

THE NATIONAL FOOD SECURITY BILL, 2011: AN OPPORTUNITY LOST?

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The Food Security Bill, 2011 is one of the key legislations introduced in the recent past, which, if framed and implemented in the right manner, has the potential to eliminate endemic hunger in the country. This said, from the very beginning, the Bill has been criticised and termed as nothing but a mere reshuffling of the prevalent Targeted Public Distribution System (TPDS). The Bill, it is argued, has missed out on the opportunity to overhaul the existing system and plug the loopholes plaguing it. The problems with respect to procurement, storage, targeting, distribution etc. which blunted the usefulness of TPDS have not been addressed and this has cast a shadow on the effectiveness of the Bill. The lack of meaningful opportunities of participation for the target communities has made it a failure when viewed from the prism of structural injustice as well. The Bill's adherence to international human rights standards is also poor. Thus, the Bill needs a major revamp and the author, in the course of this paper, suggests some measures for this.

I. INTRODUCTION

The problems associated with the Public Distribution System ("PDS") and thereafter the Targeted PDS ("TPDS") in India are well documented.¹ A number of criticisms have been levelled at the system, ranging from gaps in its legal framework to the lack of effectiveness in

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¹ See generally R. Khera, *Trends in Diversion of Grain from the Public Distribution System*, 46 ECO. & POL. WKLY. 106 (2011); *Foodgrains Distribution Woes*, 38 ECO. & POL. WKLY. 2236 (2003); S. Jha & P.V. Srinivasan, *Taking the PDS to the Poor: Directions for Further Reform*, 36 ECO. & POL. WKLY. 3779 (2001); S. Jha, *Consumer Subsidies in India: Is Targeting Effective?* 23 DEV. & CHANGE 101 (1992), available at <http://onlinelibrary.wiley.com/doi/10.1111/j.1467-7660.1992.tb00471.x/pdf> (last visited Oct 23, 2011).

implementation.² It is in this context that the idea of a more comprehensive Food Security Act was mooted. While the initial idea was to recognise and implement a universal right to food, this was dropped citing the fiscal burden it would impose on the economy.³ Now the drafters of the National Food Security Bill (“Bill”)⁴ themselves are up in arms against the watered down version of the Bill,⁵ which is now under the consideration of the Parliamentary Committee on Food headed by Vilasrao Muttemwar.⁶ The Bill, they allege, does not offer anything beyond the already existing scheme of TPDS. Classification into priority and general households, and provision for cash transfers in lieu of food grains, among others, are seen as some of the major drawbacks of the Bill.⁷

² See Programme Evaluation Organisation, Planning Commission, Performance Evaluation of Targeted Public Distribution System (2005), available at http://planningcommission.nic.in/reports/peoreport/peo/peo_tpd.pdf [hereinafter PLANNING COMMISSION REPORT]; Rep. of the Special Rapporteur on the Right to Food, Comm’n on Human Rights, 57th Sess., E/CN.4/2001/53 U.N.ESCOR (Feb 7, 2001) [hereinafter Special Rapporteur Report]; *Supreme Court Orders on the Right to Food: A Tool for Action*, RIGHT TO FOOD CAMPAIGN, <http://www.righttofoodindia.org/case/case.html> (last updated Mar 12, 2012) (follow “Supreme Court Orders on the Right to Food: A Tool for Action” hyperlink) [hereinafter Supreme Court Orders]; High Level Committee Report, *Summary and Recommendations*, available at <http://dfpd.nic.in/?q=node/138> (last visited Oct 23, 2011).

³ *Thought for Food*, THE INDIAN EXPRESS (Dec 15, 2011), <http://www.indianexpress.com/news/thought-for-food/888006> (last visited on November 24, 2012).

⁴ Draft National Food Security Bill, 2011 [hereinafter ‘Bill’], available at <http://dfpd.nic.in/fcamin/FSBILL/food-security.pdf>.

⁵ J. Dreze, *Food Security, Plan Z*, HINDUSTAN TIMES (Aug 22, 2012), <http://www.hindustantimes.com/News-Feed/ColumnsOthers/Food-security-Plan-Z/Article1-917836.aspx>; R. Rameshan, *Food bill off chest, Dreze logs off*, TELEGRAPH (Jun 23, 2011), http://www.telegraphindia.com/1110623/jsp/nation/story_14149557.jsp; *Open letter urges Prime Minister to dump Food Security Bill*, THE HINDU BUSINESS LINE (Aug 2, 2011), <http://www.thehindubusinessline.com/industry-and-economy/article2316647.ece>.

⁶ *Parliamentary Panel to Submit Report on Bill in Winter Session*, THE ECONOMICS TIMES (Oct 22, 2012), http://articles.economicstimes.indiatimes.com/2012-10-22/news/34653714_1_food-bill-parliamentary-panel-winter-session.

⁷ J. Dreze, *Mending the Food Security Act*, THE HINDU (May 23, 2011), <http://www.hindu.com/2011/05/24/stories/2011052456661000.htm>.

The Bill's failure is not just that it replicates the inefficiencies plaguing the existing scheme, but also that it is a complete failure when viewed from the prism of structural injustice and rights based approach as evident from the very little scope for participation of the beneficiaries, lack of decision making powers for them, lack of adequate penalties on the duty holders etc.⁸

This paper does not cover in depth all the debates surrounding the right to food and the food security Bill, but instead, tries to flag out some of the more prominent inadequacies of the Bill. The first part of the paper briefly explains the context and importance of enacting a food security legislation. The second part of the paper argues that the changes incorporated in the Bill are merely cosmetic, and fail to remedy the failures of the previous and existing systems. This is done by examining how various recommendations on different stages of PDS have been incorporated in the present Bill. For the purposes of comparison, reliance is placed on the observations made in the planning commission report,⁹ Supreme Court's interim orders in the Right to food case,¹⁰ report of the UN Special *Rapporteur* on the Right to Food,¹¹ High level committee's report to the food ministry,¹² the National Advisory Commission's Recommendations¹³ and other scholarly writings on this issue. The last part of this paper makes a case for the revamping of the Bill so as to conform to the idea of the rights based approach, and also to eliminate structural injustice. This part should be read with the understanding that most of the real beneficiaries of the food security bill are poor and underprivileged.

⁸ R. SOBHAN, CHALLENGING THE INJUSTICE OF POVERTY: AGENDA FOR INCLUSIVE DEVELOPMENT IN SOUTH ASIA, 1-12 (2011).

⁹ PLANNING COMMISSION REPORT, *supra* note 2.

¹⁰ A final decision in the case has not been given yet. But, a number of interim orders, which would have effect till a final verdict is passed, have been given. All these orders are available at <http://www.righttofoodindia.org/orders/interimorders.html> (last visited Feb 28, 2011).

¹¹ Special Rapporteur Report, *supra* note 2.

¹² High Level Committee Report, *supra* note 2.

¹³ Explanatory Note on National Food Security Bill, NATIONAL ADVISORY COUNCIL (Feb 21, 2011), http://nac.nic.in/foodsecurity/explanatory_note.pdf.

II. THE SIGNIFICANCE OF ENACTING A FOOD SECURITY LEGISLATION

India ranks a lowly 65th among nations surveyed for the Global Hunger Index, and is classified as one of the countries with “alarming” levels of hunger.¹⁴ This makes for an even more shocking reading when one realizes that foodgrains often pile up and rot in the Food Corporation of India’s [“FCI”] warehouses.¹⁵ It is in this context that a “right to food” through a food security legislation assumes significance. This right has been recognised both by the domestic and international legal regimes and has the potential to reduce the “alarming” levels of hunger witnessed in the country.

Under the international legal regimen, Article 25 (1) of the United Nations Declaration on Human Rights, 1948 [“UNDHR”]¹⁶ and Article 11 of the International Covenant on the Economic, Cultural and Social Rights, 1976 [“ICESCR”]¹⁷ recognise the right to

¹⁴ INTERNATIONAL FOOD POLICY RESEARCH INSTITUTE ET AL. 2012 GLOBAL HUNGER INDEX REPORT 19 (2012), available at <http://www.ifpri.org/sites/default/files/publications/ghi12.pdf>.

¹⁵ See generally M. Raghavan, *Food Stocks: Managing Excesses*, 38 ECO. & POL. WKLY. 873 (2003).

¹⁶ Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc.A/RES/217(III), Art. 25(1) (Dec 10, 1948) (“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”).

¹⁷ International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), Art. 11(2) (Dec. 16, 1966)

(“The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.”)

food of every individual enjoining ratifying states to take measures to fulfill this right. Although initially this right was seen to be non-justiciable, this view has shifted over the course of time.¹⁸ Similarly, under the Indian constitution, Article 47 of the Directive Principles of State Policy has laid emphasis on the raising of levels of nutrition as one of the primary duties of the State, and the jurisprudence under Article 21 has also recognized adequate nutrition as one of the inalienable components of right to life.¹⁹ Thus, we have reached a stage where every individual has a right to be free from hunger, even if not a right to food. Thus, the food security legislation is nothing but an embodiment of a State's recognition of this duty.

The importance of a rights based legislation such as the National Food Security Bill is that along with conferring rights, it also imposes a concomitant set of duties on the State. Thus, State actors would be forced to take action to avoid situations where hunger coexists with excess grains rotting undistributed in storehouses. The concerned duty holders would not be able to take recourse to the excuse that they do not have a duty to avoid such wastage once these duties are crystallized under the legislation. The legislation could also have the potential of improving the productivity of food grains in the country along with streamlining our Public Distribution System, among other things, as will be evident from the following discussion.

III. THE BILL SUFFERS FROM A NUMBER OF FUNDAMENTAL FLAWS AND THE CHANGES INCORPORATED ARE MERELY COSMETIC

As already pointed out, a number of flaws plague each stage of the PDS.²⁰ While it is difficult to pinpoint every one of them, an attempt has been made to highlight some of the problems surrounding key issues.

¹⁸ For a detailed discussion on this see, S. Chopra, *Holding the State Accountable for Hunger*, 44 ECON. & POL. WKLY. 8 (2009).

¹⁹ Francis Coralie Mullin v. Union Territory of Delhi, (1981) 1 S.C.C. 608, *cited in* S. Chopra, *Holding the State Accountable for Hunger*, 44 ECO. & POL. WKLY. 8 (2009).

²⁰ See Khera, *supra* note 1.

A. PROCUREMENT

One of the central concerns with regard to procurement of foodgrains has been the quality of the grains procured. In spite of the mandate under the Revised Model Citizen's Charter,²¹ the Supreme Court directive²² to ensure Fair Average Quality ("FAQ") while implementing mid-day meal schemes and the Food Corporation of India's own commitment to these standards,²³ instances of poor quality grains being distributed are plenty.²⁴ While poor quality may not always be a result of not adhering to quality norms, and may often be a result of inadequate storage facilities, instances of non-adherence to quality norms at the procurement stage are not few.²⁵ The reason for this predicament is the lack of clarity caused by the presence of multiple government orders and circulars enumerating the quality standards.²⁶

It is disappointing that the Bill does not make any attempt to harmonise these standards. The preamble to the Bill states that its aim is to "*provide for food and nutritional security....by ensuring access to adequate quantity of quality food....*"²⁷ But the Bill falls short of addressing what constitutes 'quality food' and how it will be ensured. It does not

²¹ Revised Model Citizen's Charter, (Jul 2007), *available at* <http://dfpd.nic.in/?q=node/18>.

²² Supreme Court Orders, *supra* note 2.

²³ See, *Operations-Procurement*, <http://dfpd.nic.in/?q=node/998> (last visited Nov 1, 2011).

²⁴ *Brimming granaries and begging bowls*, THE HINDU, (Jun 17, 2001), <http://www.hindu.com/2001/06/17/stories/05171341.htm>.

²⁵ Editorial, *PDS Rot*, THE TRIBUNE, (Jul 27, 2011), <http://www.tribuneindia.com/2011/20110727/edit.htm> (The FCI procures damaged grains under political pressure which become virtually inedible during unscientific storage but still find their way into the distribution system); P. Goyal, *Food Security in India*, THE HINDU, (Jan 10, 2002), <http://www.hindu.com/thehindu/biz/2002/01/10/stories/2002011000440200.htm>.

²⁶ See, e.g., *Uniform Specifications for procurement of Indian wheat of all varieties for Rabi Marketing Season 2009-2010*, <http://dfpd.nic.in/?q=node/381>; *Uniform Specifications for procurement of Indian wheat of all varieties for Rabi Marketing Season 2007-2008*, <http://dfpd.nic.in/?q=node/363>.

²⁷ The Bill, *supra* note 4, Preamble.

prescribe any minimum standard, nor does it equate the required standards to the FAQ standards. It is not suggested that there should be an annexure specifying the quality of each food grain procured under the PDS. However, a mention should have been made of the need to adhere to the minimum standards, which would be FAQ standards under the present scheme. A related schedule drawing upon the guidelines for FAQ could also have been included, but instead, the present Bill leaves this issue at the mercy of seasonal circulars.

Prioritisation of decentralised procurement of locally available foodgrain is another area which the Bill falls short of addressing adequately. The issue is given a mention in Schedule III of the Bill,²⁸ but is couched in loose language, merely calling for incentivising decentralised procurement. The Bill nowhere makes decentralised procurement mandatory even in areas where it could be successfully implemented. There is not even a time line set for the progressive realisation of this policy, which could mean that the provision will be a non-starter. By not laying enough emphasis on decentralised procurement, the Bill has missed out on yet another opportunity to vitalize the local agricultural markets. Enabling decentralised procurement will benefit the local farmers as they will receive Minimum Support Prices, and will also lead to a decrease of the costs of transporting food grains under the TPDS.²⁹ Yet another merit of decentralised procurement, as suggested by the National Advisory Council, is that it will lead to higher procurement.³⁰ As of now, procurement by the FCI is limited to a few States and experience from States like Orissa and Chhattisgarh proves that there is a direct co-relation between increase in food production and local procurement.³¹

²⁸ The Bill, *supra* note 4, schedule III, cl. 2(a).

²⁹ INTEGRATED RESEARCH AND ACTION FOR DEVELOPMENT, PLANNING COMMISSION, EXTENSION OF MSP: FISCAL AND WELFARE IMPLICATIONS (2007), *available at* http://planningcommission.nic.in/reports/sereport/ser/ser_msp.pdf.

³⁰ Explanatory Note on National Food Security Bill, *supra* note 13.

³¹ Explanatory Note on National Food Security Bill, *supra* note 13.

Thus the issues with respect to procurement remain largely unchanged from the previous regime. A more aggressive decentralised policy is the need of the hour but the Bill falls short of realising this.

B. STORAGE

Lack of proper scientific storage facilities and the resultant rotting of food grains has been the most widely debated topic in the area of TPDS during the last two years.³² The present Bill has tried to remedy this situation by including provisions for the creation of scientific storage facilities at various levels.³³ However, the provisions seem to be nothing more than a vision statement in the light of losses suffered due to unscientific storage facilities, and the need for establishment of these facilities in a time bound manner has been ignored. There should have been unambiguous guidelines on a time frame for the completion of the construction of storage facilities to ensure that the rotting of foodgrain is avoided at the earliest. Enforcement mechanisms such as imposing fines on the states failing to comply with these deadlines should also have been put in place. The Bill should have also addressed the issue of how to effectively use excess stock which cannot be stored, making intra-state transfer of grains, to warehouses with adequate capacity, mandatory. The merits of such a provision are manifold; for instance, not only will it encourage the states to establish storage facilities but it will also ensure that the grains are stored safely.

C. TARGETING

The debate surrounding targeting is vast and this paper does not address the issue in its entirety.³⁴ Nevertheless, it is important to identify the key issues surrounding targeting and how they have been

³² See “*Let not grains rot in godowns while millions cry for food*”, THE HINDU, Aug. 9, 2010, <http://www.thehindu.com/news/national/article559588.ece>.

³³ The Bill, *supra* note 4, cls. 30(5)(d) & 32(6)(a) & schedule III, cl. 2 (C)..

³⁴ See M.H. Suryanarayana, *Agflation and the Public Distribution System*, 43 ECO. & POL. WKLY. 13 (2008) for detailed analysis; A. Sen & Himanshu, *Why Not a Universal Food Security Legislation*, 46 ECO. & POL. WKLY. 38 (2011).

addressed in the Bill. The latest version of the Bill, through Clauses 3 and 15, plans to bring roughly 67% of the population within its ambit;³⁵ Clause 3 (1) classifies the population into priority and general households. While every person in the priority household is made eligible to receive 7 kg of foodgrain at a subsidized rate every month through TPDS, every person belonging to general household is entitled to not less than 3 kg every month. Clause 3 (2) provides that the entitlements guaranteed under sub-clause 1, shall be extended “up to” 75% of the rural population and 50% of the urban population. Within these, not less than 46% of the rural and 28% of the urban population shall be designated as priority households. Clause 15 further states that the Central government will prescribe the guidelines for identification of these households and the identification shall be done either by the concerned state governments or an agency prescribed by the government.

The insistence of the government on a targeted approach has always met with constant opposition,³⁶ mostly because the experience with the transition from PDS to TPDS did not yield the expected results, resulting in untold miseries due to exclusion errors.³⁷ Although targeting was introduced to ensure that the food grains reached the beneficiaries who are in real need, the results yielded were to the contrary.³⁸ Many people in need were left out and excess stocks piled up.³⁹ Moreover, the process of identification itself takes a heavy toll on the public exchequer, making the validity of the exercise even more questionable.⁴⁰

Apart from these, many other concerns have been raised as well; one of them being that the Bill will favour the richer states since the food allocation will remain much the same to all states irrespective

³⁵ Dreze, *supra* note 7.

³⁶ A. Sen & Himanshu, *supra* note 34, at 39.

³⁷ Dreze, *supra* note 7.

³⁸ R. Khera, *Right to Food Act: Beyond Cheap Promises*, 46 ECON. & POL. WKLY. 42 (2009).

³⁹ Raghavan, *supra* note 15, at 873-874.

⁴⁰ Jha & Srinivasan, *supra* note 1, at 3784.

of their current status.⁴¹ The Uttar Pradesh Chief Minister recently drove home this point when he pointed out the vast differences in the poverty levels in different states and the resulting absurdity in having a single criterion for all of them.⁴² The reasoning behind the specific cut-off numbers prescribed by the Bill is faulty as it relies on surveys which were conducted a decade ago.⁴³

General comment 12 on the 'Right to adequate food' imposes an obligation on every state to ensure that everyone under a state's jurisdiction has access to minimum essential food which is nutritionally adequate and safe.⁴⁴ Thus, one of the main suggestions to remove the lacunae of the existing regime by doing away with TPDS and universalising food security, has been discarded by the Bill. Thus, it is appalling to note that the Bill leaves open the most important issue concerning food security. Even if there is no universalization, the standards should be redrawn to remedy the concerns regarding exclusion and that of richer states standing to benefit more. One of the possible ways in which this can be dealt with is to set a narrow exclusion criterion to ensure that the bulk of the population is brought within the Bill's ambit, and only those with a very high level of income who can afford food without government subsidy, are left out.⁴⁵ By

⁴¹ Dreze, *supra* note 5.

⁴² N. Sethi, *Akhilesh Seeks Changes in Food Security Bill*, THE TIMES OF INDIA, (Oct 25, 2012), http://articles.timesofindia.indiatimes.com/2012-10-25/india/34729047_1_akhilesh-yadav-national-food-security-bill-state-governments.

⁴³ S. Balani, *PRS Legislative Research, Legislative Brief: The National Food Security Bill* (2012), <http://www.prsindia.org/uploads/media/Food%20Security/Legislative%20Brief%20National%20Food%20Security%20Bill%202011.pdf>; See cl 15 of the Bill which empowers the Central government to revise the guidelines from time to time for identification of these households; G. Parsai, *Food entitlement beneficiaries will be determined by parameters of new census*, THE HINDU, Oct. 3, 2011, <http://www.thehindu.com/news/national/article2508700.ece>.

⁴⁴ U.N. ESCOR, *Substantive Issues Arising in the Implementation of The International Covenant On Economic, Social And Cultural Rights: General Comment 12, The Right to Adequate Food (Art. 11)*, E/C.12/1999/5 (Dec 5, 1999), available at <http://www.unhchr.ch/tbs/doc.nsf/0/3d02758c707031d58025677f003b73b9> [hereinafter General Comment].

⁴⁵ Dreze, *supra* note 7.

providing for a targeted approach which leaves out a large section of the population, the Bill opens up a scenario which may end up being worse than the existing one.

D. DISTRIBUTION

Distribution of foodgrain is another hotly debated area in the recent past. The Supreme Court order of July 27 regarding the distribution of excess stocks created much furore in the country.⁴⁶ The apex court's heavy criticism of the government for letting food grains rot in the government warehouses, and the Prime Minister's rejoinder that the Courts should not interfere in policy matters, brought the distribution issue into the limelight.⁴⁷ The main reason for the failure in the distribution process is the irregular delivery scheduling of the distribution system and subsequent off take by the consumers under the PDS.⁴⁸ Door-step delivery of foodgrain at Fair Price Shops ("FPS") within the first seven days of a month has been the recommended cure for resolving this problem.⁴⁹ Although door-step delivery has been made part of the present Bill,⁵⁰ there is no mandatory requirement regarding the time period within which it has to be done every month. As mentioned, the remedy for poor offtake is to ensure that the foodgrains reach the FPS within the first seven days. People who depend on daily wages will otherwise find it extremely difficult to procure food grains.

Another suggestion with regard to the process of distribution has been the allotment of FPS licence to co-operative bodies.⁵¹ The

⁴⁶ *Crime to let even a grain rot, says SC*, THE TELEGRAPH (Jul 28, 2010), http://www.telegraphindia.com/1100728/jsp/nation/story_12739810.jsp.

⁴⁷ *Rotting of Foodgrains 'extremely serious' matter: Supreme Court*, THE TIMES OF INDIA (Oct 18, 2010), http://articles.timesofindia.indiatimes.com/2010-10-18/india/28239789_1_food-grains-godowns-wastage.

⁴⁸ *Foodgrains Distribution Woes*, *supra* note 1, at 2236; PLANNING COMMISSION REPORT, *supra* note 2, at xiii.

⁴⁹ PLANNING COMMISSION REPORT, *supra* note 2, at xiii.

⁵⁰ The Bill, *supra* note 4, cls. 18(2) (a) & 32(2)(a)

⁵¹ High Level Committee Report, *supra* note 2.

Bill has taken cognizance of this issue and has provided for the prioritization of co-operative and self-help groups while allotting the licenses.⁵² Although this is a heartening shift away from the previous regime when the private dealers indulged in black marketeering and corruption, there are no strict deterrent measures against such malpractices in the Bill. There should have been provisions imposing severe penalties on FPS dealers who cause diversions and other malpractices, as suggested by the Supreme Court⁵³.

E. GRIEVANCE REDRESSAL MECHANISM

The lack of grievance redressal mechanisms has played a major part in the failure of PDS. The grievance redressal mechanisms envisaged in the Bill start from the district level.⁵⁴ The State Food Security Commission and the National Food Security Commission man the grievance redressal forums at the state and national levels.⁵⁵ However, the Bill does not provide for any such mechanisms at the village or *taluk* levels. Since a large section of the beneficiaries of the legislation reside in rural areas, they will be hard pressed to approach forums even at the district level due to financial reasons. The NAC's recommendation for the setting up of People's Facilitation Centres at the block and ward levels⁵⁶ for rural and urban areas has been ignored. Such a body was expected to facilitate the forwarding of the grievances of the local population to district level officers.

The only body at village/*taluk* level is the "Vigilance Committee" constituted under Clause 37, which lack any real decision making powers. They are neither empowered to impose penalties on the violators, nor to take remedial measures for the improvement of

⁵² The Bill, *supra* note 4, cl. 18(2)(e).

⁵³ PUCL v. Union of India & Ors., Interim Order, May 2, 2003, Supreme Court Writ Petition [Civil] No. 196 of 2001; *Food Security Scheme Details: Supreme Court order on Targeted Public Distribution System*, http://www.righttofoodindia.org/data/food_security_schemes_details.pdf (Last visited on Nov. 3, 2011).

⁵⁴ The Bill, *supra* note 4, cl. 21(1).

⁵⁵ The Bill, *supra* note 4, cls. 22-26.

⁵⁶ Explanatory Note on National Food Security Bill, *supra* note 13.

the schemes they are mandated to oversee. The lack of an effective and approachable forum to resolve and plug implementation gaps points to the superfluous approach adopted under the Bill.

F. MISCELLANEOUS ISSUES

a. *Penalties on public servant*

Under Clause 41 of the Bill, a public servant who has failed to comply with the relief recommended by any of the grievance redressal officers is liable to pay a paltry sum of Rs. 5000. It is shocking that even after the poor implementation history of PDS, the Bill has decided to let off potential culprits lightly. The inclusion of provisions which will act as a serious deterring factor is non-negotiable if one is to tide over the problems of the earlier food regime.

b. *Cash transfers*

Clause 18 (1) (h) of the Bill calls upon the Central and State governments to progressively reform the TPDS, and one of the methods suggested is to make cash transfers in lieu of food entitlements, which according to persons working on the field, is against the popular wishes of the beneficiaries of the scheme.⁵⁷ The practical difficulties associated with cash transfers are aplenty and merits a separate analysis in itself;⁵⁸ nevertheless, there seems to be a great divide in both the public and the legal circles regarding the viability of introducing cash transfers. One section suggests that the cash transfers can eliminate the traditional problems associated with PDS like leakages, difficulty in targeting etc.⁵⁹ The system of cash transfers, it is argued, will provide a simple and effective way of

⁵⁷ A. Adhikari, et al., Op-Ed, *The National Food Security Act must include strong safeguards- A letter to the Prime Minister on the importance of a 'near-universal PDS'*, THE HINDU (Jul 21, 2011), <http://www.thehindu.com/opinion/op-ed/article2282234.ece>.

⁵⁸ M. Shah, *Direct cash transfer no panacea by itself*, THE HINDU (Sep 20, 2008), <http://www.hindu.com/2008/09/20/stories/2008092055751000.htm>.

⁵⁹ See generally A. Kotwal et al., *PDS Forever?*, 46 ECO. & POL. WKLY. 21,72 (2011).

accessing the benefits and will also weed out the incentives for diverting grains to the open market.⁶⁰ Under this system, the beneficiaries will be provided with food coupons or other biometric cards through which they can make the purchase. The retailers can redeem these food coupons later on at banks or designated government offices.⁶¹ This is seen by many as a simple and effective way of imparting the benefits designed under the Act.

On the other hand, a number of critics point to the possible misuse of the same system. They argue that once the system is implemented, the beneficiaries will be at the mercy of the market forces which will control the prices of food grains. There is also the fear that money being easier to divert than foodgrains, it will ultimately end up being taken away from the reach of the real beneficiaries. Furthermore, critics fear that if cash is given to the beneficiaries, it might end up being diverted for purposes other than the purchase of food materials.⁶² Although Clause 19 of the Bill has designated the eldest woman in the family as the head of the family, considering the existing reality in the country the eldest female might remain a mere figurehead, with the actual control being wielded by men who might divert the cash for purposes other than buying of food for the household.

More importantly, as pointed out earlier, rural households, one of the major beneficiaries of the system, have expressed their preference of food transfers over cash.⁶³ The volatility of food prices also makes it extremely difficult to implement a system of cash transfers. It would be an extremely onerous task for the governments to revise

⁶⁰ *Id.*

⁶¹ Kotwal, *supra* note 60, at 73; *see generally* D. Kapur *et al.*, *More on Direct Cash Transfers*, 43 ECO. & POL. WKLY. 85 (2008).

⁶² J. Ghosh, *The Siren Song of Cash Transfers*, THE HINDU (Mar 2, 2011), <http://www.thehindu.com/opinion/lead/the-siren-song-of-cash-transfers/article1504114.ece>; Shah, *supra* note 59.

⁶³ D. Trivedi, *Rural Households Prefer Food Transfers Over Cash: Survey*, THE HINDU BUSINESS LINE, (Jul 24, 2011), <http://www.thehindubusinessline.com/todays-paper/tp-economy/rural-households-prefer-food-transfers-over-cash-survey/article2288441.ece>.

the amount of cash to be transferred every time the prices of food grains vary. With these concerns looming large, it is suggested that it would make more sense to persist with the present system.

The above analysis shows that the draft Bill leaves many questions and concerns unanswered. Most of the key recommendations by various committees and scholars have been disregarded in the framing of the Bill. This may partially be the result of the State's economic concerns regarding the expansion of such a scheme, but the prevalent opinions in favour of universalization, fortified by the presence of excess stocks, seem to suggest that there is no real need for concern.⁶⁴ One has to realise that ensuring right to adequate food is not a *choice* for the state; rather, it is an obligation to be carried out at any cost as already detailed above.⁶⁵ A parallel could be drawn from the case of *Paschim Banga Khet Mazdoor Samiti v. West Bengal*,⁶⁶ in which the Supreme Court ruled that the State cannot "cite financial constraints to limit its constitutional obligations to protect the right to life".⁶⁷ Since food is an essential component of one's right to life,⁶⁸ the State has no option but to carry out its obligation.

IV. THE BILL IS A FAILURE WHEN VIEWED THROUGH THE PRISMS OF STRUCTURAL INJUSTICE AND RIGHTS BASED APPROACH

The idea of structural injustice is that the prime reason for poverty is "the inequitable distribution of opportunities across society between the rich and the excluded".⁶⁹ According to this concept, neither targeting of resources nor an increase in growth will help alleviate poverty.⁷⁰ Rather, the reasons for poverty are grounded in

⁶⁴ Raghavan, *supra* note 15; Himanshu & A. Sen, *supra* note 35, at insert pincite.

⁶⁵ Chopra, *supra* note 18.

⁶⁶ (1996) 4 S.C.C. 37.

⁶⁷ Chopra, *supra* note 18, at 10.

⁶⁸ For arguments on the same, see PUCL v. UoI and Ors. Initial Petition, *available at* <http://www.righttofoodindia.org/case/petition.html> (last visited Nov 12, 2011).

⁶⁹ SOBHAN, *supra* note 8, at 2.

⁷⁰ SOBHAN, *supra* note 8, at 3.

certain inherited structural arrangements, which pave the way for inequitable distribution of opportunities in more ways than one.⁷¹

The primary concern regarding the Bill when viewed from this perspective is that the Bill gives targeting the prime position in the quest for alleviation of poverty. It is admitted that even universalization is not sufficient under the framework of structural injustice. As already pointed out, the primary focus of the Bill should have been empowerment; thus, bridging the gap caused by inequitable distribution of opportunities. The ability to actively take part in the economic market and in the decision making process affecting one's life is an integral part of the remedial measures under this concept. The concept of structural injustice can be a good vantage point to realise the hollow approach adopted by this legislation, evidenced by the following facts. Almost no role is given to the local communities in the decision making process, and scant regard has been given to local preferences with respect to the food materials. Even if food materials are available locally and can be procured at much cheaper rates, the Bill does not envisage a scenario where the locals can demand for the same. In a country like India, where there are so many regional diversities even within staple food grains, this idea assumes much significance. If foodgrain can be procured locally at cheaper rates, more vigorous participation of farmers in the market can be ensured and communities will have a greater say in a process to which their lives are closely linked. By deciding not to consider local preferences, the framers of the Bill have further highlighted the deep rooted structural injustice in our society.

Yet another area which illustrates the structural injustice prevalent in the Bill is the general lack of decision making powers for the beneficiaries. As pointed out earlier, in spite of the proposed establishment of vigilance committees, these committees are given little or no decision making powers. Last but not the least, it is shocking that no debates are being carried out at local levels regarding the kind of food security regime they want. The real beneficiaries are kept

⁷¹ For a more detailed understanding, see SOBHAN, *supra* note 8.

outside the loop and the Bill is only put up on the food ministry website, thus limiting accessibility. By not doing carrying out surveys at the grassroots level, the State is subjecting the beneficiaries of the scheme to a regime thought out in the heads of people at the top of social hierarchy, who themselves have never been dependent on state-sponsored food. Thus, the Bill does nothing to eliminate the already existing structures which perpetuate structural injustice in our society.

Another approach which can be used to assess the adherence of the Bill to human rights standards is the rights based approach. According to United Nations Office of the High Commissioner for Human Rights [“UNOHCHR”] the rights based approach is “*a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to protecting and promoting human rights standards*”.⁷² It attempts to incorporate international human rights standards to the plans and policies of development by ensuring, among other things, participation and empowerment of the people related to the development process, accountability of the duty holders, express linking of rights to the development process, non-discrimination and attention to vulnerable groups.⁷³ One of the key components of this approach is to examine whether adequate laws have been put in place to identify the claim holders, their ability to stake claim over these rights and also to enable the duty bearers who are accountable to them to carry out their obligations.⁷⁴ The Bill fares badly when viewed from a right based approach. As pointed out, the rights holders under the Bill have not yet been properly identified.⁷⁵ The provisions on identification of beneficiaries, Clauses 3 and 15, use the term “up to”, implying the maximum coverage possible under the Bill;

⁷² Guidelines of United Nations Office of the High Commissioner for Human Rights, www.unohchr.org, cited in S. Baltiwala, *When Rights Go Wrong- Distorting the Rights Based Approach to Development*, SEMINAR (Jan 2007), available at http://www.india-seminar.com/2007/569/569_srilatha_baltiwala.htm.

⁷³ *Id.*

⁷⁴ See generally J. KIRKEMANN BOESEN & T. MARTIN, APPLYING RIGHTS BASED APPROACH: AN INSPIRATIONAL GUIDE FOR CIVIL SOCIETY (2007).

⁷⁵ See *supra* Part III(3).

but, this leaves open the issue of what recourse one will have in case the government decides to cut down on the target group to the least extent allowed under the Bill. Similarly, the accountability of duty holders has not been ensured through deterrent measures and powers to local level vigilance committees.⁷⁶ It is also unclear how one can claim one's rights under the present Bill – there are no explicit provisions regarding the justiciability of the rights, or which forums to approach. Thus, the Bill becomes a complete disappointment from a rights based approach as well.

V. CONCLUSION

The Food Security Bill in its present form is unacceptable as it tries to reassert the idea of targeting and excludes some of the indispensable recommendations from various sources. The state cannot shirk its obligations by creating a legislation which has *less* to it than what meets the eyes. The superfluous provisions need to be restructured in such a way that the concerns voiced by experts are taken into account and the concerns regarding structural injustice are factored in. A narrow exclusion criterion is the need of the day to ensure the bulk of the population is covered. Provisions for procurement and storage should have more clarity with regard to the standards to be used and the time frame within which the targets laid down need to be achieved. An attempt to empower the beneficiaries of the scheme by prioritizing decentralised procurement, scheduling the distribution of food grains within a certain date of the month, imparting real decision making powers etc. should also be made. Furthermore, the introduction of schemes like cash transfers, which are meant to replace food transfer, should not be implemented against the wishes of the beneficiaries. Thus, the Bill should not just be an attempt to satisfy at the surface level the growing demands for better food coverage of the nations. The voices of the real beneficiaries should be heard and given serious thought. This can surely give the nation a head start in its fight against hunger.

⁷⁶ See *supra* Part III(6)(a).