Right to Food Act: Beyond Cheap Promises

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This article attempts to flag some of the issues that are likely to come up in the debate on the Right to Food Act in the coming months. It is important to ensure that this debate focuses on the substantive issues. In the run-up to the enactment of the National Rural Employment Guarantee Act, the debate was somewhat derailed by a loud anti-NREGA lobby, particularly vocal in the business press. Hopefully, the debate on the RTF Act will be more productive. Politically, the main challenge is to ensure that the Act is not trivialised, by reducing it to the electoral promise of "25 kgs at Rs 3/kg for BPI, households". The ultimate shape of the RTF Act will depend on whether the government merely seeks to gain "political capital" from it, or whether it is guided by its responsibility to the people of this country.

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1 Introduction

that the United Progressive Alliance government was preparing a National Food Security Bill, confirmed that the Congress Party will deliver on its election promise of providing 25 kg of foodgrains per month, at Rs 3/kg, to every poor family.¹

The Congress' eagerness to make good on this promise can be traced to the widely-held view that the National Rural Employment Guarantee Act (NREGA) played an important role in the victory of the party in the recent elections. Another reason could be the electoral success of those state governments where similar provisions of inexpensive foodgrains are already in place, indicating that there is "political capital" to be gained through such policies.

Whatever the reasons behind the Congress' willingness to give priority to its food security promises, it provides an excellent opportunity to put in place a comprehensive Right to Food Act (hereafter, RTF Act) that would help to deal with the country's dismal record on nutrition and health. India's food security and nutrition indicators are among the worst in the world. Worse, some of these indicators have barely improved in recent years. For instance, the proportion of underweight children was much the same in 1998-99 and 2005-06, according to National Family Survey (NFHS) data.

What shape should a RTF Act take? Some believe that the provision of cheap foodgrains alone would be adequate.² The first thing to note is that the right to food goes beyond the provision of subsidised cereals. The right to food is about ensuring freedom from hunger, malnutrition and other deprivations associated with the lack of food. Viewed in this manner, it is obvious that the RTF Act would, along with providing access to cheap grain, have

to create other entitlements that guarantee good nutrition. This requires not only nutritious food (including a balanced intake of calories, protein, fats and essential micronutrients) but also attention to childcare, clean water, hygiene, basic healthcare and so on. Moreover, even with a narrow focus on food alone, a RTF Act would have to link with a wide range of issues, including, for instance, access to land, water and forests, which play an important role in people's livelihoods. Clearly, this goes beyond the sort of legislation that is being contemplated at the moment, and requires political will and vision of a kind that is sorely lacking. Nevertheless, it is worth expanding the boundaries of current proposals, and trying to create a political environment for an effective RTF Act.3

A Possible Framework

The RTF Act is a complex legislation that will have an impact on a wide section of the population with diverse needs, and therefore different interventions are required. For instance, for infants, the right to food requires focusing on breastfeeding, maternal health, safe drinking water, etc; in the case of vulnerable groups such as the aged, disabled and widows, pensions are needed along with the Public Distribution System (PDS), whereas for the urban destitute, community kitchens will be required to complement the PDS. At the very least the RTF Act would have to build on four major types of interventions: nutrition schemes for children, the PDS, social assistance for vulnerable groups (e g, pensions, Antyodaya Anna Yojana) and other interventions. These should cover not only rural areas but also urban areas or at least urban slums. In rural areas, these interventions are best seen as complementary to the NREGA.

There are several reasons for children to have the first claim under the RTF Act. Research on nutrition has unambiguously demonstrated that it is in the o-3 age group that nutritional interventions are most required to ensure that subsequent growth of the child is adequate. In terms of the new law, this would imply strengthening the Integrated Child Development

Services (ICDS), especially the services provided for children in the o-3 age group.⁵ "Infant and young child feeding" services may need to be included under the ICDS. These services would include breastfeeding counselling and support.⁶ Maternity entitlements (including income support for child birth) are important to address the abysmal levels of undernutrition in the country.

Given the vulnerabilities faced by very large sections of the rural (and to a lesser extent, urban) poor, the PDS plays an important role in the realisation of the right to food. A universal PDS should form the basis of the RTF Act, with "expanded" entitlements for those who are poor and vulnerable. Insofar as the right to food is about nourishment, the PDS should also provide access to subsidised pulses and oil to at least those with expanded entitlements. A universal PDs supplying cereals, pulses and oil is necessary because in spite of improvements in incomes, frequent fluctuations in earnings continue to drive households back into poverty. Moreover, improvements in nutrition indicators have been altogether unsatisfactory at least partly because the Indian diet remains cereal dominated.

Special attention needs to be given to the food-insecure in urban areas. This would require adequate coverage of urban households under the PDS. The Act should have a provision for community kitchens for those who may not be able to access PDS entitlements (e g, migrants without ration cards, homeless, and other destitute).

The RTF Act would have to include other interventions such as pensions for the aged and disabled and for widows. These vulnerable groups have little recourse to other sources of cash. Pension schemes for such groups are already in place. Available evidence suggests that these (relatively small) cash transfers serve as a lifeline for many of its beneficiaries, allowing them to take care of their special needs (e g, essential health services).

The Act would also need to include provisions that would come into effect when faced with emergencies and disasters (such as floods, earthquakes, riots, etc). For this community kitchens for immediate relief can be combined with some medium-term measures.

The sections that follow list some of the issues that require further research and debate if one works within this broad framework.

2 Some Legal Issues

From the legal perspective, there is a strong case for the enactment of a RTF Act. First, the Constitution which guarantees the fundamental "right to life" (Article 21), has been interpreted several times to include the right to food (Dreze 2004). Further, Article 47 of the Directive Principles directs the state to "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". Second, India is a signatory to various international treaties and covenant on these issues.7 Third, and most importantly, the Supreme Court has issued a series of orders pertaining to nutrition-related schemes in the "right to food case" (People's Union for Civil Liberties vs the Union of India and Others, Civil Writ Petition 196/2001). In fact, it would not be incorrect to say that it is the right to food case that has prepared the ground for the framing of a right to food law in the country.

Of all the legal obligations of the government to enact a Right to Food law, the right to food case in the Supreme Court fleshes out the issues in the greatest detail. Any right to food law would, at the very least, have to incorporate the interim orders issued in this case. Keeping these orders out of the ambit of the proposed law would be in direct conflict with the Supreme Court's orders. The enactment of a RTF Act should be seen as an opportunity to enshrine those orders in law.

Briefly, the right to food case began in the context of a drought in Rajasthan in 2001, when the government of India was holding massive food stocks (60 million tonnes at one point) while the rural population was enduring severe hardships. In this context, the petitioner sought relief for the affected population in the form of employment on public works at the minimum wage. Payment was sought to be made partly in cash and partly in kind. The Supreme Court asked the central and state governments what they were doing to combat the hunger situation in Rajasthan and elsewhere. In its response the central government

stated that it had nine nutrition-related schemes to deal with the situation. The court began to review the implementation of these schemes. Based on this, it began issuing orders instructing the central and state governments to implement nutrition-related schemes in letter and spirit, effectively turning the benefits under these schemes into legal entitlements.

The effect of the interim orders has been to galvanise public opinion and action in support for the nutrition-related schemes. The case of the Mid-Day Meal Scheme (MDMS) is illustrative. 11 The MDMS was initiated in 1995, but most states were providing only monthly "dry rations" until the Court intervened. On 28 November 2002 the Supreme Court ordered that cooked meals be provided to children. Activists and the media were then able to use мрмs-related orders to press state governments into action.12 The result of this combination of legal intervention and public action is that 140 million school-going children enjoy a cooked meal daily as a matter of routine. The impressive improvement in the coverage and implementation is not confined to the MDMS.13 The RTF Act is likely to play a similar role acting as a source of bargaining power and a tool for action.

3 Some Contentious Issues

This section raises some of the difficult questions that will have to be answered if one accepts the broad contours for the RTF act outlined in Section 1. The three issues discussed below are: the PDS, the financial implications of the proposed Act and the grievance redressal mechanisms.

3.1 Public Distribution System

The PDS is likely to be the most debated issue. As far as the PDS is concerned there are four difficult questions: first, should the PDS be universal or targeted? Second, if it is targeted, what proportion of households should get Below Poverty Line (BPL) cards and how should these households be identified? The third question relates to the entitlements of households covered by the PDS. Finally, more attention needs to be given to the form that the PDS takes in urban areas. Before discussing these issues, it would be useful to recapitulate the changes in the PDS over the past 15 years.

Prior to 1997 the PDS was supposed to be universal although household survey data suggest that it was, in practice, very patchy. In 1997, the Targeted PDS (TPDS) was introduced, with different entitlements for "Below Poverty Line" (BPL) households and "Above Poverty Line" (APL) households. In 2000-01, APL households were effectively driven out of the PDS by raising the APL issue price.

India's experience with the TPDS has not been encouraging. Leaving aside the procurement side of the PDS, the selection of BPL households has been fraught with difficulties. The criteria used for identification have been widely debated (Swaminathan and Mishra (2001), Sundaram (2003), Hirway (2003), and Khera (2008).

Attempts at revision and fine-tuning of the selection procedures have yet to yield a satisfactory outcome. Second, even if satisfactory formulae could have been devised, there has been a lot of arbitrariness and manipulation in the implementation of the BPL surveys. Finally, even if the perfect selection criteria were implemented honestly, it would still be inadequate. This is because poverty is not a static phenomenon. Especially in rural areas, households can fall into, and climb out of, poverty at any time. BPL surveys, on the other hand, fix the status of the household as APL or BPL for a period of five years. The result is that the TPDs continues to suffer from large inclusion and exclusion errors, whereby BPL cards are held by the nonpoor (as identified by the government's own criterion) and many poor households have APL cards.

A universal PDS is appealing for several reasons. The most important is the equity argument (Drèze and Sen 1989). This argument is attractive when discussing any government transfer, but especially so in the context of a RTF act. The "right to food" has to be a universal right. If it is not universal, exclusion errors are inevitable, no matter how sound and well implemented the targeting criteria might be. Second, the "benefits for the poor end up being poor benefits", as Amartya Sen aptly put it. When, in an attempt to target subsidies, government programmes leave out better-off households, these programmes lose that section of the population that is best placed to make the targeted

programmes work (Hirschman 1970). Third, the costs associated with targeting – financial and in terms of incorrect identification of households – are also large. Fourth, a universal PDS can go a long way in improving the financial viability of fair price shops. This, in turn, is likely to help in avoiding leakages from the PDS. Last but not least, the whole BPL approach is very divisive in sharp contrast with programmes like NREGA that create solidarity among the poor.

What should the entitlements of households from the PDS be? Currently, the central government subsidises foodgrains only, and that too only wheat and rice. Some state governments, such as Tamil Nadu, also provide dals, spices, oil and other commodities. As mentioned above, adding pulses and edible oil to PDS entitlements would help in addressing the deficiencies of the Indian cereal-dominated diet.

The addition of pulses and oil to the PDS basket will imply a substantial increase in the costs of the PDS. For these, it might be worth considering a targeted approach. Within this universal PDS, entitlements of all households need not be uniform. It is in recognition of the special needs to certain households that the Anna Antyodaya Yojana (AAY) was initiated in 2001. AAY households are currently entitled to 35 kg of foodgrains per month at Rs 2 and Rs 3 for wheat and rice, respectively. This group could be entitled to subsidised pulses (say, 5 kg at Rs 20/kg) and oil (500 grams at Rs 35/kg), in addition to grains. 15

The food insecure in urban areas may be fewer in number, but the vulnerabilities faced by them are magnified by the fact that in urban areas there is hardly any recourse to charity from neighbours, forest products, etc. Their living conditions in urban areas combined with poor access to the PDS makes them especially vulnerable. There are other issues such as the requirements for obtaining BPL cards (e.g., for migrants) that have increased exclusion errors in urban areas. For urban areas, one could consider combining a universal system with some exclusion criteria.16 There needs to be more discussion on the situation of the PDS in urban areas, coverage of BPL households, problems, etc. This should be supplemented with other interventions particularly for the homeless and destitute, such as community kitchens.

3.2 Financial Implications

One of the first questions that will (and needs to) be asked is what will this cost. The additional fiscal burden on account of the new Act will depend on whether new schemes are put in place, what those schemes will cost and whether and to what extent existing schemes are expanded.

As per the 2009-10 budget documents, the central government has budgeted Rs 8,000 crore for the MDMs; Rs 6,026 crore on the ICDS (Haq 2009); Rs 6,523 crore on "Social Security and Welfare" (includes expenditure on pension schemes); Rs 43,627 crore on food subsidy. This brings the current "food bill" to Rs 64.176 crore.

The increase in the food bill will depend crucially on the extent to which the current schemes are expanded. The existing schemes require certain improvements which would need to be built into the proposed law. More anganwadis need to be opened to ensure universal coverage, more anganwadi staff need to be appointed, their remuneration needs to brought to decent levels and several services that are currently provided only on paper need to be activated. According to one estimate, the "universalisation with quality" of the ICDS and other programmes for children under six (maternity entitlements, crèches and breastfeeding support) will require a financial commitment of Rs 30,000 crore.17

Another big item on the food bill could be a universal PDS. As a first approximation, one can calculate the implicit income transfer associated with PDS entitlements as the difference between market price and issue price, multiplied by quantity. The cost, on the other hand, can be calculated as the difference between the so-called "economic cost" of grain (total cost of delivering food through the Food Corporation of India) and issue price, multiplied by quantity. For instance, in the case of wheat, the proposed issue price is Rs 3/kg, the economic cost is close to Rs 14/kg, and the market price is around Rs 10/kg. Thus, a monthly household quota of 25 kgs would cost Rs 275 to the government, and be worth Rs 175 to the household. Based on similar calculations for rice (with an economic cost of about Rs 18/kg), and assuming that there are 20 crore card holders, with an overall 2:1 ratio between rice and wheat, the total cost would be around Rs 82,000 crore. For a quota of 35 kgs, the corresponding cost would be about Rs 1,15,000 crore. These calculations are illustrative, but they give a useful indication of the possible cost of a universal PDS.

One cheaper alternative would be to make an initial provision for universal PDS in the poorest 200 districts of the country.18 This would give a chance to observe the comparative performance of the universal and targeted systems before gradual universalisation elsewhere. Another option, variations of which are currently in place in some states (such as Andhra Pradesh, Chhattisgarh, Kerala and Tamil Nadu) is to universalise with reduced entitlements. Each of these states gives more BPL ration cards than subsidised by the centre and a larger subsidy per household, but households are entitled to 25 kg per month (Karat 2009). Tamil Nadu has a universal PDS whereby households are entitled to 16-20 kg per household at Re 1/kg.19 The additional costs are borne by the state governments.

Other entitlements (such as pensions and maternity benefits) which now reach only a small proportion of the population could increase the total cost of the Act substantially if coverage is expanded. Currently, the coverage is somewhat arbitrarily determined and needs expansion.²⁰

Another question relates to the centrestate cost-sharing norms. As far as existing schemes are concerned, the existing cost-sharing norms may continue. However, if new schemes are introduced under the Act similar norms will need to be devised. The national law could move towards a model whereby the centre bears the subsidy associated with universal coverage, while states bear the costs of the additional subsidy that expanded entitlements would require.

These examples are just illustrations of the costs which need to be worked out carefully. The total cost with better coverage and expanded entitlements is likely to be about twice as large as the current food bill of Rs 64,176 crore. The question is whether, in the current political and economic climate, this is feasible. Thus, the cost of the RTF act is as much a question of political feasibility as it is of economic feasibility.

It is also worth pointing out that, as far as the PDS is concerned, the Congress manifesto promise of 25 kg per month at Rs 3 per kg for BPL households is not acceptable on at least two grounds: first, it implies a reduction of the current entitlements under the PDS and second, it would also violate a Supreme Court order that fixes the entitlement at 35 kg. The real debate is whether this entitlement should be universal, and what other entitlements would be covered by the RTF Act.

3.3 Grievance Redressal

One of the major impediments for a functional PDS (in many parts of the country) is the lack of effective grievance redressal mechanisms. There is no satisfactory feedback mechanism to monitor whether and how much reaches the ration card holder after the grain is delivered to the ration dealer. This has been at the root of the diversion of foodgrains by ration dealers. Apart from dealing with this loophole, it is also important for the proposed act to include an independent body for oversight and a provision for penalties and compensation when the rights under this act are violated.

Indeed, this is one of the most important lessons to learn from the NREGA. The NREGA also has a weak (in fact, almost non-existent) grievance redressal system. Whatever provisions exist (e g, the payment of unemployment allowance when work is not provided, imposition of fines under Section 25 of the NREGA, compensation for delayed wages, obligation to make grievance redressal Rules, etc) have been ignored or undermined. The RTF Act will need to build in very specific accountability mechanisms, provision for penalties and compensation (when individual rights are violated).

Besides this, in the NREGA there is no body for oversight at the state or the national level. The Central Employment Guarantee Council, which has been vested with many powers under the NREGA, has in fact been reduced to a toothless advisory body.

In this respect, there are important lessons to learn from the experience of the Right to Information (RTI) Act. First, the

RTI Act has succeeded in giving real powers to the Central Information Commission as well as the State Information Commissions. Second, the Act itself provides a time-bound framework for disposing appeals. Third, the RTI Act has bite because it builds in strong provisions for penalties.

The RTF act should provide an oversight body at the national level, a grievance redressal mechanism that is independent and yet easily accessible to the most vulnerable and marginalised. Further, it should include strong penalties; certain infractions (e g, children falling sick upon consuming the mid-day meal, monthly ration being pilfered) should attract automatic penalties.

4 Concluding Comments

This note has attempted to flag some of the issues that are likely to come up in the debate on the RTF Act in the coming months. It is important to ensure that this debate focuses on the substantive issues. In the run-up to the enactment of NREGA, the debate was somewhat derailed by a loud anti-NREGA lobby, particularly vocal in the business press. Hopefully, the debate on the RTF Act will be more productive.

Politically, the main challenge is to ensure that the Act is not trivialised, e g, by reducing it to the electoral promise of "25 kgs at Rs 3/kg for BPL households". The ultimate shape of the RTF Act will depend on whether the government merely seeks to gain "political capital" from it, or whether it is guided by its responsibility to the people of this country.

If the concept note on the National Food Security Act (NFSA) circulated last month to state governments by the ministry of food is an indication of the government's thinking, there are grounds for concern in this respect. The note proposes that the NFSA should have BPL families as its exclusive focus group (with the number of BPL families fixed by the central government based on the latest poverty estimates). It excludes APL households from the PDS entirely. Further, the note suggests that other nutrition-related schemes such as the ICDS, мрмs and Annapoorna "may not be continued separately". Under the guise of a constructive proposal, this note is nothing short of an attack on the right to food.

$INSIGHT \equiv$

Finance Minister Pranab Mukherjee stated in his budget speech that a draft of the NFSA would be posted on the food ministry's web site "very soon". The content of this draft will help to clarify whether the government's commitment to the *aam aadmi* (common man, and presumably women and children too) goes beyond electoral rhetoric.

NOTES

- See in this context also Ranjan (2009), Himanshu (2009), Karat (2009), Mander (2009) and Patnaik (2009).
- 2 This is the impression one gets, for example, from the budget speech, where the Finance Minister appears to reduce the National Food Security Act to the fulfilment of the electoral promise of providing 25 kg of foodgrains at Rs 3/kg to all BPL households.
- 3 Drèze (2004) presents a compelling case for such a law, and a lucid enunciation of what the right to food would mean in terms of entitlements as well as how these can be given.
- 4 See Deaton and Drèze (2008), Working Group for Children Under Six (2007), and the literature cited there. Also the Maternal and Child Undernutrition series published in *The Lancet*, 2008.
- 5 Though children aged o-3 years are covered by the ICDS, the current interventions are not adequate and often not implemented. It is not easy for such young children to come daily to the anganwadi, nor is it easy to organise effective programmes based on home visits or take-home rations.
- 6 The Supreme Court order whereby Rs 2/child/day is to be spent for supplementary nutrition for children aged o-6 years should be interpreted to cover children in the age group of o-6 months, using this to fund breastfeeding counseling and support.
- 7 Including the Universal Declaration of Human Rights (1949), Article 25 and the International Covenant on Economic, Social and Cultural Rights (1966), Article 11.
- 8 One example of this is the Congress manifesto promise of 25kg per month per BPL household of foodgrains through the PDS. The Court has clearly stated that BPL households are entitled to 35kg per month.
- 9 Originally, the petition was against the Union of India and the Government of Rajasthan. However, the Court brought in other state governments as well on account of the widespread nature of the problem, including reports of starvation deaths from Madhya Pradesh and Orissa.
- 10 These were: Integrated Child Development Services, Mid-Day Meal Scheme, Public Distribution System, Annapoona, Antyodaya Anna Yojana, National Family Benefit Scheme, National Maternity Benefit Scheme and National Old Age Pensions Scheme. Sampoorna Grameen Rozgar Yojana (SGRY) was also in the initial list, but this programme was phased out after the NREGA came into force
- 11 See www.righttofoodindia.org for all interim orders issued in this case. See also Secretariat of the Right to Food Campaign (2008).
- 12 See Drèze and Goyal (2003) and Khera (2006) for more on the developments after the Court's intervention. See FOCUS (2006) and Working Group for Children Under Six (2007) on the improvements in the ICDS.
- 13 The Supreme Court has issued orders pertaining to most of the nutrition-related schemes. It has issued several important and wide-ranging orders in this case available at www.righttofoodindia.org.
- 14 The distribution of BPL cards is supposed to be subject to a "cap" fixed by the central government. The current cap is 37% of the rural population

- (the official "head-count ratio" based on 1993-94 NSS data), with an additional 10% margin for targeting errors. However, some states go beyond the cap at their own expense. According to the food ministry, there are over 10.5 crore BPL cards in the country (including Antyodaya cards).
- 15 A list of priority groups eligible for expanded entitlements under the PDS, could include any household that satisfies any two of the following criteria: households belonging to the scheduled castes or scheduled tribes; landless households; household where some members work as hired, casual agricultural labourers; households where no adult household member is healthy enough to work as a casual agricultural labourer and no household member has studied beyond Class 5. As noted in Karat (2009), Chhattisgarh and Kerala already have similar criteria in place.
- 16 Households satisfying any of these criteria would be automatically be excluded from the PDS. For instance, any household where a member is a regular employee of the government drawing a monthly salary or motorised vehicles could be kept out of the PDS.
- 17 See Working Group on Children Under Six (2007). While presenting the 2009-10 budget, the finance minister promised to universalise the ICDS by 2012.
- 18 This would be similar to what happened in the case of the NREGA whereby it was implemented in the poorest 200 districts in 2006-07, extended to another 130 in the next financial year and to all the remaining districts in 2008-09.
- 19 Notably, it is among the few states where the PDS is functional and can be termed a successful programme. The reasons for its success are many including the fact that its universal, fair price shop run by private dealers supply up to 21 items which helps make them financially viable. There are important demand-side factors also that contribute to the success of the PDS in Tamil Nadu, including wide awareness of PDS entitlements and united stake in a functioning system.
- 20 Another example of expansion of entitlements under current schemes is that of school health services. In many states the MDMS, on paper at least, includes school health services. The only states where these are provided in any seriousness include Tamil Nadu, Kerala and Gujarat. These need to be activated in other states as well.

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