



## RIGHT TO FOOD AND IMPACT OF TRIPS AGREEMENT ON FOOD SECURITY: A CRITIQUE

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### ARTICLE INFO

#### Article History:

Received 05<sup>th</sup> September, 2017  
Received in revised form  
18<sup>th</sup> October, 2017  
Accepted 26<sup>th</sup> November, 2017  
Published online 30<sup>th</sup> December, 2017

#### Key Words:

Food Security,  
Trips, Agriculture Innovation,  
Challenges and Threats.

### ABSTRACT

In this paper analyzes a number of issues arising in the context of the direct and indirect relationship between Intellectual Property Rights and Food Security. The Royal society report, Genetically Modification plant for food, concluded that the use of genetically modified (GM) plant potentially offered benefit in Agriculture practice, food equality nutrition and health, but there were several aspects of Genetically Modified technology which required further consideration. We recognize that there is public concern about Genetically Modified technology, particularly with respect to the safety of G.M. food for human consumption and access to food to the Human and to the possible effect of the technology on the environment. The right to food is a human right recognized under national and international law which protects the right of people to access food and feed them self either by producing their food or by purchasing it. As presented in this paper, when we have been observed on system of agricultural innovation at National and International level. A solution is needed and needful action will be required. This paper argues that system failed to due to a lack of connection among the various components of the system. Therefore Intellectual Property law, policy, practice and management serve in order to secure the human rights of Right to Food.

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**Citation:** Ganapati Tippanna. 2017. "Right to food and impact of trips agreement on food security: A critique", *International Journal of Development Research*, 7, (12), 17864-17867.

## INTRODUCTION

The right to food can be seen at least three different perspectives firstly, from a jurisprudential perspective, secondly, the right can be analyzed and appreciated from an international perspective of human rights. Thirdly, to examine the right by locating it in the Indian constitutional scheme of fundamental rights and directive principles. The institution food policy institute in its global hunger index (GHI) ranked India at 67 amongst 81 developing countries and 2010 report revealed that there are alarmingly high levels of hunger malnutrition and starvation deaths in India. The GHI Report 2011 pointed out that there are 230 million Indians go hungry daily. Despite rapid economic growth in the last two decades India is unlikely to achieve the first millennium development Goal (MDG) of reducing the number of hungry and malnourished by half before the end of 2015. At the global level nation states rejoice their success in achieving self sufficiency in food production and ever increasing food stocks.

But, at national level the state of food security is still dismal. The responsibility of the national government, international community and civil society to pursue such policies and programmes aimed at eradicating hunger and malnutrition is being increasingly recognized and it is also pointed out that persistence of food insecurity is largely due to poverty and deprivation. The world food summit, 1996, while reaffirming the right to food of every one to have access to safe and nutritious food and the fundamental right of every one to be free from hunger, considered intolerable that more than 800 million people throughout the world and particularly in developing countries do not have enough food to meet their basic nutritional needs.<sup>1</sup>

### Meaning of Food Security

'Food security' as a concept has continuously evolved over last few decades, originally the focus was on the supply side of the food equation concentrating on adequate availability of food at the national and international level. Food security means the supply of the entitled quantity of food grains and meals specified under chapter II; of The National Food

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Security Act, 2013.<sup>2</sup> Food security as defined in the world food summit underlines this availability at all times of adequate world supplies of basic food stuffs to sustain a steady expansion of food consumption and to offset fluctuation in production and prices. Following the success of the green revolution, which helped the increase food production (Food availability) but did not result in substantial reductions in poverty and level of malnutrition, it was recognized that availability does not assure “access”. In 1983, FAO expanded its concept of food security to include both ‘physical and economic access’ to food supply ensuring that all people at all times have both physical and economic access to the basic food that they need.<sup>3</sup> Food and nutrition security (FNS) in addition to the three pillars already discussed i.e., “availability” “Access” and “utilization”/ “Absorption”, the FAO 2002 definition includes another element “stability” which refers to the temporal dimension of food security i.e., the time frame over which food security is being considered. FAO expanded the definition in 2002 as follows. Food security is a situation that exists when all people at all times, have physical, social and economic access to sufficient, safe and nutritious food that meets their dietary needs and preferences for an active and healthy life”.<sup>4</sup>

### Concept of Right to Food

Art 47 of the constitution, inter alia, provides 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 as among its primary duties. The Universal Declaration of Human Rights and International Covenant on Economic, Social and Cultural Rights, to which India is a signatory, also cast responsibilities on state parties to the right of every one to adequate food. In pursuance of the constitutional and the international convention obligation, providing food security has been focus of the Governments planning and policy. Food security means availability of sufficient food grains to meet the domestic demand as well as access, at the individual level, to adequate quantities of food at affordable prices. Attainment of self-sufficient in food grains production at the national level has been one of the major achievements of the country. In order to address the issue of the security at the household level, the Government is implementing the Targeted Public Distribution System under which subsidized food grains are provided to the Below Poverty Line<sup>5</sup>.

### Nature of Trips

The agreements on trade related aspects of intellectual property rights (TRIPS) agreements, binding on all the members of the WTO. The TRIPS had been included in the multi-lateral trade talks for the first time. It requires the member nations to establish a minimum level of intellectual property right protection in their national laws. Failure to comply with these minimum requirements will expose the defaulting states to the enforcement provisions of the WTO.<sup>6</sup> Therefore, the main object of the TRIPS is to lay down standards concerning the availability, scope and use of IPR more particularly copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits, protection of undisclosed information and control of multi-competitive practices in contractual licenses. The basic principles followed by TRIPS are national treatment and most favoured nation treatment.<sup>7</sup>

The TRIPS agreement has been divided into seven parts and containing 72 articles, Part I sets forth the general principles and objectives of TRIPS. Part II provides the minimum standards each country must provide for various forms of intellectual property. Part III of TRIPS establishes extensive procedures to ensure that IPR are enforced at, and within each member states borders. Part IV sets forth the requirement of the acquisition integrates. TRIPS into the dispute prevention and settlement mechanism given additional time to implement the agreements. As on January 1, 1996 Agreement India is a signatory to it and that is the reason why it has amended some of the laws relating to patents and copyright. Apart from bringing in new legislations on trademarks, designs and geographical indications in recent times, to however, for treaty obligation, under the TRIPS agreements.<sup>8</sup>

### Law relating to right to Food

The U.N. specialized agencies are also concerned with the promotion, in a broad sense of economic and social rights. For example, the food and agricultural organization (FAO) is helping the states to combat undernourishment and starvation. These activities were carried on long before and quite independently of the adoption of the U.N. covenants in 1966 but nevertheless they are directly relevant to the obligations assumed by states in article 11 of the international covenant on economic, social and cultural rights, which recognized the right of everyone to an adequate standard of living including adequate food, clothing and housing, and the fundamental right of everyone to be free from hunger. Article 11 (2) of the covenant on economic, social and cultural rights, further lays down that “the state parties to the present covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation the measures, including specific programmes, which are needed.

- To improve methods of production, conservation and distribution food by making full use of technical and scientific knowledge’s by disseminating knowledge of two principles of nutrition and by developing or reforming agrarian system in such a way as to achieve the most efficient development and utilization of natural resources;
- Taking into account for problem of both good importing and food exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

The UPA I government has introduced food safety and standards Act and UPA II government has introduced the food safety and standard Rules 2011, and there is little agreement yet over who qualifies as poor enough to receive subsidized food grain.<sup>9</sup>

### Food security governance in India

**The right to food (Quarterly of safety and security) Act:** The union government draft of the right to food (guarantee of safety and security) Act, insists on the physical, economic and social right of all citizens to have access to safe and nutritious food, constituent with an adequate diet necessary to lead an active and healthy life with dignity. The proposal law offers a quantity of cereal of a modest cost each month to a broad range of beneficiaries in principle all those living under the

poverty line and a range of others. The recognition of a right to food through this act is a landmark measure and deserves great credit. However, there is an imbalance between the great vision expressed by the Act in principle and the narrow means to achieve it in practice. There is distinction between legislations seeking to promote to protect a basic right and the strategy of doing so. The proposed act will help further the fulfillment of the right but will not by itself achieve it and unlikely that any one piece of legislation would do so.

### **The food safety and standards Act, 2006**

The safety and standards authority of India has been established under the food safety and standards Act, 2006, as a body for laying down science based standards for articles of food and regularizing, manufacturing, processing, distribution, sale and import of food so as to ensure safe and wholesome food for human consumption. Apart from this Act there are certain regulations covering but hosts of things associated with food safety and security they are:

- The food safety and standards regulations, 2011.
- FSS (Licensing and Registration of Food Business) Regulation, 2011.
- FFS (Packaging and labeling) Regulation, 2011.
- FSS (Food products standard and additives) Regulation, 2011.
- FSS (Prohibition and restriction on sale) Regulation, 2011.
- FSS (Laboratory and sampling analysis) Regulation, 2011.

**Constitutional mandate:** The constitution of India, part III, Art 21 provides for protection of life and personal liberty no person shall be deprived of his life or personal liberty except to producer established by law according to the Supreme Court of India 'Right to life guaranteed in any civilized society implies the right to food water, decent environment, education, medical care and shelter'.

**Supreme Court Ruling:** The decision of the Supreme Court of India in both *Kishan Pattnayak and Another v/s State of Orissa* and *People's Union for Civil Liberties v/s Union of India* and others has recognized the "Risk to Food" under the "Right to life" stipulated in Article 21 of the Indian constitution with reference to the Directive principles of state policy concerning nutrition, contained in Article 47. The court also appointed the commissioner to monitor the implementation of the intention orders, passed in this case. As the right to food, has been recognized as constitutional right, the constitutional court has the power of judicial review over government schemes/ policies in this concern. This means that the court may declare certain laws/schemes/policies as unconstitutional, if they violate the right to food.<sup>10</sup>

**State obligation in respect of right to food:** Anyone contemplating the capriciousness with which calamity is imposed on innocent human beings unlucky enough to be poor in those geographic localities subject to the vagaries of nature. Such as drought, flood and famines and human blunder would be tempted to turn to law for help. Some jurists have tried to establish that international law guarantees life to these victims of geography domestic politics and world tribalism. Thus, recognition of right to food as a human right, and that right can be asserted against governments by their citizens, by aliens or

by other governments. Modern claim for a right to food in international law, as already pointed out, stems from Article 11 of the ICESCR and according to Article 2 obligations corresponding to Article 11 (1) are to be achieved of each state taking '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 for full realization of rights recognized in the present covenant by all appropriate means, including particularly by adoption of legislative measures.'<sup>11</sup> During 1997 the violations of economic, social and cultural rights in general and the right to food in particular through Maastricht guidelines so that the right to food can be regarded as fully sustainable. The general comment 12, the right to food guidelines, 2004 and the optional protocol to the covenant on economic, social and cultural rights, 2008 provides victims of violations of the right to food access to justice at national, regional and international level.<sup>12</sup>

### **Impact of TRIPS agreements on food Security**

In view of increasing population all over the world, increase in agriculture production is an utter need. It is possible only through research in the field of agriculture and creation of new varieties of plants along with protection to the inventors/scientists. Creation of higher yield of food grains, pulses, seeds and fruits of all varieties by scientific research involves investment of many labour and intellectual efforts. This is why the new plant varieties are put under the list of intellectual property. The person or organizations which produce such varieties are rewarded either by granting them patent rights or by an effective sui generis system. The sui generis in Latin means of its own kind or class or unique or peculiar. The term is used in intellectual property law to describe a regime designed to protect rights that fall outside the traditional patent, trademark, copyright, and trade secret doctrine. The Indian government has adopted sui generis legislation to give protection to breeders of new varieties of plants in conformity with TRIPS agreement. The provisions of plants varieties and Farmers Rights Act, 2001, protects the rights of farmers to save, use, sow, resow, exchange share or sell his farm produce of a variety protected under the Act. However, a farmer is not entitled to such right where the sale is for the purpose of reproduction under the commercial marketing arrangement.<sup>13</sup> There is no easy way to identify the policy, economic and legal linkages between food security as a goal and intellectual property rights (IPRs) as an instrument to promote and enhance human creativity and overall social well being. But connections do exist food security is part of the basic human right to food, broadly defined as timely access to sufficient and nutritious food. It is inextricably linked to the right to health, discussed in an earlier chapter. It is linked to intellectual property (IP) in as much as plant variety to genetic resources, biodiversity components and biotechnological process, may be limiting the possibilities of cultivators to freely grow certain crops, and of people to consume resulting agricultural products.

Linkages may also be found in the overall social goals of distinct, long established legal regime including those protecting human rights specifically in regard to the right to food and intellectual property rights. While pursuing different specific objectives, these regimes should in theory, be complementary in advancing human welfare and development from a strict legal perspective. Intellectual property rights

should in no way undermine a very basic human right on which life literally depends seeds and to genetic resources in general. Intellectual property rights may affect the accessibility and availability of a high number of agricultural products. This is specifically the case with IPRs such as patents which allows the rights holder to prevent third parties from commercial exploitation of the exclusive rights as defined in the patent claims.<sup>14</sup> Intellectual property protection of technologies including biotechnology may also signify that countries and their communities especially those of technologically disadvantaged nations are unable to enhance their agriculture process through appropriate application of these technologies. Private and public research sector may meanwhile be affected by legal restrictions on the use of certain technologies, this reducing options for agricultural development. This is even more serious in a context where, increasingly, the relationship between appropriate food intake and health has become apparent in both developed and developing countries.<sup>15</sup>

### Conclusion

India is going through a phenomenon of knowledge society influencing the information society, the industrial society and the agricultural society through innovation and value addition, India while working on intellectual property for economic development should also to built the values based on our civilization heritage in the evaluation of our society. Legal community must also play the balancing role, so that our intellectual property, growth can continue to be beneficial to our people and nation, free from providing vested interest industrial developed country are trying to make laws and treaties to protect and promote their own national interest and priorities. India should work for legal situation even in industrial sector with ethics.

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