

THE RIGHT TO FOOD AS A HUMAN RIGHT: AN OVERVIEW OF NUTRITIONAL STANDARDS FOR PERSONS WITH DISABILITIES

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Abstract

The right to food finds recognition in the Universal Declaration of Human Rights, 1948 as well. Article 25 assures the right to a standard of living sufficient for healthy well-being of oneself and one's family as including food. Article 11(1) of the International Covenant on Economic, Social, and Cultural Rights, states that the right to passable food is essential for a standard of living. Hence, being free from hunger is a fundamental right of everyone. The right to adequate food can only be realized when each person by themselves or as part of a community, gains continuous access physically and economically to adequate food or at least access to the means for procuring food. At its core this right seeks to imply that, both quantitatively and qualitatively, sufficient food is made available so as to fulfill all the dietary needs of all people, while ensuring that such food is not only within the cultural context at is also free from adverse substances, besides being accessible and sustainable so as to ensure that the same does not come into conflict with the enjoyment of any of the other human rights.

It is commonly accepted that around the world today, an estimated one hundred and eighty to two hundred million persons between the ages of ten to twenty four years are living with disabilities.¹ Also, it is often assumed that responding to the vulnerabilities of persons with disabilities simply requires extending humanitarian aid protection paradigm to them. That paradigm focuses on adherence to humanitarian principles, securing and maintaining access, and developing sophisticated on going food security analysis and programme.

Key Words: Right to Food, Persons with Disability, Human Rights, Nutritional Standards

Introduction

Malnutrition and disability are both major global health problems. There are an estimated one billion people worldwide living with a disability of whom some 93 million are children aged under 14 years. Worldwide, almost one billion people are malnourished. Malnutrition remains a major cause of child mortality, with the latest estimates suggesting that under-nutrition causes 3.1 million child deaths annually; 45% of all child deaths.

As per the World Report on disability revealed by WHO, there are around one billion people with disabilities. Out of whom approximately 30% are women with disabilities. In Asia pacific region nearly 80% of persons with disabilities live in rural areas. In India as per the Persons with Disabled Policy statistics around 12.6 million people are male and 9.3 people are female out of total 21 million. It is estimated that the population of persons with disabilities in India has increased to 70 million in the year 2001.

Enormous ink and abandoned number of pages are spent for deliberating upon the problem of poverty at different international conferences. However, there is no major literature to show the relationship between poverty and disability. In this connection it is relevant to mention the meaning of poverty has said by a great noble laureate Dr. Amartya Sen according to him poverty refers to 'what we can or cannot do, can or cannot be. This includes but goes beyond material lack or want to include human capabilities, for example skills and physical abilities, and also self-respect in society.'

By now substantial jurisprudence has evolved in the direction of treating the issue of rights of persons with disabilities as a Human Right. This is more evident when the United Nations adopted United Nations Convention on the Rights of Persons with Disabilities 2008. The issue of malnutrition in the persons with disabilities is addressed through various provisions of the said convention ultimately leading to evolving jurisprudence at domestic level in different parts of the world. India has not lagged in addressing the problem of malnutrition in the persons with disabilities. This is evident when one looks at the provisions of the Persons with Disabilities Act, 1995 which contain provisions for addressing the issue of malnutrition in persons with disabilities.

It is pertinent to note that the right to food is recognized in the 1948 Universal Declaration of Human Rights³ as part of the right to an adequate standard of living and is enshrined in the International Covenant on Economic, Social and Cultural Rights. It is also protected by regional treaties and national constitutions. More importantly, this paper notes that the right to food to persons with disabilities has been recognized in different international conventions. However, all human beings, regardless of their race, colour, sex, language, religion, political or other opinion, social group, birth or other status have the right to adequate food and the right to be free from hunger.

Health Organization reported that about 2 million people of world citizens die each year due to lack of food safety. The Right to Food and the right to health intersect at a point to indicate their dependency on health. Realizing the human right in the form of the right to food for food safety protection under international law requires national policy to meet with the international policy of food safety. Food safety is assured by the food wealth and assumed as "the right of citizens to get healthy and culturally suitable food which is produced through the sustainable and ecological friendly process, also the right to define their own food and agriculture system."¹⁸⁹⁴ The wealth of food is one of the requirements for the right to food and acts as the fundamental point of which a state can perform a strong effort in adapting to globalization in food production and distribution. The shift of the food system implicates the meeting point of those rights in national policy.

Concept of Malnutrition

It is often said 'today's child is tomorrow's citizen.' Then number of questions arise about what is done for making a child a valuable citizen of a nation. The population of child forms a substantial number in many countries of the world including India. If the child is neglected in giving proper care and attention for its overall growth and development, then a child becoming tomorrow's citizen will be a near dream. The author respectfully submit that instead of saying 'today's child is tomorrow's citizen' it is appropriate to say and treat 'today's child is today's citizen' in this direction providing prescribed nutrition to a child is not only the responsibility of the family but also is responsibility of the nation and the governments ruling the country. Before going into meaning of the term malnutrition, it would be appropriate to know the demographic profile of children suffering from malnutrition.

Demographic Profile of Children with Malnutrition

¹⁸⁹⁴ Ramanujam N, Caivano N, Abebe S. 2015. From Justiciability to Justice: Realizing the Human Right to Food. JSDLP Online. 11(1):1–38.

Malnutrition is one of the most concerning health and development issues in India as in other parts of the world. The National Family Health Survey of India – III revealed that 42.5% children under the age of 5 years are under weight (low weight for age), 48% children are stunted (low height for age) and 19.8% children are wasted (low weight for height). As per 2011 census of India the total population is 1,21,01,93,422 out of whom the population of male is 62,37,24,248 and female is 58,64,69,174. The total child population between age group 0 to 6 years in India is around 15,87,89,287 out of whom the population of male child is 8,29,52,135 and the population of female child is 7,58,37,152.¹⁸⁹⁵

As per the statistics revealed by MOSPI report 2012¹⁸⁹⁶ it appears approximately more 7.5 crore children i.e., half the population of children in India are malnourished. It is interesting to further revealed the statistic furnished by MOSPI report 2012 relating to malnutrition in children at all India level. While an absolute increase of 181 million in the country's population has been recorded during the decade 2001-2011, there is a reduction of 5.05 millions in the population of children aged 0-6 years during this period. The decline in male children is 2.06 million and in female children is 2.99 millions.¹⁸⁹⁷

As per NFHS 3, 48% of children under age five years are stunted (too short for their age) which indicates that, half of the country's children are chronically malnourished. Acute malnutrition, as evidenced by wasting, results in a child being too thin for his or her height. 19.8% of children under five years in the country are wasted which indicates that, one out of every five children in India is wasted. 43% of children under age five years are underweight for their age.¹⁸⁹⁸

During the period between NFHS 2 (1998-99) & NFHS 3 (2005-06), decline has been observed for stunting and underweight among children under 3 years of age, whereas the percentage of children wasted has increased. Higher is the

percentage of underweight female children (< 5 years) than male children, whereas females are in a slightly better position compared to male children (< 5 years) while considering stunting and wasting. The NFHS 3 (2005-06) results also indicates that malnutrition is more prevalent among children in the higher birth order category.¹⁸⁹⁹

The rural India is witnessing more malnutrition among children < 5 years as higher percentage of stunted, wasted and underweight children were reported from rural areas. High malnutrition of all types prevails in the group of illiterate mothers and mother's with less than 5 year's education. Malnutrition among children is highest for underweight mothers.

The author respectfully submits that many states in India have not yet collected statistics on the population of malnourished children. However, statistics are available relating to infant mortality and maternal mortality. Having mentioned the demographic profile of the malnutrition in children it may be submitted that the problem of malnutrition in children cannot be taken lightly by governments both at centre and states in India.

Meaning of Malnutrition

Malnutrition is defined according to World Food Program (WFP) as "a state in which the physical function of an individual is impaired to the point where he or she can no longer maintain natural bodily capacities". Though often used to mean just under-nutrition, strictly speaking, it incorporates both under- and over-weight.¹⁹⁰⁰

Under nutrition is defined by UNICEF¹⁹⁰¹ as "the outcome of insufficient food intake (hunger)". Under-nutrition includes being underweight for one's age, too short for one's age (stunted), dangerously thin (wasted), and deficient in vitamins and minerals (micronutrient malnutrition)."

¹⁸⁹⁵ Children in India 2012 –A appraisal report by Ministry of Statistics and Planning Implementation, Government of India, 2012.

¹⁸⁹⁶ *Ibid.*

¹⁸⁹⁷ *Ibid.*

¹⁸⁹⁸ *Ibid.*

¹⁸⁹⁹ *Ibid.*

¹⁹⁰⁰ <http://www.wfp.org/hunger/glossary>.

¹⁹⁰¹ United Nations International Children's Emergency Fund.

Malnutrition is a general term. It most often refers to under nutrition resulting from inadequate consumption, poor absorption or excessive loss of nutrients, but the term also encompasses over-nutrition resulting from excessive intake of specific nutrients.¹⁹⁰²

A person is said to be malnourished if he is not provided with adequate nutrients for normal growth and if he is unable to digest the food he consumes. Acute malnutrition, also known as 'wasting' is characterized by a rapid on in nutritional status over a short period of time. In children, it can be measured using the weight-for-height nutritional index or Mid-upper arm circumference.

Vitamin and mineral deficiencies also affect the survival of children and development. Anaemia affects 74% of children under the age of three, more than 90% of adolescent girls and 50% of women. Iodine deficiency, which reduces learning capacity up to 13% is widespread. Vitamin A deficiency, which causes blindness and increases morbidity and mortality among preschoolers, also remains a public-health problem.¹⁹⁰³

The author respectfully submits that the problem of malnutrition of course, is limited to poverty yet one cannot rule out the existence of the problem of malnutrition in children belonging to rich and affluent class of citizens in society. It is further submitted that the existence of malnutrition both in poor and affluent families may be attributed due to the degree of care, attention and concern of children in the families.

Causes of Malnutrition

No single cause may be attributed to the cause of malnutrition in children. The cause of malnutrition in children differs from one region to other region and of course the cause may differ from one community to other community and one family to other family, therefore, the causes of malnutrition are multifarious and multidimensional. However, the causes of

malnutrition may be broadly classified into social, economic, health and other factors.

Social causes of malnutrition in children include lack of food security, lack of education, lack of literacy, gender discrimination (female child have not cared properly when compared to the male child), child marriage and early pregnancy, alcoholism in family.

Health factors for malnutrition in children include poor breastfeeding practices, inadequate birth spacing, genetic problems, poor access to health services, poor diet, digestive disorders and stomach conditions. Economic factors of malnutrition in children include poverty, hiking food prices and unorganized food distribution system. Other factors for malnutrition may include lack of availability of safe drinking water, Poor sanitation and environmental condition, Poor personal hygiene, Maternal malnutrition, Wrong cooking and food preparation practices – inappropriate to developmental stage of child. Existence of disability in any person is also a cause for malnutrition furthermore another important cause for malnutrition is due to malnutrition in mothers, especially during the time of pregnancy.

Relationship between Malnutrition and Disability

There is a close nexus between disability and malnutrition as a result the problem of malnutrition founding pregnant women, newborn children and persons born with impairment suffer from malnutrition it will be appropriate to focus on the consequences of malnutrition in pregnant women and children.

Maternal Malnutrition

Maternal malnutrition can affect the development of the foetus, cause intrauterine growth delays and increase the risk of infants developing impairments. For example, low maternal folate levels are associated with

¹⁹⁰² Comprehensive Master Action Plan Report on Prevention of Malnutrition of Children in the state of Karnataka by Justice N.K. Patil

¹⁹⁰³ *Ibid.*

increased risk of the child being born with a neural tube defect.

Mothers who are malnourished are more likely to give birth to low-birth-weight babies¹⁹⁰⁴, a risk factor for mild intellectual disability.¹⁴ Iodine deficiency during pregnancy has been reported to increase incidence of poor foetal growth and low birth weight babies. Anemia – a deficiency of iron – prevalent in 42% of pregnant women in low- and middle-income countries.

Maternal obesity can also lead to adverse birth complications such as increased risk of infection and trauma during delivery which may increase the likelihood of the infant developing a disability. Maternal overweight at conception can also lead to the child being overweight and developing chronic diseases in later life.

Child Malnutrition

Specific micronutrient deficiencies, including lack of iodine, iron and vitamin A, and malnutrition related to lack of protein and energy, are considered risk factors for physical, sensory and cognitive impairment. There is also evidence to suggest that iodine deficiency may affect the motor development of young children under age four, and less consistently their cognitive development, with effects on very young children being irreparable.

Malnutrition can also cause structural damage to the brain and affect motor and exploratory skills as well as future cognitive development and schooling. For example, stunting is defined as height for age lower than 2 standard deviations below the median. It is caused in very early childhood by a range of determinants related to nutrition, lack of essential minerals or vitamins, and diarrhea and can lead to cognitive delays which later affect educational performance.

Evidence from high income countries, and increasingly also from low- and middle-income countries suggests that malnutrition in infancy and childhood also has adult sequelae, such as

high blood pressure and metabolic disease. These are key risk factors for disabling conditions such as diabetes, heart disease and stroke.

Right to Food as Human Right to address Malnutrition

By now sufficient jurisprudence have evolved transforming different models and rights for protecting the life and dignity of persons with disability at the United Nations level. This is evidence from the fact that the approach for protecting the rights, life and dignities of persons with disability transformed from charity model to medical model and from social model to right based model so also the transformation began with right based model to human rights model ultimately leading for treating the issue of 'disability as a human right'.

There is a close nexus between right to food and addressing the problem of poverty. When a man is fed well in society 60% of his poverty is solved. When the problem of poverty is solved the problem of malnutrition is also solved to greater extent. Therefore, there is a need to focus through light on international and domestic standards for providing right to food in context with disability.

Right to Food as a Human Right issue

The right to food is guaranteed in the International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW Convention), and the Convention on the Rights of the Child (CRC). Article 11(1) of the ICESCR includes adequate food as a component on an adequate standard of living and Article 11(2) refers to 'the fundamental right of everyone to be free from hunger.' The CEDAW includes adequate nutrition as part of an adequate standard of living in Article 14. Article 24 (2) (c) of the CRC specifically mentions rights to both food and water.

In General Comment No.12, the ICESCR confirms that the right to adequate food applies to

¹⁹⁰⁴ Lutter CK, Lutter R (2012) Fetal and early childhood undernutrition, mortality, and lifelong health. Science, Vol. 337 (6101) pp.1495-9.

everyone without discrimination and 'is of crucial importance for the enjoyment of all rights.

Though the above-mentioned International Standard provision does not use the word persons with disabilities in their provisions but still it could be construed that the provisions do apply to persons with disabilities. For example, the general comment on ICESCR not only ensure right to food without any discrimination but also signify that there should be physical access to the right to food for infants and young children, elderly people the physically disabled the terminally ill and persons with persistent medical problems including the mentally ill.

As earlier mentioned, right to food by now is a human right issue, so also by adopting the United Nations Convention (to Promote and Protect the Rights and the Dignities) of persons with disabilities 2008, the rights of persons with disabilities are treated as human rights issue. In this context it is worth discussing how the UNCRPD promotes the right to food, and livelihood, right to health for addressing the problem of malnutrition. The provision relating to protection of child rights in the UNCRPD is also relevant for the purpose of this article.

Article 7: Children with Disabilities

1. *States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.*
2. *In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.*
3. *States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with*

disability and age-appropriate assistance to realize that right.

Article 10: Right to Life

States Parties reaffirm that every human being has the inherent right to life and shall take all necessary measures to ensure its effective enjoyment by persons with disabilities on an equal basis with others.

Article 25: Health

One of the highlights of the aforesaid article no. 25 of UNCRPD is that the state should *Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.*

India is one among the earliest countries in the world to sign¹⁹⁰⁵ and ratify¹⁹⁰⁶ the UNCRPD. By doing so, India has taken a lead in fulfilling the obligation set by UNCRPD at domestic level. It will be now appropriate to focus the Indian response on the implementation of policies, laws and programmes in addressing the issue of malnutrition.

Indian Response to address the issue of Malnutrition

One of the significant and excellent development in Indian jurisprudence is by way of enacting the National Food Security Act, 2013. The said act has fulfilled the mandates lay down in directive principles of state policy under part IV especially Article 47 of the Constitution of India which lays down that — the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health ...among its primary duties. Furthermore, the Right to Food Security Act, 2013 through its statement of reasons and objects reflects the theme of United Nations Convention on the rights of persons with disabilities, 2008 which obligates for protecting the right and dignity of children with disabilities. The Food Security Act, 2013 consists of 45 sections and 4 schedules. Though the aforesaid

¹⁹⁰⁵ India signed UNCRPD on 30th March 2008.

¹⁹⁰⁶ India signed UNCRPD on 30th October 2008.

Act does not use the term persons with disability in its provisions except in the definitional part and schedule 3 yet the said Act do apply for providing entitlement of the right to food for persons with disabilities. It is worth to mention few provisions of the said Act for our purpose.

Sec. 4. Subject to such schemes as may be framed by the Central Government, every

pregnant woman and lactating mother shall be entitled to—

(a) meal, free of charge, during pregnancy and six months after the childbirth,

through the local *anganwadi*, so as to meet the nutritional standards specified in

Schedule II; and

(b) maternity benefit of not less than rupees six thousand, in such instalments as

may be prescribed by the Central Government:

Provided that all pregnant women and lactating mothers in regular employment

with the Central Government or State Governments or Public Sector Undertakings or

those who are in receipt of similar benefits under any law for the time being in force

shall not be entitled to benefits specified in clause (b).

Sec. 5. (1) Subject to the provisions contained in clause (b), every child up to the age of

fourteen years shall have the following entitlements for his nutritional needs, namely:—

(a) in the case of children in the age group of six months to six years, age

appropriate meal, free of charge, through the local *anganwadi* so as to meet the

nutritional standards specified in Schedule II:

Provided that for children below the age of six months, exclusive breast feeding

shall be promoted;

(b) in the case of children, up to class VIII or within the age group of six to

fourteen years, whichever is applicable, one mid-day meal, free of charge, everyday,

except on school holidays, in all schools run by local bodies, Government and

Government aided schools, so as to meet the nutritional standards specified in

Schedule II.

(2) Every school, referred to in clause (b) of sub-section (1), and *anganwadi* shall

have facilities for cooking meals, drinking water and sanitation:

Provided that in urban areas facilities of centralized kitchens for cooking meals may be

used, wherever required, as per the guidelines issued by the Central Government.

Sec. 6. The State Government shall, through the local *anganwadi*, identify and provide

meals, free of charge, to children who suffer from malnutrition, so as to meet the nutritional

standards specified in Schedule II.

The Right to Food Security Act, 2013 came in the statute book due to the landmark judgment delivered by the Supreme Court of India by featuring for the first time in *People's Union for Civil Liberties Vs. Union of India and others*¹⁹⁰⁷. In its interim order dated 23rd July, 2001 the Court asked the Governments to include persons with disabilities in all schemes targeted at poorer sections of the society. In specific terms, the Court directed:

Antyodaya Anna Ayojana (AAA) Cards be issued to the following groups of persons, which would entitle them to buy grains at highly subsidized rates:

¹⁹⁰⁷ AIR 2001 SC 530.

- I. Aged, infirm, disabled, destitute men and women, pregnant and lactating women
- II. Widows and other single women with no regular support
- III. Old persons (aged 60 or above) with no regular support and no assured means of subsistence
- IV. Households with disabled adults and without assured means of subsistence
- V. Households where due to old age, lack of physical or mental fitness, social customs, need to care for a disabled, or other reasons, no adult member is available to engage in gainful employment outside the house
- VI. Primitive tribes

Conclusion

India's nutritional standards for Persons with Disabilities (PwDs) are largely integrated into broad public health and social equity frameworks rather than being governed by a single, specialized code. National schemes emphasize making food security, nutritional supplements, and dietary counseling universally accessible while recognizing the unique metabolic and physical needs of diverse disabilities.

Malnutrition in children with disabilities can be attributed to many factors. These include physical problems in feeding, suboptimal feeding practices due to lack of knowledge or specific skills among caregivers, or attitudinal, social or cultural causes (such as the exclusion or neglect of children with disabilities in feeding practices, socially or in the home). The availability of food in the home is also a factor. When children with disabilities live in residential care or other institutions, their nutrition tends to suffer due to inadequate staffing and discriminatory practices. Children with disabilities represent a disproportionate share of

children in such facilities and are less likely to benefit from nutritional programmes, which are often not extended to institutions. In humanitarian situations, children with disabilities are at risk of malnutrition because their particular needs are not usually taken into account.

Evidence suggests that persons with disabilities—particularly in severe cases—face a significantly higher risk of malnutrition and nutrient deficiency. Ongoing advocacy highlights the need to integrate structured nutritional assessments into routine rehabilitation and to increase caregiver training on safe feeding and modified diets.

The Right to food is both a freedom and an entitlement. There are still some misunderstandings regarding the right to food, despite the laws and regulations in place to protect it. First off, this right does not require the government to provide food for its citizens, but it does require that it make food accessible to all classes of citizens. Not a shortage of food, but a lack of access to food is what leads to hunger and malnutrition. Second, while having access to food is a fundamental human right, having access to food security is a requirement for all other aspects of that right. Thirdly, the argument is made that the right to food falls within the umbrella of the right to life. Even food security and safety can be discussed in the same breath. The right to nourishment, however, still needs to be given more attention and better implementation methods. Only by guaranteeing the right to nourishment for future generations can we ensure that future generations will be nourished.