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Right to Food in Brazil in Comparison to India

BIPASHA GUPTA¹

ABSTRACT

This study compares and contrasts the constitutional approaches to guaranteeing the right to food in India and Brazil. An examination of how international law has influenced the terminology and meaning of the constitutional right, beginning with India, will be included in this analysis. It will examine how both countries that have a constitutional right to food have construed and executed the right's justiciability. Because international legal principles are intrinsically linked to the right to food.

I. INTRODUCTION

Hunger is among the world's most serious hazards to public health. The Green Revolution has dramatically expanded agricultural production in the United States and around the world in the last six decades, with average yearly food levels of production capable of sustaining twelve billion people. Despite advancements in agricultural productivity, over one billion of people, the vast number of whom reside in emerging economies, still lack nutrition. Certainly, a lack of appropriate food security is the primary cause of illness-related early death around the world.

The International Covenant on Economic, Social, and Cultural Rights (ICESCR), which gives the holder the right to food, was developed by the United Nations in 1966. Despite being a party to the treaty to the ICESCR, the United States has never approved it. Furthermore, despite the fact that the majority of countries have the right to food, the United States has never had a constitutionally guaranteed right of it. Twenty-one countries have specifically included the right to food in their constitutions, all of which are members to the ICESCR.

In India, when it heard an objection to state inaction, the Supreme Court agreed to hear a suit premised on the more fundamental issue of constitutional protections, illustrating a manner wherein the right to food is not inherently justiciable. The Supreme Court of India was likely

¹ Author is a student at Christ University, New Delhi, India.

referring to grassroots organisations that campaigned hard for government programmes to supply food in schools and during famines to be enforced and strengthened.²

Brazilians look at it differently. As part of the individual right to a minimum pay, Brazil's constitution includes a right to sufficient nutrition. This anticipates a genuine right to a decent living, which includes the right to food. People in Brazil rarely have power to protest the government's failure to guarantee this right. Brazil's right to food is largely enforced by huge government initiatives, and the country has implemented some of the most comprehensive steps to eradicate hunger.

II. THE RIGHT TO FOOD IN INDIA AND BRAZIL

The fundamental safeguards for the right to food in India and Brazil will be compared and contrasted in this section. However South Africa gives the best support for the right by allowing residents to file a lawsuit for intruding on their right to food on an ad hoc basis.³ In this regard, South Africa is at the far end of the enforceability spectrum for the right to food. India is closer to the middle of the spectrum, allowing certain right-wing cases but generally prohibiting individual right enforcement. Brazil provides individuals even less ability to enforce the right, but as will be demonstrated, through its Fome Zero anti-hunger programme, it has made some of the most significant efforts to preserve the right to food.

(A) India

The manner the Indian constitution separates "directive principles from fundamental rights" is one of its distinguishing features. The fundamental rights part covers the entire constitution, while the directive principles part covers part IV. The right to appropriate shelter, food, health services, free education, the encouragement of animal husbandry, the conservation of forests, the preservation of antiquities, and many more financial and other aims of the government are all covered by directive principles.⁴ Directive principles are clearly non-justiciable, as stated in article 37 of Part IV. Fundamental rights comprise a wide range of civil, administrative, social, and cultural rights that are separate from directive principles to various degrees.

The constitutional right to food is a directive concept enshrined in **Article 47 of Part IV** of the constitution. Article 47 provides that:

² Sinha, Manoj Kumar. "RIGHT TO FOOD: INTERNATIONAL AND NATIONAL PERSPECTIVES." *Journal of the Indian Law Institute*, vol. 56, no. 1, Indian Law Institute, 2014, pp. 47–61.

³ Drèze, Jean. "Democracy and Right to Food." *Economic and Political Weekly*, vol. 39, no. 17, Economic and Political Weekly, 2004, pp. 1723–31.

⁴ Krishnan, Preethi, and Mangala Subramaniam. "Understanding the State: Right to Food Campaign in India." *The Global South*, vol. 8, no. 2, Indiana University Press, 2014, pp. 101–18.

“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 and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”⁵

While the right to food is not justiciable in and of itself, a class of plaintiffs has been successful in bringing a lawsuit under article 21, which is part III of the fundamental rights. The case was brought by the Right To Food Campaign, an activist alliance that is now known as the Right To Food Campaign. Case number three: The Right to Food Campaign Case was the result of unique circumstances and government pressures, and it is now widely considered an outlier in the realm of directive principle justiciability.

Despite having some of the world's worst poverty and hunger crises, India had a particularly difficult year in 2001. Many years of catastrophe and droughts in Rajasthan resulted in an increase in starving deaths, despite the fact that a number of food and famine relief initiatives were supposed to help. The People's Union for Civil Liberties (PUCL) filed a lawsuit in 2001, requesting that the Famine Code be enforced, a law that allows reserved food grain inventories to be released in times of famine.

The case was based on a writ petition that was fought for years before the court imposed injunctive relief in 2003, directing the state and national governments to implement positive initiatives such as:

1. For a period of 90 days, the Famine Code should be implemented.
2. The grain allocation for the food for work programme should be quadrupled, and financial assistance for the programme should be increased
3. Ration shop licensees shall remain open and provide grain to low-income families at the stipulated price.
4. Publicity should be made to the rights of low-income households to grain
5. All people who are unable to sustain themselves (elders, widows, and crippled adults) will be given an Antyodaya Anna Yozana ration card for free grain.
6. The noon meal scheme should be gradually implemented in schools by the federal government and state governments.

⁵ The Constitution of India, 1950

In the case of the RTF, it's worth noting that it was conducted by a well-organized and effective grassroots coalition of organisations. Some scholars consider the case as an outlier, referring out that political pressure appears to be the most likely source of the Indian Constitutional Court's change of heart.⁶ Though this casts doubt on the right to food's future justiciability, the decision does provide a precedent for utilising fundamental rights as a justification for deprivations of directive principles rights.

(B) Brazil

Brazil, like India, has an incredibly long constitution. Brazil has had seven constitutions since its colonial invaders left over 200 years ago. The current constitution was drafted during a two-year period by the Constitutional Congress in 1988, following twenty-four years of harsh military administration. The 1988 constitution protects a multitude of social, economic, and cultural rights, therefore it's not surprise that international law is mentioned explicitly in the document's preamble. In so far as it is guaranteed within the right to a subsistence wages, Brazil defends the right to food as a constitutional right:

The foregoing are rights of city and rural labourers, in addition to any others aiming to change their social environment: IV a national minimum wage capable of meeting their basic necessities as well as those of their households with housing, meal, education, health, leisure, clothing, hygiene, transportation, and social security, with regular intervals improvements to maintain its disposable income, and that it was forbidden to bind it for any intent.

If juxtaposed to the ICESCR and other countries' explicit, stand-alone sections, Brazil's inclusion of the right to food within the right to a minimum salary appears to downplay the significance of the right.⁷ In another light, the inclusion of the right to food in the right to a minimum wage could be seen as highlighting the right to food and giving greater scope to employment rights, which are already highly regarded rights.

Suits alleging unlawful violation of a person's right to food are likewise barred under Brazil's constitution.

Brazil, on the other hand, has made significant attempts to give meaning to the right by establishing ambitious national initiatives aimed at eradicating or at the very least reducing hunger among its population.

⁶ SHAKEEL, ADNAN. "The Déjà-vu Of Food Security And The Right To Food In India: DEVELOPMENT IN THEORY AND PRACTICE." *World Affairs: The Journal of International Issues*, vol. 21, no. 4, Kapur Surya Foundation, 2017, pp. 82–97.

⁷ Fish, Warren R. "Changing Food Use Patterns in Brazil." *Luso-Brazilian Review*, vol. 15, no. 1, University of Wisconsin Press, 1978, pp. 69–89.

Former Brazilian President Luiz Inácio Lula da Silva (nicknamed Lula) campaigned to abolish hunger in the country by the end of his first term in office. Following his election, Lula pushed for the launch of the Fome Zero ("zero hunger") programme, which aims to eradicate poverty and hunger. The Fome Zero initiative openly bases its authority and objectives on the constitutional right to food.⁸ The Ministry for Social Justice, which was just established, oversees the initiative. A public forum named the National Food Security Council, in addition to the Ministry of Social Justice and the Special Ministry for Food Security and Combating Hunger, intends to incorporate public input into the administration of the Fome Zero initiative. The redesign of the Bolsa Escola programme, which offered meals and other aid to children attending public schools, is one of the Fome Zero program's repercussions. This programme, now known as Bolsa Familia, has expanded its ability to provide direct assistance to families in contrast to the meals provided to students attending public school.⁹ The Carta Alimentação gives direct financial rewards in the form of plastic money to individuals in dire need, with funds available only for food purchases.

III. ANALYSIS

Two important elements emerge when comparing the two constitutional methods to addressing hunger. On the one hand, there is a framework in place to guarantee the constitutional right to food by making it justiciable for citizens who claim the government has violated their rights. Even though most Americans are unfamiliar with the concept of having standing for social, economic, and cultural rights, this method generally conforms to western concepts of standing for constitutional claims. On the other hand, as Brazil and India have showed, there is widespread opposition to assigning standing to such rights.¹⁰ The right to food, as well as other social, economic, and cultural rights, are nonjusticiable under this approach, and function more as recommendations or principles to be followed. This approach demonstrates a level of confidence with allowing legislature and the executive authorities to protect certain constitutional rights. Or, if not that, it at least demonstrates dissatisfaction with courts as custodians of these rights.

⁸ Daniela Trejos Vargas, XIX. Brazil - The Reintroduction of a Democratic State and the Liberalization of a Previously Closed Economy, 13 Fla. J. Int'l L. 125,126 (2000).

⁹ Jerome A. Singh, Michelle Govender & Nilam Reddy, South Africa a Decade After Apartheid: Realizing Health Through Human Rights, 12 Geo. J. on Poverty L. & Pol'y 355, 378(2005).

¹⁰ Khera, Reetika. "“Right to Food ’Act: Beyond Cheap Promises.” *Economic and Political Weekly*, vol. 44, no. 29, Economic and Political Weekly, 2009, pp. 40–44.

While it may be tempting to praise one technique over the other, determining which is greater in an objective sense is challenging.¹¹ While many academics believe that explicit protection and justiciability is the best constitutional method for safeguarding the kinds of rights derived from the ICESCR, the superiority of such an approach is predicated on the presence of many governance institutions and facts which may not manifest in any given country.

Both of the countries examined in this research have large government-run hunger-relief programmes. Brazil has made the most headway in decreasing hunger, with India coming in second. In general, Brazil's strategy indicates faith in the effectiveness of legislative initiatives to eliminate hunger (or to use a long overdue pun it has put its money where its mouth is). Brazil's decision to invest a substantial amount of money on anti-hunger programmes is maybe more significant. Because of this political and monetary commitment, as well as low corruption and effectual aid distribution procedures, the initiatives have shown to be highly effective in alleviating hunger. The justiciability of the right to food may be substantially eclipsed by the context of political capacity to effectively efficiently address the problem of hunger, according to Brazil's strategy.

India acts as a counterweight to Brazil's model in many aspects. Notwithstanding the prevalence of several initiatives targeted at decreasing hunger, the court in the Right To Food Cases noted that they would be ineffectual from even the most primitive level, owing to mismanagement, bribery, and a lack of political will and commitment of municipal and state governments. Nevertheless, it appears likely that the court took the exceptional step of permitting the complaint based on a stretched reading of Article 21 because the government had failed miserably to carry out the programmes it had in place. While it is commendable that the Hon'ble Supreme Court stepped in where local authorities had failed, there is a growing expectation that Indian courts will not be called upon to intervene in future government programmes.

IV. CONCLUSION

After examining how the right to food has been adopted and contrasting these methods to the actual deprivations caused by starvation, it is hard to ascertain that the constitutional right to food has made a significant difference in the amount of hunger-related suffering. Rather, the economic system's health is the most important factor of food access, followed by the government's commitment to reducing poverty. If there is a ray of light, it is in the momentum

¹¹ Hospes, Otto. "Overcoming Barriers to the Implementation of the Right to Food." *European Food and Feed Law Review*, vol. 3, no. 4, Lexxion Verlagsgesellschaft mbH, 2008, pp. 246–61.

that Brazil's and India's constitutional rights to food have produced. There has been a greater awareness of the Right to Food in both countries, and it has set a precedent for future endeavours, causing governments to take more effective efforts. Greater efforts to solve the challenges may be undertaken if right to food issues are better integrated into these countries' political discussions.

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