

Demanding a Comprehensive Food Security Legislation

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The Right to Food (RTF) campaign which has been mobilising and advocating on hunger, malnutrition and food related issues in the country for the last ten years has its origins in a Public Interest Litigation (PIL) filed in the Supreme Court in April 2001 by People's Union for Civil Liberties, Rajasthan. This Case is now one of the longest running mandamus in the world. The petition demanded that the country's gigantic food stocks should be used without delay to protect people from hunger and starvation. The RTF campaign played a key role in mobilising demand for a comprehensive legislation. While it succeeded in broadening the debate to some extent, the National Food Security Act is still only a limited response to the prevailing situation of food insecurity in the country. The experience of the RTF campaign can be seen as a case study of the role of civil society mobilisation in the legislative process. This essay briefly traces the way in which the campaign engaged with the process of legislation and its content. What will be the role such mobilisation would have in ensuring implementation of the Act and how it takes forward its unmet demands vis-a-vis the legislation?

The National Food Security Act (NFSA) was passed unanimously by both houses of the Indian Parliament in September 2013. This significant legislation was brought in after four years of debate among policy makers, in the media and the civil society. During this period, the Bill went through many changes and what finally came into being is very different from what the Government initially started with. Along with factors such as the context of high food price inflation, the perceived value of the NREGA in bringing the Congress party and UPA back into power, the central place given to cheap foodgrains through the PDS in a number of states and Assembly elections in 2008, the content of the Bill was also influenced by civil society action, especially by the Right to Food campaign. In this paper, we briefly trace the way in which the Bill was modified at various stages and the role played by the Right to Food campaign (RTFC).

“The Manifesto of the Congress Party for the General Elections in 2009 States”:

Along the lines of NREGA, we will enact a National Food Security Act: The Indian National Congress pledges to enact a Right to Food law that guarantees access to sufficient food for all people, particularly the most vulnerable sections of society.

The Indian National Congress pledges that every family living below the poverty line either in rural or urban areas will be entitled, by law, to 25 kgs of rice or wheat per month at Rs. 3 per kg. Subsidised community kitchens will be set up in all cities for homeless people and migrants with the support of the Central government.

It is this election promise that the UPA government tried to fulfil through the National Food Security Act (NFSA).

The Draft

The NFSA was also mentioned as one of the priority areas for the Government by the President in her inaugural speech in June 2009 (<http://pratibhapatil.nic.in/>). An Empowered Group of Ministers (EGoM) was formed for the purpose of drafting the Bill and seeing it through. The first draft put forward by the EGoM, for discussion in the Cabinet, was a minimalist one, which proposed an entitlement of 25 kgs of food grains at Rs. 3 per kg for all BPL households.

The draft was widely criticised. The Right to Food campaign argued that this was in violation of previous Supreme Court orders that every BPL household is entitled to 35 kgs per household per month. Further, it was pointed out that the entire system of targeting in PDS, based on the BPL criteria, was flawed resulting in large scale errors. Moreover, food security cannot be reduced to a single entitlement of a small amount of foodgrains to a targeted section of the population (See www.righttofoodindia.org for various versions of the NFSB and the RTFC's response to each.)

Internationally, the definition of food security now includes nutrition security. Further, food security is not just about food distribution but also about food production, availability, access and absorption. Therefore the RTFC demanded for a comprehensive food security legislation that built on a framework of the multiple legal entitlements guaranteed by the Supreme Court of India already in relation to the PDS, Antyodaya Anna Yojana (AAY) for vulnerable sections of society, supplementary nutrition for infants and young children under ICDS, maternity entitlements under NMBS and Janani Suraksha Yojana (JSY), school mid-day meals, old age pensions and addressing needs of the homeless and urban poor, street children, single women and infants under six months.

The Supreme Court case on the Right to Food, PUCL vs. Union of India is still ongoing and any legislation would be expected to be an improvement over what the Court had already directed through interim orders and not something less than that. Further the campaign also demanded that the Act must create an enabling environment for promoting food production by prioritising people's control over productive resources including land, forests and water and that no diversion of these resources must be allowed as large sections of the people of this country only survive on access to these natural resources.

National Advisory Council (NAC)’s Interventions

The task of redrafting of the food security bill was then given to the National Advisory Council (NAC) under the Chairpersonship of Sonia Gandhi. The NAC had played a critical role in the drafting of the NREGA and RTI; and was expected to do the same with the food security bill as well. The NAC conducted a number of consultations with different experts and government departments, including some members of the Right to Food campaign and made its recommendations regarding the Bill, which was then forwarded to the Food Ministry in 2011. The Food Ministry then fine-tuned the NAC recommendations and placed a NFSB in Parliament in December 2011. The Bill was then forwarded to the Standing Committee of Parliament for its report. Following the Standing Committee report a little over a year later (in January 2013), the Government made further changes to the NFSB, which was finally passed in September 2013.

The NAC widened the ambit of the Bill from the single entitlement framework to include a life cycle approach that looked at food security needs from birth to old age. However, the main attention even within the NAC was in relation to the PDS. The debates in the media were also largely restricted to discussions around the PDS. Even with regard to the PDS, it was seen that the government restricted its thinking within the framework of dividing the population into APL and BPL. Experience with a targeted PDS has shown that there are large-scale exclusion errors in the targeted system with the deserving poor being left out of the PDS net. Identification of the poor still remains a problem. So does the vulnerability of the huge proportion of people who are living at the margins, just above the poverty line. In the Indian context of very low incomes, widespread poverty and food insecurity, it was argued that universalisation is required for the PDS. Even the NAC in its initial recommendations stated that “time-bound universalisation of foodgrain entitlements across the country may be desirable.” However, the NAC in its final recommendations moved away from this vision, while proposing to divide the population into three groups – ‘priority’ (based on Tendulkar committee’s estimates); ‘general’ and the ‘excluded’ (top 10 per cent in rural areas and top 50 per cent in urban areas).

Based on Tendulkar estimates (plus accounting for 10 per cent transient poor), the NAC proposed to include 46 per cent of rural population and 28 per cent of urban population to get an entitlement of 35 kgs (7 kgs per head) per month at Rs. 3 per kg for rice, Rs. 2 per kg for wheat and Rs. 1 per kg for millets. This would result in about 9.8 crore households being included under this category. Further, the prices which they proposed were lower than the current prices for the BPL category. Finally, those in the ‘general’ category were guaranteed 20kgs per month as an entitlement at prices not more than 50 per cent of the MSP (which is close to current APL prices).

The Right to Food campaign was disappointed with the NAC recommendations and felt that this was a missed opportunity of providing a radical vision for food security in

the country. The central problem of identification of poor households remained in the NAC draft as well. It was felt that having a targeted PDS in legislation would make it even more difficult to fight the division of the population into categories of those below the poverty line and those above (even though the groups had been called ‘general’ and ‘priority’ the idea essentially remained the same).

It seemed as if the NAC’s primary concerns were of unavailability of foodgrains and resources required for a universal PDS. In fact, an Expert Committee set up by the Prime Minister (Rangarajan Committee)¹ to examine the NAC proposals, had argued that even the NAC’s framework was not feasible because of problems of procurement of foodgrains. They, therefore, suggested that the legal entitlement be restricted only to those below the poverty line, while foodgrains being made available to the rest based on availability.

In making this argument, it is assumed that procurement as a proportion of production cannot be raised beyond current levels. The RTFC showed that current procurement is only about 33 per cent of production and this can be increased by reforms in procurement such as encouraging decentralised procurement, timely payments, including millets in PDS and so on. Further, there is no reason to assume that agriculture production would remain stagnant. They proposed that while discussing the food security bill, issues related to production, procurement and distribution must be simultaneously dealt with. The food security bill can in fact be seen as an opportunity for the much needed reforms and investment in agriculture to take off².

The NAC version was, however, positive in terms of introducing the non-PDS entitlements. While the initial drafts of the Government of India did not mention child malnutrition at all, the NAC’s did specify that maternal and child nutrition entitlements will be included in the Food Security Bill. While adolescent girls were left out, the NAC did argue for a universal ICDS with entitlements for pregnant and lactating women and children under six years of age. The NAC also included within the framework of the NFSB a destitute feeding programme, community kitchens in urban areas and entitlements for migrants. Here again, social security pensions for the aged, single women and disabled (for which national programmes already exist and these are also covered by Supreme Court orders) were not included within the NFSB framework.

Standing Committee of Parliament

Once the Bill was made based on the NAC recommendations, it was sent to the Parliamentary Standing Committee. The Bill, especially in relation to how it defined the PDS beneficiaries went through significant changes at this stage. The Standing Committee received thousands of responses from across the country rejecting the APL/BPL division. Around the same time, there was also significant debate across the country around the poverty line (triggered by an affidavit submitted by the Planning

Commission to the Supreme Court) resulting in more or less a consensus that poverty line based targeting was a failed policy. There were protests across the country, led by the RTFC, against the absurdly low poverty lines and its usage for targeting in welfare schemes. The Deputy Chairperson of the Planning Commission and the Minister for Rural Development did a joint press conference in response where they announced that the government favoured de-linking of food entitlement and other social programmes from the present poverty line. An influential letter to the Prime Minister by over 40 economists also appealed to the Government to move away from the poverty line based targeting.³ They proposed that instead of making a distinction between those above and below the poverty line, the PDS should provide uniform entitlements to all, except for a small excluded category. The RTFC continued to argue for a universal PDS. Eventually, the Standing Committee also recommended moving towards an approach of uniform entitlements and expanded coverage.

Based on the Standing Committee's recommendations⁴, this aspect of the Bill was modified. It is this modified version that was passed. The NFSA therefore has some positive aspects, which have enormous potential to transform the PDS, especially in poor states. The Act promises 5kg of foodgrain per month to 67 per cent of the country's population – 75 per cent in rural areas and 50 per cent in urban areas. By doing so, the PDS entitlements are delinked from the poverty line based division of the population into BPL and APL. The expanded coverage under the NFSA results in a doubling of coverage in many states. In states like Uttar Pradesh, Bihar, Jharkhand and Assam the coverage under this Act will be over 80 per cent in rural areas. Such wide coverage can automatically bring down exclusion errors. This has been the experience of other states such as Tamil Nadu, Andhra Pradesh and Chhattisgarh.

The Act, however, left it to the state governments to come up with the identification criteria. In the absence of universalisation or keeping people out based on self-selection, the best method would be to arrive at simple exclusion criteria such as keeping out those who are income tax payees, have regular jobs, own four-wheelers etc. This could help minimise exclusion errors to a large extent. However, since the Act remains silent on the identification criteria, there is a danger that state governments will not adopt the exclusion approach but will come up with some messy system of identification of beneficiaries under the Act (as is being seen in Rajasthan, Delhi, etc.).

The Act has taken welcome steps in relation to women's rights. Ration cards will be in name of the women of the family. Universal maternity entitlements will be provided to all pregnant and lactating women, to the tune of Rs. 6,000 over six months. This recognises women as workers and their right to wage compensation for maternity leave in order to exclusively breastfeed the child.

Right to Food Campaign

The Right to Food (RTF) campaign in India has been mobilising and advocating on hunger, malnutrition and food related issues in the country for the last ten years. The RTF campaign's foundation statement states that it is "an informal network of organisations and individuals committed to the realisation of the right to food in India". The RTF campaign has expanded into a wide network with members across the country representing different groups including agricultural workers' unions, women's rights groups, dalit rights groups, single women's networks, child rights organisations, those working with construction workers, migrant workers, and homeless populations and so on. These varied groups have come together in agreement with the campaign's belief that "everyone has a fundamental right to be free from hunger and that the primary responsibility for guaranteeing basic entitlements rests with the state".

The RTF campaign has its origins in a public interest litigation (PIL) filed in the Supreme Court in April 2001 by People's Union for Civil Liberties, Rajasthan. The petition demanded that the country's gigantic food stocks should be used without delay to protect people from hunger and starvation. Popularly known as the 'Right to Food case', this is now one of the longest running mandamus in the world. More than 50 orders have been passed including some very significant ones such as universalisation of school mid-day meals and the supplementary nutrition programme for children under six years, pregnant and lactating mothers and adolescent girls. While some of these orders were path-breaking in their content, it was soon realised that for them to actually translate into action on the ground required pressure from the people. Different groups began to mobilise around the Supreme Court orders and came together to form the Right to Food campaign. Very soon, the scope expanded beyond the Supreme Court case towards building a larger public campaign for the right to food.

In response to the announcement of its intent to pass a food security legislation, the RTF campaign also actively worked to bring pressure on the Government to introduce a Bill that was comprehensive in its approach. The Act that was finally passed, even though inadequate⁵, however was still seen to be a step forward in the struggle for right to food. While the Government and all political parties took a narrow view of food security reducing it to only distribution of subsidised foodgrains to the poor, the RTFC consistently argued that one must take a more comprehensive approach including issues of agricultural production, access to resources, livelihoods, minimum wages and so on. There was a vibrant discussion within the campaign on whether it is possible to have a single legislation, which addressed these broad structural issues or if the opportunity given by the promise of a food security act should tactically be utilised to gain as much as possible within the framework of entitlements through public programmes.

The Right to Food campaign then drafted its own version of the Act. The draft was called the 'Food Entitlements Act' and not 'Food Security Act' because it was believed

that food security was a broader concept as a right. The campaign's draft demanded a decentralised procurement mechanism, universal and expanded public distribution system including cereals, pulses, millets and oil, special provisions for vulnerable groups such as feeding programmes for children, social security pensions for the aged and disabled, portability of entitlements for migrants and so on. The draft also listed broad principles related to coercive land acquisition, protecting small and marginal farmers, a moratorium on genetically-modified crops, food production and availability and so on.

All along, the friction between this comprehensive approach and the minimalistic framework set by the government has remained. Even though the RTF campaign and allied civil society networks talked about linking production, procurement and distribution issues, the debate in the policy circles and media was largely restricted to whether the Public Distribution System (PDS) should be universal or not and what the extent of coverage should be. This was also an important debate needing serious engagement.

On the other hand, was the onslaught from the right wing media on the idea of the food security act saying that it would destroy the economy by being a burden on the fiscal deficit and distorting the food market. Many influential voices, even from within the government, were opposed to the PDS itself and proposed that it be dismantled and replaced by direct cash transfer. In this context, the campaign defended the PDS and its role, the need for state intervention on hunger and malnutrition.

During the four year period when the Bill was being debated, the RTFC organised a number of protests and demonstrations, met with Members of Parliament, linked up their arguments with research and evidence and approached the media to put forward their point of view. As a result of all this, it can be argued that the campaign to some extent managed to influence the Act. Although the final act is nowhere close to what the campaign had demanded, in comparison to the government's own initial drafts which did nothing but legislate the PDS in its current form, the NFSA includes an expanded PDS, delinks it from the poverty line, includes universal maternity entitlements, nutrition for children and the framework for grievance redressal. This expansion was possible because of multiple factors and actors, with the RTF campaign also playing a significant role.

This experience is a case study for the role of civil society mobilisation around a legislation, which needs to be further studied. What would also be of interest is to see what the role of such mobilisation can be in ensuring implementation of the Act and how it takes forward its unmet demands vis-a-vis the legislation.

¹ For a critique of the Rangarajan committee report see Jean Drèze (2011), 'A Notional Advisory Council?' The Hindu, Jan 10th 2011, <http://www.hindu.com/2011/01/10/stories/2011011051231100.htm>

² See draft bill of Right to Food campaign at www.righttofoodindia.org

³ Food Security Bill, The Economic Times, 12 March, 2012, http://articles.economictimes.indiatimes.com/2012-03-12/news/31153016_1_pds-households-framework

⁴ A critique of the Standing Committee's recommendations on the NFSB: Why the Parliament should reject the standing committee's recommendations on the Food Security Bill: RTFC, 24 January, 2013, <http://www.im4change.org/latest-news-updates/why-the-parliament-should-reject-the-standing-committees-recommendations-on-the-food-security-bill-rtfc-19099.html>

⁵ A Critique of the National Food Security Bill cleared by the Cabinet: Right to Food Campaign rejects the National Food Security Bill cleared by the Cabinet, 19 March, 2013, <http://www.im4change.org/latest-news-updates/right-to-food-campaign-rejects-the-national-food-security-bill-cleared-by-the-cabinet-20034.html>