

## **Right to Food and Role of the State to Ensure Food Security in Bangladesh: Need of a Right based Approach**

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### **Abstract**

*Right to food is a human right. It protects the right of all human beings to live with dignity, free from hunger, food insecurity and malnutrition. Rights to food directly link with right to life of human being. It talks about the substance of human life. The right to food is not charity, but about ensuring that the all people have the capacity to feed themselves with dignified life. Bangladesh is the country having multi-ethnic, multicultural and multi-religious in nature has deemed to include them in the state's authority and vested to them the sovereignty of the state. Accessibility to sufficient, safe and nutritious food to meet the minimum standard of dietary needs and food preference for and active healthy life is food security. The concept of food security has four pillars which emphasizes on availability, accessibility, utilization and stability of the food and sources of food. The right based approach to food security has further legal dimension in that government have a legal obligation progressively to enable all individual within their borders not merely to be free from hunger but to procure, in ways that fully consistent with their dignity, food that is adequate for healthy active life. Realizing the right requires the availability of food in quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances and acceptable within a given culture; the accessibility of such food in ways that are sustainable and that do not interface with the enjoyment of other human rights. This paper examines the framework laws on right to food and role of State to ensure food security in Bangladesh. Upon a summary discussion of the present situation of Bangladesh, its existing legal regime on right to food and identifying the major gaps and inconsistencies, this paper underscores the need for a holistic legal reform with a right based approach; that can be steered by a framework law on right to food.*

**Keywords:** Right to food, Need right based approach, Recognition, Food security, Role of state.

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## **Introduction**

Right to food is a most important right of a human being for survival. One of the vital objectives of modern welfare States is to ensure this right for their people. Food insecurity is a long-standing problem in Bangladesh. Food security is essential element of human security and fundamental to social & economic development. Nutritional deficiencies have devastating consequences for the well being and future of the people. Hunger and malnutrition are intrinsic deprivations and severely diminish the quality of life. Furthermore, under-nutrition is associated with reduced learning abilities, greater exposure to disease and other impairments of individual and social opportunities (Jean Dreze, 2005).

Every welfare state is under obligation to ensure basic needs of its people. Article 15 of the Constitution of Bangladesh requires state to ensure people's access to basic necessities including food, clothing, shelter, and medical care as one of the fundamental principle of state policy. Article 18 states that the state is obligated to regard the raising of the level of nutrition and improvement of public health as among its primary duties. Although these social rights are not justiciable, their inclusion as a fundamental principle of State policy is significant because it serves to guide interpretation of fundamental rights, including the right to life under article 32. In many instances, the higher judiciary of Bangladesh has applied the fundamental principles to interpret the meaning of the fundamental rights. However, despite the constitutional recognition of right to food, due to low income level, lack of access to land, unequal distribution of land ownership, disparity, rising food prices, many people in Bangladesh are deprived of this right. Food insecurity is considered an outcome of social and economic processes that lead to lack of access to food (De Rose et al., 1998).

## **Aims and Objectives of the Study**

The study report will examine the food security situation in Bangladesh, and shed light on current shift from right to food approach to right based approach to food. The study will highlight on the definition, contents and role of the State of the right to food. The report will also analyse the constitutional provisions of the Bangladesh and international instruments on right to food. It will make a critical assessment the laws and policies on food security in Bangladesh and determine to what extent the existing legal framework is consistent with the right-based approach. It will also highlight mechanisms of implementation of the right to food. The study will take a right-based approach to food security and will recommend for adoption of specific law on the right to food in Bangladesh.

## **Methodology of the Study**

The study report will mainly take an analytical approach as a methodology. This study report will be based on comprehensive literature review on laws

and policies in Bangladesh, international instruments, and judicial decisions on right to food in Bangladesh and other jurisdictions. A comparative perspective will be adopted to highlight development of laws on the right to food in other countries.

### **Defining the Right to Food**

Broadly speaking the right to food can be interpreted as a claim of individuals on society. It is an entitlement to be free from hunger, which derives from the assertion that the society has enough resources, both economic and institutional, to ensure that everyone is adequately nourished (Jean D., 2005). The right to food protects the right of all human beings to feed themselves in dignity, either by producing their food or by purchasing it (Olivier de Schutter). The right to food is both a freedom and an entitlement. Freedom denotes freedom from hunger and entitlement signifies entitlement to adequate food that meets dietary needs (Maria Socorro I.).

According to the Committee on ESCR in its General Comment 12 adopted in 1999: “The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement.”

In 2000, the Special Rapporteur on the Right to Food was established by the Commission on Human Rights. According to the Special Rapporteur, the right to food is:

*The right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear (United Nations Special Rapporteur on the right to food).*

### **Misconceptions about the Right to Food**

There are three misconceptions about the right to food:-

#### **i. A Right to Food Implies that the Very Existence of Hunger is a Violation of Human Rights**

Mere existence of hunger does not constitute a violation of human rights. Deprivation – lacking access to food – can have many causes. Only a clear failure of a government to fulfill its obligations, when it is in a position to take remedial steps, can be termed a breach of the right to food.

#### **ii. The concept of a right to food is too theoretical–It is food, not the right to food, that is needed**

People need access to food in a normal dignified way. One’s access to food affects one’s entire fabric of life.

**iii. There is no need to establish a right to food. Rights make people lazy. And who is supposed to pay for such a right?**

The concept of a right to food should not be misunderstood as the right to “social transfers” of food or money to disadvantaged groups. Social transfers are only a last resort, except to children, the elderly, and the disabled.

**Contents of the Right to Food**

Right to Adequate Food explains these three essential contents:

“Availability requires on the one hand that food should be available from natural resources either through the production of food, by cultivating land or animal husbandry, or through other way of obtaining food, such as fishing, hunting or gathering.

Accessibility requires economic and physical access to food to be guaranteed. Economic accessibility means that food must be affordable. Individuals should be able to afford food for an adequate diet without compromising on any other basic needs, such as school fees, medicines or rent. Physical accessibility means that food should be accessible to all, including to the physically vulnerable, for whom it may be difficult to go out to get food. Access to food must also be guaranteed to people in remote areas and to victims of armed conflicts or natural disasters, as well as to prisoners.

Adequacy means that the food must satisfy dietary needs, taking into account the individual’s age, living conditions, health, occupation sex etc. For example, if children’s food does not contain the nutrients necessary for their physical and mental development, it is not adequate. Food should be safe for human consumption and free from adverse substances, such as contaminants from industrial or agricultural processes, including residues from pesticides, hormones or veterinary drugs. For example, food containing religious or cultural taboos for the recipients is inconsistent with their eating habits and would not be culturally acceptable (The Right to Adequate Food, Fact Sheet No.34)

**International Recognition of Right to Food**

The right to food is a human right recognized by international human rights law. The Universal Declaration of Human Rights recognizes the right to food within the broader right of adequate standard of living as it declares “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food (Art. 25).

The International Covenant on Economic, Social and Cultural Rights recognizes the right to adequate food as an essential part of the right to an adequate standard of living (Art.11 (1)). It also explicitly recognizes “the fundamental right of everyone to be free from hunger (Art.11 (2)).

The right to food is also recognized in other international conventions protecting specific groups, such as the Convention on the Elimination of all Forms of Discrimination against Women (1979), the Convention on the Rights of the Child (1989), the Convention on the Rights of persons with Disabilities (2006), and the convention relating to the status of Refugees of 1951 (entered into force in 1954) and related protocol of 1967.

The Voluntary Guidelines to support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (the Right to Food Guidelines) adopted by the FAO Council in 2004, recommend actions to be undertaken at the national level in order to build an enabling environment for people to feed themselves with dignity, and to establish appropriate safety nets for those who are unable to do so.

### **Situation of Food Security in Bangladesh**

In order to understand the situation of food security, it is essential to define food security. According to the 1996 World Food Summit,

*“Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food which meets their dietary needs and food preferences for active and healthy life.”*

Food security is generally measured at three levels: national, local, and household. Food security at the national level is determined by the availability of enough resources for the whole population (Kashem and Faroque A., 2011). At the local level, food security can be measured by comparing regional nutritional requirements with availability of dietary calories per head. In Bangladesh, there is considerable regional variation in food security. At the household level, food security is measured by actual dietary intake of all household members using household income and expenditure surveys (Kashem and Faroque A., 2011). At the household level, food security is dependent on a household's access to enough food (Kashem and Faroque A., 2011). Thus at the household level, food security is closely linked with the issue of poverty, access, sufficiency, vulnerability and sustainability.

Despite progress in reduction of poverty level and growth of food production, widespread hunger exists in Bangladesh because of the increasing population pressure, and the lack of purchasing power among the ultra poor ((Kashem and Faroque A., 2011). Many poor and vulnerable households, whether food producers or not, do not have food security because they are unable to afford a minimum basket of food items through their own food production, cash income, market purchases and other resources necessary to acquire safe and nutritious food (NFPPA, 2008-2015). Adulteration of food is major threat to quality aspect of food security in Bangladesh. The fact that women eat last and eat least reflects an unequal

distribution within the household (NFPPA, 2008-2015). According to the Global Food Security Index, 2012, Bangladesh is the least food-secure among the South Asian countries. Globally, Bangladesh ranked 81<sup>st</sup> in terms of food security amongst 105 countries. At least 31% of the population of Bangladesh is still calorie deficient and 40% of children are too short for their age due to inadequate calorie intake (NDHS, 2011). While the food availability has increased in recent years, lack of access is largely responsible for over 60 million people going hungry every day. Natural disaster, lack of education and lack of awareness also contributes to food insecurity in Bangladesh. Continuing population growth, shrinking of arable land every year due to demand from housing and industries, submersion of land, salinity of water due to climate change, declining soil fertility due to over exploitation of soil and imbalanced use of fertilizers are main threats to achieving food security in Bangladesh (Faruque A. Dr., 2014).

### **Nature of Food Security**

There are two dimensions of nature of food security problem- chronic and transitory. Chronic insecurity refers to situation when individuals or groups of people suffer from food insecurity all of the time. Chronic insecurity is continuous inadequacy of food. Transitory food insecurity occurs when households face a temporary decline in access to enough food (Jean Z.2003). Food security in Bangladesh is affected by frequent natural disasters, when availability of food is temporarily or permanently disrupted.

### **State's Obligations to Ensure Right to Food**

While state is mainly responsible for ensuring the right to food, other stakeholders - individuals, families, local communities, non-governmental organizations, civil society organizations, as well as the private business sector - have responsibilities in the realization of the right to adequate food. The right to adequate food, like any other human right, imposes three types or levels of obligations on States parties: the obligations to respect, to protect and to fulfill.

#### **The obligation to respect the right to food**

States have to *respect* people's existing access to food and means of obtaining food. The obligation to *respect* existing access to adequate food requires States parties not to take any measures that result in preventing such access or suspend legislation or policies that give people access to food (e.g., social welfare legislation, nutrition-related programs). States should also regularly review their national policies and programs related to food to ensure that they effectively respect the equal right of everyone to food.

#### **The obligation to protect the right to food**

States have to protect individuals' enjoyment of the right to food against violations by third parties such as other individuals, groups, private

enterprises and other state entities, which is known as horizontal obligation (Christine B.K., 2005). For example, States should prevent third parties from destroying sources of food by, for instance, polluting land and water with hazardous industrial or agricultural products or destroying the ancestral lands of indigenous peoples to clear the way for mining, or construction of dams, highways or industrial agriculture. The obligation to protect also includes ensuring safe food in the market and for this purpose, States must establish and enforce food quality and safety standards, and ensure fair and equal market practices.

### **The obligation to fulfill the right to food**

The obligation to fulfill incorporates both an obligation to facilitate and an obligation to provide. The obligation to facilitate means the States must take proactive measures for strengthening people's access to and use of resources and means of ensuring their food security such as the implementation of agrarian reform program or minimum income regulations.

### **Progressive and Immediate Obligations**

The ICESCR permits States to achieve the full realization of the right to food progressively. Article 2 (1) of the ICESCR provides:

*Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.*

The argument for progressive realization of the economic, social and cultural rights including the right to food is mainly premised on the concept of resource constraints of the States. It means that States must make every possible and constant effort, using all available resources, to better respect, protect and fulfill the right to food. The States must realize the following four categories of obligations immediately.

#### **a. The Elimination of Discrimination**

States must immediately prohibit discrimination in access to food and to the related resources on the basis of race, colour, sex, language, age, religion, political or other opinion, national or social origin, property, birth, disability or other status, and adopt measures to eradicate discrimination on these grounds.

#### **b. Obligation to “take steps”**

While the full realization of the right to food may be achieved progressively, the following steps towards that goal must be taken within a reasonably short time. Examples of such steps are:

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- \* Assessing the state of enjoyment of the right to food, including ensuring adequate mechanisms to collect and assess relevant and suitably disaggregated data;
- \* Formulating strategies and plans, incorporating indicators, benchmarks and time bound targets,

### **c. Prohibition of Retrogressive Measures**

States should not take any measure that undermines the existing level of fulfillment of the right to food unless there are strong justifications for it.

### **d. Protection of minimum essential level of the right to food**

Under the ICESCR, there are obligations considered to be of immediate effect to meet the minimum essential levels of each of the rights, including the right to food. They are called minimum core obligations. For the right to food, States have to ensure the satisfaction of the minimum essential level required to be free from hunger, even in times of natural or other disasters.

## **Right to Food: Existing Legal Regime of Bangladesh**

### **Constitutional Obligations**

The Constitution of Bangladesh does not recognize right to food as a fundamental right. However, Article 15 provides that it shall be the fundamental responsibility of the state to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens the provision of the basic necessities of life including food. The Constitution sets rural development and agricultural revolution (Art. 16) as well as raising the level of nutrition and improvement of public health (Art. 18) as fundamental principles of State policy. The preamble to the Constitution promises that the fundamental aim of the State shall be “a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens”. Thus, it can be argued that although the constitution does not recognize right to food as a fundamental right, the spirit of the Constitution is in favor of full realization of this right. Moreover, the Constitution also recognizes right to life as a fundamental right (Art. 32) which can be argued to include right to food by way of judicial interpretation.

### **Obligations under International Law**

Bangladesh has commitments to ensure right to food under different international treaties. Bangladesh ratified the ICESCR and is a party to the other core international human right treaties that create obligations for member States to ensure right to food. By ratify in the international ICESCR Bangladesh has undertaken specific obligations to ensure right to food for its citizens. As a State party to the international instruments including

ICESCR, the obligation of Bangladesh is three-fold, i.e. to respect, to protect and fulfill the human right to food. Besides, Bangladesh has signed the Vienna Declaration and program of Action, 1993 and other international instruments, under which the Government is committed to realize right to food for all the citizens. Bangladesh is also a party to the GATT Uruguay Round Agreement, 1994 on liberalization of agricultural trade. As a signatory to the Vienna Declaration and Program of Action adopted by the world conference on Human Rights in 1993 Bangladesh, Bangladesh has expressed its commitment to implementing the DRD adopted by the UN in 1986. Bangladesh has also made commitments to cut by half the number of people suffering from hunger and malnutrition by 2015 under the world Food Summit Declaration and the UN Millennium Declaration. Bangladesh has also endorsed FAO guidelines on right to food and land tenure governance.

### **National Strategies on the Right to Food**

Laws alone are not sufficient to realize the right to food in a country. The adoption of a national strategy for the realization of the right to food is essential so that the right to food is operationalised and put into action at the local level. Participation of the affected people is key to the success of such a strategy. This implies that people need to be included in the decision making processes surrounding the right to food as this ensures that real needs are identified and effectively responded to such needs. Participation further increases the awareness around the right to food and thus empowers people to realize and claim their right to food.

According to the Special Rapporteur of UN on the Right to Food, a national strategy should establish the appropriate mechanisms that (1) utilize monitoring systems to identify emerging threats to the right to adequate food, (2) improve coordination between relevant agencies at the national, state, and local level, (3) improve accountability, with a clear allocation of responsibilities and Time frames for progressive implementation of the right to food, and (4) ensure the adequate public participation that includes the most food-insecure segments of the population.

### **Necessity for Legal Reform: Framework Law on Right to Food**

There are many gaps and inconsistencies in the existing legal regime like; absence of a rights based approach, lack of accountability, poor monitoring, no effective remedy and laws addressing different aspects without any planned approach etc. It is evident from the analysis of existing legal regime of Bangladesh that a comprehensive legal reform is essential to ensure right to food. The strategies for legal reform to implement right to food at national level include legislative intervention in three main Levels: (i) incorporation of the right into the national constitution; (ii) adoption of a framework law relating to the right to food; and (iii) a comprehensive

review of all or the most relevant sectoral laws affecting the enjoyment of the right to food for their compatibility with this human right. But considering the present context of Bangladesh, adoption of a framework law on right to food should be the priority.

Without prejudice to the importance of inclusion of right to food as a fundamental right, it can be perceived that the plea of amendment of Constitution to include right to food as a fundamental right would take time and it also depends on the advancement of other ESC right, as these rights are interdependent. Even if, the right to food is constitutionally recognized as a fundamental right, the requirement of a framework law would still be relevant, particularly for Bangladesh where the existing scheme of legislation is whimsical and lack a right based approach.

### **Need of a Rights - based Approach to right to Food**

In recent years, there has been an important shift from basic need approach to right based approach in relation to right to food. The right-based approach to food is adopted mainly due to inherent inadequacy in basic need approach, which does not create legal obligation on the states to ensure right to food. In particular, the right-based approach has become popular in view of the global food crisis and increasing number of undernourished people increased around the world.

Rights based approach to food security recognizes adequate and sustainable access to nutritious and culturally acceptable food as a human right. Recognizing all individuals are right holders, not mere beneficiaries. Making the progressive realization of the right to adequate food an obligation of the state, not a matter of choice. Introducing complaint and redress mechanisms to deal with alleged violations of the right to adequate food. Ensuring that duty bearers can be held accountable for their actions and omissions. Makes states aware of their responsibilities and assists with understanding the state's capacity to fulfill those responsibilities. Supports the avoidance of policies and actions that result in, or contribute to, violations of the enjoyment of the right to adequate food. Prioritizes the fight against hunger at national levels. Applies the following human rights principles to policies, regulations, and laws, and pro-food security actions at all levels (also known as the PANTHER) (FAO, 2006): Participation, Accountability, Non-discrimination, Transparency, Human dignity, Empowerment, Rule of law. Recognizes that all human rights are universal, indivisible, interdependent and interrelated, meaning that the right to adequate food directly relates to all other human rights, and cannot be considered in isolation of other rights.

Furthermore, a rights-based approach to ensuring adequate food is advantageous on many levels (Charlotte McClain-Nhlap). First, it introduces the well established principles in international human rights law

of nondiscrimination and equality; second, it supports a number of other basic human rights, such as the right to the highest attainable standard of health; third, it draws attention to the most vulnerable segments of society. Recognition of right to food generally entails an important question of its justiciability. Like other economic, social and cultural rights, two arguments are invoked to challenge the justiciability of the right to food. First, it is argued that the right to food and the correlative obligations of States are not clearly formulated, nor precisely defined, precluding, as a consequence, any judicial or quasi-judicial body from determining, in concrete cases whether the right to food had in fact been violated (Christophe Golay, 'The Right to Food and Access to Justice: Examples at the National, Regional and International Levels', FAO, Rome, 2009). Second, a judicial or quasi-judicial body could not exercise effective oversight of the right to food given its specific nature. But these arguments are no longer valid because the right to food and the correlative obligations of States are now clearly set forth in international law.

### **Recommendations**

I would like to humbly propose the following recommendation to ensure right to food and food security:

1. Following public consultations, amend the Constitution to entrench the right to food as a fundamental right by including it in Chapter III of the constitution
2. After public consultations, promulgate a framework law to secure the right to food.
3. Review existing legislation to ensure its compatibility with the right to food as defined in international law.
  - a. This review could be carried out by the BNHRC, in collaboration with relevant NGOs and CSOs.
  - b. The review should cover all legislation from all sectors, including agricultural legislation, land legislation, environmental legislation, labour legislation, nutrition and health legislation, the Penal Code, etc.
  - c. The review should conclude with a Plan of Action.
3. Consolidate all existing legislation on the right to food and ensure it is consistent and does not overlap.

For example, the penalties for offences such as food adulteration should be the same in all applicable legislation to avoid confusion.

4. Review policies to ensure that they are compatible with human rights and the right to food, in particular the FAO's PANTHER principles -

participation, accountability, nondiscrimination, transparency, human dignity, empowerment, and the rule of law

5. Ensure that the National Food Policy is compatible with principles of good governance such as transparency and accountability.
6. Review all institutional mechanisms for securing the right to food. Ensure that they are fit for purpose and up to date with modern standards.
7. Remedies for violation of the rights to food must be available in the framework law in order to address impunity for these violations.
8. Since food security is a multi-sectoral, issue, an integrated approach should be developed to bring together all the diverse players and stakeholders as well as to make them accountable for improving food security.

### **Conclusion**

Given the context discussed above, constitutional guarantee of right to food as fundamental human right is the primary safeguard to the protection and promotion of the right to food of the poor and vulnerable people of the country. However, full realization of right to food involves effective interaction of cross- sectoral determinants. The existing laws of Bangladesh not only fail to comply with the globally accepted standard of right to food, they are also deaf and dumb to the real cry of the people. These gaps and inconsistencies can be explained precisely by the fact that these laws were not framed, with any vision of protecting the right to food. In general, the lack of accountability in the governance and the culture of impunity have been a constant obstacle in implementation of all human rights in Bangladesh including the right to food. Therefore, it is all the more necessary at present to change the vision of the legislature so that the right to food is addressed from a holistic and rights based approach. Thus, adoption of a framework law can play a pivotal role in legal reform for implementing right to food in Bangladesh.

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