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A right denied

Jayati Ghosh, Frontline April 10-23rd, 2010

The real purpose of the draft Food Security Bill is to replace a universal system of public food distribution with a targeted system.

How serious is the United Progressive Alliance government about enacting food security legislation that gives every citizen in the country the right to adequate food? On the face of it, the government appears to be extremely serious. After all, ensuring the right to food was a major election promise of the Congress party that leads the UPA; it has been frequently mentioned in various official pronouncements of this government; and it was mentioned prominently in the latest Budget speech of the Finance Minister.

Most recently, a draft Food Security Bill that has purportedly been prepared for consideration by the Empowered Group of Ministers has been doing the rounds unofficially. While the authenticity of this document is not clear, it is nevertheless worth examining, just in case it provides any pointers to the current thinking of the government on this crucial matter.

But even a cursory examination of this supposed draft Bill suggests that it cannot be a serious document. For it has been prepared without the most elementary knowledge of what is implied by declaring food as a human right of every citizen. It, therefore, appears that this is a very preliminary draft that has not even been tempered by legal opinion within the government.

Thus, the "Preamble" declares that this is an Act "to provide statutory framework for assured food security to all citizens of India to promote their active and healthy life thereby enabling them to contribute productively to nation building". This sweeping statement is clearly not legally tenable, since none of the important terms and concepts are defined, such as "assured food security", nor is it clarified how it will be determined that citizens "contribute productively to nation building"!

The important point in this sentence, however, is that food security is to be provided to all citizens, not a particular group that can vary according to administrative decisions. Indeed, that is how it should be, because a rights-based approach cannot assign a basic human right to only a subset of the population, however defined. Since the right to food is a subset of the right to life, as clarified by the Supreme Court in several judgments, clearly it must apply to each and every Indian citizen.

Excluding the poor

However, the next sentence of the Preamble shows the real thrust of the document – in effect is a negation of the universal principle.

"The Act is also to entitle poor, vulnerable, food insecure sections of the society to provision of certain minimum quantities of foodgrains per family per month through reformed public distribution system."

In other words, the population as a whole is supposed to be given food security as a legal entitlement (although how this is to be done is not clear) but public provision of foodgrains is only for a targeted section defined as poor. The rest of the document makes it clear that the purpose is really to abandon a comprehensive and universal system of public food distribution and then replace it with a targeted system. In that system, only those defined as poor by State governments on the basis of total numbers to be determined by the Centre, will have access to publicly distributed foodgrains, presumably at a subsidised rate.

The document that I have seen (which hopefully is not anything like the final version) makes further exclusions even within this targeted group. The exclusions are breathtaking in their scope: “The provisions of this Act will not be applicable to areas affected by extremist or terrorist/naxalite activities or insurgency. Provisions of this Act may not be applicable also during periods of war/external aggression, financial emergency, etc.”

To counter such a provision, there is of course the obvious point that areas of extremist activity are typically the more backward regions in which the population is predominantly poor and hunger is widespread, so that public provision of foodgrains is particularly necessary in such areas.

But apart from that, it is difficult to see how this exclusion could be defended if it is challenged in a court of law. How can a resident of a so-called “area affected by extremist/naxalite activity” have less of a right to life than a resident of another part of the country? In any case, who is to decide which areas are “affected”, and at what point are they to be excluded? How can a basic right be negated by financial emergency? And who is to define such an emergency especially given the opacity of government finances?

The entire focus of the operational part of the proposed Act is on the targeted public distribution system [TPDS], which will provide foodgrains to households identified as living below the poverty line (BPL). The total number of such households is to be determined by the Central Ministry of Food and Public Distribution on the basis of the latest available poverty estimates notified by the Planning Commission, with such estimates remaining valid for a period of five years.

Poverty & nutrition

There are numerous problems with such targeting, of which the well-known errors of unfair exclusion and unjustified inclusion are only a part. A central problem in this particular case is that the extent of undernourishment in the country is considerably higher than the extent of income poverty as currently defined, even by the most generous estimates. All available data point to this.

For instance, the Planning Commission’s estimate of rural income poverty based on National Sample Survey 2004-05 was 28 per cent, but the same survey indicated calorie deficiency (at less than 2,200 Kcal a day) among 70 per cent of the rural population – more than double the poverty estimate. Other estimates from the National Family Health Surveys point to widespread anaemia and low Body Mass Index among a majority of the population, especially women and children.

Therefore, equating poverty and hunger is fallacious: there may be a significant overlap, but solving the problem of widespread hunger and under-nutrition requires a more comprehensive and inclusive approach that does not remove the majority of the population from the ambit of public provision.

This approach also leads to implementation requirements, which are so inconsistent that they are laughable. Thus, the document declares that “it shall be the responsibility of the State governments to identify *without inclusion or exclusion errors* [emphasis added throughout] as per the number fixed by the... Government of India.” But this is impossible since Planning Commission estimates are based not only on surveys and, therefore, are technically random, but also on the dimension of household consumption, which can vary considerably for the same household from day to day. So these estimates cannot be used as a definitive guide to the exact number of the poor on any subsequent day. And to expect the estimates to be free of errors of exclusion or inclusion would be statistically impossible.

Further, if a State government finds its poverty estimates to be higher than those of the Central government, how can it possibly avoid errors of unfair exclusion? And who is supposed to be legally culpable if there are indeed such errors of exclusion?

Given the continuing possibility, indeed likelihood, of substantial exclusion of the hungry from the access given to BPL households, the lack of any real provision for the Above Poverty Line (APL) population is especially worrying.

There is a cursory mention of such households, which magnanimously states: “For APL families in *food-deficit States* depending upon the availability in the Central pool, the Central Ministry of Food and Public Distribution may make some allocations of foodgrains at issue prices, which will not be lower than the cost of acquisition.”

This extremely restricted and parsimonious allocation from the Centre would inflict severe damage on States such as Kerala and Tamil Nadu, which have managed to develop functioning near-universal systems of public food distribution. And this would make it far more difficult for other States to improve basic food access for all.

In any case, the Central pool of foodgrains in a system proposed by this document would tend to be extremely small and may not even exist, because the purported Bill allows State governments to replace physical provision with a system of cash transfers to those identified as poor. “Depending upon choice of State governments, instead of allocating foodgrains under the TPDS, the Ministry of Food and Public Distribution may transfer equivalent subsidy as cash grant to such State governments. ...The State governments may distribute the equivalent food subsidy in cash to identified BPL families.”

It is absurd to imagine that the systems of power, discrimination and corruption that operate to prevent the poor from access to public foodgrains would not operate at all when the strategy is straightforward cash transfer. Indeed, the likelihood of large-scale diversion and denial of foodgrains to the deserving is even greater. In any case, it is not clear if the transferred cash would actually compensate for the denial of actual foodgrains.

Destroying the PDS

Most of all, the basic purpose of the public procurement and distribution system, of providing an incentive price to farmers for foodgrain production and ensuring the distribution of such food to deficit areas, would be completely lost in a system of cash transfers, which would in effect, destroy the PDS rather than reform and strengthen it genuinely.

Compared to these massive flaws, the other problems in the purported draft Bill – such as the reduction of the amount of foodgrains to be provided from 35 kg to 25 kg a month to a household; the elimination of special provision to the poorest in the Antyodaya and Annapurna schemes; the lack of any specification of the price at which such foodgrains are to be made available, and so on – seem to be minor, troubling though they are. That is because the kind of legislation described in this document is so far off the track that it would be the opposite of a genuine right to food legislation.

Clearly, if a new law is to promote food security instead of creating more food insecurity, it has to start from completely different principles and be based on a universal rather than a particularistic principle. So it is devoutly to be hoped that the document critiqued here bears no relation to the actual draft Bill being considered by the government.