

## From the Right to Food to Food Sovereignty: Policy Initiatives in India and Beyond

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### INTRODUCTION

The international human rights framework establishes and defines the obligations of States toward human rights. In the course of performance, States have often been deterred by politics (local/global), financial constraints, political will, etc.<sup>1</sup> The recourse to rights as parameters to define state action and performance,<sup>2</sup> has strengthened the process of change and reform seeking interventions. The struggle for realizing human/basic rights has urgently caught the attention of society and policymakers worldwide.<sup>3</sup> On the very premise of basic rights, critics today are seeking to introduce

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<sup>1</sup> Human rights is currently a global philosophy, developed in theory and legal form, and internalized at the international and national levels. "Today's development of human rights also has two additional aspects. The first is furthering the protection of existing rights at all levels - namely national, regional and universal levels - by means of, *inter alia*, national legislation, interpretation of the provisions of the existing human rights treaties by supervisory bodies established in these treaties, reinforcing the implementation systems, adopting additional protocols to the treaties, and the activities of the non-governmental organisations...The second dimension of contemporary development of human rights is the extension of the list of human rights...It also makes human rights law dynamic and open to development." See Bulent Algan, "Rethinking Third Generation Human Rights", 1:1 *Ankara Law Review* 124 (2004).

<sup>2</sup> A rights-based approach includes "four essential elements: evaluating the claims of rights holders and the corresponding obligations of duty bearers; developing strategies to build the capacity of rights holders to claim their rights and of duty bearers to fulfill their obligations; monitoring and evaluating outcomes and processes using human rights principles and standards; and finally, incorporating the recommendations of international human rights bodies to inform each step of the process." Adapted from United Nations, *The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among the UN Agencies* (May 2003), available at [http://www.crin.org/docs/resources/publications/hrbap/HR\\_common\\_understanding.doc](http://www.crin.org/docs/resources/publications/hrbap/HR_common_understanding.doc).

<sup>3</sup> The perpetuation of exclusion within the legal order is gradually leading to another set of socio-legal crisis issues such as mass unrest and violence against the state. For instance, in September 2010 social unrest, food riots resulting in deaths and injuries were witnessed in Mozambique and several countries. The Special Rapporteur explained that 'the crowds anger in Mozambique and other countries was predictable...we know where the food system is failing. We know which measures should be taken. But

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clarity in the theory and practice of rights by deciphering the sanctity of 'rights', as distinct from 'entitlements'.<sup>4</sup> Entitlements are, as experts suggest, what we seek today from the state, they qualify as a demand for actual delivery and performance from the government elected for the task. Entitlements connote the functional reality of rights which may be many and ever-increasing.

In the context of basic rights, there is tremendous learning from the right to food established as a vital human right associated with dignity and survival.<sup>5</sup> Article 25 of the Universal Declaration on Human Rights (1948) states "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food . . ." The basic right to food as well as 'health, standards of living, housing etc are also commonly labeled as socio-economic rights'.<sup>6</sup> Socio-economic rights are

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lack of political will and a lost sense of urgency have unacceptably delayed decisive action." See UN Expert on "Food Riots, Predictable Crisis and Unprepared Governments", available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10308&LangID=E> (Last visited 15.9.2011).

<sup>4</sup> Entitlement rights refer to the welfare concept of a right. That right is not "merely a moral entitlement to do or to have, but also an entitlement to the efforts of others or to make demands on others to aid and promote our seeking after or enjoyment of some good...If such a concept is denied significance, a great deal of controversy about rights in this century becomes meaningless." See Gary Herbert, *A philosophical History of Rights*, 311 (2003). Also the dominant perspective is; "rights are freedoms from oppression by the state or the society. These rights do not entail government handouts. Entitlements; however are welfare measures entailing government handouts... Rights are universal, but entitlements are not." See Swaminathan Anklesaria, "Lets not Confuse Entitlements with Rights" *The Economic Times* August (2009). Available at [http://articles.economictimes.indiatimes.com/2010-08-29/news/27610958\\_1\\_entitlements-rights-welfare-measures](http://articles.economictimes.indiatimes.com/2010-08-29/news/27610958_1_entitlements-rights-welfare-measures) (Last visited 15.6.2011).

<sup>5</sup> The Committee on Economic, Social and Cultural Rights under General Comment No. 12 stated that the core content of the right to food includes "The availability of food in quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; and the accessibility of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights. See ECOSOC, U.N. CHR, *General Comment No. 12, The Right to Adequate Food*, 15 U.N. Doc.E/C.12/1999/11 (1999).

<sup>6</sup> Socio-economic rights have faced several criticisms for (a) do not fit conceptually within the idea of rights, which are generally taken to mean negative liberties rather than positive entitlements. (b) A second critique is that socioeconomic rights are not rights, but aspirations of what a desirable society looks like. (c) Socioeconomic rights are not justiciable, or as the ICESCR puts it, the rights are progressively realizable within available resources. The argument is that this is both because it costs money to implement them and also because judges lack the legitimacy, competence, and the power to meaningfully address them. (d) That there is a hierarchy among rights, and socioeconomic rights do not rank at the top.

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contained in the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR).<sup>7</sup> Unlike the International Covenant on Civil and Political Rights (ICCPR), which mandates that all rights should be immediately implementable, the ICESCR subjects the guarantee of rights to two conditions; (a) they should be progressively realizable and (b) the realization should be subject to available resources. Under Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) two standards are laid out; the right to adequate food and the right to be free from hunger. The World Food Summit in 1996 led to the adoption of the Code of Conduct on the Right to Food.<sup>8</sup> The Code of Conduct states that the right to adequate food means that every man, woman, and child alone and in a community with others must have physical and economic access at all times to adequate food or by using a resource base appropriate for its procurement in ways consistent with human dignity. It further states that the realization of the right to adequate food requires (a) the availability of food, free from adverse substances and culturally acceptable, in a quantity and quality which will satisfy the nutritional and dietary needs of individuals; (b) the accessibility of such food in ways that do not interfere with the enjoyment of other human rights and that is sustainable.

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See Balakrishnan Rajagopal, Pro-Human Rights but Anti- Poor? A Critical Evaluation of the Indian Supreme Court from Social Movement Perspective", *Human Rights Review* April- June 171 (2007).

<sup>7</sup> The theory on human rights creates a hierarchy between civil and political rights on the one hand, and economic and social rights on the other. The former referred to as the first generation rights, the latter as second generation rights. The penetration of human rights theory on the generation of rights has had significant impact on the operation and interpretation of human rights. As rightly said "Objections can be and have been voiced against the term 'generations' on a number of grounds. The ordinary meaning given to the term 'generation' implies that a new generation replaces its predecessor. Each and every generation is then subject to death or to be replaced by a new one. 'Generation' can also remind one of the fact that even if an older generation survives, it is outworn or useless for the present time and the new one is more improved. However, the situation is extremely different in the field of human rights law. The protection of civil and political rights and economic, social and cultural rights (the so-called first and second generations) has become more and more important than ever before and they have neither replaced the other set of rights nor have they been replaced by each other. On the contrary, in practice, the first generation of civil and political rights have been granted more effective protection than the following 'generations' of rights both at the national and the international levels, and they are, despite being named as the first generation, more sophisticated and evolved than their 'successor'." See Bulent Algan, "Rethinking Third Generation Human Rights", 1:1 *Ankara Law Review* 126 (2004).

<sup>8</sup> Available at <http://www.fao.org/worldfoodsummit/english/newsroom/focus/focus6.htm>

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In the words of "the right to food is the right to have regular, permanent and free access, either directly or by means of financial purchases, to food that is quantitatively and qualitatively adequate..."<sup>9</sup>

Despite the high ended agenda of the international human rights framework, the deplorable food conditions the world over are deplorable. Olivier De Schutter, Special Rapporteur on the Right to Food explains that the food crisis leading to mass hunger and malnutrition is a man made crisis growing in ambit and impact. Although the crisis is a resultant of multiple factors, the primary duty rests with the state to ensure food security.<sup>10</sup> The Rapporteur claims the state is under an obligation to respect, obligation to protect, and an obligation to fulfill.<sup>11</sup> State action must ensure that there are two

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<sup>9</sup> Special Rapporteur on Food, See United Nations Document E/CN.4/2001/53, par.14:

<http://daccessdds.un.org/doc/UNDOC/GEN/G01/110/35/PDF/G0111035.pdf?OpenElement>

<sup>10</sup> In reference to Zimbabwe, during 2000 and 2001 there was inequitable land distribution. The government designated thousands of farms for compulsory acquisition without compensating the farmers for the cost of the appropriated land. The implementation of the land reform program had a disastrous impact on access to food in the country. In 2001, Zimbabwe's maize production fell by twenty-eight percent, largely as a result of reduced plantings on large-scale commercial farms seized as part of the land reform process. Zimbabwe's government responded to the food shortage by restricting international food aid to the country and denying food to its political opponents. The government's Grain Marketing Board, which was given a monopoly on the purchase and distribution of grain, pursued discriminatory policies by denying opposition party supporters access to food. Zimbabwe is but one example where local actors facilitated widespread food insecurity. See Amnesty International Report, *Zimbabwe: Power and hunger violations of the right to food* 10-29 (2004).

Available at [http://web.amnesty.org/library/pdf/AFR460262004ENGLISH/\\$File/AFR4602604.pdf](http://web.amnesty.org/library/pdf/AFR460262004ENGLISH/$File/AFR4602604.pdf).

<sup>11</sup> The obligation to respect means that the Government should not arbitrarily take away people's right to food or makes it difficult for them to gain access to food. The obligation to respect the right to food is effectively a negative obligation, as it entails limits on the exercise of State power that might threaten people's existing access to food. Violations of the obligation to respect would occur, for example, if the Government arbitrarily evicted or displaced people from their land, especially if the land was their primary means of feeding themselves, if the Government took away social security provisions without making sure that vulnerable people had alternative ways to feed themselves, or if the Government knowingly introduced toxic substances into the food chain, as the right to food entails access to food that is "free from adverse substances". The obligation to protect means that the Government must pass and enforce laws to prevent powerful people or organizations from violating the right to food. The obligation to fulfil (facilitate and provide) means that the Government must take positive actions to identify vulnerable groups and to implement policies to ensure their access to adequate food by facilitating their ability to feed themselves. The obligation to fulfil is a positive obligation, as this means that the Government must actively seek to identify vulnerable groups and implement policies to improve those people's access to adequate food and their ability to feed themselves. That could mean improving employment prospects by introducing an agrarian reform programme for landless groups or promoting

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obligations performed vis-à-vis right to food; (a) The cessation of any activities that negatively affect the population's right to adequate food. (b) Regulation of the institutions that are involved in the process of production and distribution.<sup>12</sup>

To seek improvement in policy and governance, the right to food campaign has gained momentum in several countries including India, Brazil, South Africa etc. As rightly expressed; "as articulations, interpretations, and even commitments to promoting the right to food become more commonplace, the ability to enforce these commitments, or to reconcile them with global processes and global actors, remains relatively weak. In order to ensure the right to food for all, it is necessary to re-examine the human rights framework in light of globalization."<sup>13</sup> With conditions of deprivation maintaining THE status-quo within national boundaries, the law on basic rights continues to expand in thought and demand. States are facing a paradigm shift vis-à-vis the right to food, which now must ensure the establishment of food sovereignty. Realistically, 'food sovereignty goes beyond the concept of food security, which says nothing about where food comes from, or how it is produced. To achieve genuine sovereignty, people in rural areas must have access to productive land and receive prices for their crops that allow them to make a decent living while feeding the nation's people.'<sup>14</sup> The obligations of the States towards establishing food sovereignty are not limited to the provision of food to the vulnerable, but also empowering the communities to be rightly placed for accessing as well as producing food for self-consumption. In other words, individuals must be able to

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alternative employment opportunities. It could also include, for example, free milk programmes in schools in order to improve child nutrition. The further obligation to provide goes beyond the obligation to facilitate, but only comes into effect when people's food security is threatened for reasons beyond their control. As a last resort, direct assistance may have to be provided by means of safety nets such as food voucher schemes or social security provisions to ensure freedom from hunger.

<sup>12</sup> United Nations Economic and Social Council, Commission on Human Rights 66<sup>th</sup> Session on "Economic, Social and Cultural Rights: The Right to Food". E/CN.4/2006/44. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/118/82/PDF/G0611882.pdf?OpenElement> (Last visited 1.9.2011).

<sup>13</sup> Smita Narula, "The Right to Food: Holding Global Actors Accountable under International Law" (2006). Available at [http://www.chrgj.org/publications/docs/wp/WPS\\_NYU\\_CHRGJ\\_Narula\\_Final.pdf](http://www.chrgj.org/publications/docs/wp/WPS_NYU_CHRGJ_Narula_Final.pdf) (Last visited 11.10.2011).

<sup>14</sup> See Vandana Shiva, "India's Food Security Emergency", available at <http://english.aljazeera.net/indepth/opinion/2011/07/20117810358528978.html> (Last visited 12.9.2011).

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either procure it from land and otherwise or must avail from state mechanisms for distribution.

In 2010 the UN Special Rapporteur on the Right to Food asserted that the unequal distribution of land threatens the right to food and therefore, the right to food entails an obligation on the state to secure access to land through redistributive programmes that may in turn result in restrictions on others right to property because landlessness is a cause of particular vulnerability. Access to land not only secures the right to food, but also other human rights such as the right to work and housing. The right to food requires that each individual alone or in a community with others, have physical and economic access at all times to adequate food or means for its procurement. States may be under an obligation to provide food where an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal. Food sovereignty requires that States refrain from taking measures that may deprive individuals of access to productive resources on which they depend when they produce food for themselves (the obligation to respect), that they protect such access from encroachment by other private parties (the obligation to protect) and that they seek to strengthen people's access to and utilization of resources and means to ensure their livelihoods, including food security (the obligation to fulfil).<sup>15</sup> Food sovereignty has been argued as an alternative to the existing food regime propelled intensively by the international trade and related processes.<sup>16</sup> According to Professor Pouncy the institutions and processes propelling the global food crisis have "transformed farming

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<sup>15</sup> See General Assembly, Sixty-Fifth Session, "Report of the Special Rapporteur On the Right to Food" August (2010). Available at [http://www.srfood.org/images/stories/pdf/officialreports/20101021\\_access-to-land-report\\_en.pdf](http://www.srfood.org/images/stories/pdf/officialreports/20101021_access-to-land-report_en.pdf) (Last visited 23.6.2011).

<sup>16</sup> Experts reveal several causal conditions for food crisis. A few as (a) threat to food security posed by trade liberalization, by the privatization of seeds and plants through patenting, and by the appropriation by transnational agribusiness of the traditional knowledge of small farmers. (b) Processes of food production, distribution and consumption have become market processes and as a result, the ability to meet one's nutritional needs is a function of the ability to pay the price that the globalized market has established for the commodities we consume as food. See Carmen Gonzalez, "The Global Politics of Food: Introduction to the Theoretical Perspective Cluster", 43:1 *Inter-American Law Review* 81- 82 (2011).

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into industrial production, food into commodities, and home-cooked family meals into industrially manufactured meal products to be consumed at home, at work, or in restaurants...the concept of food sovereignty may be more effective in rallying opposition to global capital's hegemonic control over the world's food supply."<sup>17</sup>

The legal and political discourse on the right to food guided now by the objective of food sovereignty directs attention towards governance and policy linked to situations of deprivation and vulnerability. Food sovereignty signals for re-establishing local self determination in matters of social or community concern. However, the question as to how it is absorbed and constructed within existing paradigms of governance is yet again a condition worth treating.

## **RIGHT TO FOOD AND THE INDIAN CONSTITUTION**

In India, the state seeks to fulfill its responsibility toward the right to food under the various welfare schemes such as the Public Distribution System (hereinafter PDS).<sup>18</sup> In terms of the constitutional text, access to food is to be prioritized at any given time and at any cost. It is one of the primary means to bridge the gap between economic and social inequality.<sup>19</sup>

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<sup>17</sup> Carmen Gonzalez, "The Global Politics of Food: Introduction to the Theoretical Perspective Cluster", 43:1 *Inter-American Law Review* 82 (2011).

<sup>18</sup> The schemes can be broadly divided into four categories: Entitlement feeding 'Integrated Child Development Services' (ICDS) seek to take care of the nutritional challenges faced by infants and young children (0-6 years) and pregnant women, nursing mothers and adolescent girls, Mid-Day Meal Scheme (MDMS) provides meals to all primary school children. Food subsidy programmes (targeted Public Distribution System (TPDS) including Antyodaya and Annapurna Yojana) Employment programmes (National Rural Employment Guarantee Act (NREGA). the targeted PDS provides subsidised grain to families below the poverty line; the NREGA provides 100 days of employment in 200 districts (to begin with); the social assistance programmes cover the aged who are left out of the social security net.

<sup>19</sup> Initiatives to address inequality have been witnessed worldwide. The President of the Republic of Brazil, when the country launched a similar food guarantee, called it "Hunger Zero". He pledged that 'we will make it possible for people in our country to eat three square meals a day, every day, with no need for handouts from anyone. Brazil cannot go on living with so much inequity. We must overcome hunger, extreme poverty and social exclusion.'

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The socio-economic rights can be traced within the Indian Constitution under Part IV dealing with Directive Principles of State Policy. Under the Directive Principles of State Policy (DPSP), the state is obligated to raise the level of nutrition, and the courts have interpreted the 'right to food' as implicit under Article 21 as a right to life.<sup>20</sup> The rights jurisprudence in India is indicative of a significant shift in terms of socio-economic rights or the directive principles as a priority and at par with the fundamental rights proclaimed as civil and political rights contained in the Constitution of India.

Irrespective of the right to food receiving due attention, the intensity of social exclusion and deprivation seems evident and immense. Within the rights framework, studies indicate that in free India, "hunger survives in the form of individual men, women and children... They are forced to cut back on their food intakes, sometimes reduced to eating one meal a day; or to beg for food; or to eat tubers, grasses and mango kernels that fill their stomachs but provide no nutrition; or sometimes just to drink the starch water left over after cooking rice, which their neighbours give them in tight-fisted charity. They suffer to see their children painfully sleep on empty stomachs, and often succumb to ordinary illnesses which better nourished people would easily survive."<sup>21</sup> The Justice D.P Wadhwa Committee appointed by the Supreme Court referred to the PDS Scheme as a bogus programme, which has collapsed in several states.<sup>22</sup>

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<sup>20</sup> The Indian Constitution classifies fundamental rights (justiciable) which consists largely of civil and political rights under once chapter and directive principles of state policy (non-justiciable) under another chapter. 'Over the years the Indian courts have re- defined the relationship between fundamental rights and directive principles. The Supreme Court has gone through various phases in interpreting the relationship between fundamental rights and directive principles. Initially there was a firm adherence to the supremacy of fundamental rights. After several constitutional amendments, public debate and disputes over court decisions, the Supreme Court has adopted a more balanced and integrated approach in order to interpret harmoniously the chapters.' See Henry Steiner and Phillip Alston, *International Human Rights in Context: Law, Politics, Morals*, 284 (2000).

<sup>21</sup> Harsh Mander, "Exiling Hunger from Every Home", *The Hindu* (2009). Available at <http://www.hindu.com/mag/2009/07/05/stories/2009070550070300.htm> (Last visited 12.9.2011).

<sup>22</sup> Devinder Sharma, "Towards Zero Hunger", Vol. 8 (1) *CBGA Budget Track*, January, 3 (2011). The situation can also be described as follows- The persistence of widespread hunger is the cumulative outcome of public policies that produce and reproduce impoverishment; of failures to invest in agriculture



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India witnessed the Right to Food Campaign initiated through a writ petition before the Supreme Court of India in 2001 to enforce the right to food, designating it as 'justiciable' within the constitutional apparatus of rights.<sup>23</sup> In reading Article 47 of the Directive Principles of State Policy<sup>24</sup>, the court passed an interim order and (a) interpreted the right to food as inclusive in Article 21 on the right to life (b) converted most food-employment related schemes into legal entitlements. (c) In an interim order in 2002, the court appointed an independent mechanism, the Commissioners of the Supreme Court to ensure compliance by the state and central government with the orders of the court. The Commissioners submit bi-annual reports to the SC. Six reports highlighting non-compliance, structural issues regarding hunger, and the hurdles in implementation have been submitted to the SC so far. The SC then asks the state and central governments to respond to the issues raised by the Commissioners. The Commissioners are also empowered to move contempt of court charges against chief secretaries and other senior state/ central government officials when the non-compliance is willful and deliberate. In *Krishna Pattanayak v. State of Orissa*<sup>25</sup>, the Supreme Court of India had ordered the constitution of a Committee in response to the complaint, to look into the occurrence of several deaths in a few districts of Orissa on the alleged failure of the State to prevent so. The Committee was set up to monitor the welfare schemes undertaken and to be undertaken in the future. The deaths persisted time and again,

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especially in poorer regions of India and for rain-fed and small farmers; of unacknowledged and unaddressed destitution; of embedded gender, caste, tribe, disability and stigma which construct tall social barriers to accessing food; but in the last analysis, it is the result of a profound collapse of governance. See Harsh Mander, "Destitution, Social Barriers and Food Rights" Vol. 8 (1) *CBGA Budget Track*, January, 7 (2011).

<sup>23</sup> The writ petition was filed as the right to food of a numerous people in the country was still unrealized. It also challenged the poor implementation of the PDS. See W.P. (Civil) 196/2001. The question raised before the court was: "Starvation deaths have become a National Phenomenon while there is a surplus stock of food grains in government godowns. Does the right to life mean that people who are starving and who are too poor to buy food grains free of cost by the State from the surplus stock lying with the State particularly when it is lying unused and rotting?" See Y.P Chibbar, "PUCL Petitions Supreme Court on Starvation Deaths", *PUCL Bulletin*, July (2001). Available at <http://www.earthwindow.com/grc2/foodrights/HumanRightToFoodinIndia.pdf> (Last visited 12.6.2011).

<sup>24</sup> Article 47: "The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties..."

<sup>25</sup> (1989) Supp 1 SCC 258.

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and in response, the court has time and again directed the course of the PDS.<sup>26</sup> In 2006, The Ministry of Rural Development and the Ministry for Food and Consumer Affairs agreed that the allocation of food grains by the Central government would continue to be based on estimates made by the Planning Commission of poverty ratios, and the Court Commissioners will be consulted.<sup>27</sup>

Theoretically, the right to food intends to reduce social exclusion by enhancing access to food to vulnerable communities that are deprived of such basic resources. However, the task of designating right to food as an objective entitlement has not been realized in India. The right to food is often entangled within the legal apparatus, further permitting the fact of exclusion and deprivation of vulnerable populations. As indicated by the Supreme Court of India in *Tapan Sudhakaran v. Food Corporation of India and Others*<sup>28</sup> the legal apparatus of the State is under a duty to give effect to the constitutional mandate. Referring to the responsibilities of the Food Corporation of India (FCI) concerned directly with the food grains in India, the court stated that substandard rice should not enter the market for human consumption, since those suffering from poverty would be willing to get it at cheap prices. It would then be injurious to their health.

Currently, India is at the threshold of formulating a legislative framework to address the condition of food affairs. The National Food Security Bill (2011) is an attempt to comprehensively supervise welfare programmes and establish a right to food for the vulnerable. The agenda sought to be achieved is holistic requiring attention to 'food

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<sup>26</sup> The Orders were as follows; July 2001 (food to be provided to aged, infirm, disabled...), September 2001( directed 16 states to identify BPL families to comply with directions of the Central government), November 2001 (directed the implementation of 8 food based schemes and recognized benefits of these schemes as legal entitlements), May 2003 (directing that a system be evolved to ensure the inclusion of eligible BPL families in the list, May 2003 (directed the inclusion of the aged, infirm, disabled, destitute women and man...in another Yojana. Text available at <http://www.righttofoodindia.org>

<sup>27</sup> Text available at <http://www.righttofoodindia.org> (Last visited 8.12.2009).

<sup>28</sup> (1996) 6 SCC 101-111.

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availability and production'.<sup>29</sup> The objective of the Food Security Act is to ensure public provisioning of food and related measures to enable assured economic, and social access to adequate food, for all persons in the country, at all times, in pursuance of their fundamental right to live with dignity.<sup>30</sup> The significant dimensions of the proposed law are (a) Every person shall have physical, economic and social access, at all times, either directly or by means of financial purchases, to quantitatively and qualitatively adequate, sufficient and safe food, which ensures an active and healthy life (Under Chapter III, Section 4), (b) Entitlements of Special Groups such as destitute persons, homeless persons, migrants, emergency and disaster-affected persons (Chapter IV), (c) Right of Persons Living in Starvation (Chapter V), (d) Constitution of National Food Commission and State Food Commission (Section 36, 54), (e) Provision of subsidized food grains (Chapter VI). (f) Provides for the appointment of a District Grievance Redressal Officer, empowered to entertain complaints against violations of food entitlements (Chapter XI), (g) Mandate for transparency and accountability vis-à-vis information, planning, monitoring, implementation (Chapter XVI), (h) Chapter XVII deals specifically with the progressive realization of food security through promotion of agricultural productivity and investments.

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<sup>29</sup> M.S. Swaminathan, "Synergy between Food Security Act and NREGA", *The Hindu* (2009).

<sup>30</sup> The Preamble of the proposed law refers to Article 25 of the Universal Declaration of Human Rights (1949), that recognizes the right of everyone to adequate food; Article 11 of the International Covenant on Economic, Social and Cultural Rights (1966) and General Comment 12 of the Committee on Economic, Social and Cultural Rights further elaborate the responsibilities of all State Parties to recognize the right of everyone to be free from hunger; Article 21 of the Constitution of India guarantees a fundamental right to life and personal liberty, which necessarily includes the right to life with dignity; reference also to the Supreme Court of India that has recognized the right to food and nutrition as integral to the right to life; and further specified variously the corresponding duties of the State.

Chapter IV deals with Entitlements of Special Groups such as destitute persons, homeless persons, migrants, emergency and disaster affected persons. Chapter V with Right of Persons Living in Starvation. Section 36 deals with constitution of National Food Commission and 54 (1) with State Food Commission. Chapter VI dealing with the provision of subsidized food grains. Chapter XI provides for the appointment of a District Grievance Redressal Officer, empowered to entertain complaints against violations of food entitlements. Chapter XVI is dealing with the mandate for transparency and accountability vis-à-vis information, planning, monitoring, implementation etc. Chapter XVII deals specifically with the progressive realization of food security through promotion of agricultural productivity and investments.

Deepa Kansra, "From the Right to Food to Food Sovereignty: Policy Initiatives in India and Beyond", in Deepa Kansra, Rabindra Pathak, Bhriгу Vishwakarma (eds.), *Re-thinking the Law: Emerging Issues and Challenges*, 64-87 (2013).

In addition the proposed law also involves;

- a) Identification of Beneficiaries i.e. the population that the Bill seeks to secure is covered as a priority, general, and excluded households. The priority sector would cover approximately 46 percent of the population and will get 35 kgs of grain per month. General households would get 20 kgs of grain whereas the excluded households, as the name suggests shall not be entitled to anything.
- b) The provision for food security allowances implies transfer of cash on the failure of state governments to provide for the defined foodgrains.<sup>31</sup>

The proposed law in India certainly is hinting toward the need to tackle expanding dimensions of food security. However, the course of policy and governance must be fully constructed to comprehensively entail the duty to protect-provide-promote, with due status also accorded to the civil society and specific conditions of the vulnerable populations.<sup>32</sup> Whether or not the proposed law seeks to achieve food sovereignty, can be ascertained by looking at its provisions and how capable they are in dealing with the complexity of issues entailed in the right to food.

Research at the global platform has time and again been done to emphasize the requisites for a strong policy framework on food. As indicated, food policy necessarily must be complex and integrated. First and foremost, there must be space for the

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<sup>31</sup> The UNDP and the World Bank has advocated for the cash transfer scheme in India. The Planning Commission in 2001 reported a great weightage of leakage in foodgrains. See *Conditional Cash Transfer Schemes for Alleviating Poverty*, [http://www.undp.org.in/content/cct/CCT\\_DP.pdf](http://www.undp.org.in/content/cct/CCT_DP.pdf).

<sup>32</sup> The Bill has already been subject to criticism,<sup>32</sup> with strong opposition coming from the Right to Food Campaign that has put forth the Draft Food and Entitlement Act.<sup>32</sup> It is significantly restricted its ambit to providing food, as opposed to the changing requirements of food sovereignty, based on duty to protect and duty to promote. The Chief Minister of Tamil Nadu stated that the Bill was replete with inaccuracy and confusion. Also the designing and implementation of welfare popular schemes should be left to the States. See The Times of India (Online), "Jayalalithaa oppose National Food Security Bill, December (2011). Available at [http://articles.timesofindia.indiatimes.com/2011-12-20/india/30537611\\_1\\_j-jayalalithaa-national-food-security-bill-tamil-nadu](http://articles.timesofindia.indiatimes.com/2011-12-20/india/30537611_1_j-jayalalithaa-national-food-security-bill-tamil-nadu) (Last visited 26. 12.2011). Also see Gayatri Sahgal, "Debates on National Food Security Bill", *Accountability Initiative* (2011). Available at <http://www.accountabilityindia.in/accountabilityblog/1197-debate-national-food-security-bill> (Last visited 26.12.2011).

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recognition of civil society and people's movement to give a boost to the right to food within society and legal spaces. Second, is the need for identification in realistic terms for the target groups that require the assistance of the state for food grains. For instance, in India the past endeavors for the identification of the poor (to whom the food must be provided by the PDS scheme) have either failed to achieve or have faced criticism. In 1997, on the recommendation of the World Bank, the Government of India introduced the Targeted Public Distribution System (TPDS). The policy targeting of households on the basis of income criteria is to demarcate poor and non-poor households.<sup>33</sup> The current Bill is expected to adopt a more calculated approach.

Third, as part of the concept of food sovereignty, the security of farmers' rights to land and agricultural productivity is also a necessity for the realization of the right to food. The large-scale acquisitions have deprived the local populations from adequate livelihood and food, moving contrary to the goal of empowerment, self-reliance, and sustainable agriculture.<sup>34</sup> Sustainable agriculture produces abundant food without depleting the earth's resources or polluting its environment. Agriculture follows the principles of nature to develop systems for raising crops and livestock that are, like nature, self-sustaining. Sustainable agriculture is also the agriculture of social values,

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<sup>33</sup> Madhura Swaminathan, "Should Public Distribution System be Targeted?", Vol. 8 (1) *CBGA Budget Track*, January, 14 (2011).

<sup>34</sup> Justice Krishna Iyer in the *State of Kerala v. Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd.* while upholding the constitutional validity of a land reform law from Kerala stated, "the concept of agrarian reform is a complex and dynamic one promoting wider interests than conventional reorganisation of the land system or distribution of land. It is intended to realise the social function of the land and includes-we are merely giving, by way of illustration, a few familiar proposals of agrarian reform-creation of economic units of rural production, establishment of adequate credit system, implementation of modern production techniques, construction of irrigation systems and adequate drainage, making available fertilizers, fungicides, herbicides and other methods of intensifying and increasing agricultural production, providing readily available means of communication and transportation, to facilitate proper marketing of the village produce, putting up of silos, warehouses, etc., to the extent necessary for preserving produce and handling it so as to bring it conveniently within the reach of the consumers when they need it, training of village youth in modern agricultural practices with a view to maximizing production and help solve social problems that are found in relation to the life of the agricultural community. The village man, his welfare, is the target." See Balakrishnan Rajagopal, Pro-Human Rights but Anti- Poor? A Critical Evaluation of the Indian Supreme Court from Social Movement Perspective", *Human Rights Review* April- June 161 (2007).

Deepa Kansra, "From the Right to Food to Food Sovereignty: Policy Initiatives in India and Beyond", in Deepa Kansra, Rabindra Pathak, Bhriгу Vishwakarma (eds.), *Re-thinking the Law: Emerging Issues and Challenges*, 64-87 (2013).

one whose success is indistinguishable from vibrant rural communities, rich lives for families on the farms, and wholesome food for everyone. But in the first decade of the 21st Century, sustainable agriculture, as a set of commonly accepted practices or a model farm economy, is still in its infancy—more than an idea, but only just.<sup>35</sup> Youngberg and Harwood observe; "we are yet a long way from knowing just what methods and systems in diverse locations will really lead to sustainability... In many regions of the country, however, and for many crops, the particular mix of methods that will allow curtailing use of harmful farm chemicals or building crop diversity, while also providing economic success, are not yet clear. The stage is set for challenging not only farm practitioners, but also researchers, educators, and farm industry."<sup>36</sup>

It is gradually that now we see a visible impact of the ideal of sustainable agriculture for the realization right to food. In a recent development, the Supreme Court of India responding to a PIL filed by the Democratic Youth Federation of India, has ordered a nationwide ban on the use and manufacture of Endosulfin, a cheap and popular pesticide having adverse effects on environment and health, giving effect to the precautionary principle.<sup>37</sup> The Indian Council for Medical Research has been the premiere institution studying the effects of Endosulfin.<sup>38</sup> In Kerala, "the sale and use of Endosulfin has been banned since 2004, and yet the Pollution Control Board of Kerala

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<sup>35</sup> Richard Earles, "Sustainable Agriculture: An introduction", available at <http://attra.ncat.org/attra-pub/PDF/sustagintro.pdf> "The concept of sustainable agriculture is a relatively recent response to the decline in the quality of the natural resource base associated with modern agriculture."

<sup>36</sup> Garth Youngberg and Richard Harwood, "Sustainable Farming Systems: Needs and Opportunities," *American Journal of Alternative Agriculture* 100 (1989).

<sup>37</sup> The precautionary principle was formulated to guide public policy making and to undertake risk analysis prior to any decision or action taken. It encourages complete regard for scrutinizing the viability and possible impact of actions. The principle is based on recognizing that some activities may cause serious, irreversible damage, and must not be adopted or practiced. Precautionary action is appropriate and necessary when there is some evidence that a particular plan, technology, activity might be harmful. The principle is not mandatory but directive in nature. 'The choices among potential anticipatory actions however should take full consideration of the weight of evidence for potential harm...and an assessment of potential alternative actions.' *Supra* note 12 at 247.

<sup>38</sup> Dhananjay Mahapatra, "SC Bans Endosulfin Production, Sale and Use", *The Times of India*, May (2011). Available at [http://articles.timesofindia.indiatimes.com/2011-05-14/india/29542828\\_1\\_endosulfan-cheap-pesticide-countrywide-ban](http://articles.timesofindia.indiatimes.com/2011-05-14/india/29542828_1_endosulfan-cheap-pesticide-countrywide-ban) (Last visited May 2011).

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during its monitoring has revealed endosulfin residues in the water resources."<sup>39</sup> Because of the hesitation earlier shown by the Government of India for a nationwide ban, the National Human Rights Commission of India (NHRC)<sup>40</sup> has concluded on how 'endosulfin is a persistent organic pollutant, the dangers it poses will linger and multiply through the generations, causing harm on a scale that presently cannot be fully quantified.'<sup>41</sup> At the Stockholm Convention on Persistent Organic Pollutants (POP) India agreed to a global ban on endosulfin, with exemptions on certain crops such as cotton, onion, potatoes etc.<sup>42</sup> The concern is of the victims of the pesticide that have suffered adversely, and the question of sustainability in agricultural production. The State of Kerala has since been trying to rehabilitate and compensate the victims in Kerala.<sup>43</sup>

So with the expanding dimensions of the right to food and corresponding obligations, the food policy is not only required to absorb complexity, but also to adopt an informed strategy that must include communities, state institutions, and civil society.

## CONCLUSION

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<sup>39</sup> Leela Solomon, "Endosulfin: Centre in Denial", *Economic and Political Weekly*, Vol. XLVI No.8 February 19, 21 (2011).

<sup>40</sup> The NHRC taking suo motu cognizance in 2001 of the reports of aerial spraying of endosulfin in Kerala, asked the ICMR (Indian Council for Medical Research) to submit a report on the matter. The Commission was disturbed by the Government of India's position on opposing a global elimination of endosulfin. Taking cognizance of fresh reports in 2010 the Commission set up an investigative team that confirmed a high incident of medical disorders as a result of endosulfin. In 2002, the Kerala High Court in a Public Interest Litigation said: "after anxious soul-searching, we have reached a conclusion that between the two alternative, we must err on the safer side and choose the alternative which has less dangerous implications...It is not as if the agricultural production in this country would come to a standstill if endosulfin is not used...If it turns out it is a toxic substance and its continued use and adverse effects on human beings and life and environment, we would have endangered life and health of citizens. We have decided to choose the lesser evil, and purely as a precautionary measure to impose a temporary ban on the use of endosulfin within the State pending the decision if the Central Government." See NHRC Recommendation on Endosulfin. Available at <http://www.nhrc.nic.in/disparchive.asp?fno=2175>

<sup>41</sup> *Supra* note 22.

Also the Centre for Science and Environment (CSE), New Delhi, warned that endosulfin is easily absorbed by the stomach, by the lungs and through the skin, meaning that routes of exposure can pose hazard.

<sup>42</sup> NDTV Correspondent, "India Agrees to Endosulfin Ban", *NDTV*, April 30 (2011). Available at <http://www.ndtv.com/article/india/india-agrees-to-endosulfan-ban-102347>

<sup>43</sup> K.S. Harikrishnan, "Kerala waits for Relief from Endosulfin Tragedy", *IPS News* 31 May (2011). Available at <http://ipsnews.net/news.asp?idnews=55378> (Last visited 10.6.2011).

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The theory of human rights establishes the State's mandate toward the realization of rights. Politics and reality, on the other hand, have infested the very processes and institutions performing for rights. The failure of policy, excessive corruption, etc. has reduced the many millions to insignificant existence and social exclusion. In the words of Josue Castro (Brazilian Sociologist), "hunger is exclusion – exclusion from the land, from income, jobs, wages, life, and citizenship. When a person gets to the point of not having anything to eat, it is because all the rest has been denied. This is a modern form of exile. It is death in life..."<sup>44</sup>

The growing popularity of the concept of food sovereignty has expressed the concern of the world community and civil society towards the insignificant existence of the right to food. The credit for raising the concern of the million vulnerable certainly goes to the (a) judicial machinery and (b) civil society. In addition to the Supreme Court in India, several other courts have established the relevance of food sovereignty. In Switzerland, the Swiss Federal Tribunal has expanded the horizon of the right to food and corresponding obligations. It says; "anyone in a situation of distress and unable to support himself has the right to be aided and assisted and to receive the means indispensable to a dignified existence worthy of a human being". Thus, any victim of a violation of the right to food can invoke this explicitly before the Federal Tribunal and obtain reparation and compensation."<sup>45</sup> In South Africa, judicial redressal has been vigorously in the areas of health, housing and water, and lately food.<sup>46</sup>

In addition, the global movement to strengthen and construct food sovereignty has also been a movement from below. To illustrate, the international network of peasants and indigenous people 'La Via Campesina' has popularized the concept of food sovereignty

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<sup>44</sup> See Right to Food Case Study: Brazil, February 2004, p. 9, FAO Documents IGWGRTFG /INF 4/APP.1: [www.fao.org/righttofood/common/ecg/51629\\_fr\\_template\\_case\\_study\\_Brazil\\_Annex.pdf](http://www.fao.org/righttofood/common/ecg/51629_fr_template_case_study_Brazil_Annex.pdf)

<sup>45</sup> Swiss Federal Tribunal, references ATF 121 I367, 371, 373 V.=JT 1996 389.

<sup>46</sup> In the landmark *Grootboom* case<sup>46</sup> the court interprets the constitutional right to shelter. *Government of RSA and Others v. Grootboom and Others* 2001 (1) SA 436.



Deepa Kansra, "From the Right to Food to Food Sovereignty: Policy Initiatives in India and Beyond", in Deepa Kansra, Rabindra Pathak, Bhrihu Vishwakarma (eds.), *Re-thinking the Law: Emerging Issues and Challenges*, 64-87 (2013).

to increase self-reliance of families and communities in production.<sup>47</sup> In 2000, the Brazil Landless Workers Movement that it would work with La Via Campesina to educate and train the youth peasants and rural dwellers for self-reliance.<sup>48</sup> In Brazil, the campaign for food has from inception linked to the civil society emphasizing upon the reality of 'No Corn, No Country'. In 1993, The Citizen Action against Hunger and Poverty, and For Life was launched involving a large number of individuals from the society spreading awareness on Economic, Social, and Cultural Rights, co-coordinating with government for constructing appropriate policies etc. The agenda in Brazil is towards capacity building and achieving food sovereignty by focusing on<sup>49</sup>:

- a) Identifying the poor and the hungry.
- b) Conducting a thorough assessment (clear definition of right holders and duty bearers, empowerment, creating claim mechanisms, defining goals and benchmarks).
- c) Elaborating on a sound food strategy.
- d) Allocating responsibilities (States must not place barriers on those who want to feed themselves, ensure that no one interferes with another's right to food, facilitate access to food, and provide direct aid).
- e) Creating a legal framework (defining the right to food and related concepts, revoking contrary laws, defining violations, access to remedies, defining entitlements, and defining benchmarks)
- f) Monitoring progress (with the use of indicators such as food production, availability, access, income, and education.)

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<sup>47</sup> Founded in 1992, this international movement, made up of peasant farmers organizations, small and medium sized farms, farm workers, peasant farmers and indigenous communities, has become a central actor throughout the world with respect to the peasant farmer struggle against the ravages of neo liberalism. Its main goal is to organize and to publicize internationally the peasant farmer demands such as the right to land, food sovereignty and the issue of the protection of biodiversity. See <http://www.viacampesina.org>

<sup>48</sup> *Supra* note 17 at 84.

<sup>49</sup> Food and Agricultural Organization of the United Nations, *Right to Food: Lessons Learnt from Brazil*, Available at <ftp://ftp.fao.org/docrep/fao/010/a1331e/a1331e.pdf> (Last visited 12.12.2011).

Deepa Kansra, "From the Right to Food to Food Sovereignty: Policy Initiatives in India and Beyond", in Deepa Kansra, Rabindra Pathak, Bhriku Vishwakarma (eds.), *Re-thinking the Law: Emerging Issues and Challenges*, 64-87 (2013).

- g) Ensuring recourse mechanisms. (Special Commission on Food as the central agency of work and implementation).

There is tremendous learning in the framework of 'capacity building' as put forth by Brazil. The most significant requirement pertains to the institutional mechanisms that are to be concerned with food security, distribution, and redressal for violations of the right to food. Realistically, in the realm of socio-economic rights, since the duty/mandate for performance is on the State, how equipped is the State to define violations and subsequent redressal is another pertinent question? How equipped are the courts to redress violations within evolved connotations of monetary compensation for rights violations in the case of the right to food? <sup>50</sup>

Pertinent to note, that with this aim of establishing good policy and defined duties, the world community is expected to be a protected hub for the deprived. The difficulties however in terms of basic rights still hold ground. The States must find time and resources to build a structure to ensure food sovereignty, or else the condition of inequality will be buttressed with poor governance conditions adding to the plight of the weaker sections. The deprivation from the basic resources of survival would continue to push a chunk of the population towards further conditions of isolation and insignificant existence. The case of Brazil is noteworthy to realize basic rights in order to ensure a deprivation free society. The continuous deficit in strategy and planning would multiply the obstacles to food provision and protection in the form of poverty, environment, trade, inflation, etc. In the absence of a paradigm shift towards rights-based policy and practice, the crisis in human rights would continue and spur situations of mass frustration, violence and political dissatisfaction worldwide.

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<sup>50</sup> Right to food has been interpreted to also entail right to safe drinking water. See *General Comment 15* of the Committee on Economic, Social and Cultural Rights adopted in 2002, *The Right to Water*, Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights, United Nations Document E/C.12/2002/11: <http://www.unhcr.ch/tbs/doc.nsf/0/a5458d1d1bbd713fc1256cc400389e94?Opendocument>