

# Food Law Regulation and Human Rights in India

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## Anurag Singh

Associate Professor,  
Dept. of Law,  
Meerut College,  
Meerut, Uttar Pradesh, India

### Abstract

The right to food is not explicitly included in the Indian Constitution, but various decisions of the Supreme Court make it clear that the right to food is inherent under the right to life (Article 21). The states are directed by the Constitution to make such a policy that every citizen should equally have the right to get proper means of livelihood and the state should try to raise the nutritional and standard of living and improve public health. Articles 39A and 47 of the Indian Constitution state that, Right to food will be the primary responsibility of the state. The National Human Rights Commission in its interpretation said that the right to food is the fundamental right of Indian citizens. It also clarified in 2003 that the right to be free from hunger is a fundamental right. According to Article 3 of the Universal Declaration of Human Rights, 1948, every person have the right to life, and to live in freedom and safety. The provisions of the International Covenant on Economic, Social and Cultural Rights and of the International Covenant on Civil and Political Rights states full and complete sovereignty over all their natural wealth and resources. In the Declaration on the Right to Development, it was also made clear that for development, the states would ensure that people have access to basic resources such as food, housing, education, employment etc. The International Declarations of which India is a signatory have included the right to food as a human right. The Public Interest Litigation filed by the People's Union for Civil Liberties in 2001, which made the Government of India, Food Corporation of India and all state governments a party, said that the right to food is a fundamental right (under Article 21). In 2005, the MNREGA scheme provides employment to the people came into force. The National Food Security Act, 2013 is to provide for food and nutritional security by ensuring access to adequate quantity of quality food at economical prices to help people live a life of dignity. This article shows the human rights of food security in today's situation when the country is in lockdown due to Covid 19.

**Keywords:** Food security, Human Rights, Universal Declaration, International Conventions, NHRC.

### Introduction

Food is both an expression and an instrument of power. Hunger can be a symptom of oppression. Freedom is the absence of oppression. Human rights secure a realm of freedom which transcends markets and pave the way towards a future that offers both food and freedom. The Global Hunger Index, reported that India, ranked 102 out of 117 countries suffers from serious hunger and that just a tenth of children between six to 23 months are fed a minimum acceptable diet<sup>1</sup>. With population increasing day by day, the natural resources are decreasing in unsustainable way. Science and technology advancements are also threatening food security in terms of safety, by food adulteration and increase in genetically modified foods. A broader look at the extent of food insecurity bring out into the open that an additional 17.2 percent of the world population, or 1.3 billion people, have experienced food insecurity at moderate levels, meaning they did not have regular access to nutritious and sufficient food. The combination of moderate and severe levels of food insecurity brings the estimated total to 26.4 percent of the world population, amounting to about 2 billion people. According to latest estimates, 9.2 percent of the world population (around 700 million people) were exposed to acute levels of food insecurity in 2018, insinuating reductions in the quantity of food consumed to the extent of experiencing hunger<sup>2</sup>. Food security is a human right recognized as right to food at the international and national level both.

**Aim of Study**

1. To judge the applicability of International Conventions and Declarations on Human Rights of food safety in India
2. To monitor the role of Food Safety and Standards Authority of India (FSSAI).
3. To analyze the National Food Security Act, 2013.
4. To do a thorough, comprehensive and analytical study of food regulations in India.

**Review of Literature**

Food Safety and Protection covers various aspects of food safety, security, and protection. Ensuring food safety to protect public health remains a significant challenge in both developing and developed nations. The book by V Ravishankar Rai<sup>3</sup>, discusses the challenges involved in the prevention and control of food borne illnesses. It accesses the legal framework, regulatory agencies, and laws and regulations for food protection. The book has five sections dealing with the topics of food safety laws. The Edited book by Ram Lakhan Singh and Sukanta Mondal<sup>4</sup> is to help scholars, analyst, and industry executives understand and address everyday problems regarding food contamination and safety. Book "Food Safety and Human Health" puts forward a structure to manage food risks associated with food safety and ensure a safe food system. D.P. Attrely in "Role of Risk Analysis and Risk Communication in Food Safety Management"<sup>5</sup> defines the Constitutional aspect of food safety and defines the role of WHO. Kent brings an understanding of human rights as a universally defined right, applicable to people of any nationality uniformly.. The human right to an adequate livelihood, including the human right to adequate food, needs to be implemented worldwide in a systematic way. *Freedom from Want* makes it clear that feeding people will not solve the problem of hunger, for feeding programs can only be a short-term treatment of a symptom, not a cure<sup>6</sup>. The Supreme Court in different cases such as ParmanandKatra v. Union of India, People's Union for Civil Liberties v. Union of India, Swami Achyutanand Tirth vs. Union of India and Nestle India Limited v. The Food Safety and Standards Authority of India describes the relationship between food safety and human rights.

**International Perspective and Food as a Human Right**

The human right to freedom from hunger has been termed a fundamental right in international law. Right to food is recognized in Article 25 of Universal Declaration of Human Rights. Article 25 (1) of the UDHR asserts that 'everyone has the right to a standard of living adequate for the health and well-being of himself and his family including food, clothing, and housing'. In several other international instruments also, the right to food has been recognised as part of the right to a dignified standard of living, especially emphasising on the need for freedom from hunger. The Preamble to the Constitution of the Food and Agricultural Organisation (FAO) 1965, declared the 'ensuring humanity's freedom from hunger' as one of its basic purposes. The 2009 optional protocol to the international

covenant on Economic Social and Cultural Right (ICESCR)<sup>7</sup> makes the right to food justifiable at international level. Article 11 Paragraph 1 calls on States to "recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food... and the continuous improvement of living conditions". Paragraph 2 is more precise, as it demands that States guarantee the fundamental right of everyone to be free from hunger, and asks them to take "individually and through international co-operation, measures, including specific programmes, which are needed: (a) to bring about an improvement in the methods of production, conservation and distribution of food by deploying technical and scientific knowledge, by publicising knowledge of the principles of nutrition and by developing or restructuring agrarian systems in such a way as to achieve the most efficient development and employment of natural resources; (b) bearing in mind the problems of both food-importing and food exporting countries, to ensure an equitable allocation of world food supplies in relation to need". The UN Convention on the Rights of the Child (CRC)<sup>8</sup>, 1989, goes beyond hunger and addresses the issue of child nutrition. The right to food as a human right imposes three types or levels of obligations on States: which is now a widely used framework for analysing States human rights obligations generally. These are: the duty to respect, the duty to protect, and the duty to fulfil or facilitate human rights. World Health Organisation (WHO) is also involved in food safety. As per quoted by WHO in 'Strategic Plan for Food Safety including Foodborne Zoonoses 2013-2022' WHO mentioned that enforcing updated standards in future requires a highly controlled food chain supplied with appropriate data on contaminants, threats and risk management approaches<sup>9</sup>

**Food Safety and Indian Perspective**

One of the most basic rights that we come across is the right to safe and nutritious food that has evident nexus with right to life. These human rights are indivisible and inalienable and hence these rights cannot be denied to any individual. These rights are inter-linked to one other, so denial of enjoyment of one right will have inevitable impact on other right as well and also its relation with rule of law<sup>10</sup>. In India as also in many other developing countries food accounts for a large part of the family budget. Every consumer wants to get the maximum quantity of at the commodity for as low price as possible. Food and water are not only the elixir of life, but these valuable products are worshipped as god in India. In spite of this fact, the evil of food adulteration is not only present but thriving in the society. In India too, ensuring food safety has been recognized as an important component in protecting the health of the people. Among the developing countries, India and Sri Lanka were the earliest to enact modern food laws. Right to food can be fulfill only if safe, hygienic and wholesome food products will be available to consumers<sup>11</sup>. Food security act is a mile stone to provide food to all vulnerable group of people. Government of India, enacted a Central Legislation for

food safety i.e. The Food Safety and Standards Act, 2006. The objective of the Government of India is to develop food quality for improving health outcomes of citizens and increase India's competitiveness in the International food markets. India's long-term vision is to have a strong and proactive system of quality assurance for food that is based on the three pillars of self-regulation, strong consumer awareness and legal enforcement wherever required. The Preamble of The National Food Security Act, 2013 state it as, "An Act to make provisions for the establishment of an efficient and effective authority and for regulating, through coordination, the activities relating to food production, import, processing, stock, supply, marketing and sales, so as to ensure the rights toward access to safe food through appropriate application of scientific process, upon repealing and reenacting the existing laws connected thereto. Whereas it is necessary to ensure the rights toward access to safe food for the protection of human health and life; and Whereas it is necessary to make provisions for the establishment of an efficient and effective authority and for regulating, through coordination, the activities relating to food production, import, processing, stock, supply, marketing and sales, so as to ensure the rights toward access to safe food through appropriate application of scientific process, upon repealing and reenacting the existing law connected thereto." The Act has laid a special focus on nutritional support to women and children. Besides meals to pregnant women and lactating mothers during pregnancy, it provides for maternity benefits amounting to not less than 6000 rupees till six months after child birth. Children upto 14 years of age shall be entitled to nutritious meals or take home rations as per the prescribed nutritional standards. In case of non-supply of entitled food grains or meals, the beneficiaries will receive food security allowance. The Act also contains provisions for setting up of grievance redressal mechanism at the District and State level. Separate provisions have also been made for ensuring transparency and accountability<sup>12</sup>.

The legal basis of the right to food has been helpfully spelt by the National Human Rights Commission (NHRC) in the Proceedings of a hearing held on 17 January 2003:

"Article 21 of the Constitution of India guarantees the fundamental right to life and personal liberty. The expression 'Life' in this Article has been expounded judicially to mean a life with human dignity and not mere survival or animal existence. In the light of this, the State is obliged to provide for all those minimum requirements which must be satisfied in order to enable a person to live with human dignity, such as education, health care, just and humane conditions of work, protection against exploitation, etc. In the view of the Commission, the Right to Food is inherent to a life with dignity, and Article 21 should be read with Articles 39(a) and 47 to understand the nature of the obligation of the State in order to ensure the effective realization of this right. Article 39(a) of the Constitution part of the Directive Principles of State Policy, fundamental in the governance of the country, mandates the State to direct its policy

towards securing for its citizens, the right to an adequate means of livelihood. Article 47 spells out as a primary responsibility of the state, its duty to raise the level of nutrition and the standard of living of its people. The citizen's right to be free from hunger enshrined in Article 21 is to be ensured by working on the lines of the obligation of the State set out in Articles 39(a) and 47. The reading of Article 21 together with Articles 39(a) and article 47 puts the issue of food security in the right perspective, thus making the Right to Food a guaranteed Fundamental Right enforceable under virtue of the constitutional remedy as mentioned under Article 32 of the Constitution.<sup>13</sup>

The Constitution of India both explicitly and implicitly provides for the right to food, thereby offering healthy national protection that is likely more accessible to Indian citizens than similar safeguards provided by international bodies. Article 47, found in the Directive Principles division of the Constitution, explicitly creates "duty of the State to raise the level of nutrition and the standard of living and to improve public health." Given the aspirational and non-justiciable nature of the Directive Principles, however, most of the development of the right to food has occurred within the context of Article 21, which includes the right to life and is located within the enforceable and justiciable Fundamental Rights section of the Constitution. Indeed, the Supreme Court has explicitly stated in various cases that the right to life should be interpreted as a right to "live with human dignity", which includes the right to food and other basic necessities. Certain directive principles such as right to an adequate means of livelihood under Article 39, right to work, education and public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undeserved want under Article 41, living wages for workers under Article 43, and the principle relating to the duty of the state to secure social order for the promotion of welfare under Article 38 are thought to be sufficient to ensure right to food. It can be inferred that right to health is one of the fundamental rights and is an integral part of right to life and constitutional assurance, it have to be taken in its proper spirit. Furthermore, as the right to health cannot be materialized in its fullest extent without ensuring the proper food safety and standard, it is essential that the legal mechanism must be brush up for its proper implementation.

Strengthening of food sector by successfully implementing various rules and regulations such as Hazard Analysis and Critical Control Points (HACCP) can help in getting fruitful results. In India, a National Centre for HACCP Certification (NCHC) has been established in Kerala. It mainly works on developing a team of experts to ensure food safety systems, provide guidelines to food industry and consumers and accelerates the action plan of government to make India free of food safety issues. The HACCP system can be applied throughout the food supply chain from the manufacturer to the customer<sup>14</sup>. Although India is having a legal framework the major problem encountered in the execution of food safety

standards is outdated infrastructure. Seeking the future of food safety in India, FSSAI also united with the Global Food Safety Partnership (GFSP) to develop actions for investments for food safety in Asia. It focuses to create a way which ensures the availability of safe and nutritious food for all through co-operative activities<sup>15</sup>. The Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (MGNREGA) was notified in September 2005. The Act's mandate is to provide at least 100 days of guaranteed wage employment in a financial year to every rural household whose adult members volunteer to do unskilled manual work for food security as prime concern<sup>16</sup>.

#### **Agriculture and Food Security in India**

Food has become a primary need of human beings to ensure their life. Food functions as an indispensable component to fulfil hunger. India is the country of farming. Agriculture forms the basis of economy and sustenance of life of the people of India. Majority of people do farming for securing a living. Extensive amount of cultivable land provides great potential for farming, although food security still becomes a solemn problem requiring serious attention. Laws on food issues are made to amend that food is not only a strategic and crucial matter, but it has also become a part of human right. As such, on condition that the state does not fulfill people's need of food, it is said to violate human right. Sustainable agriculture may be regarded as the successful management of resources for agriculture to satisfy the changing human needs while maintaining or enhancing the quality of environment and conserving natural resources. The natural resources that support productive agriculture (namely land and water) are declining in quality, and competition for them is intensifying. Rainfall remains, due to inadequate irrigation a major source of volatility in Indian agriculture. Heavy public investments, particularly in irrigation and related technologies, have helped to offset the worst effects of weather, but the deceleration of growth in the late 1990s and early 2000s, persistent increase in food prices in recent years, and declining water tables have resuscitated concerns over food security. Climate change will with almost utmost certainty magnify the challenges and expectations from agriculture. Three main goals: environmental health, economic profitability, and social equity together form what is known as Sustainable agriculture. Success in promoting sustainable agriculture can be achieved on seven fronts, namely, crop diversification, genetic diversity, integrated nutrient management, integrated pest management, sustainable water management, post-harvest technology and sound extension programmes.

For large agrarian developing countries like India, food security is an important and integral element of national security. Physical access to food, achieving minimum level of self-sufficiency, protecting crops prices from volatility in global markets as also the difficulties in ensuring timely distribution of imported food grains to remote and backward areas

are also significant issues in safeguarding the food security and livelihood.

#### **Role of Judiciary and Food Safety and Security**

The Supreme Court in the case of *ParmanandKatra v. Union of India*<sup>17</sup> held that right to health and medical care is a right covered by Article 21 since health is fundamental for making a workmen live life meaningfully and purposefully and without compromising on personal dignity. Article 21 makes it obligatory for the state to safeguard the right to life of every person, preservation of human life being of utmost importance. It is the moral imperative of those who are in charge of the health and wellness of the community to preserve life so that innocent may be protected and the guilty may be punished. Similarly in *Centre for Public Interest Litigation v. Union of India*<sup>18</sup>, the Supreme Court observed, "The right to life and human dignity under article 21 of the Constitution also incorporates the right to have food articles and beverages free from harmful residues such as pesticides and insecticides. Food articles harmful and injurious to public health are violative of the fundamental right to life guaranteed by the Constitution and the onus to take steps for protection of life and health lies upon the government."

In *Swami Achyutanand Tirth & Ors vs. Union of India & Ors.*<sup>19</sup> the court relied on a report dated 02.01.2011 titled "Executive Summary on National Survey on Milk Adulteration, 2011" released by Foods Safety and Standards Authority of India (FSSAI) which concluded that on a national level, 68.4 per cent of milk being sold is adulterated with Bihar, Chhattisgarh, Odisha, West Bengal, Mizoram, Jharkhand and Daman and Diu being the worst performing states with adulteration in milk found upto 100%. In the States of Uttarakhand and Uttar Pradesh 88% of milk samples were found adulterated. According to the petitioners, milk is an indispensable source of nourishment for infants and a major part of the diet for kids of tender age and if no effective measure is taken to tackle adulteration consequently ensuring the purity of milk, health of the children will be adversely affected. The Writ Petition was disposed of with the following directions and observations: i) Union of India and the State Governments shall take appropriate steps to implement Food Safety and Standards Act, 2006 in a more effective manner....x) Union of India/State Governments to evolve a complaint mechanism for checking corruption and other unethical practices of the Food Authorities and their officers. In *Nestle India Limited v. The Food Safety and Standards Authority of India*<sup>20</sup> (the Maggi Case), Bombay High Court held that Principles of natural justice have not been followed before passing the impugned orders and particularly when the Petitioner - Company, one day prior to the impugned orders, had given a Press Release that it had recalled the product till the authorities were satisfied about safety of its product.

The question as stated in the appeal in *Vaishnorani Mahila Bachat Gat vs. State of Maharashtra & Ors.*<sup>21</sup> is that the local self help groups are sought to be ousted by the money power of large corporate houses with the help of the State. The

petitioners in the writ petition filed before the High Court i.e. W.P. No.3359/2016 questioned the tender notice dated 08.03.2016 issued by the State of Maharashtra inviting tender for multilevel contract and for supply of ready to cook food to Anganwadi Centres as supplementary nutritional food for children, pregnant women and lactating mothers, adolescents girls under Integrated Child Development Scheme (ICDS Scheme). The Supreme Court decided that the tender conditions cannot be held to be valid as they were arbitrarily fixed. For nutrition and health it would be appropriate to form groups of the smaller area such as at panchayat or group of panchayats etc., within the District so that the real intention behind the policy is fulfilled in its real sense and supply should be decentralised.

#### Conclusion

Food safety is an authentic human requirement. Guaranteeing it for present and the generations to come to sustain human life with better quality, a safe food supply of adequate quality will play a significant role. The basic question is what is the role that law can play in this regard? What purposes law can serve and in what manner? It is claimed that law serves many purposes and functions in society. The four principle purpose and functions of law are to establish standards, maintain order, resolve disputes, and protect rights and liberties. Only law cannot ensure food safety but it is a shared responsibility. It is important to work along the food production chain – covering all from farmers and manufacturers to vendors and consumers. Law has responsibility to promote social welfare. Therefore, factors affecting health, posing challenges to production and consumption of safe and standard food must be the prime concern of the legal system.

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## Remarking An Analisation

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