

SIGNIFICANCE OF TPDS FOR POVERTY REDUCTION – A STUDY IN THE LIGHT OF INDIAN LEGAL REGIME

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ABSTRACT

Poverty, hunger and food insecurity omnipresent reality in India. The Government has implemented many programmes, schemes and policies to control poverty and foster development. The Right to food is a basic human right and deeply linked with the right to live with dignity. Articles 21, 39(a) & 27 of the Constitution mandates the states to provide adequate means of livelihood, raise the level of nutrition and standard of living of the citizens. As per the data report of national and international agencies, a large number people in India are suffering from malnutrition, undernourished, underweight and stunted. In many cases Indian Judiciary has taken serious concern about the socio-economic offences. Targeted Public Distribution System is a major and wide-ranging poverty alleviation programme in India that leads towards the socio-economic welfare of the people. Essential foodstuffs like rice, sugar, wheat, kerosene and other goods are supplied to people through this system at a cheap price. Though it is a commendable step to ensure food security to the needy people but could not achieve its desired results because of widespread corruption, leakage of funds and other reasons.

Key Words –*Human Development, Constitution, Malnutrition, Hunger, Judiciary, Targeted Public Distribution System, Corruption, Leakage.*

Introduction

Poverty and lack of development have been the main fact of human history. Poverty is a perpetual feature of Indian society and economy. Poverty reduction is the supreme objective of development planning in India. Since independence, our Government at different point of times has undertaken many programmes, schemes and enacted legislations for poverty alleviation as well human development, taking into considerations many factors like infrastructural development, development in health and education sector, creating scope for participation of women labour force, asset creation etc.

Human rights are considered as inherent and inalienable for the existence of human being. The basic objectives of human rights are to protect human life and liberty, to preserve the dignity of people, promoting a healthy environment, maintaining equality etc. the right to food is one of the basic human rights strongly linked to the right to life. The 1990 UN Global Consultation on the Right to Development as a Human Right, stated that the right to development is an inalienable human right. Human being as the central subject to the right and that all the aspects of the right to development set forth in the Declaration of the Right to Development are indivisible and interdependent and these include civil, political, economic, social and cultural rights. India has been committed to ensure the protection and preservation of these rights.

Objective of the Study

The present study has been undertaken with the following objectives- 1. To know the some important provisions of NFS Act and EC Act in relation to the Targeted Public Distribution System. 2. To highlight the important features of TPDS along with the Constitutional provisions and Judicial response in respect with PDS System. 3. To study and understand the impact of this food security system on the socio-economic welfare of the people in India in reference with Covid-19 pandemic situation.

Methodology

The methodology adopted in this study is mainly doctrinal. The study is based on secondary sources of data, such as books, records, official documents of Governments, journals, magazines, News Paper Reporting and official websites etc.

Public Distribution System (PDS) is one of the significant and extensive poverty alleviation programmes in India that contributes towards the socio-economic welfare of the people. Essential commodities or foodstuffs like rice, sugar, wheat and kerosene are being supplied to the people through the PDS at reasonable prices. PDS is considered to be a sound policy for the people living below the poverty line. But this system could not achieve its desired results because of widespread corruption, leakage of funds and other reasons.

With the objective of reducing the financial burden of food subsidy and targeting it better and helpful to the really needy people, the Government of India adopted and re-launched the Targeted Public Distribution System from June 1997. The basic purpose of this TPDS is to provide food grains to people below poverty line at highly subsidized prices from the PDS. Under the TPDS, states are directed to formulate and implement proper and well built arrangements for the identification of the poor for delivery of food grains.

Under the TPDS, the Central Government is responsible for procurement, allocation and transportation of the food grains upto the selected store of the Food Corporation of India. The residual responsibility of the State Governments and Union Territories is that to distribute the food grains received from the Central Government to the eligible beneficiaries.

Right to Food – A Constitutional Obligation

The Right to Food is an inevitable element to live with dignity. Article 21 of the Constitution of India guarantees a fundamental right to life and personal liberty. The conjoint reading of Articles 21, 39(a) and 47 explains the nature and obligations of the state in order to ensure the effective realization of this right. Article 39(a) of the Constitution, embodied as one of the Directive

Principles which is fundamental in the governance of the country, requires state to direct its policies towards securing that all its citizens have the right to an adequate means of livelihood, while Article 47 talks about the duty of the state to raise the level of nutrition and standard of living of its people as a primary responsibility. Thus, from the above provisions it can be said that the Constitution makes the right to food a guaranteed Fundamental Right which is enforceable by the strategy of the constitutional remedy provided under Article 32 of the Constitution.

Statistical Aspects of Poverty

As per United Nation's Millennium Development Goal (MDG) Programme 270 million or 21.9% people out of 1.2 billion of Indians lived below the poverty line of \$ 1.25 in 2011-12. This number is expected to reduce to 20.3% or 268 million people by 2020.¹

According to the latest report of the Planning Commission, the number of people living below the poverty line has shrunk to 21.9 percent in 2011-12 from 37.2 percent in 2004-05 because of increase in per capita consumption. The latest numbers on poverty levels are dramatic, they show that the numbers of people below poverty line (as mentioned by the Tendulkar Committee) has shrunk from 37 percent of the population to 22 percent, in the seven years to 2011-12. This is an unprecedented diminish in poverty levels, some 40 percent of those who were poor in 2004-2005 were no longer poor seven years later.²

India's position in the achievement of global food security is not commendable. According to the FAO 2018 report, 195 million people are undernourished populations in India. About 41 percent of the world's underweight children live in India, says UN Hunger Taskforce.³ One in every four people in India is hungry and every second child is underweight and stunted. According to the

¹ Poverty in India, Wikipedia, (4th May 2017, 7:53 PM) http://www.en.wikipedia.org/wiki/Poverty_in_india

² Poverty estimates for 2011-12, Government of India, Press Information Bureau, (12th April 2016, 6:50 PM)
http://www.planningcommission.nic.in/pre_pov2307

³ The State of Food Security and Nutrition in the World. Safeguarding Against Economic Slowdowns and Downturns, Food and agricultural Organization of the United Nations, UNICEF, International Fund for Agricultural Development, World Health Organization, World Food Programme, 2019, (5th January, 2020, 6:50 PM)
<http://www.fao.org/3/ca5162en/ca5162en.pdf>

Global Hunger Index 2018 Report, India is among 45 countries that have serious level of hunger. India has ranked 55th among 77 countries in the Global Hunger Index.

Relevance of the Essential Commodities Act, 1955

The Essential Commodities Act, 1955 enacted by the Parliament to ensure the supply and distribution of certain commodities or products like foodstuffs, drugs, fuel, fertilizers, petroleum products, steel, paper etc. The Central Government can include new commodities and when the necessity arises and excludes any item if the situation improves. The object of the Act being control of production, supply and distribution of such commodities, trade and commerce therein, in the interest of the general public, the supplies of such commodities to be maintained or increased securing the equitable distribution and availability thereof to the general public at fair prices are within the scope of the Act.⁴ Section 7 of the Act prescribed the punishment and it says that if any person violates any provisions of Section 3 in relation to production, supply and distribution of essential commodities, he shall be punished with the maximum imprisonment seven years and also liable to fine.

The Importance & Significance of the NFS Act, 2013

The National Food Security Act, (NFSA) 2013 has enacted in the year 2013 marks a paradigm shift in the approach to food security from welfare to rights based approach. The primary objective of this law is to provide food and nutritional security by making food accessible both quantitatively and qualitatively at cheap rate for the unprivileged households with a hope to provide them proper nourishment.

The Act legally entitles upto 75% of the rural population and 50% of the urban population to receive subsidized foodgrains under Targeted Public Distribution System. About two thirds of the population, therefore is covered under the Act to receive highly subsidised foodgrains⁵.

⁴ B. K. Sharma & Vijay Nagpal, *Treaties on Economic & social Offences*, 173, (2007 Edition, Allahabad Law Agency)

⁵ Ministry of Consumer Affairs, Food & Public Distribution, Department of Food & Public Distribution, Govt. of India, (23rd December, 2019, 7:53PM) <https://dfpd.gov.in/nfsa-act.htm>

Under this Act, foodgrains is allocated at the rate of 5 kilograms per person per month for priority household category⁶ and at the rate of 35 kilograms per family per month for AAY families at a highly subsidized costs of Rs. 1/-, Rs. 2/- and Rs. 3/- per kilogram for nutri-cereals, wheat and rice respectively. Presently the Act is being implemented in all 36 States/Union Territories and covers around 81.35 crore persons. The annual allocation of foodgrain under National Food Security Act and other Welfare Schemes is about 610 lakh metric tons.⁷

Status of TPDS

In order to prevent the violation of the provisions of TPDS (Control) Order 2015⁸ and NFSR 2013, the Department of Food & Public distribution has implemented a Scheme on ‘End-to-End Computerization of TPDS Operations’ under 12th Five Year Plan (2012-2017) on the basis of cost sharing between Central Government and States/UTs. The activities mentioned in the Scheme such as digitization of ration cards and other databases of beneficiaries, computerization of supply-chain management, setting up of transparency portals and grievance redressal mechanisms and installation of ePoS (Electronic Point of Sale) devices at fair Price Shops and issuance of foodgrains through biometric authentication. Apart from this, all States/UTs have been also directed to insert the Aadhaar numbers in the ration Card database. The scheme would facilitate the removal of bogus or ineligible ration cards and better targeting of food subsidy make availability of foodgrains to intended beneficiaries at Fair Price Shops (FPS), check leakage and diversions of foodgrains etc. As on 24th January 2017, 100% digitization of ration

⁶ “Prior to the implementation of NFSR, there were mainly three types of Ration cards issued by the State Govt. such as APL, BPL and Antyodaya (AAY) Ration Cards. According to NFSR 2013, APL group and BPL group have been re-classified into two categories – Non-Priority and Priority. Thus NFSR prioritizes household’s needs considering not only their income but other socio-economic imbalances in the society”. NFSR Ration Card Categories-Antyodaya(AAY), Priority (PHH), Non-Priority (NPHH), State Priority, (24th December, 2019, 8:15 PM) <https://www.lopol.org/article/nfsr-ration-card-categories-antyodaya-aay-priority-phh-non-priority-nphh-state-priority>

⁷ National Food Security Act, Ministry of Consumer Affairs, Food & Public Distribution, Press Information Bureau, Government of India, (24th December, 2019, 8:44PM)

<https://pib.gov.in/newsite/PrintRelease.aspx?relid=191101>

⁸ MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION (Department of Food and Public Distribution) ORDER New Delhi, (30th December, 2019, 5:40PM) <https://dfpd.gov.in/nfsr-act.htm>

cards and 72.97% seeding of Aadhaar has been achieved and 1.78 lakh ePoS are currently operating⁹ at Fair Price Shops.¹⁰

Issues relating to irregularities in TPDS

As per the report of various studies made by the academicians, organizations and other agencies it has been revealed that targeting mechanisms such as PDs are prone to large inclusion and exclusion errors. TPDS suffers from large leakages of food grains during transportation to and from ration shops into the open market. In an evaluation of TPDs, the erstwhile Planning Commission found 36% leakage of PDS rice and wheat at the all-India level.¹¹

The Food Corporation of India is the main government agency which is authorized to store the food grains in the central pool. FCI does not have adequate storage capacity to accommodate the huge food grains. As a consequence, Food Corporation hires space from government agencies and private parties. On one occasion, the Comptroller and Auditor General (CAG) stated that there is sub-optimum utilization of the existing storage capacity available with FCI and states. It is noticeable that inadequate storage will result in wastage of food. Therefore, proper infrastructure of storage is much required for logistic management. The FCI officials have a sincere responsibility to perform their duties in regard to inspections and preservations etc. of food grains¹².

⁹ 75% of the rural population and up to 50% of the urban population receiving highly subsidized foodgrains, Ministry of Consumer Affairs, Food and Public Distribution, Government of India, Press Information Bureau, (26th December, 2019, 5:45 PM) <https://pib.gov.in/newsite/PrintRelease.asp>

¹⁰ “A Public Distribution Shop is also known as Fair Price Shop (FPS), is a part of India’s Public Distribution System established by the Government of India which distributes rations at a subsidized price to the poor. Locally these are also known as Ration Shops or Public Distribution shops and mainly sell wheat, rice, sugar, kerosene and essential commodities at a price lower than the market price. In order to purchase goods from these shops beneficiaries should have valid Ration Card. These shops are regulated throughout the country jointly by Central & State Govt. It is the largest distribution network in the world”. For details see, Public Distribution System, (26th December, 2019, 7:48PM)https://en.wikipedia.org/wiki/Public_distribution_system

¹¹Public Distribution System, (4th January 2020, 8:18 PM) <https://www.drishtijas.com>

¹² Public Distribution System, functioning, limitations, revamping, (4th January, 2020, 8:22PM)

<https://www.civilserviceindia.com/subject/General-Studies/notes/public-distribution-system-functioning-limitations-revamping.html>

A study conducted by the Planning Commission itself, it is revealed that, leakages from the Targeted Public Distribution System are higher than those under the Public Distribution System (PDS). Leakages and diversion to unintended beneficiaries have indicated that only 42 percent of the subsidized grain released from the central pool actually reaches to the poor people under TPDS. Various estimates have shown that leakages under the PDS at 31-37 percent.¹³ As per the statement of Planning Commission Official, “Certain kind of leakages, however, cannot be captured and actual leakages may well be above the 58 percent that the study found”.¹⁴

Despite the fact that India had considerable economic progress over the years, hunger and poverty prevailed in the country. Out of the total population of 1.3 billion people, 190.7 million people are undernourished and 25 percent of the children experience hunger.¹⁵ Along with this existing backdrop of India, the sudden cease of economic activities nationwide will question the rising food insecurity and misery for the destitute. The Covid-19 lockdown situation has disrupted many economic activities like fisheries, livestock, agriculture and their supply chain. The imposition of quarantine rule and restrictions on the movement of goods and people as disease control measures has resulted in significant socio-economic impacts on livelihoods especially for poor rural farmers, livestock dealers and fishermen.

Covid-19 Pandemic and the issue of food security

India is one of the largest food producer countries in the world. But due to a weak supply chain, mismanagement, lack of positive efforts taken by the concerned authorities huge amount of food spoils before it reaches to the neediest consumers. As per the report of the International Development Finance Corporation, almost 200 million people in India are undernourished and

¹³PDS leakage more in targeted scheme, Mamata Singh, New Delhi, (5th January, 2020, 8:45 PM)

<https://www.business-standard.com/article>

¹⁴Ibid

¹⁵ Local Food System and Covid-19; A Glimpse on India’s responses, Food and Agricultural Organization of the United Nations, (19th February, 2020, 8:50PM) <http://www.fao.org/in-action/food-for-cities-programme/news/detail/en/c/1272232/>

recent lockdowns due to Covid-19 pandemic have significantly aggravated this widespread food insecurity.¹⁶

The World Bank Report submitted that the Covid-19 pandemic is estimated to push an additional 88 million to 115 million people into extreme poverty this year, with the total rising to as many as 150 million by 2021, depending on the severity of the economic contraction. Extreme poverty, defined as living on less than \$ 1.90 a day, is likely to affect between 9.1% and 9.4% of the world's population in 2020, according to the biennial poverty and Shared Prosperity Report. This would represent a regression to the rate of 9.2% in 2017. Had the pandemic not convulsed the globe, the poverty rate was expected to drop to 7.9% in 2020.¹⁷

During the lockdown, there was no crisis of food grains. In March 2020, the country had an adequate quantity of food grains (58.4 million tons) and pulses (3 million tons). Though, there was a lack of other commodities like fruits and vegetables, eggs, meat, milk and sugar that constitutes 78 percent of the total food consumed. Disruption in supply chain system and a fall in demand had caused a huge loss of production as a result farmers, traders and consumers have financially effected.¹⁸

According to the data based media report of the Save Life Foundation, it has been revealed that during the month of May, more than 380 people have died in approximately 1200 road accidents, amongst them 30% were migrants travelling back home. In May, 2020, Government of India, has run more than 2050 "Shramik Special" train from many districts in the country for migrant workers, since then Indian Railway have transported more than 3 million migrant workers.

¹⁶ Strengthening Food Security in India during Covid-19, D.F.C. - U.S. International Development Finance Corporation, (30th January 2021, 7:50PM) <https://www.dfc.gov/investment-story/strengthening-food-security-india-during-covid-19>

¹⁷ Covid-19 to add as many as 150 million Extreme Poor by 2021, (20th November, 2020, 6:13PM))
<https://www.worldbank.org/en/news/press-release/>

¹⁸ Opinion: Impact of Covid-19 pandemic on food security of India. The Covid-19 pandemic is threatening the long-cherished food security of India, (30th January, 2021, 6:35PM)
<https://government.economictimes.indiatimes.com/news/policy/opinion-impact-of-the-covid-19-pandemic-on-food-security-of-india>

However, many migrant labourers could not reach to their home due to lack transportation facilities and other difficulties.¹⁹ The food security structure of India has much effected by the Covid-19 pandemic. In addition to the downfall in the economy, the impact of corona virus has significantly noticed on all four aspects of food security system such as availability, accessibility, stability and utilization of food.

For a permanent and sturdy food security system, there should be a strong linkage between these four pillars. The pandemic has however had worrisome implication for food security, particularly for the poor and weaker sections of the society. Access to food was not fully secured as a result of the decline in incomes and loss of livelihood during the pandemic due to Covid-19. It was further weakened by socio-economic inequalities. The food supply chain was disrupted due to widespread interruption, a sudden ban on transportation and closing of the border. Though during lockdown food supply chain had been able to function in order to provide free pulses, cereals and essential commodities. So in this crisis period the role of PDS is much important and significant to ensure equitable access to food and regional disparities in the availability of food grains.

In order to deal with the situation arising out of Covid-19 pandemic and to prevent any major damage by way of loss of human lives and livelihood, the government has adopted some commendable quick decisions in a comprehensive manner. The concern of the poor and most vulnerable populations was perhaps the most difficult task. In this regard, the government has enhanced social safety programmes including direct benefit such as cash transfer scheme, making MGNREGA more financially strong so that more people can get employment under this scheme, quick and advance disbursement of social security pension, provision of direct cash grants to construction workers and most importantly, giving free and subsidized food grains under Pradhan Mantri Garib Kalyan Yozana (PMGKY) to more than 800 million people with the objective of food for all.²⁰

¹⁹ COVID-19 and the plight of migrants in India, (30th January, 2021, 8:35PM)
<https://pmj.bmjjournals.org/content/early/2020/08/12/postgradmedj-2020-138454>

²⁰ PMGKY - Pradhan Mantri Garib Kalyan Yojana, (10th February, 2021, 7:35 PM)
<https://www.bankbazaar.com/saving-schemes/pradhan-mantri-garib-kalyan-yojana.html>

The lengthy lockdown caused due to Covid-19 has aggravated the plight of different sections of the society. Amongst them the migrant labourers have faced the most adversarial situation. The government has failed to provide adequate food grains and other essential commodities to such migrant workers during this period. Taking into account this incident, the government is planning to implement “One Nation One Ration Card” scheme that would be helpful to all those poor people who are living in other states for their livelihood.

Judicial Observations

A good number of cases reveal that the judiciary in India has taken a serious concern of socio-economic offences. In PUCL (PDS Matters) v. Union of India,²¹ the Supreme Court focused on the Wadhwa J CVC report, the report mentioned that PDS which is the largest food distribution network in the world suffers due to corruption. The apex court directed the Governments to give immediate measures so that poor people can get benefit out of this system.

In Swaraj Abhiyan v. Union of India²², a division bench of the apex court held that National Food Security Act, which is a social justice and social welfare legislation, is not being implemented in the right manner. It is not proper on the part of the state to ignore the plight of the common people in enforcing such important legislation. The implementation of the Act involves the federal structure system where both the central and state government will function actively with a cooperative approach and make combined effort with the objective of making the law more effective.

²¹ (2013) 2 SCC 663

²² Writ Petition (Civil), 857 of 2015 (15th February, 2021, 7:48PM) <http://lawtimesjournal.in/swaraj-abhiyan-vs-union-of-india-ors/>

A Division Bench of the Delhi High Court in *Delhi Rozi-Roti Adhikar Abhiyan v. Union of India*,²³ while dealing with the distress of migrant workers all over India during lock down, the Court issued directions to the Government of National Capital Territory of Delhi (GNCTD) to ensure distribution of food grains to the poor, needy and marginalized sections of the society even they might be the non-PDS residents of Delhi.

In a leading case,²⁴ a Division Bench of the Karnataka High Court directed the Karnataka Government to take adequate measures for the vulnerable communities, including the transgender community in the light of Covid-19 pandemic situation so that they can keep their life ongoing.

In another significant case,²⁵ petitioner filed a plea seeking immediate relief to the poor, unorganized sector workers, slum dwellers and economically marginalized sections of the society those who are living in hunger during corona virus lock down period. The Supreme Court instructed the concerned government department to take positive measures for giving them necessary relief.

²³ W.P.(C) 2161/2017 (15th February, 2021, 7:45 PM) https://images.assettype.com/barandbench/2020-04/de4ac68e-7e9b-4626-a917-3de050586189/Delhi_Rozi_Roti_Adhikar_vs_UOI.pdf

²⁴ Mohammed Arif Jameel v. The Principal Secretary, WRIT PETITION NO.6436 OF 2018 (GM-RES) PIL (15th February, 2021, 7:50 PM) <https://indiankanoon.org/doc/44194728/>

²⁵ Swami Agnivesh vs Union Of India, WRIT PETITION (CIVIL)Diary No(s).10802/2020 (15th February, 2021, 7:50 PM) <https://indiankanoon.org/doc/189070830/>

Conclusion

Food is inevitable for survival and basic right for all individuals. Socio-economic crimes signify mainly such kind of crimes and which affect the health and moral principles of the public and affect the economy of the country. Some examples can be unfair competition, black marketing, breach of contracts, adulteration of food and drugs, creating an artificial food crisis condition etc. The most fundamental of all socio-economic rights is an individual's right to food. The plight of poor people is miserable, where protection of rights and interests of each and every individual is a priority. The Targeted Public Distribution System is a commendable effort of government responding to nutrition and food security for the needy people. If implemented effectively this system may reduce the levels of hunger and malnutrition in India.

The Covid-19 pandemic has overwhelmed the entire world and India also has borne the brunt of the same. The Government of India has taken some significant steps to feed the entire nation and protect the poor, weaker and unprivileged sections by providing them livelihoods amid the coronavirus outbreak. It is expected that the measures taken by the government may rebuild the society's potential for a better food security structure and that may lead to an efficient food security system.