
RIGHT TO FOOD: ANALYSIS OF THE IMPACT OF COVID-19

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1 Introduction

For the life of humans food is one of the basic requirements. In past wars were fought for survival. In prehistoric days cavemen killed animals for getting food and this led to the discovery of stone and crude tools of hunt. This was the time when an accidental discovery of fire totally changed the way of eating. At present we can only guess how the first cooked food evolved. Maybe one day some piece of meat or other food item accidentally landed in fire and it tasted good; or a whole animal must have fallen into a fire and got char-grilled accidentally to create the first barbecue of the world.¹ Cavemen old pictures also depict about the roasted animals. Even this day the cuisine of nomads and tribes is essentially whole spit roasted.² It was between 10,000 B.C and 3000 B.C when the masses of Middle East, Southeast Asia, and other areas of Asia including Europe and Africa went under the early revolution called agriculture. The free flow of food items paved the way of new era of Food and food-related items.³ Emperor's cuisine of China, royal cuisine of Thailand, Kosher laws of Jews and many others throughout the world have been segregated according to social status and caste of the people.⁴ Cooking was limited to home during the old days, where women used to cook food for a joint family. Grand buffet system hosted by royal and rich kings set to contest and innovation in cooking food.⁵

A lot of communal importance is carried through food. Various celebrations as Dussehra, Diwali, Eid and Christmas have notable menus defined for the occasions.⁶ In certain groups even to this day, grown-up men are provided much and better quality foods than females because of their superior social status.⁷ Education is also a factor which affects the choice of food. If a mother is educated well then she must ensure that household members should be

¹ Parvinder S. Bali, Food Production Operations 3 (2014).

² *Ibid*

³ National Geographic, Answer Book 10,001 Fast Facts About our World 244,245 (2015).

⁴ Bali, *supra*, 4.

⁵ Bali, *supra*, 1.

⁶ Sunetra Roday, Food Science and Nutrition 244 (2018).

⁷ *Ibid*

provided a balanced diet.⁸ The evolution of industry of food can be detected from the excess food which at that time was needed to be conserved for some wet day. Our early forefathers were aware of the fundamental concepts of food preservation. They used to take the help of natural resources for it. In the year 1850, milk started transportation via the use of special milk tanks and trains for a space of many hundred miles. It was the early sign of negligible loss in quality.⁹ A law of India made over 2500 years before banned the contamination of medicine, grain and scents.¹⁰

2. Right to Food: International Perspective

International Development of Right to Food: The legislative history of right to food shows that it has provided the ever increasing guarantee to food. A double challenge is faced by the legal scientists on this point because on one hand they want to boost the internal consistency of the law body and on the other they seek to adjust the logic of obligations and rights as per novel social trends. Legal scientists thus contribute and study to the law on motion.¹¹

Various classical writers such as: David Ricardo (1772-1823), Thomas Robert Malthus (1766-1834) and Adam Smith (1723-90) laid stress on the necessity of food availability for the better economic growth. Smith in his '*The Wealth of Nations*' has talked about economy and food security. Similarly Malthus in his essay '*An Essay on the principle of population*' which was published in 1798 has talked about economic growth and food. He attempted to systematically explain the effect of biophysical limits on human aspirations to improve living standards and availability of food and other basic necessities of life.¹² Food laws were in developed stage around the world since old days. Existence of legislations controlling marketing and the production of food is found since older days. Hammurabi Code provides different references to cattle and grain stocks. If we just take the example of Old Egypt it was having legislations on the labelling of different wines which was quite similar to what we found in this regard at present. In Old Rome also laws to curb sale of poor quality food and minimizing food related frauds were in existence. Holy book of Christians 'Bible' also provides several references about the food should and should not be eaten.¹³ In 1266 during the rule of Henry III in England early Food laws on Assize of Bread and Ale were framed. These laws were to control the weight and

⁸ *Ibid*

⁹ "Id. At 2"

¹⁰ Gabriela Steier & Kiran K. Patel, *International Food Law and Policy* 202 (2016).

¹¹ Hospes & Hadiprayitno, *supra*, 27,28.

¹² Biswajit Chatterjee & Asim K. Karmakar, *Food Security in India* 86 (2012).

¹³ Caoimhin Macmaolain, *Food Law* 3 (2015).

quality of beer and bread. At that time price of items for illustration: beer was set taking into consideration the raw material through which it was produced. Consumers of these goods had the right to complaint and threatening punishments were imposed on the maker of these goods. Later on parliament of England framed many laws to control the safety and quality of drinks and certain food items. Some of these legislations are as follow:

- Adulteration of Tea and Coffee Act, 1724
- Adulteration of Tea Act, 1730
- Bread Act, 1822
- Bread Act, 1836 (introduced sale of bread in multiples)
- Corn, Peas, Beans or Parsnips and Cocoa Act, 1822 (it introduced the need of license for the sale of such items)
- Adulteration of Food or Drink Act, 1860 (Which made intentional selling of these goods an offence)
- Food Act, 1984 (To deal with the food items dangerous to health and having lower nutritional quality) etc. Again from 18th century providing anyone food item unfit for human digestion whether done intentionally or unintentionally was made a serious offence. Suppliers of goods were held for manslaughter if anyone died from the consumption of meat or adulterated food items.¹⁴

The right to food was recognized for the first time in the year 1215 through the Magna Carta of England. Right to food is of contemporary origin within the United Nations Universal Human Rights framework. Article 25 of UDHR (Universal Declaration of Human Rights) of 1948, provides “Everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including clothing, housing and medical care and necessary social services, and the right to security in event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” Thus internationally the right to food has been developed by the different means such as: UDHR (Universal Declaration of Human Rights) of 1948, The United Nations International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR) recognizes “Right to an adequate

¹⁴ Caoimhin Macmaolain , Food Law 4, 5 (2015).

standard of living, including right to adequate food as well as the right to be free from hunger.”Convention on Elimination of all Forms of Discrimination against women,1979 Convention on the Rights of Child, 1989 and The Rome declaration of 1984 etc.¹⁵ in addition to these UN special Rapporteur on right to food in 2002 has provided that Right to adequate food is human right, inherent in all people, to have regular, unrestricted and permanent access, directly or by method of financial purchases qualitative and quantitative sufficient and adequate food consistent to cultural tradition of people to which consumer belongs and which ensure mental and physical and dignified life free of fear.¹⁶

Again Rome Declaration on Food¹⁷ provides that food should not be used as an instrument of economic or political pressure and it should be dealt with international cooperation and solidarity.

Thus it shares the following points:

1. Right of everyone to have access to safe and nutritious food, consistent with the right to adequate food.
2. Reaffirmation that hunger is an outrage and violation of human dignity.
3. Intolerable consideration that 825 million people of the world most of which are children and women particularly in developing countries don't have sufficient food to meet their nutritional needs, which infringe their fundamental human right.
4. Encouragement for all states for taking of steps to promote the conditions for everyone to be free from hunger and earliest enjoyment of right to food.
5. Deciding for the full response the necessity for integrated and coordinated approach in the protection and promotion of right to food.
6. Requesting the special Rapporteur on the right to food for fulfillment of its mandate and accomplishing the follow points:

(a) Identification of emerging issues related to right to food throughout the world;

¹⁵ Dr. Manish Kumar Chaubey, Right to Food In India, 48 Civil and Military Law Journal. 4 (2012).

¹⁶ Commission on Human Rights Resolution, The right to food (Mar. 17, 2020, 10:14 AM), <https://www.refworld.org/docid/3b00f2881c.html>

¹⁷ World Food Summit, Rome Declaration on World Food Security (Mar. 17, 2020, 10:33 AM), <http://www.fao.org/3/w3613e/w3613e00.htm>

- (b) Establishment of cooperation with governments, inter government org.
- (c) Receiving, seeking and responding to information on different aspects of realization of right to food.

3. Food as a Human Right:

Inception of Adequate food as a Human right firstly evolved since its pronouncement in the year 1948. In year 1948 this right came into light when UDHR (Universal Declaration of Human Rights) made it a right under Article 25(1). Article 25(1) provides the right to food, among the other daily needs including that of social services, medical care, housing and clothing.¹⁸ Freedom from hunger, food safety and food were declared as the Fundamental human right in the year 1996 at world food summit. Again different (MDGs) Millennium Development Goals also urge for food as basic human right along with security, shelter, education and health related rights.¹⁹

4. Statutory Developments in India:

When India became independent, our country faced two main food issues: nutritional problem: was the threat of famine and resultant acute starvation due to low agricultural production and lack of proper food distribution system. The other was high prevalence of micronutrient deficiency and chronic energy due to: high prevalence of infection because of poor access to safe drinking water, food, sanitation and health care, poor utilization of available facilities due to low literacy and lack of awareness.²⁰ In our country right to food was recognized as a prime duty of the king/queen to look after the welfare of its public. There are found such examples in history when such persons used to provide food items during famine or as a preventive measure.²¹ At that time these laws were in the shape of established royal customs. These customs gradually took the shape of the laws and statutes. Indian Constitution is the top law which discuss and provides the legal enforceability to the right to food. There are various Articles under the Constitution which talks about the right to food and the availability of safe and hygienic food. Article 39 (a) provides that state should direct its policy to secure citizens, men and women equal right to adequate means of livelihood. Similarly Article 47 talks about

¹⁸ Ken Albala, *The Sage Encyclopedia of Food Issues*, 2, 800 (2015).

¹⁹ Asim K.Karmakar, *Food Security in India* 134 (2012).

²⁰ Prema Ramachandran, *India's Food and Nutritional Security*, 9 *Journal of National Human Rights Commission*, 56,57, (2010).

²¹ M S Swaminathan, et.al., *National Food Security Summit* 2 (2004).

another directive principle of state policy which calls it the duty of state to raise the level of nutrition and standard of living and to improve the health of its public. Article 21 which is the right of all the rights also covers the right to food in it to a greater extent, because citizens deserves such right to food in which they should be provided with the safe and nutritious food supply. Constitution has thus realized the importance of the safe and nutritious food supply and covered the right to food in its different provisions.²² History of legislative enactments of India shows that consistent efforts were made by the government to end the menace of food adulteration. Contamination of food is an anti social crime. There were many laws on the issue of food which were in developed stage before the Prevention of Food Adulteration Act, 1954. The first such Act was passed in the year 1912. This was then called as The united provinces Prevention of Food Adulteration Act, 1912. It was then applied to twenty two states of India with minor variations. To check the practicability of this legislation in 1937 Committee was appointed by Central Advisory Board of Health. This Committee in its recommendations called for all India level Act on the issue of food adulteration. But the committee's recommendations were failed to be accomplished because under it state government were also given power to legislate.²³ During the British rule some penal provisions on adulteration of food were put when in the year 1860 they enacted the Indian Penal Code. This code has the provisions to deal with the adulteration of food. But it proved to be the ineffective legislation because it was not in a position to address the grievances of the customers. So this was the reason why the The Prevention of Food Adulteration Act, 1954 and other such legislations were passed.²⁴ Prior to the year 1954 the Food Authority in India was local, mainly in the form of local provincial acts. Prevention of Food Adulteration Act, (PFA Act) 1954 becomes the first national law on the issue of food. This Act came into effect on 1, June 1955. This Act provided various powers to the state governments to make rules, after discussion and consultation with the Central Committee of Food Standards. This Act also made it necessary for the state government to lay the framed rules before the respective state legislature.²⁵ PFA (Prevention of Food Adulteration Act, 1954 was amended in the year 1964, 1971, 1976, 1986 and in the year 1998. The main objective of all these amendments was to strengthen the Act and to curb the loopholes by adding the provision of severe punishments for its violations. In one of the amendment published on

²² Ashok R. Patil, *The Food Safety And Standards Act, 2006: Need Of The Hour*, 5 *Karnataka Law Journal* 21, 22 (2007).

²³ Shree Dhar Purohit & Kashi Nath Joshi, *Supreme Court on Prevention of Food Adulteration Law in India* 1 (1973).

²⁴ Singh & Majumdar, *supra*, 21,22.

²⁵ S.N .Mahindru, *Food Safety Concept and Reality* 9 (2015).

dated 24, December, 1986 it was stated that the purpose of this Act is “An Act to provide for the protection of the interests of consumers and for this purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumer’s disputes and for the matters connected therewith.²⁶” As said earlier many amendments were made in the Act of 1954 to make it worth but every effort was in vain. As per a survey done by the Industrial Toxicological Research Centre, Lucknow on the analysis of 12,750 samples of colored items including Milk products 70 % of them were found carrying toxic colours unfit for humans. Again coke and Pepsi soft drinks were tested by Center for Science and Environment (CSE) in which these drinks were found containing pesticides in the year 2003. This pesticide residue was 24 time higher than the level fixed by (BIS) Bureau of Indian Standards. This was the reason why Food Safety and Standards Act, 2006 was passed.²⁷

5. Judicial Approach

in the landmark judgement of *Maneka Gandhi v. Union of India*²⁸ the Supreme Court while delivering the judgement stated:

Right to life enshrined in Article 21 means something more than animal instinct and includes the right to live with human dignity, it would include all these aspects which would make life meaningful, complete and living.

Also in the case of *Shantistar Builders v. Narayan Khimalal Totame*²⁹ the Supreme Court stated that basic needs of man have traditionally been accepted to the three - food, clothing and shelter.

Kishan Patnaik v. State of Odisha³⁰

In this case the petitioner wrote a letter to the Supreme Court of India highlighting the status of starving people in the Kalahandi part of Odisha who even sold their children to fulfill the demand of hunger, though the apex court did not mentioned about the right to food as a fundamental right but took cognizance into it and directed the state government to address the serious issue of starvation.

²⁶ “Id. At 10”

²⁷Macmaolain, supra, 37.

²⁸ AIR 1978 SC

²⁹ AIR 1990 SCC 520

³⁰ AIR 1989 SCC 677

Chameli Devi v. State of U.P ³¹

It was held that everyone has the right to standard of living adequate for the health and well-being of himself and his family including food, clothing, housing, medical care and necessary social services.

People united for civil liberties (PUCL) v. Union of India ³²

This writ petition was filed on behalf of the people living in the territory of Rajasthan, the people were too poor and had not been getting any kind any required food relief or any other kind of relief obligatory by the Rajasthan famine Code of 1962, and due to the absence of adequate food for all the people were eating on a rotation basis which in general is also known as Rotation eating which means some people of the family will eat on one day and the remaining others on the other day. PUCL went to the court on the issue of RIGHT TO FOOD and the apex court passed an interim order that said that Right to food is enshrined under article 2 and the state can not escape its duty to fulfill it.

6. Impact of Pandemic on Right to Food

As the deadly corona virus knocked India and gradually spared its roots here, the Indian government quickly responded to the catastrophe. One of the first and important decisions after imposing country wide lockdown was the announcement to provide free ration for the weaker section of society. The government announced relief package in terms of extra ration to be given to the marginalised and poor. This was instrumental in preventing the worst food crisis in human history. Nearly 80 crore Indians benefited from the scheme called *Pradhan Mantri Garib Kalyan Ann Yojana*. Rs. 1.75 lakh crore was spent on this scheme. One Nation, One Ration card” scheme was also implemented for the migrant labour. The combined efforts of the central government, state government, and civil society and non-government organisations reduced the number of those going hungry to bed during the pandemic to the minimal. Free ration was provided to 75% and 50% of the rural and urban population respectively under Antyodaya Anna Yojana. The Pradhan mantra Garib Kalyan Ann Yojana has now been hailed by the United Nations ‘World Food Programme’. ³³ However those who did not have ration cards had a tough time. Works under MNREGA continued and this provided some relief and

³¹ AIR 1996 SCC 549

³² Writ Petition(Civil) No. 196 of 2001.

³³ Kaushik Roy, UN World Food Programme Hails India’s Food Security During Pandemic <https://newsonair.com/2021/08/01/un-world-food-programme-hails-indias-food-security-during-pandemic/>

money to the poor and needy. First wave of COVID-19 brought about gaps in India's social security system particularly related to food. Unfortunately, the annual budget in the subsequent years continued to overlook this aspect.³⁴

The lockdown imposed after first wave of COVID-19 resulted in migration of several people from one part of the country to other at times on foot. The influx of people from cities to villages resulted in easy availability of labour resulting in depressed wages. On the other hand the migration of labour to its native areas during harvesting season posed another problem. There was delay in harvesting and transportation of food grains. This led to food insecurity through out India.³⁵

Right to food is a fundamental right in India.³⁶ The first lockdown was announced on 24.3.2020 and the second was announced on 14.4.2021 with a notice of 4 hours and a day respectively. There was insufficient notice to people. Those who survived on the community kitchens were the worst affected. There were reports that the people who ran these kitchens were harassed by the police.³⁷ After the first lockdown Government of India announced a relief package of 1.7 lakh crores for the poor of the country. Under this package around 800 million ration card holders were to benefit. The package was useless for those who earlier did not qualify for it but now had lost jobs and were on the brink of starvation.³⁸ As the people lost job food insecurity increased. Different surveys point out food insecurity during lockdown. An estimate by IDinsight suggested that around 26% households under study were eating less than usual during the time of pandemic. A survey by CSE-APU stated that while 77% respondents admitted to eat less during first lockdown 60% continued to eat less even after the lockdown was lifted. As per the report of ActionAid 35% of 10,000 informal workers were eating only once a day. PRADAHAN+ Survey covering informal sector in 13 states found that respondents were eating less than before. In a survey held in Bihar on 20,000 migrant labours, 60% respondents said that they were finding it difficult to provide two meals a day to all their family members.³⁹

³⁴ Jean Drèze, Anmol Somanchi, The Covid-19 crisis and food security available at <https://www.ideasforindia.in/topics/poverty-inequality/the-covid-19-crisis-and-food-security.html>

³⁵ <https://theowp.org/food-insecurity-and-covid-19-in-india/>

³⁶ People's Union for Civil Liberties v. Union of India & Others, 2001, Supreme Court, Writ Petition (civil) 196/2001.

³⁷ Manjeet Sehgal, "Coronavirus lockdown in Chandigarh: Daily wage workers are surviving on donated food", India Today, 2 April, 2020 available at <https://www.indiatoday.in/india/story/coronavirus-lockdown-chandigarh-daily-wageworkers-food-condition-1662638-2020-04-02> visited on 9.4.2022

³⁸ Available at <https://www.icj.org/wp-content/uploads/2020/06/India-Right-to-Food-COVID19-Briefing-Paper-2020-ENG.pdf> visited on 9.4.2022

³⁹ Jean Drèze and Anmol Somanchi, The Covid 19 Crisis and People's Right to Food available at <https://osf.io/preprints/socarxiv/ybrmg/> visited on 2.4.2022

Loss of income resulted in the decrease in the quality and quantity of the food. People struggled to feed their families. Sharp dip was noticed in the consumption of non-vegetarian food items. The consumption of nutritious food was also affected adversely. The unlocking after the first lockdown improved the earning of the people and improved the food consumption.⁴⁰

According to the Global Hunger Index in 2020, India stood at 94th position out of 107 nations. The First Phase of the National Family Health Survey shows that the number of underweight children has increased in 16 Indian states. The overburdening of healthcare systems, loss of income and disrupted programs has resulted in a threat of nutrition crisis.⁴¹

The pandemic disturbed the food supply chain. In view of the restrictions imposed, farmers found it difficult to harvest crops. Trade restrictions, sealing of borders made it difficult to sell their crop. As a result the produce did not reach the market in time. The small scale farmers were the worst hit. This had an impact on rest of the populations as well who were not able to consume balanced diet.

During pandemic cracks emerged in bureaucratic systems like PDS and healthcare. However judiciary did not take cognisance of the same⁴².

7. Conclusion

Thus on the basis of above discussion we can conclude that food contamination or adulteration related issues were limited during the early historical system. During the very ancient time man was either gather or hunter. At that time human's focus was more on the survival by eating whatever one found for survival. These priorities were then changed during medieval times when human started thinking about food items of his/her liking and also the food of safer quality. Because of the prevalence of ruling system of king or queen during this time food safety norms differ according to the wishes of such kings or queens. Sometimes we thus found a very strict system of food safety and preservation and on the other time these went more liberal. After this there came the system of defined and written laws during the British time. British were already familiar with the written statutes/ laws thus they also imposed this system

⁴⁰ Jean Drèze, Anmol Somanchi, The Covid-19 crisis and food security available at <https://www.ideasforindia.in/topics/poverty-inequality/the-covid-19-crisis-and-food-security.html>

⁴¹ COVID-19 is creating a hunger catastrophe in India – here's an opportunity to break the cycle <https://www.weforum.org/agenda/2021/06/covid-19-pandemic-hunger-catastrophe-india-poverty-food-insecurity-relief/>

⁴² Available at <https://www.deccanherald.com/opinion/panorama/judiciary-and-right-to-food-amid-the-covid-19-crisis-972114.html> visited on 6.4.2022

in India. This system of laws and regulations was stricter than what we found earlier during ancient and medieval times. Most of our present system of food related laws is also a replica of what we found during the British time.