



National Food Security Act: A Relook

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Abstract

It has been four years since the National Food Security Act, 2013 (NFSA) was passed, ample time for us to assess its impact on the food insecurity in India. The Act was initiated as an ambitious attempt to provide food security through a life-cycle approach, but over the years it has remained restricted to merely converting four schemes into legal entitlements. It has lost sight of its ultimate goal of providing 'food security' and remains largely over occupied by food distribution. Additionally, core aspects of food production and management have been placed under schedule III, to be progressively realized, in other words 'not imperative'.

The present paper shall critically analyze the concept of food security against the national Act. An attempt shall be made at highlighting the lacunae within the provisions of the Act, implementation gaps and operational inadequacies. Moreover, the interaction between the national law and the individual state rules and the impact of diverse state-specific factors on rule-making and ground-level implementation shall also be considered. The paper introduces the concept of food security and gives an overview of the NFSA. It also critically analyzes the provisions of the Act and highlights the gaps in food security therein. The paper concludes with

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recommendations as to how food security can be implemented in an effective way.

Keywords: Grievance Redressal Mechanisms, National Food Security Act, Nutritional Security, Public Distribution System, Right to Food

I. Introduction

In the recent Global Hunger Index (GHI), India has been ranked 97th, out of 118 countries¹- a fall from 83 in 2000 and 102 in 2008.² This implies that, while hunger levels in India have diminished, the improvement has been outstripped by several other countries. In fact, Bangladesh³ has improved remarkably with a rank of 90 to India's 97. This is the reality when India runs the world's largest children's nutrition schemes under the Integrated Child Development Services (ICDS) and the Mid-day Meals Scheme (MDMS). The result of this year's GHI implores one to re-examine the entitlements promised under the National Food Security Act, 2013 (NFSA) which boasts of a life-cycle approach to the right to food. While the NFSA is looked at, as the panacea for food security in India, the realities portray a grim picture. Clearly our attempts lack in results and the drawbacks are too stark to ignore. Therefore, one must begin with evaluating the concept of 'Right to Food' (RTF) as understood internationally, against the provisions of the NFSA.

The 'Right to food' was first recognized by the *Universal Declaration of Human Rights (UDHR)*, as a part of the right to adequate standard of living, encompassing the right to food, clothing and shelter.⁴ It was followed by the *International Covenant on Economic, Social and*

¹IFPRI , Global Hunger Index 2016, <http://ghi.ifpri.org/> , (last visited April 24, 2017).

² Subodh Varma, *India Ranked 97th of 118 in Global Hunger Index*, Times of India, Oct 13, 2016.

³ Klaus von Grebmer et. al., 2016 Global Hunger Index: Getting to Zero Hunger, International Food Policy Research Institute, (Oct 2016), <http://www.ifpri.org/publication/2016-global-hunger-index-getting-zero-hunger>.

⁴ UDHR art. 25.

Cultural Rights, 1966 (ICESCR), that sought to impose binding obligations on States and create mechanisms for enforcing the rights contained in the UDHR. Specifically Article 11(1) of the ICESCR recognizes “...the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” Article 11(2) recognizes the “fundamental right of everyone to be free from hunger”. The Committee on Economic, Social and Cultural Rights (CESCR) stated that this right is “indivisibly linked to the inherent dignity of the human being and is indispensable for the fulfilment of other human rights.”⁵ It outlined the normative content of the RTF and cautioned against a narrow interpretation of the right to mean “a minimum package of calories, proteins and other specific nutrients”.⁶ According to the CESCR, the right to adequate food implies:⁷

*The **availability** of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture; the **accessibility** of such food in ways that are sustainable and that do not interfere with the enjoyment of other human rights.*

In line with the same chain of thought, the Supreme Court of India in 2003, while elaborating on the ‘right to food’ under Article 21 of the Indian Constitution stated:

Right to food is about respecting, protecting and fulfilling access to food producing resources and work...the right to food in the context of human rights doesn't mean that the state is a super-entrepreneur determining and carrying economic activities in its own wisdom. It means the right to feed oneself, which emphasizes dignity and self-reliance, very different from economic commands of the government. Right to food is not necessarily realized when no one is hungry. It means not only hunger is

⁵ Committee on Economic Social and Cultural Rights, CESCR General Comment No. 12: The Right to Adequate Food (Art.11), Twentieth Session, Document E/C.12/1999/5, Para 4.

⁶ *Supra* note 5.

⁷ *Supra* note 4.

*eradicated, but future hunger and malnutrition can be eradicated through course action or other comparable mechanisms of holding the state accountable on its obligations under right to food.*⁸

This explanation of RTF by the Supreme Court, emphasizes on self-reliance and access to food growing resources. Non-payment of wages would adversely affect the right to food of the employees and consequently violate Article 21. When this right is not exclusively dependent on the economic measures taken by the government, then, RTF is a justiciable, reviewable, expandable and legally enforceable constitutional right.⁹ In 2004, the Guidelines by the Food and Agricultural Organization (FAO) Council explicated that, states are to build an enabling environment for people to feed themselves with dignity, and to establish appropriate safety nets for those who are unable to do so.¹⁰

Thus food security, as envisaged globally, is a goal where the people are self-reliant for their dietary needs, with accessibility, not only to food, but also to food-producing resources. To fulfil Right to food, it is expected that states look beyond the aspect of food allocation or welfare. It requires measures to improve methods of food production, conservation and distribution by using technical and scientific knowledge, disseminating knowledge of the principles of nutrition, and developing efficient agrarian systems to ensure an equitable distribution of food supplies, corresponding to need. Whilst keeping this essence of food security in mind, we shall endeavour to reevaluate the NFSA.

⁸ Kapila Hingorani v. State of Bihar, 2003 6 SCC 1.

⁹ Lauren Birchfield & Jessica Corsi, Right to life is the right to food: People's Union for Civil Liberties v. Union of India & other, <https://www.wcl.american.edu/hrbrief/17/3corsi.pdf>. (last visited April 24, 2017).

¹⁰ FAO, The Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (The Right to Food Guidelines 2005).

II. National Food Security Act, 2013

The preamble of NFSA, 2013 through a human life-cycle approach, aims to provide for food and nutritional security, by ensuring access to adequate quantity of quality food, at affordable prices. By attributing food security, to merely providing food at affordable prices, has diminished its scope. NFSA restricts the otherwise wide, food and nutritional security, which includes production, distribution and appropriate consumption, to just the distribution aspect. The preamble, in essence, excludes concerns of accessibility and availability of food producing resources.

The definition of 'food security' under S. 2 of the NFSA is 'supply of the entitled quantity of food grains and meal, specified under Chapter II'. In other words, the ambit of food security in the Act, is the effective propagation of Targeted Public Distribution System (TPDS), Integrated Child Development Services (ICDS), the Mid-day Meals Scheme (MDMS) and Maternity Benefit Scheme (MBS). However, food security as explained previously, goes far beyond these schemes. The concept of food security, envisaged under the Act is myopic, enslaving it to mere hand-outs from the government.

It would be wrong to say that the legislature has completely disregarded the other aspects of food security. They are mentioned in Schedule III of the Act, as admirable goals for revitalizing agriculture, promoting procurement, storage and movement of food grains and ensuring access to health, sanitation and water. But these have interestingly been put under the head of objectives that need to be 'progressively realised' implying that they are optional and need not be implemented urgently. Simultaneously, the National Food Security Mission (NFSM), a major undertaking since 2007, focuses on improving the production of food grains with innovative technology and farm management mechanisms. The mission has been actively pursued by central and state governments. It is disappointing that this mission hasn't been integrated with the NFSA, and remains just a scheme. Food security under the national Act, needs to be a holistic, multi-sectorial discourse, embodying the ideals of food security, aligned with the objectives of NFSM. Unfortunately, what we have in the

NFSA, is just a shadow of this. Few aspects that have been overlooked and need to be addressed are highlighted below.

II.1 Nutritional Security

Recent surveys have shown that 9 out of 10 adults, on a regular Indian diet, are deficient in proteins.¹¹ These figures are worse for children belonging to vulnerable economic and social sections. A survey on nutritional consumption of children (4 - 14 years) from weaker economic sections, highlights a dismal picture of only 22% children having adequate proteins in their diet.¹² While Schedule II of the Act lays down nutritional standards for ICDS and MDMS, to our dismay these programmes are just quantitative and not qualitative. Studies have shown that while ICDS and MDMS boast of high calorie meals, the nutritional delivery through these meals is abysmally low, especially in nutrients like proteins, fat and iodine.¹³

The struggle is not to just give children calories, rather, it is to give them calories from right nutrient sources. The sources of such proteins are milk, eggs, green leafy vegetables etc. Unfortunately this issue has been turned into an election gimmick. When states like Tamil Nadu ensure that eggs are given every day as part of the MDMS, for many other states, suggesting this is akin to blasphemy.¹⁴ On the other hand, states like Karnataka have started providing children with a glass of milk, under state schemes.¹⁵ Since milk and eggs are not mandated as a part of the MDMS, these

¹¹ Manish Mahajan, *Protein Consumption in Diet of Adult Indians: A General Consumer Survey*, INDIAN MEDICAL GAZETTE, 149 (2015).

¹² Kulsum A, Lakshmi JA & Prakash J, *Food Intake and Energy Protein Adequacy of Children from an Urban Slum in Mysore, India- a Qualitative Analysis*, *Journal on Malnutrition*, 14 MAL J NUTR163 (2008).

¹³ Satish Y. Deodhar, SwetaMahadiratta et al, *An Evaluation of Mid-Day Meal Scheme*, 22 JOURNAL OF INDIAN SCHOOL OF POLITICAL ECONOMY, 33 (2012).

¹⁴ TNN, *Eggs not needed in mid-day meals*, TIMES OF INDIA, Feb. 11, 2016.

¹⁵ NammaSarkara, "Ksheera Bhagya" - Free Milk to All School Children, <http://www.nmmasarkara.in/ksheera-bhagya-free-milk-to-all-school-children/> (last visited Apr. 24, 2017).

schemes are not entitlements, and remain at the mercy of the ruling parties of respective states.

There is a lack of understanding at a policy level that fats and proteins have to be part of the food intake of the population. Malnourishment does not merely require calorie replenishment, but, calorie revitalization, from the right kind of food. Food security means ensuring that children are getting the nutrients they otherwise lack at home or are unable to afford by themselves. What we are presently feeding our children, falls short of ensuring their food security.

II.2 Uncooperative Federalism

The NFSA was finally passed in 2013, after being subject to wide debates. Yet in 2017, states are still grappling over implementing the Act. The Hon'ble Supreme Court in February 2016, expressed disappointment at the non-implementation of the Act, in states like Gujarat, Tamil Nadu, Kerala and others.¹⁶ This hesitation on the part of the states, stems from the lack of cohesive effort by the Centre, to bring states on board, in the implementation of this nationwide change.

The Act lays down a bare minimum of entitlements for food security and also allows state governments to add on to it. The bone of contention however, is not the entitlements within the NFSA, it is the restriction that the Act puts on the public distribution system. Under S 3(2), the Act puts a ceiling of 75% on rural population and 50% on urban population. For states like Kerala and Tamil Nadu, which practice universal Targeted Public Distribution Systems, there are fears that the NFSA excludes population which was covered previously.¹⁷

Such a move of exclusion would be unpopular amongst the public and state governments are reluctant to move forward with the Act. The state governments can only continue to extend the benefits at the cost of its own coffers. Individual states grapple with such uniquely area-specific issues that need to be looked into. The socio-

¹⁶ V Venkatesan, *Supreme Court steps in again*, FRONTLINE, March 4, 2016.

¹⁷ Sneha Mary Koshi, *Kerala families fear subsidy cuts as Centre presses for Food Security Act*, NDTV NEWS, Oct. 22, 2016.

economic demographics of states within India, are extremely diverse and the blanket Act has left the states unable to voice their concerns.

II.3 State Specific Rules

The state governments are primary initiators of food security within their respective states. Under S.10, it is the state governments that are supposed to identify households entitled to the benefits of TPDS within the state, as priority households (PHH) and Antyodaya Anna Yojana (AAY) families. The lower end of the spectrum is covered by the AAY, which is a common minimum across all states. States are free to choose priority households, based on their distinct requirements. This has burdened the states as they need to redo the entire identification process, while staying within the limits of the central ceiling, under S.3. To fit into the ceiling, different states have resorted to diverse criteria for identification, ranging from land ceiling, income limits and ownership of vehicles in assessing the standard of living. This could mean that a family which would come under PHH in state A would be considered non-PHH, thus a non-beneficiary in state B, due to the difference in criteria. Likewise, beneficiaries could be receiving varied benefits based on the state in which they reside.

Under S. 40 of the NFSA states have to establish a State Food Commission (SFC), appoint District Grievance Redressal Officers (DGRO), make rules for social auditing, set up vigilance committees, actively participate in public disclosure and make comprehensive state rules. This overhauling of the TPDS within the state, is a herculean task. It is now becoming clear that the states are struggling to cope with the process of making rules. Over the four years, most states, barring a few, have not succeeded in formulating food security rules, or in setting up a functioning grievance redressal mechanism.¹⁸ While only five states have actually come out with food security rules, their content is not worth applauding.¹⁹ In effect, the Act remains largely on paper, as state governments grapple to reboot and come out with rules needed to

¹⁸ Please refer to Status report on State implementation of NFSA in Annexure I.

revitalize food security. The functioning of the NFSA is provisory to the state governments' enthusiasm, which at present is bleak and shrouded in confusion.

III. Gap in Implementation

All states, with the exception of two, have implemented the NFSA. Merely announcing the implementation will not suffice; states have to formulate rules that are the implementation vectors of the Act. This dedication is missing, as primarily the state governments are dragging their feet in coming out with the rules. Secondly, these rules, if any, do not translate into efficient directives that can propel food security.

In an attempt to revamp the grievance redressal mechanism (GRM), a State Food Commission (SFC) is envisaged. It is the supervisory body to monitor and review the implementation of the NFSA. Due to its importance, it is vital that the SFC remains independent. But contrary to this, most states have merely designated existing bodies as SFC -some designating the State Consumer Dispute Redressal Board, or others placing it under the aegis of the State Department of Food and Civil supplies.²⁰ While it is not unlawful to designate an already existing body as the SFC, but, to do so without laying down clear cut guidelines for functioning and assessing the capacity of already existing department, in the light of its new role, is an oversight. It is also baffling that states have subject the SFC to the authority of officers of the state Departments of Food and Civil Supplies, which is like subjecting them to the functionaries of the very schemes that they are expected to redress.

While on paper it is seen that states are making rules to fulfil their mandate under the NFSA, such rules, as mentioned above, only undermine food security and are contrary to the objectives of the Act. It needs to be impressed upon the state governments that rules under the NFSA should not only be in concurrence with its provisions, but also its purpose.

²⁰ *Supra* note 20.

IV. Problems with Convergence

Most schemes that come under the Act have been in existence for years before the Act. With the coming of the NFSA, these schemes became legal entitlements. Under S. 7, each of the schemes shall be implemented through their individual guidelines. But the NFSA is the common focal point covering all four schemes. The Act envisages convergence between schemes, in the light of their collective goal to attain food security. Yet the Act is silent on actually facilitating this convergence of the schemes.

Under S. 14, states are to setup a common GR mechanism through the DGRO²¹ and the SFC,²² to oversee the NFSA in its entirety. Meanwhile, there also exists GR mechanisms, under the TPDS system, MDMS and ICDS; each overlooking the functioning of their respective schemes. With the existence of these individual GR mechanisms the question is, whether the internal grievance redressal mechanism under the NFSA i.e. the DGRO and the SFC fit into the scheme of affairs.

Different departments are involved in the implementation of food security schemes and Acts in India. For example, the Department of food and civil supplies is primarily in charge of the PDS scheme. The Integrated Child Development Services under the Department of women and child; and Mid-Day Meal Scheme usually under Department of Education. These entities work separately and independent without coordinating between one another. This has led to the unfortunate fragmentation of the benefits. There are essentially four parallel food security mechanisms working solitarily. This is leading to organizational multiplicity and improvidence. While the NFSA intends to achieve food security by converging these schemes, in practice, this is proving to be harder than imagined.

The MDMS and the ICDS schemes, both of which existed independent pre-NFSA, were elevated to the status of legal entitlements by the Act. There has been no revaluation of these schemes, in the light of their new role as contributors to food

²¹ National Food Security Act 2013, § 15 & 16

²² National Food Security Act 2013, § 16.

security within the country. The NFSA unfavorably leans towards 'food distribution' to women, children and households, whereas it is asserted that food security goes much beyond this. Both MDMS and ICDS need to be measured against the parameters of right to food.

Further, S. 14, makes no specific reference only to TPDS, but most states have interpreted it as setting up grievance redressal mechanisms in TPDS alone. States have setup redressal mechanisms that serve a limited mandate of addressing only grievances arising out of TPDS. They rarely have GR mechanisms for complaints under the MDMS or the ICDS. Even within the provisions of the Act, one can observe that it is heavily lopsided towards the PDS system. It outlines the obligation of the state governments to setup vigilance committees and conduct social audits for TPDS. But, the same courtesy has not been extended to the other entitlements under the Act.

A relook at the NFSA cannot be complete without highlighting the capacity-building issues plaguing our country. Challenges of accountability, food safety, infrastructural issues and managerial incapacities, need to be addressed compulsorily, if we need to move forward in our food security goals.²³ Scholarly writings also point out that ineffectiveness of ICDS is due to infrastructural incapacity²⁴ and inaccessibility by beneficiaries.²⁵ A closer look needs to be taken towards fulfilling these technical aspects of food security. The schemes need to be appraised against quality of these entitlements, not only in terms of nutrition, but also in terms of the practical application.

²³ Ritika Khera, *Mid-Day Meals in Primary Schools: Achievements and Challenges*, 41 ECONOMIC & POLITICAL WEEKLY, 42-47 (2006).

²⁴ Ritika Khera, *Children's Development: Baby steps in Orissa*, 40 ECONOMIC & POLITICAL WEEKLY, 44 (2015).

²⁵ Chudasma, Rakesh et. al. , *Evaluation of Anganwadi center's performance under the Integrated Child Development Services (ICDS) program in the State of Gujarat in India in 2012-2013*, 20 JOURNAL OF MAHATMA GANDHI INSTITUTE OF MEDICAL SCIENCES, 1 (2015).

V. Conclusion

Irrespective of its many flaws, the Act lays down a common minimum, which is essential for food security. There remains consensus on the fact that the NFSA has laid down bare essentials of the right to food. Instead of looking for an alternative, the right approach would be to expand and read into the law. There is a need to look into components of food security beyond just accessibility, as mentioned in the NFSA. In order to broaden the scope and incorporate global ideals into the concept of food security in India, it is imperative to engage with economists, agro-economists and participate in multisectorial dialogues. Participatory advocacy measures are needed to create a model policy, to incorporate concerns from complementary sectors. It is now apt to re-evaluate nutritional allocations in terms of quality, rather than quantity. We need to shift focus towards ensuring NFSA's effective implementation specifically, by revitalizing the provisions of the Act itself, by strengthening grievance redressal processes and rule making. Consultative processes and guidance for states to implement the Act, keeping in mind the purpose of the provisions. Involving NGOs and specialized organizations working in this sector, will augment efforts to improve food security in India.

There needs to be a pan India effort to identify state-specific food security issues and address them through best practices from fellow states. States such as Tamil Nadu, Karnataka and Chhattisgarh have been leading the path, by providing more food grains than mandated under the NSFA. States like Goa have added vulnerable groups such as HIV patients, single mothers, transgender etc. to the beneficiary list.²⁶ It is only with efforts like this, can we attempt to make the waves of change necessary for making India, food secure.

²⁶ Identification of beneficiaries as per Notification No: DCS/S/foodsecurity/2014-2015/08, Department of Civil Supplies and Consumer Affairs, Goa.

Annexure I

Sl. No	State	Identification	SFC	DGRO	RULES
1.	Andhra Pradesh	circular dated: 07.09.2015	Designated Order dated 06.07.2015	Designated by Order dated 06.07.15	Not available
2.	Andaman and Nicobar	Identification guidelines 14.10.2015	Notified on 20.03.15	Notified on 20.03.15	Notified rules 31.03.16
3.	Assam	notification : 17.10.2013			Not available
4.	Bihar	Identification criteria 19.11.15	Notification dated 21.01.2014;		Not available
5.	Chhattisgarh				Act available
6.	Daman & Diu	Identification criteria notification : 10.02.14	Constituted by notification dated: 27.08.2015		Not available
7.	NCT Delhi	Identification criteria 26.07.13	Notification dated : 23.08.2013	Notification on 23.08.2013	Not available
8.	Goa	Notification: 16.04.15	Designated on 10.09.15	Designated on 10.09.15	Not available
9.	Gujarat	Identification notification : 22.03.2016	Established notification on: 2.04.16	Designated on: 27.01.16	Available
10.	Haryana	Eligibility criteria notification : 11.08.2014	Notification dated: 04.08.14	Notification dated: 03.10.13	Available 12.06.14

Sl. No	State	Identification	SFC	DGRO	RULES
11	Himachal Pradesh	Guidelines to identify date: 01.08.2013		Designated on 12.09.2013	Not available
12	Jammu And Kashmir	Criteria notification date: 14.12.15	Notification on 15.01.16	Notifications on 08.12.15	Not available
13	Karnataka	Order dated 16.08.16	Order dated: 10.6.16	Notification on 18.6.16	In process
14	Madhya Pradesh	Rules 05.06.2014	Notification on 26.02.2014	Notification on 24.09.2014	Available
15	Maharashtra	Identification criteria: 19.08.2014			Not available
16	Mizoram				Available
17	Manipur	Identification criteria February 2014			Not available
18	Nagaland	Identification notice: 17.07.14 & 03.09.15			Not available
19	Punjab	available	Order dated: 27.12.2013	Notification 31.12.13	Not available
20	Rajasthan		Constitution on 24.09.2013	Designated notification: 24.9.2013	Not available
21	Sikkim				Available
22	Telangana				Available
23	Tripura				Available
24	Uttar Pradesh	Notification 23.09.13			Available