

Right to Food: A Life with Dignity

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Abstract- The progressive realization of the right to food is a binding international obligation on all nation states and the freedom from hunger is a fundamental human right. Such being the nature of the right to food, all instance of hunger is a human rights violation. The legal framework of the Nations should incorporate the protection of the right to food to make this right real and effective. The responsibility of building a hunger free world not only rests on individual states, but also on the community of nations, corporate sectors and international organizations.

Index Terms- Dignified life, Hunger, Malnutrition, Right to Food.

I. INTRODUCTION

The term right to food was coined by President Roosevelt of United States of America in 1941. According to him one of the four freedoms which form the basis of human rights is the freedom from want (Rosemen, 1941). The freedom from hunger form an integral part of President Roosevelt's conception of the freedom from want. (Kunnenman). The right to food ensures a life free from hunger and therefore brings dignity to life. Thus it forms a very essential ingredient of the right to life.

II. RIGHT TO FOOD AN OBJECTIVE OF UNITED NATIONS

This fundamental freedom became the mandate of the United Nations. The Charter of the United Nations promotes respect and observance of the fundamental freedom. All the Nation States that are the members of the United Nations are under the obligation to abide by the Charter of the Organization. As most of the Nation States have acquired the membership of the Organization the right to food which is a manifestation of the freedom from want is established as a universal binding norm.

III. RIGHT TO FOOD AS PER CONSTITUTION OF FAO

The Constitution of the Food and Agricultural Organization (FAO) of the United Nations provide that the Nation States that are the members of the Organization are required to take action separately as well as collectively towards raising the level of nutrition. The member states should work for the up-liftment of the standard of living of the people. The member states should ensure freedom from hunger to all (FAO).

IV. RIGHT TO FOOD A CUSTOMARY INTERNATIONAL LAW

The customary international law is a law which the Nation State habitually obeys as obligatory. The Universal Declaration of Human Rights adopted by the United Nations in the year 1948 for the first time formally recognised the right to adequate standard of living (Article 25 of Universal Declaration of Human Rights, 1948). The right to food is a basic component of the adequate standard of living. Thus the right to food is a part of the customary international law and the Nation States are accordingly under the international obligation to realize the right to food of the people.

The Universal Declaration of Human Rights was also given a binding effect by way of two Covenants namely the International Covenant on Civil and Political Rights, 1966 and the International Covenant on Economic, Social and Cultural Rights, 1966. The two Covenants and the first Optional Protocol is known as the International Bill of Human Rights. The International Bill of Human Rights is a customary international law. The customary international law is an imperative norm for all Nation States even when the State has not ratified the Covenant. However when a Covenant is ratified by a Nation State, the State is subject to procedural aspect like submission of compliance report. Therefore it brings more accountability.

V. COVENANT ON ECONOMIC AND SOCIAL AND CULTURAL RIGHTS

As the right to food is an economic right therefore the International Covenant on the Economic, Social and Cultural Rights, deals with the right to food in a comprehensive manner. The Covenant recognises the right of everyone to an adequate standard of living for himself and his family (Article 11.1). The adequate standard of living means certain basic quality of life. This right is the most far reaching human right. The deprivation of the adequate standard of living is often due to poverty.

The Covenant further provides the fundamental right of everyone to be free from hunger (Article 11.2). This is the minimum core content of the right to food. The international law terms this right as a fundamental right. As in the present era hunger and malnutrition is often a result of poverty then inadequate production, eradication of poverty is the chief obligation of the Government in order to ensure the minimum core content of the right to food.

The covenant also ensures that in no case can a person be deprived of the means of subsistence. (Article 1 paragraph 2) This provision has an important impact on the realization of the right to food (Eide, 1998). As the individuals have been guaranteed the means of subsistence, it creates a sustainable access to food.

Another far reaching guarantee under the covenant is the right to social security (Article 9). This provision ensures that the Nation State shall prevent the fall in the standard of living due to old age, sickness or unemployment. Thus the Nation State should take steps to prevent the fall in the food consumption of the people belonging to the vulnerable section. This provision strengthens the concept of the normative core content of the right to food. As the basic components of human rights have been guaranteed, any person unable to fulfill the basic needs is required to be provided the same by the Government. Therefore the Nation States are under the international obligation to undertake intervention programmes for the section of the people suffering from hunger and malnutrition.

VI. OBLIGATION OF THE NATION STATES

The Covenant on Economic Social and Cultural right imposes the following obligation on the Nation State namely:

(1) Obligation to take Steps

The Nation State is under the obligation to undertake steps individually and with the assistance of the international agencies, bodies and other Nation States to realize the right to food of the people to the maximum of the economic capacity. The Nation State should adopt all appropriate measures including the adoption of appropriate legislative measures for the realization of the right to food of the people. The obligation to take steps is a negative obligation. It requires the Nation State to repeal all legislation that prevents the people from satisfying the dietary needs through self efforts. Furthermore, it also prevents the Nation State from adopting policies and legislations which shall obstruct the people from feeding themselves through their own efforts. The obligation to take steps also imposes a positive obligation on the Nation State to ensure that all individuals have access to food. In the *Ogoni Case (The Social and Economic Rights Action Center and the Center for Economic and Social Rights-versus-Nigeria)* (2002) the issue before the court was as to whether the Nation State fails its obligation to take step when there is a widespread starvation in the country. As the right to food was not implicit in the African Charter on Peoples and Human Right, the African Commission held that the right flows from the right to life. The Commission held that the Government had failed to take step required to protect the people of the Ogoni community. This is a classic illustration of the manner the Nation State is to discharge its obligation to take step.

(ii) The Obligation of Non Discrimination

The second obligation of the Nation State in the realization of the right to food is the obligation of non-discrimination. The Covenant on the economic and social right guarantee to the individuals that the rights enumerated in the covenant shall be exercised without any discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or any other status (Article 2.2). The meaning of the above obligation is explained as the prohibition on discrimination in the access to food or entitlements for its procurement on the above mentioned ground. Such discrimination is a violation of the obligation of the Nation State (United Nations). The Charter of the United Nations and

Universal Declaration of Human Rights, 1948 also promotes the principle of non-discrimination. Beside the above international documents this principle is enshrined in the constitution of most of the countries.

In *F.H. Zwaan-de Vries-versus-The Netherlands* (1987) the United Nation Human Rights Committee upheld the principles of non-discrimination when it held that the Dutch legislation that barred the married women but not the married men from the benefit of unemployment allowance is discriminatory and thus a violation of the obligation of the Nation State.

These obligations of the Nation States are clarified by the Committee on Economic Social and Cultural Rights. The committee applies a three level obligation upon the Nation States.

Obligation to Respect

The obligation to respect the right to food of the people requires the Nation State to refrain from any act which deprives an individual or a group of individuals from enjoying their right to food through their own efforts (General Comment 12 paragraph 16). This obligation is same as the negative obligation of the Nation State. Such obligation prohibits policies that destroy the access to food of individuals or group of individuals.

The obligation to respect is upheld in the classic case of *Ogoni* where the African Commission has held that by destroying the source to food of an individual and arbitrarily evicting them off their property is a violation of the obligation to respect.

The obligations to respect also include prohibition to repeal or suspend any legislation that gives access to the right to food of the people. In *Resident of Bon Vista of Mansions-versus-Southern Metropolitan Local Council* (2000(6) BCLR 625) the High Court of South Africa quashed the order of the local council to disconnect the water supply on the ground of non-payment of bills. The court held that such action is a breach of the obligation of the Nation State to respect the existing access to water.

Thus the obligation to respect the right to food not only operates as a negative right but also creates a positive duty to respect the existing access to food.

Obligation to Protect

The obligation to protect means that the Nation State is required to ensure that no individual or enterprise deprives other persons or a group of persons of their access to adequate food (General Comment 12 paragraph 15). This obligation ensures that the Nation State protects the food vulnerable section from the outside interference resulting in destroying their access to food.

The Nation States under this obligation are required to ensure by taking appropriate steps that the activities of the private business sectors and the civil society do not obstruct the access to food of the people (General Comment 12 paragraph 27).

Again in the classic case of *Ogoni* the African Commission held that the Government of Nigeria violated its obligation to protect when the Government failed to prevent the corporation from disposing off its industrial waste in water which

contaminated the water for farming and the fishes on which the *Ogoni* community relied for a livelihood. This resulted in severe malnutrition in the community.

The obligation to protect also extends to the international institutions and bodies. The international financial institutions like the International Monetary Fund and the World Bank is required to adopt policies that protect the right to food of the people (General Comment 12 paragraph 41 and General Comment 2 paragraph 9). The obligation to protect operates as a check on the Government adopting the neo-liberal economic theory to allow the extension of the theory to interfere with the traditional livelihood of the vulnerable community. The conversion of agricultural land to economic zones is a violation of the obligation to protect.

Obligation to Fulfill (facilitate) Needs

The obligation to fulfill is further divided as follows

- (a) The obligation to facilitate
- (b) The obligation to provide.

The obligation to facilitate means that the Nation State must take steps to ensure that the people can earn their livelihood and thus ensures food security. The obligation includes proactive role of the Nation State to increase the access of the people to food. The obligation further includes training on nutrition, agrarian reform policies, urban and rural development etc.

The obligation to provide means that whenever an individual or a group of individuals are unable to feed themselves for reasons beyond their control the Nation State is required to directly provide food assistance to the maximum of the available resource. This obligation is also available to the sick, old and infirm, victims of natural disaster etc. The example of the obligation to provide is found in *Grootboom and others-versus-Government of the Republic of South Africa and others* (2000) where the Constitutional Court of South Africa, explored the obligation to provide very thoroughly and held that the Government has failed in its obligation to provide for the people in desperate need when the Nation State evicted a community of 510 children and 390 adults living in informal settlements without providing an alternative accommodation.

The Apex Court of India has observed that most of the jurisprudence on the right to food in India is concentrated on the obligation of the Nation State to provide (PUCL-vs-Union of India, Writ Petition No 196/2000).

The obligation to protect differs from state to state according to the available resource. However all Nation States are required to protect the people against the violation of the minimum core content of the right to food. When a Nation State argues that it lacks the resource to provide access to food to the population suffering from starvation, it has to establish that it has undertaken all steps possible with the resource at their disposal to satisfy the minimum core content (General Comment 12 paragraph 17).

VII. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Certain rights of the civil nature are interrelated to the right to food like the right to life. The guarantee of such rights leads to

a guarantee of the right to food. The international law on the civil and political rights guarantees the right to life for all human beings (Article 6(1)). The right to life should be given a wide and inclusive meaning. As the right to food is the basic component of the right to life, therefore, violation of the right to food also constitutes the violation of the right to dignified life.

VIII. PROTECTION OF VULNERABLE GROUPS

The international law universally accepted by the Nation States is the Convention on the Protection of the Rights of the Child 1989. The convention contains provisions which deal with issues of nutrition of a child. It recognises the right of highest standard of health which includes measures to combat malnutrition by providing adequate nutritious food. The Nation State should ensure adequate pre-natal and post natal care of mothers. The convention calls to promote and encourage international co-operation for full realization of the right to adequate nutrition of the children (Article 24). The Nation State has an obligation to provide a standard of living adequate for the physical, mental, spiritual and social development of the child (Article 27.1). Parents and the similarly placed persons have the primary obligation as per their financial capability to provide a living condition adequate for the development of the child (Article 27.2). The Nation State is required to assist the parents to implement the right to nutrition (Article 27.3).

The Convention protecting the rights of the child has been accepted by all the Nation States excepting two and therefore the Convention has attained the status of the customary international law.

The International Convention for Elimination of all Forms of Discrimination against Women, 1979 provides protection to the right to food during pregnancy and the lactation period (Article 12.2).

IX. RESOURCE IMPLICATION AND THE RIGHT TO FOOD

The ultimate goal of every law is the full realization of the rights flowing from it. However as the right to food has a substantial resource implication, the realization of the right to food to a great extent depends upon the economic capacity of the Nation State (General Comment 3). The Nation State is required to progressively realize the right to food of the people. This means that the Nation State is required to take positive step in the above direction. This balances the right to food with the economic capacity of the Nation State. The realization of the right to food cannot be differed indefinitely on the ground of economic incapacity (Intergovernmental Working Group). However the extent of the adequacy of the steps could vary according to the economic capacity of the Nation State. The Nation State should undertake diverse steps as short time measures which will lead to the realization of the right to food of the people.

The lack of political will cannot be given the colour of resource constrain as an excuse for a Nation State to deny the right to food (General Comment 12 paragraph 17). In *Grootboom and others-versus-Government of the Republic of South Africa and others* the Constitutional Court of South Africa found that

the Nation State should allow the progressive realization of the economic right to housing of the larger section of the people to the extent of the available resource.

X. CONSTITUTIONS OF SOME NATION STATES RECOGNISING RIGHT TO FOOD

The international law pays an important role in setting guidelines for national legislations. When a Nation State undertakes to honour a particular right, it is their responsibility to discharge their obligation by formulating them in their national legislation. The frontline of the responsibility to realize the right to food is on the Nation State. The Nation State is required to articulate laws creating entitlements for the right to food.

The right to food has been incorporated in various constitutions of the world either as aspiration goal or an enforceable right. The Constitution of Bangladesh, Bolivia, Brazil, Colombia, Congo, Cuba, Ecuador, Ethiopia, Guatemala, Haiti, India, Islamic Republic of Iran, Malawi, Nicaragua, Nigeria, Pakistan, Paraguay, South Africa, Sri Lanka, Uganda and Ukraine, contains provisions relating to the right to food.

However, in many countries the Constitution establishes the right to food as an aspiration goal like Bangladesh, Ecuador, Ethiopia, Guatemala, India, Malawi, Nigeria, Pakistan, Iran and Sri Lanka. All the above countries except Pakistan have ratified the International Covenant on Economic, Social and Cultural Rights. Therefore these Nation States have the obligation to frame legislative framework on the right to food and establish it as a basic right. The Voluntary Guidelines also call upon the Nation States to frame adequate legislative framework establishing the right to food rather than an aspiration goal which can be easily avoided by the Nation State.

In some Nation States the right to food is available to a particular section of the population. The Constitution of Bolivia, Brazil and Cuba provides the protection of the right to food only to small section of the vulnerable population. Therefore such provision fails to meet the requirements of the minimum protection that is to be ensured as per the international law.

There is another set of Nation States which cast the obligation to provide protection of the right to food only on the parents. The international law cast a duty to ensure protection against the violation of the right to food firstly upon the Nation State, secondly the community, society or the parents, and thirdly on Transitional Corporations, lastly the International Organizations.

Most of the Constitutions of Nation States containing a provision on the right to food provide protection only to the citizens like the Constitutions of Bangladesh, Haiti, Nicaragua and Nigeria.

In many countries the right to food is not directly recognised. Many constitutions of the world recognize other related rights like the right to life or the right to human dignity. The United Nations Human Rights Committee suggested that the Government should adopt broad interpretation of the right to life and human dignity to include the right to food. This interpretation facilitated the inclusion of the right to food in the legislative framework when the Constitution recognizes the right to life or other associated rights.

The Constitution of India guarantees the right to life. The Constitution establishes the right to food as the aspiration goal. Harmonizing the two provisions the judiciary held that the Constitution of India guarantees the right to food.

The Constitution of Switzerland recognises the right to human dignity. Subsequently the right to minimum condition of existence including food, shelter has been recognised under the new Constitution of Switzerland.

Thus most of the constitutional protection does not fulfill the notion of the different dimensions of the right to food as per the international law. The most comprehensive legal protection of the right to food is found in the Constitution of South Africa. It not only assures the right to food, water and social security but also puts an obligation on the Nation State to respect, protect and fulfill the rights flowing from the Bill of Rights.

XI. CONCLUSION

The international protection on the right to food has reached a new height through General Comment 12. However the international mechanism for realization of the right to food is falling behind the target. According to the estimate of the FAO, 826 million people worldwide suffer from hunger. After three decades of the existence of the Bill of Rights the people continue to suffer the violation of the minimum level of the guaranteed right to food.

The countries are striving towards economic development to eradicate poverty. The fruits of the economic growth are being diverted through policies to the rich who constitute 20% of the population. This brings a negative effect on accessibility of food to the poor and marginalized groups as they are losing their traditional livelihood to corporate sectors. The growth in economy usually escapes the poor. The international law need to elaborate in further details the balance required to be observed by the Nation States between economic growth and the livelihood of the poor and marginalized.

A number of the countries like South Africa, Nicaragua, Mexico, Peru and Uganda are working in bringing about legislation on the right to food. In the year 2005 Guatemala was the first country in Latin America to pass legislation on the right to food. Brazil passed legislation in 2006 to achieve the target of zero hunger. There is a tremendous pressure from the civil society in India for legislation on the right to food. The Government of India is in the process of processing legislation for protection of the right to food.

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