survival.<sup>7</sup> When the mother earth showers bounties universally, the interplay of economic forces in the society and the failure of the state to checkmate the same, ultimately led to the cornering of the bounties by few at the cost of the lives of the others. Unequal distribution of wealth and gross disparities in income are the basic causes of the world food problem. Unequal access to the food is the product of state's inability to control over the food distribution and manipulation of market

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\* Professor and Head, Department of Law, S.P. Mahila Visvavidyalayam, Tirupati (A.P.).

1. Gorovitz, "Bigatory Loyalty and Malnutrition" in Brown and Shue (ed.), *Food Policy: The Responsibility of United States* 3 (1977).

2. Desrousier, Norman W, *Attack on Starvation* 6 (1961).

3. *The Hindu* (February 2, 1994).

4. Alston Tomas Veski (ed.), *The Right to Food* 19 (Mensenrechten, Martinus).

5. *Id.* at. 10.

6. *Ibid.* See also Berg, *Malnourished People : A Policy View* (1981).

7. Tinner Peter C., *Food Policy Analysis* 3 (1983).

forces which keep the price of the food beyond the purchasing power of the subjects. Thus, it is the state's duty to extend right to food in order to secure its future generations. Indescribable extreme sufferings from the scourge of hunger frustrates populace which threaten the every existence of the society. Hunger is not a disease nor a biological state but individual's misfortune caused by maldistribution and absolute poverty.

### Conceptual framework of right to food

Right to food is an important component of right to life in its broad conceptualisation. Right to life cannot simply be considered as civil right revolving around the essential safeguards against deprivation of life like killing.<sup>8</sup> As life would be meaningful only with adequate nutrient food, measures to eliminate malnutrition and epidemics constitute an important aspect of state's duty to sustain and guarantee the right to life.<sup>9</sup> The expressions like 'right to eat', 'right to nourishment', 'right to be saved from starvation' are often used as substitutes for 'right to food' but the latter appears to be more suitable and comprehensive. At times right to food is considered only as aspirational economic right. Generally, it is also thought that the measures assuring right to work will incidentally take care of right to food. However, right to food is to be guaranteed not only to the persons who are able to work but others also who are unable to work by reason of their infancy. This right is more meaningful and valuable to the children who would be the architects of the future.

Right to food implies right to adequate nutrient food to meet the biological requirements of human beings. Guarantee of this

right undisputably amounts to guaranteeing one of the primary welfare rights. According to Rodney Peffer, a welfare right is a right to some type of goods or service that one requires to survive and to have any sort of worthwhile life.<sup>10</sup> Carl Wellman who travels beyond Hohfeldian Orthodoxy, squarely brings in the welfare rights within the sphere of his general conception of right as a system of normative elements that confer autonomy concerning some core upon its possessor and he opines that legal welfare right can accurately be conceived of as system of legal autonomy.<sup>11</sup> Right to food is not a charity but a right of the individual and a perfect duty of the state as hunger arises as a result of interaction of social forces beyond the control of individual and not due to his misconduct but because of his misfortune.

### Normative instruments and right to food

The right to adequate food has long been accepted in the normative instruments of international law. However, initially it was indirectly covered under various provisions of the international instruments. Under Art. 55 and 56 of the UN Charter, an obligation was imposed on state to take joint and separate action to achieve higher standards of living and solutions to the problem of health. Art. 25 of Universal Declaration of Human Rights provides that every one has the right to standard of living adequate for the health and well being of himself and of his family including food, clothing, housing, medical care etc. B.R. Sen, the then Director General of FAO in 1963 regretted the absence of freedom from hunger as one of the mankind's first freedoms in the Universal Declaration of Human Rights. Right to food has been stated broadly without any degree of specificity in several Declarations, Conventions and Resolutions as a part of right to life, development and work. Art. 1(2) of International Covenant on Civil and Political Rights provides that people shall not be deprived of their means of subsistence. The Geneva Con-

8. Alston; *supra* note 4 at 24.

9. Report of the Human Rights Committee, UN Doc. A/37/40(1982).

10. "A Defence of Rights to Well-being" *Philosophy and Public Affairs*, pp. 65 & 80 (1978).

11. Wellman Carl, *Welfare Rights* (New Jersey, Rowman and Littlefield), 60 (1982).

ventions of 1949 and their Protocols which are meant to protect war victims try to protect the basic daily food rations of war victims. Similar references can be seen in the Diplomatic Conferences on 'Reaffirmations and Development of International Humanitarian Law Applicable in Armed Conflicts' in the year 1977. It may be pertinent to note that Art. 11 of the International Covenant on Economic, Social and Cultural Rights of 1966 directly refers to the right to adequate food and the right to be free from hunger. This is an important instrument in the sense that it has been ratified by majority of the states and it provides for a mechanism to monitor the performance. Vital role was played by the Commission on the Human Rights and the Specialised Agencies of UNO including ILO, UNESCO, WHO and FAO in bringing out that Covenant. Art. 11 as noted above commits state's parties to recognise right to food and to adopt necessary measures for its realisation. It also requires equal distribution of food by international co-operation.<sup>12</sup> The Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989 (which was logical culmination of the Geneva Declaration on the Rights of the Child, 1924; Declaration of the Rights of the Child adopted by UNO in 1959; Universal Declaration of the Human Rights and the two Covenants, certain General Assembly Resolutions, 1974, 1985, 1986, etc.) specifically guarantees under Art. 24 and 217 the child's right to a standard living and state's responsibility to combat malnutrition. The Vienna Declarations and the Programme of Action 1993, affirms once again the commitment of world organisations to eradicate the infant mortality and malnutrition by means of National Action Plans. It also calls on

states to integrate the Convention on Rights of the Child (1989) into their National Action Plans. The United Nations' World Summit held in Copenhagen (March 1995), showed its concern to find strategies to assure human security which includes food security.

Thus, the right to adequate food has long been accepted in the normative instruments of international law. However, it remained to be only an aspirational right as the stress was always on evolving framework against the violation of civil and political rights and there existed manifest lack of political will among the nations to assure right to food. There is a need to give practical content to this right which has been long professed but neglected.

#### **Right to food in India**

The penumbra of constitutional provisions relating to right to food spreads over Part-III and Part-IV of the Indian Constitution. Some are broad generations and indirect assurances whereas the others are marked with specificity. Art.39(a) requires the state to secure the right to adequate means of livelihood. In particular, Art. 39(g) ordains that the children be given opportunities and facilities to develop in a healthy manner. Art. 41 is a general behest of the Constitution to the State to secure the people free from undeserved want. Art. 47 of the Indian Constitution specifically refers that the state shall regard the rising of the level of nutrition and living of its people and improvement of public health as among its primary duties. However, the rights continue to be unenforceable directives. Nevertheless, they should not be considered as mere platitudes but they are the conscience of the Constitution to achieve the socio-economic justice and the Constitution is founded on, the rock of balance between Part-III and Part-IV.<sup>13</sup> These principles may also work as aids of interpretation of various fundamental rights.

12. Alston, *supra* not 4 at 32.

13. *Minerva Mills v. Union of India*, A.I.R. 1980 S.C. 1789.

In its quest to humanise the law, the Supreme Court embarked upon the expansive interpretation of Art.21 and almost reached the goal of assuring right to food as a fundamental right. It has been recognised in *Maneka Gandhi v. Union of India*<sup>14</sup> that life under Art. 21 is not confined to mere physical existence but includes the right to live with human dignity and which according to *Francies Coroly v. U.T. Delhi*<sup>15</sup> included the bare necessities of life such as adequate nutrition. In *Olga Tellis v. Bombay Municipal Corporation*,<sup>16</sup> the Supreme Court viewed that there is an obligation to call upon the state to secure to its citizens adequate means of livelihood. It has been held by the Supreme Court in *Vincent v. Union of India*,<sup>17</sup> that the right to maintenance and improvement of public health is included in the right to live with human dignity. It may be interesting to note that Krishna Iyer, J. has taken cognizance of international Covenants on Civil and Political Rights in *Jolly George v. Bank of Cochin*<sup>18</sup> and felt that India being a party to the Covenant, it must respect the same. On the same analogy, India being a signatory to the International Covenant on Economic, Social and Cultural Rights 1966, it should accord legislative recognition to the right to food and must make it enforceable. It is essential to realise that the implicit judicial exercises or indirect legislative assurances cannot substitute for a guarantee of right to food specifically under Part-III as fundamental right of the Indian Constitution.

India witnesses a plethora of tall promises by political parties and catena of governmental assurances since independence aiming at removal of hunger. In

fact, several executive programmes are aimed at removing poverty like IRDP, NREP, RLIEGP, MFAL, SPPA, ITDP, etc. However these programmes are unaccountable exercises extended as a matter of gifts and charities by the Chief Ministers and Prime Minister with no legal entitlement for the public. The implementation of these schemes were marked with apathy, mismanagement and boundless corruptions whereby only a fraction of allocated benefits are estimated to trickle down to the beneficiaries.

### Conclusion

If right to food is made a fundamental right it becomes enforceable pinning down the responsibility on the states. It cannot be impracticable or backbreaking exercise to assure right to food atleast to the malnourished children and the women by adopting strategies of long term production distribution at an appropriate level by which malnutrition can be curtailed. Any economic structural changes would at the first instance affect the poor and hence necessary checks shall be placed on modernization and liberalisation through: review procedure both at administrative and judicial levels.

The possible argument that the framework of fundamental rights allows only negative rights and not positive rights like right to food, does not hold good as it is well established that Part-III contains both positive and negative rights and cover individual oriented and societal rights (Arts. 17, 23 and 24 of Indian Constitution).

All the citizens below the age of 18 years should be given right to food, taking however, into account the economic criteria of such citizens. Right to food is an essential purpose and basic postulate of a welfare state and a vital right of millions of impoverished Indians which cannot be sacrificed for legislative lethargy, governmental inertia or cyni-

14. A.I.R., 1978 S.C. 597.

15. A.I.R. 1981 S.C. 746.

16. A.I.R. 1986 S.C. 180.

17. A.I.R. 1987 2 S.C. 165.

18. A.I.R. 1980 S.C. 70.

cal demurs of policy makers. Armies of frustrated hunger stricken people is a stigma weakening the fabric of the society and may cause an increase in the incidence of crime and violence. Hunger, malnutrition, under-nourishment, impoverishment, starvation, famines and deaths are maladies endangering

the existence of the state and degeneration of people. Prosperity of a country cannot be dreamt of when its people are engaged in unending cramping struggle for bread and subsistence.

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