

# Malnutrition and Right to Health: An Interface

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## Abstract

*The Right to Health (RTH) is one of the most asserted and consistently talked about rights under human rights jurisprudence. Because of the myriad issues surrounding it, it is one of the most frequently violated rights in recent times. RTH is the bundle of diverse rights. Right to Food (RTF) is one of the intrinsic components of RTH. The RTF can be 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. Right to Nutritious Food (RNF) is an innate part of RTF. RTH, RTF and RNF are closely integrated and intertwined. Hunger and malnutrition are chronic, structural problems that are worsening in the wake of the crises in food prices, finance and the climate. Despite hundreds of millions of dollars poured annually into development assistance, including food aid and agricultural development, over the past 60 years, the numbers of people who are poor, hungry and under-nourished have continued to grow. In this background, this paper reviews the existing challenges and issues connected with RTH, RTF and RNF in the background of malnutrition. The paper concludes that unless the existing laws are implemented in their letter and spirit, it would be difficult for the system to overcome these challenges. The paper also asserts that there is a need for compliance of moral standards by each and every stakeholder being responsible for implementation of these rights.*

**Keywords:** Malnutrition, Health, Human Right, Relationship, Causes.

## I. Introduction

Human life is the best and finest in creation. Once deformed, damaged and destroyed, we cannot restore it to its original form.<sup>1</sup> On account of its precious value, it is recognized as a fundamental right.<sup>2</sup> It cannot be taken away without the procedure of law.<sup>3</sup> There is a good amount of literature emphasizing the need for protection to be provided for life.<sup>4</sup> The judiciary

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<sup>1</sup> Lakshmidhar Mishra, 'Starvation, Malnutrition and Malnutrition Related Deaths of Children in 15 Tribal Districts of Maharashtra - Report of an Enquiry', *National Human Rights Commission*, 2007, p. 11.

<sup>2</sup> *Constitution of Angola*, 2010, art. 85; *Constitution of Antigua and Barbuda* 1981, art. 4; *Constitution of Armenia*, 1995, art. 24.

<sup>3</sup> *Constitution of India*, 1950, art. 21

<sup>4</sup> Joseph Raj, *Natural law and Natural Rights*, Oxford University Press, Oxford, 2011, p.86.

has continuously battled for the life and healthy environment of human society.<sup>5</sup> In the backdrop of immense importance of the life, the international,<sup>6</sup> regional<sup>7</sup> and constitutional efforts<sup>8</sup> are made to provide a distinctive place to the right to life. The criminal law of India is structured in line with safety, life and well-being of the nation.<sup>9</sup> The life of the individual is protected by balancing this right with the life of others, societal as well as social interest. In fact, it is a bounden duty on the part of the State to protect and strengthen the well-being of all citizens.<sup>10</sup> The State ought to take up measures and means necessary for the purpose of the welfare of her citizens. Accordingly, all countries stand to benefit from having a healthy and well-educated workforce with the knowledge and skills needed for productive and fulfilling work including full participation in society.<sup>11</sup>

Health is an ancillary component of life. It is the optimal balance of all systems of the body such as the nervous, muscular, skeletal, circulatory, digestive, lymphatic, and hormonal and all other systems.<sup>12</sup> Due to the immense importance of life, though it is not specifically enumerated under the Constitution, the Courts time and again emphasized the importance of health through series of the Cases.<sup>13</sup> In fact, international human rights law has given intensive scope to the right to health.<sup>14</sup> On account of its importance, Constitutions across the globe have recognized health as an inherent right. In India, it is part of the right to life.<sup>15</sup> On account of its duty to protect life, the country has legislated a series of legislations governing life of the individual.<sup>16</sup> Amongst these different kinds of legislations, criminal law against threatening and diluting the life of the individual has assumed a remarkable place.<sup>17</sup> The philosophy of the State originated by virtue of social contract theories requiring such kind of protection to be extended for the individual.<sup>18</sup>

Healthy and fit nation is vital to the progress of the nation. It is the bedrock of productivity,

<sup>5</sup> *Maneka Gandhi v. Union of India*; *Francis Coralie v. Union Territory of Delhi*; *Vishakha v. the State of Rajasthan*; *Sunil Batra v. Delhi Administration*; *D.K. Basu v. State of West Bengal*; *Hussianara Khatoon v. the State of Bihar*; *Rudul Shah v. the State of Bihar*; *Mr. X. v. Hospital Z*.

<sup>6</sup> *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, 1 July 2003, New York, 18 December 1990, art. 9; *United Nations Convention on the Rights of Persons with Disabilities*, 3 May 2008, New York, 30 March 2007, art. 10; *Convention on the Rights of the Child*, 2 September 1990, New York, 20 November 1989, art. 6.

<sup>7</sup> *Charter of the Organization of American States*, 30 April 1948, Bogota, 30 April 1948, art. 15; ; *Cairo Declaration on Human Rights In Islam*, 5 Aug 1990, Cairo, 5 Aug 1990, art. 2.

<sup>8</sup> *Constitution of India*, 1950, art. 21.

<sup>9</sup> *Indian Penal Code*, 1860, India, chp. 14.

<sup>10</sup> *Constitution of India*, 1950, pt. 4.

<sup>11</sup> *Transforming our world: the 2030 Agenda for Sustainable Development*, 21 October 2015, GA/RES/70/1, para. 27.

<sup>12</sup> Philip Maffetone, *In Fitness and in Health: A Practical Guide to Healthy Diet and Nutrition, Exercise, Injury Prevention and Avoiding Disease*, Stamford, NY, D. Barmore Productions, 2009, p.13.

<sup>13</sup> *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 812; *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*, 1996, 4 SCC 37; *Parmanand Katara v. Union of India*, AIR 1989 S.C. 2039; *Consumer Education Research Centre v. Union of India*, AIR 1995 SC 922; *Burrabazar FireWorks Dealers Association and Others v. Commissioner of Police*, AIR 1998 Cal. 121.

<sup>14</sup> See, *Infra* note 59.

<sup>15</sup> *Constitution of India*, 1950, art. 21.

<sup>16</sup> *The Tobacco Control Act*, 2003, India; *The Epidemic Disease Act*, 1897, India; *Medical Termination of Pregnancy Act*, 2002, India; *Food Safety and Standards Act*, 2005, India; *The National Commission for Allied and Healthcare Professions Act*, 2021, India; *The Medical Termination of Pregnancy Act*, 1971; *The National Nursing and Midwifery Commission Act*, 2023, India; *The Mental Health Care Act*, 2017, India; *The Transplantation of Human Organs Act*, 1994, India.

<sup>17</sup> *Indian Penal Code*, 1862, ss. 299-377, 268-294.

<sup>18</sup> Thomas Hobbes, *Leviathan*, Simon and Schuster, 2008, 1642-1651; Jean-Jacques Rousseau, *The Social Contract*, 1762.

innovation, and entrepreneurship. Healthy people can enjoy their lives, go to work, contribute to their communities, learn, and support their families and friends. It is abundantly possible for a healthy nation to educate its people, create and sustain a thriving economy, defend itself, and remain prepared for emergencies.<sup>19</sup> Regardless of our age, gender, socio-economic or ethnic background, nations consider health as one of the most basic and essential assets. Ill health, on the other hand, can keep us from going to school or to work, from attending to our family responsibilities or from participating fully in the activities of our community. By the same token, we are willing to make many sacrifices if only that would guarantee us and our families a longer and healthier life.<sup>20</sup> The component of RTH includes: (a) The right to a system of health protection providing equality of opportunity for everyone to enjoy the highest attainable level of health; (b) The right to prevention, treatment and control of diseases; (c) Access to essential medicines; (d) Maternal, child and reproductive health; (e) Equal and timely access to basic health services; (f) The provision of health-related education and information; (g) Participation of the population in health-related decision making at the national and community levels.<sup>21</sup>

Freedom, Equality, Solidarity, Tolerance, Respect for Nature and Shared responsibility are the fundamental values essential to international relations in the twenty-first century.<sup>22</sup> Equitable health and food for all is closely backed by these values. In the backdrop of the immense importance of the RTH, considerable attention has been to health under Millennium Development Goals (MDGs). Three MDGs that are related directly to health are<sup>23</sup>: (a) to reduce child mortality by two thirds<sup>24</sup>; (b) to reduce maternal deaths by three quarters and achieve universal access to reproductive health<sup>25</sup>; and (c) to halt and reverse the spread of HIV/AIDS, achieve universal access to treatment for HIV/AIDS by 2010, and halt and reverse the incidence of malaria and other major diseases.<sup>26</sup> Therefore, to promote physical and mental health and well-being, and to extend life expectancy for all, we must achieve universal health coverage and access to quality health care.<sup>27</sup> Nutritional food and measures against malnutrition is *sine quo non* for the health conditions of the nation. “The nutritional well-being of a population”, Arjun Singh, Ministry of Human Resource Development writes “is both an outcome and an indicator of national development. Nutrition is therefore, an issue of survival, health and development for current and succeeding generation.”<sup>28</sup>

Malnutrition or nutritional issues is one of the challenging aspects of the Indian health system. Health of women, children and many of downtrodden sections of the nation is severely

<sup>19</sup> National Prevention Council, ‘*National Prevention Strategy*’, U.S. Department of Health and Human Services, United States of America, 2011, p.6.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid, pp. 3-4.

<sup>22</sup> *United Nations Millennium Declaration*, 18 September 2000, GA/RES/55/2, para. 1.

<sup>23</sup> In 2000, the United Nations mandated member countries to work towards achieving eight key development goals by 2015, i.e., within the first fifteen years of the 21st Century. The goals were named (and have become popularly known as) the *Millennium Development Goals* (MDGs) because of the strong emphasis that the UN placed on making exceptional progress in key areas of human development at the dawn of the third millennium.

<sup>24</sup> Ibid, no. 4.

<sup>25</sup> Ibid, no. 5.

<sup>26</sup> Ibid, no.6.

<sup>27</sup> *The 2030 Agenda for Sustainable Development*, 21 October 2015, GA/RES/70/1, , para. 26.

<sup>28</sup> Ministry of Human Resource Development, ‘*National Guidelines on Infant and Young Child Feeding, Department of Woman and Child Development*’, Government of India, New Delhi, 2004, p.4.

endangered due to lack of nutritional foods. The severity of the problem has rightly been pointed out by National Health Policy, 2017 in following words: “Malnutrition, especially micronutrient deficiencies, restricts survival, growth and development of children. It contributes to morbidity and mortality in vulnerable populations, resulting in substantial diminution in productive capacity in adulthood and consequent reduction in the nation’s economic growth and well-being. Recognizing this, the policy declares that micronutrient deficiencies would be addressed through a well-planned strategy on micronutrient interventions. Focus would be on reducing micronutrient malnourishment and augmenting initiatives like micro nutrient supplementation, food fortification, screening for anemia and public awareness. A systematic approach to address heterogeneity in micronutrient adequacy across regions in the country with focus on the more vulnerable sections of the population, is needed. Hence, screening for multiple micronutrient deficiencies is advocated. During the critical period of pregnancy, lactation, early childhood, adolescence and old age, the consequences of deficiencies are particularly severe and many are irreversible. While dietary diversification remains the most desirable way forward, supplementation and fortification require to be considered as short- and medium-term solutions to fill nutrient gaps.”<sup>29</sup>

In the backdrop of large-scale impact of nutritional gaps on integrity and propriety of the health sector of the nation, there is a need for review and evaluation of the country. Accordingly, this study is an effort to understand and analyze efforts of India made to address malnutrition.

## II. Malnutrition: Gravity of the Problem

The success rate of health globally is comparatively satisfactory. As reported by WHO “Since the beginning of the millennium, the world has seen notable improvements in population health globally. As child mortality halved, maternal mortality fell by a third, the incidence of many infectious diseases – including HIV, tuberculosis and malaria – dropped, and the risks from dying prematurely from non-communicable diseases (NCDs) and injuries declined.”<sup>30</sup>

Contemporary complexities connected with food and health aggravated the situation. Global health threats, more frequent and intense natural disasters, spiraling conflicts, violent extremism, terrorism and related humanitarian crises and forced displacement of people threaten to reverse much of the development progress made in recent decades.<sup>31</sup> It is pointed out by the United Nations General Assembly that “Almost 15 years ago, the Millennium Development Goals were agreed. These provided an important framework for development and significant progress has been made in a number of areas. But the progress has been uneven, particularly in Africa, least developed countries, landlocked developing countries and small island developing States, and *some of the Millennium Development Goals remain offtrack, in particular those related to maternal, newborn and child health and to reproductive health.*”<sup>32</sup>

Impact of malnutrition is worrisome due to its deep impact on marginalized sections of the

<sup>29</sup> National Health Policy, 2017, India, para. 4.3.

<sup>30</sup> World Health Organization, ‘*World Health Statistics 2023: Monitoring Health for the SDGs, Sustainable Development Goals*’, World Health Organization, 2023, p. vii.

<sup>31</sup> *The 2030 Agenda for Sustainable Development*, 21 October 2015, GA/RES/70/1, , para. 26.

<sup>32</sup> *Ibid*, para. 16.

society. Lack of nutrition or malnutrition has a severe impact on the health status of mothers and children. “The inequalities in health between social classes and geographical regions” John W.L. Puntis writes “represent one of the greatest challenges for the makers of health and social policy at the present time. It has been hypothesized that these inequalities are intimately related to maternal and fetal nutrition.”<sup>33</sup>

The impact of lack of nutrition on child development can be understood by assessing stunting<sup>34</sup> (low height for age), wasting (low weight for height) or overweight (high weight for height).<sup>35</sup> Between 2000 and 2022, the percentage of children under five who were stunted worldwide decreased from 33.0% to 22.3%. In contrast to the fall, since the start of the SDG era in 2015, which had an ARR of 1.4%, the decline during the MDG era occurred more quickly, with an ARR of 2.0% between 2000 and 2015, driven by the steep decline over the second half of the decade.<sup>36</sup> Globally, an estimated 148.1 million children under 5 years of age were affected by stunting in 2022. As the global food and nutrition situation worsens due to ongoing conflicts, climate change, and the long-lasting consequences of the COVID-19 pandemic, these figures could rise significantly.<sup>37</sup>

Childhood obesity and overweight increase the risk of obesity, NCDs, early death, and disability in adulthood. Approximately 33.0 million children under the age of five were overweight worldwide in 2000.<sup>38</sup> In 2022 this number had risen to 37.0 million. While the global prevalence of overweight in children under 5 years of age virtually stagnated, the Western Pacific Region, the Region of the Americas and the South-East Asian Region saw the prevalence increasing since 2000. Prevalence in the other regions increased in the early 2000s but declined in more recent periods. The regions with the highest prevalence in 2022 are the Region of the Americas, the Western Pacific Region, the European Region and the Eastern Mediterranean Region.<sup>39</sup>

Children who experience wasting are more vulnerable to long-term developmental problems, have compromised immune systems, and, in the case of severe wasting, are more likely to die.<sup>40</sup> 45 million children under the age of five were wasting in 2022, accounting for 6.8% of all children. A total of 13.7 million children were in critical conditions, with 8.1 million of them in the South-East Asia Region. Approximately 2.1% of children suffered from severe wasting, the most deadly form of under nutrition. With 14.7% of children under five suffering from wasting, the South-East Asian region had the highest incidence of the condition. The Eastern Mediterranean region had a lower frequency, with 6.9% of children.<sup>41</sup>

Inadequate maternal food intake or deficient transport or transfer of nutrients by the placenta

<sup>33</sup> John W.L. Puntis, ‘Maternal and Fetal Nutrition in Chris Holden (ed) Nutrition and Child Health’, Royal College of Nursing, 2000, p.7.

<sup>34</sup> “Stunting” is the result of chronic and recurrent malnutrition in mothers and in children who do not grow to their maximum potential.

<sup>35</sup> Ibid at p.45.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid, p.47.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

may result in programming which manifests in the next generation.<sup>42</sup> A mother's body size before pregnancy is the most important determinant of the size of her baby, with those of low body weight having small babies.<sup>43</sup> Increasing importance is being attributed to nutritional status during reproductive years. There is evidence that nutritional factors influence fertility, embryogenesis, fetal growth and maternal adaptation to pregnancy.<sup>44</sup> Anemia is one of the serious health crises connected with women. Anemia is diagnosed when the concentration of hemoglobin falls below established cut-off values. When the hemoglobin concentration decreases, the capacity of the blood to carry oxygen to tissues is compromised, resulting in symptoms such as fatigue, reduced physical work capacity, and shortness of breath, among others.<sup>45</sup> "Nutritional anemias" result when the intake of certain nutrients is insufficient to meet the demands for synthesis of hemoglobin and erythrocytes.<sup>46</sup>

It is an indicator of both poor nutrition and poor health, having significant adverse health consequences for women and their children. Severe anemia during pregnancy increases the risk of maternal and perinatal mortality, low birth weight, and poor growth and development in babies. Anemia can also affect social and economic development as it causes fatigue and lowered productivity.<sup>47</sup>

Despite a minor decline in the global prevalence of anemia among women aged 15 to 49 between 2000 and 2019, the overall number of affected individuals increased significantly due to population growth, rising from 492.9 million in 2000 to 570.8 million in 2019. Pregnant women had a higher prevalence—36.5%—than non-pregnant women (29.6%). The incidence of mild anemia rose marginally worldwide from 15.5% in 2000 to 16.2% in 2019, but the prevalence of moderate anemia decreased significantly from 14.1% in 2000 to 12.7% in 2019.<sup>48</sup>

### III. Challenges for Nutritional Status

Climate change is one of the remarkable challenges in ensuring a nutritious society. Unprecedented changes and development in the global environment aggravated the situation. WHO demonstrates that "Climate change is likely to exacerbate the triple burden of malnutrition as well as the metabolic and lifestyle risk factors for diet-related NCDs. It is expected to reduce short and long term food and nutrition security both directly, through its effects on agriculture and fisheries, and indirectly, by contributing to underlying risk factors such as water insecurity, dependency on imported foods, urbanization, migration and health-service disruption."<sup>49</sup> Rampant and persistent poverty is the biggest problem of nutrition. Prevalence of tenacious hunger is the reflection of

<sup>42</sup> John W.L. Puntis, 'Maternal and Fetal Nutrition in Chris Holden (ed) Nutrition and Child Health', Royal College of Nursing, 2000, p. 9.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid, p.3.

<sup>45</sup> World Health Organization, 'Nutritional Anemia's: Tools for Effective Prevention and Control', World Health Organization, 2017, p.2.

<sup>46</sup> Ibid.

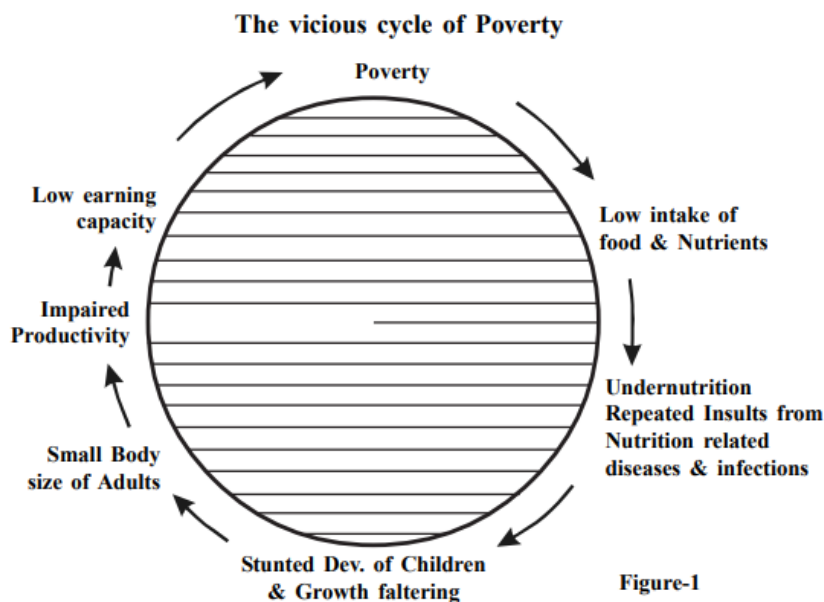
<sup>47</sup> World Health Organization, 'World Health Statistics 2023: Monitoring Health for the SDGs, Sustainable Development Goals', World Health Organization, 2023, p. 47.

<sup>48</sup> Ibid, p. 47.

<sup>49</sup> Ibid, p. 28.



under-nutrition demonstrated amongst marginalized sections of the society particularly women and children. Inadequate intake of food or essential nutrients is the result of under nutrition. The following picture depicts the vicious cycle of poverty having a devastating impact on individuals and nations.<sup>50</sup>



Courtesy: *National Nutrition Policy, 1993, p.1.*

#### IV. Conceptual Analysis of Malnutrition

Malnutrition is a broad term commonly used as an alternative to under nutrition but technically it also refers to over nutrition. People are malnourished if their diet does not provide adequate calories and protein for growth and maintenance or they are unable to fully utilize the food they eat due to illness (undernutrition). They are also malnourished if they consume too many calories (over nutrition).

Height/age is a more demanding indicator (it requires adequate weight/age and weight/height); rather than an indicator for nutritional assessment case by case, it is adequate for assessing changes in countries that develop and improve their socioeconomic conditions, but it is not adequate to assess short-term actions. When used for clinical assessment it is also helpful to measure velocity of growth. Finally, weight/height is considered the best indicator to measure acute malnutrition, even in children with short stature.

Weight, height, and head circumference measurements have been widely used as indicators of nutritional adequacy. Selection of the indicator to be used influences the magnitude of the prevalence calculated. Weight for age is a sensitive but not very specific indicator of malnutrition since it may overlook stunting. Thus, children may be underweight for age but normal or even over-weight for height. Height for age is the most demanding indicator of nutritional adequacy

<sup>50</sup> *National Nutritious Policy, 1993, India, p.1.*

since it implies adequate weight for age and appropriate weight for height.

The National Nutritious Policy, 1993<sup>51</sup> has identified following core facets of nutrition problems in India: (1) Under-nutrition resulting due to (a) Protein Energy Malnutrition (PEM) (b) Iron deficiency (c) Iodine deficiency (d) Vit. "A" deficiency (e) Low Birth Weight Children; (2) Seasonal dimensions of Nutrition; (3) Natural calamities & the landless; (4) Market Distortion and Disinformation; (5) urbanization; (6) Special Nutritional Problems of Hill People, Industrial Workers, Migrant Workers, and other special categories; and (7) Problems of Over nutrition, overweight and obesity for a small section of urban population.

## V. Consequences of Malnutrition

Malnutrition is not only a significant drain on economic growth, but it also reflects and contributes to inequity, as it disproportionately affects poor, marginalized and extremely vulnerable groups. While the policies and programs to address malnutrition require substantial resources, it is essential to recognize that the costs of not tackling malnutrition are considerable.

Malnutrition and illness reduce household income earning ability; perpetuate poverty, and slow down economic growth through three routes: (1) direct losses in productivity from poor physical and mental performance or death; (2) indirect losses from reduced working and cognitive capacity and related deficits in schooling; and (3) losses in resources due to increased health care costs. Even temporary malnutrition can cause irreversible health impairments, particularly in children, limiting the development potential of future generations.

Poor physique and health of the mothers were clearly implicated as a cause of high maternal mortality, and was partly a result of poor nutrition and impaired growth of young girls. A follow-up study of men born in Hertfordshire during 1920 has brought attention to the significance of early nutritional status as a risk factor for adult-onset cardiac disease.<sup>52</sup> Animal work shows that suboptimal nutrition before implantation can retard growth and development. Very thin women may have difficulty conceiving, and those who are at increased risk of having a premature or low birth weight infant. They should be encouraged to eat a nutrient-rich balanced diet. For overweight women, stabilization of weight before pregnancy is recommended by a reduction in fat and sugar content so that micronutrient intake is not jeopardized. Pregnancies that are closely spaced may result in maternal nutrient depletion and are associated with low birth weight and congenital malformation.<sup>53</sup>

Long-term effects associated with Failure to Thrive (FTT) include stunting, developmental delay, poor weight gain and even heart disease in later adulthood. In a group of young children with FTT from the north of England, Rayner & Rudolf (1996) reported 55% had developmental delay, and other problems included eating difficulties, poor growth, low energy intakes, iron deficiency and behavioral and sleeping difficulties.<sup>54</sup> There is a little information on the prevalence of obesity

<sup>51</sup> *National Nutritious Policy*, 1993, India, p.2.

<sup>52</sup> John W.L. Puntis, 'Maternal and Fetal Nutrition in Chris Holden (ed) *Nutrition and Child Health*', Royal College of Nursing, 2000, p. 8. .

<sup>53</sup> *Ibid*, p. 11.

<sup>54</sup> Anita MacDonald and Chris Holden, *The Free School Child Nutrition and Child Health*, *Royal College of Nursing*, 2000, pp. 11, 57.



in pre-school years. In general, there are no agreed criteria to assess relative fatness in children, but a weight of more than two centiles higher than height constitutes obesity. Obesity is more frequently associated with overweight parents, poor diet, low level of physical activity and low income.<sup>55</sup> Children who are overweight are less likely to participate in games and sports, either in school or at home, due to lack of confidence and embarrassment regarding their physical appearance. Obesity contributes to the development of a poor body image and low self-esteem. Children who are obese in primary school are more likely to be obese in later life; this in turn has a negative effect on physical and mental health.<sup>56</sup>

## VI. Malnutrition- International Law Context

Human Rights is the core concern of the United Nations Charter, 1946.<sup>57</sup> One of the sacred purposes of the UN Charter is to promote and encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.<sup>58</sup> The RTH, RTF and RNF have a long history under international legal regime. It is well established and sharply recognized under international law. It should be emphasized here that human rights law is not simply for adequate food but more broadly for an adequate standard of living. In the context of its immense importance, Right to Health has been indexed as a basic right under international,<sup>59</sup> regional<sup>60</sup> and national legal regimes.<sup>61</sup> Similar standard of human right status is extended for Right to Food including safe and nutritious food under international jurisprudence.<sup>62</sup>

## VII. Indian Strategies against Malnutrition

The purpose of this research paper is to analyze malnutrition as a Human Right issue rather than understanding it in its comprehensive sense. In fact, all these direct as well as indirect interventions are inseparable part of human rights jurisprudence. Broader understanding of all

<sup>55</sup> Ibid p. 60.

<sup>56</sup> Carolyn Patchell, 'Feeding School age Children and Adolescent in Chris Holden & Anita MacDonald (ed) Nutrition and Child Health', London: Royal College of Nursing, 2000, p.72.

<sup>57</sup> *Charter of the United Nations*, 24 October 1945, 1 UNTS XVI, preamble.

<sup>58</sup> Ibid, art. 1(3).

<sup>59</sup> *Universal Declaration of Human Rights (UDHR)*, 10 December 1948, art. 25;; *International Convention on the Elimination of All Forms of Racial Discrimination*, 21 December 1965, art. 5(e); *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, 16 December 1966, art. 12; *International Covenant on Civil and Political Rights (ICCPR)*, 16 December 1966, art. 12; *United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*, 3 September 1981, arts. 11(1f), 14(2b); *Convention on the Rights of the Child (CRC)*, 20 November 1989, U.N.Doc. A/44/736, art.24;; *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*, 18 December 1990, 2220UNTS3, arts. 28, 43(e), 45(c); *United Nations Convention on the Rights of Persons with Disabilities*, 13 December 2006, 2515UNTS3, art.25.

<sup>60</sup> *Additional Protocol of the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights*, 16 November 1999, San Salvador, art. 10 *American Declaration of the Rights and Duties of Man*, 2 May 1948, Bogota, art.11; *The European Social Charter of 1961*, 18 October 1961; *African Charter on Human and Peoples' Rights of 1981*, 27 June 1981, art.16

<sup>61</sup> *Constitution of South Africa*, 1996, art. 27 *Constitution of India*, 1950, arts. 21-47; *Constitution of Ecuador*, 1998, art. 42; *Philippine Constitution*, 1987, art. 2; *Japanese Constitution*, 1946, art.25; *French Constitution*, 1958, preamble.

<sup>62</sup> *Universal Declaration of Human Rights (UDHR)*, 10 December 1948, art. 25

these short term as well as long term measures brighten the human right approach on nutrition. Nevertheless, due to the restricted framework of this paper, the author would emphasize the measures taken by the government of India in the backdrop of malnutrition as a core human right issue.

### A. Constitution of India, 1950

Health has been the central concern of the country since the earliest period. The Indian Constitution recognizes the right to life, and contains specific provisions auxiliary to right to life.<sup>63</sup> The directive principles of State Policy 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.<sup>64</sup> Human dignity as an inherent right under Right to Life is decorated with various provisions of part IV of the Constitution. These provisions are source for short term as well as long term measures required for nutrition as stipulated under National Nutritious Policy, 1993.<sup>65</sup>

Accompanying changes to the existing laws, adoption of new laws, and strengthening of democratic institutions, the Government of India has taken notable concrete steps towards fulfilling its obligations to ensure right to nutritious food as human right through the creation of a wide range of programs dedicated to the improvement of nutrition and sustainable access to food. Notable measures taken by the Government of India are as follows:

### B. Legislative Measures:

Since pre independence health has been the prime concern of the Indian legal system. The Indian Penal Code, being a fundamental criminal code of the country, has staggering provisions relating to health.<sup>66</sup> Indian Penal Code, 1860 (IPC) is the foundation for the different special legislations relating to Health and Food. Criminalization of food adulteration<sup>67</sup> and selling of noxious food<sup>68</sup> is punishable under the Code.

- *The Food Safety and Standards Act (FSSA) 2006*: The Food Safety and Standards Act (FSSA) 2006 is a milestone in the development of nutritional jurisprudence of the country. The FSSA has consolidated divergent laws relating to food<sup>69</sup> and laid down scientific standards for articles of food. The regulatory mechanism provided under the Act as manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human health. The FSSA has made comprehensive provisions relating to nutritional properties of food by regulating manufacturing, processing, packaging,

<sup>63</sup> *Constitution of India*, 1950, art. 21.

<sup>64</sup> *Ibid*, art. 47.

<sup>65</sup> *Constitution of India*, 1950, arts. 38,39,41,43.

<sup>66</sup> *Indian Penal Code*, 1860, India, chp. 14.

<sup>67</sup> *Indian Penal Code*, 1860, India, s. 272.

<sup>68</sup> *Ibid*, s. 273.

<sup>69</sup> Following Acts are repealed through *Food Safety and Standards Act*, 2006, India: *The Prevention of Food Adulteration Act*, 1954; *The Fruit Products Order*, 1955; *The Meat Food Products Order*, 1973; *The Vegetable Oil Products (Control) Order*, 1947; *The Edible Oils Packaging (Regulation) Order*, 1998; *The Solvent Extracted Oil, De oiled Meal, and Edible Flour (Control) Order*, 1967; *The Milk and Milk Products Order*, 1992; *Any other order issued under the Essential Commodities Act*, 1955.

storage, transportation, distribution of food, import and includes food services, catering services, sale of food or food ingredients. According to the FSSA, it shall be the duty of the Food Authority to regulate and monitor the manufacture, processing, distribution, sale and import of food so as to ensure safe and wholesome food.<sup>70</sup> It is also the duty of the Food Authority to provide scientific advice and technical support to the Central Government and the State Governments in matters of framing the policy and rules in areas which have a direct or indirect bearing on food safety and nutrition.<sup>71</sup>

- *Food Safety and Standards (Labelling and Display) Regulations, 2020*: Series of regulations have been framed by the FSSA to regulate food safety and standards in the country. Food Safety and Standards (Labelling and Display) Regulations (FSSLDLDR) 2020 predominant regulations amongst all these regulations as to nutritional food. The provisions as to Nutritional Information has brought profound changes to the national jurisprudence of the nation. The nutritional information is a description intended to inform the consumer of nutritional properties of the food including sugars, added sugars, fat, dietary fiber, and nutrients.<sup>72</sup> The Nutritional information may additionally be provided in the form of Barcode/Global Trade Identification Number (GTIN). However, as per the FSSLDLDR, 25 percent deviation may be tolerated in case of nutritional information declaration.<sup>73</sup> However, these regulations fail to reiterate Nutritional Claim and Health Claims which were reflected under earlier Food Safety and Standards (Packaging and Labelling) Regulations, 2011.
- *Food Safety and Standards (Foods for Infant Nutrition) Regulations (FSSFINR) 2020*: An article of infant milk substitutes or infant foods or food for special medical purpose intended for infants shall be according to the FSSFINR, 2020. According to the FSSFINR, an article of infant milk substitutes or infant foods or food for special medical purpose intended for infants shall not be manufactured for sale, exhibited for sale or stored for sale unless such article of food and labeling of such food is approved by Food Authority.<sup>74</sup> The FSSFINR mandates that Food for infant nutrition shall comply with other statutory provisions.<sup>75</sup> The unique characteristic of the FSSFINR is the stunning importance given for natural mother's milk rather than processed milk. The FSSFINR intends to boost food for infant nutrition by emphasizing first preference to the mother's milk. It mandates that every container of products covered under the FSSFINR or any label affixed thereto shall indicate in a clear, conspicuous and in an easily readable manner, the words "IMPORTANT NOTICE" in capital letters and indicating thereunder a statement that "MOTHER'S MILK IS BEST FOR YOUR BABY" in capital letters.<sup>76</sup> This kind of statement could certainly reach out to a good number of people to sensitize

<sup>70</sup> *Food Safety and Standards Act*, 2006, India, s. 16.

<sup>71</sup> *Ibid*, s. 16(3).

<sup>72</sup> *Food Safety and Standards Act*, 2006, India, s. 5(3).

<sup>73</sup> *Ibid*, s. 9(4).

<sup>74</sup> *Food Safety and Standards Act*, 2006, India, s.3.

<sup>75</sup> *Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act*, India, 1992; the *Legal Metrology (Packaged Commodities) Rules*, India 2011; *Food Safety and Standards (Contaminants, Toxins and Residues) Regulations*, India, 2011; *Food Safety and Standards (Prohibition and Restriction of Sales) Regulation*, India, 2011; *Food Safety and Standards (Food Products Standards and Food Additives) Regulations*, India, 2011; *Food Safety and standards (Advertising and Claims) Regulations*, India, 2018.

<sup>76</sup> *Food Safety and Standards Act*, 2006, India, s.(4).

them about the importance of natural breastfeeding instead of processed products. The other details on labeling such as;<sup>77</sup> (a) infant milk substitute or infant food shall be used only on the advice of a health worker; (b) a warning that Infant milk substitute or infant food is not the sole source of nourishment of an infant; (d) a statement indicating instruction for appropriate and hygienic preparation including cleaning of utensils, bottles and teats and warning against health hazards of inappropriate preparations, (e) the approximate composition of nutrients (f) the storage condition (g) the feeding chart and directions for use and instruction for discarding leftover feed; (h) instruction for use of measuring scoop (level or heaped) and the quantity per scoop (scoop to be given with pack); (i) indicating the Batch number, Month and Year of its manufacture, use by date or Recommended Last Consumption date or Expiry Date; (j) the protein efficiency ratio (PER) which shall be minimum 2.5, if the product other than infant milk substitute is claimed to have higher quality protein could act as potential means to improve the nutritional status of infants.

- *Food Safety and Standards (Food Products Standards and Food Additives) Regulations, (FSSFPSEA) 2011:*

These Regulations provide food product standards as to Fats,<sup>78</sup> oils and fat emulsions<sup>79</sup>; Fruit & vegetable products<sup>80</sup>; Cereals and cereal products<sup>81</sup>; Meat and Meat Products<sup>82</sup>; Fish and Fish Products;<sup>83</sup> Sweets & confectionery<sup>84</sup>; Sweetening agents including Honey<sup>85</sup>; Salt, spices, condiments and related products<sup>86</sup>; Beverages like tea, coffee, mineral water etc<sup>87</sup>; and other food products like baking powder etc.<sup>88</sup> These regulations provide elaborative provisions relating to composition and quality factors, description, styles, food additives, contaminants, toxins and residues, hygiene, labelling, methods of sampling and analysis of the above products. Essential standards required for proprietary food; gluten free food; radiation processing of food; and Hemp seeds and seed products are laid down under these regulations. The regulations have also stipulated standards as to Food Additives including food colors, sweetener, yeast, lactic acid, preservatives, acidity regulators, antioxidants and processing aids.<sup>89</sup>

- *Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, (FSSPRSR) 2011<sup>90</sup>:* These regulations strictly prohibit and restrict sale of certain admixtures.<sup>91</sup> Admixture in

<sup>77</sup> Ibid.

<sup>78</sup> *Food Safety and Standards Act*, 2006, India, s. 2.1..

<sup>79</sup> Ibid, s.2.2.

<sup>80</sup> Ibid, s.2.3.

<sup>81</sup> Ibid, s.2.4.

<sup>82</sup> Ibid, s.2.5.

<sup>83</sup> Ibid, s.2.6.

<sup>84</sup> Ibid, s.2.7.

<sup>85</sup> Ibid, s.2.8.

<sup>86</sup> Ibid, s.2.9.

<sup>87</sup> Ibid, s. 2(10).

<sup>88</sup> Ibid. 2(11).

<sup>89</sup> Ibid, chp.3.

<sup>90</sup> *The Gazette of India*, pt. 3.

<sup>91</sup> *Food Safety and Standards Act*, 2006, India, s. 2(1).

its general sense is the result of combining 2 or more fluids. It restricts use of certain ingredients in the preparation of any article of food intended for sale.<sup>92</sup> These regulations also prohibit and restrict the sale of certain products.<sup>93</sup> These regulations remarkably elevated the status of nutritional jurisprudence of the nation by prohibiting admixtures, ingredients and certain products which may severely deteriorate the nutritional property of the food articles.

The above legislations are illustrative in nature. The Food Safety and Standards Act, 2006 is the umbrella legislation resulting from a series of regulations governing safe and wholesome food. The other regulations,<sup>94</sup> rules,<sup>95</sup> notifications, orders and advisories made under this legislation are integral part of the legal regime governing nutritional status of India. All these instruments are pressed into play in order to maintain the integrity of food. These regulations are directly or indirectly impacting the nutritional component of food.

- *The National Food Security Act (NFSA) 2013*.<sup>96</sup> The NFSA is one of the promising efforts of the government to ensure food security of the country. The purposes of the Act are twofold: (1) provide for food and nutritional security; (2) to ensure adequate quantity of quality food at affordable prices to people to live a life with dignity. In addition to the noble objective of food security, the nutritional component of food is emphatically asserted under the Act. It mandates that every pregnant woman and lactating mother, subjected to the schemes of the government, shall be entitled to meal, free of charge, during pregnancy and six months after the child birth, through the local *anganwadi*, so as to meet the nutritional standards specified.<sup>97</sup> Similarly, every child up to the age of 14 years shall entitle for:<sup>98</sup> (a) in the case of children in the age group of six months to six years, age appropriate meal, free of charge, through the local *anganwadi* so as to meet the nutritional standards. (b) in the case of children, up to class VIII or within the age group of six to fourteen years, whichever is applicable, one mid-day meal, free of charge, every day, except on school holidays, in all schools run by local bodies, Government and Government aided schools, so as to meet the nutritional standards. Whereas, the State Governments are mandated to provide meals, free of charge, to children who

<sup>92</sup> Ibid, sec. 2(2).

<sup>93</sup> Ibid, sec.2(3).

<sup>94</sup> *Food Safety and Standards (Licensing and Registration of Food Businesses) Regulation*, India, 2011; *Food Safety and Standards (Contaminants, Toxins and Residues) Regulation*, India, 2011; *Food Safety and Standards (Laboratory and Sampling Analysis) Regulation*, India, 2011; *Food Safety and Standards (Health Supplements, Nutraceuticals, Food for Special Dietary Use, Food for Special Medical Purpose, Functional Food and Novel Food) Regulations*, India, 2016; *Food Safety and Standards (Food Recall Procedure) Regulation*, India, 2017; *Food Safety and Standards (Import) Regulation*, India, 2017; *Food Safety and Standards (Approval for Non-Specific Food and Food Ingredients) Regulation*, India, 2017; *Food Safety and Standards (Organic Food) Regulation*, India, 2017; *Food Safety and Standards (Alcoholic Beverages) Regulation*, India, 2018; *Food Safety and Standards (Fortification of Food) Regulation*, India, 2018; *Food Safety and Standards (Food Safety Auditing) Regulation*, India, 2018; *Food Safety and Standards (Recognition and Notification of Laboratories) Regulation*, India, 2018; *Food Safety and Standards (Advertising and Claims) Regulation*, India, 2018; *Food Safety and Standards (Packaging) Regulation*, India, 2018; *Food Safety and Standards (Recovery and Distribution of Surplus food) Regulation*, India, 2019; *Food Safety and Standards (Safe food and balanced diets for children in school) Regulations*, India, 2020; *Food Safety and Standards (Ayurveda Aahara) Regulations*, India, 2022; *Food Safety and Standards (Vegan Foods) Regulations*, India, 2022.

<sup>95</sup> *The Food Safety and Standards Rules*, India, 2011.

<sup>96</sup> *The National Food Security Act*, 2013.

<sup>97</sup> *The National Food Security Act*, 2013, Sec.4.

<sup>98</sup> Ibid, s.5.

suffer from malnutrition.<sup>99</sup> Nutritional component is well taken under the NFSA in terms of constitution of State Food Commission,<sup>100</sup> State duty,<sup>101</sup> Welfare Schemes,<sup>102</sup> and enumeration of nutritional standards,<sup>103</sup> and State intervention for procurement, storage and movement of food from the viewpoint of nutrition.<sup>104</sup>

- Policies:

Policies on nutrition are vital to initiate counterattack on malnutrition and set a battleground against causes of malnutrition. It could reduce food and nutrition insecurity, strengthening resilience to shocks, and reducing disease burdens.<sup>105</sup> The policy concerns may gear up structural changes required in agricultural, social, health, education sectors and including regulations and actions for higher agricultural productivity and diversity, poverty reduction, income generation, social protection, women's empowerment, health system strengthening, population growth control, and education.<sup>106</sup>

*National Health Policy, 2017:* National Health Policy, 2017 has set forth following principles as backbone of the health system of the nation. They are:<sup>107</sup> (a) Professionalism, Integrity and Ethics; (b) Equity; (c) Affordability; (d) Universality; (e) Patient Centered & Quality of Care; (f) Accountability; (g) Inclusive Partnership; (h) Pluralism; (i) Decentralization; (j) Dynamism and adaptiveness. Effective implementation and setting roadmap for the short term and long-term goals of National Nutritious Policy 1993 is possible through these principles. The integrated and inclusive implementation of all these principles could certainly blow down the gravity of the problem. The 2017 policy articulates to institutionalize inter-sectoral coordination at national and sub-national levels to optimize health outcomes, through constitution of bodies that have representation from relevant non-health ministries. The policy prerequisite is for an empowered public health cadre to address social determinants of health effectively, by enforcing regulatory provisions.<sup>108</sup>

*National Nutritious Policy, 1993:*

The intervention of the State to encounter malnutrition issues is a multilayered one. No single strategy or window could bring desirable and deep changes to the system. The multilayered role of the State for the purpose of nutrition is rightly mentioned under National Nutritious Policy, 1993. It says "Nutrition is a multi-sectoral issue and needs to be tackled at various levels. Nutrition affects development as much as development affects nutrition. It is, therefore, important to tackle the problem of nutrition both through direct nutrition intervention for especially vulnerable groups as well as through various development policy instruments which will create conditions

<sup>99</sup> Ibid, s. 6.

<sup>100</sup> Ibid, s.16.

<sup>101</sup> Ibid, s.31.

<sup>102</sup> Ibid, s.32.

<sup>103</sup> Ibid, Sch. II.

<sup>104</sup> Ibid, Sch. III.

<sup>105</sup> Olivier Ecker and Marc Nene, 'Nutrition Policies in Developing Countries: Challenges and Highlights', 2012, *Policy note*, p.2.

<sup>106</sup> Ibid.

<sup>107</sup> *National Health Policy*, 2017, India, para. 2.2.

<sup>108</sup> Ibid, para. 3.2.



for improved nutrition.”<sup>109</sup> The multilevel intervention of the system against malnutrition as contemplated under National Nutritious Policy can be understood through the following table.<sup>110</sup>

Direct interventions (Short Term Measures)			Indirect Interventions (Long Term Measures)	
1	Nutrition Intervention for vulnerable groups	1	Food Security	
2	Fortification of Essential Foods	2	Improvement of Dietary pattern through Production and Demonstration	
3	Popularization of Low-Cost Nutritious Food	3	Policies for Effecting Income Transfers	
4	Control of Micro-Nutrient Deficiencies amongst vulnerable Groups	4	Land Reforms	
5	Nutrition Intervention for vulnerable groups	5	Health & Family Welfare	
6	Fortification of Essential Foods	6	Basic Health and Nutrition Knowledge:	
		7	Prevention of Food Adulteration:	
		8	Nutrition Surveillance	
		9	Monitoring of Nutrition Programmes	
		10	Research	
		11	Equal Remuneration	
		12	Communication	
		13	Minimum Wage Administration	
		14	Community participation	
		15	Education & Literacy	
		16	Improvement of the Status of Women	

#### ● Guidelines and Program

*National Guidelines on Infant and Young Child Feeding (IYCF), 2004:* The objectives of the IYCF are:<sup>111</sup> (1) To advocate the cause of infant and young child nutrition and its improvement through optimal feeding practices nationwide; (2) To disseminate widely the correct norms of breastfeeding and complementary feeding from policy making level to the public at large in different parts of the country in regional languages; (3) To help plan efforts for raising awareness and increasing commitment of the concerned sectors of the government, national organizations and professional groups for achieving optimal feeding practices for infant and young children; (4) To achieve the national goals for infant and young child feeding practices

<sup>109</sup> *National Nutritious Policy*, 1993, India, p.7.

<sup>110</sup> *Ibid*, pp. 7-12.

<sup>111</sup> Ministry of Human Resource Development, ‘*National Guidelines on Infant and Young Child Feeding, Department of Woman and Child Development*’, Government of India, New Delhi, 2004, p.10.

set by the Planning Commission for the Tenth Five Year Plan so as to achieve reduction in malnutrition levels in children.

*Mandatory use of Double Fortified Salt (DFS) in National Programmes – ICDS, 2011:* One of the useful fortification strategies is the use of Double Fortified Salt (DFS) i.e salt with both iodine and iron. The Central government has made it mandatory for the Ministries dealing with food and nutrition programmes like ICDS and Mid-day meal programme to make use of iron fortified iodized salt (double fortified salt) mandatory in those programmes, in an appropriate manner.<sup>112</sup>

In response to this situation, the People's Union for Civil Liberties (Rajasthan)<sup>113</sup> filed a writ petition in the Supreme Court in April 2001, demanding immediate utilization of the country's food stocks for drought relief and prevention of hunger. The petitioner requests that excess food grains held in Union of India stockpiles be released immediately to areas impacted by drought. Additionally, directives are requested that the government develop new public distribution plans for food grains that are reasonable and scientifically distributed. The scope of the petition was not restricted to drought situations alone. It also focused on the general need to uphold the 'right to food'. The respondents to the lawsuit were the Union of India, all the state/UT governments, and the Food Corporation of India. The Supreme Court has thus formally recognized the right to food, and has ordered the central and state governments to take a number of measures to improve the situation. The justiciability of this right is therefore confirmed, and the Court has issued a number of orders to the government, entailing expenditure of resources.

## VIII. Analysis and Conclusion

Good nutrition is a fundamental need for individuals to realize both their maximum physical and intellectual potential. It is the basis for the well-being of individuals and households and for human capital formation. It is a key instrument for economic development and formation of societies on just and equitable conditions. Conversely, poor nutrition and health have serious, long-lasting economic consequences at the micro and the macro level. Malnutrition is a national problem and its eradication deserves actions by various partners.<sup>114</sup> Malnutrition plays a role in more than half of all child deaths. Malnutrition in children is caused by consuming too little food energy to meet the body's needs. Adding to the problem are diets that lack essential nutrients, illnesses that deplete those nutrients, and undernourished mothers who give birth to underweight children.

People who eat well have lower rates of illness and mortality, higher levels of productivity, and improved learning capacities. Good nutrition has significant short- and long-term health, educational, and economic benefits, especially for women and children. The Indian government has taken a number of constructive actions to carry on its political pledge to eradicate hunger nationwide. The delegation expressed admiration for the measures implemented to mitigate malnourishment and promote increased food production autonomy. The progressive realization of the right to food is facilitated by these policies. However, they are insufficient on their own to

<sup>112</sup> Ministry of Women & Child Development, 'No. 5-4/2011 ND/Tech Government of India', 21<sup>st</sup> June 2011.

<sup>113</sup> *People's Union for Civil Liberties v. Union of India*, India, 2013, WP(C) No. 196 of 200.

<sup>114</sup> Ministry of Human Resource Development, 'National Guidelines on Infant and Young Child Feeding, Department of Woman and Child Development', Government of India, New Delhi, 2004, p.5.

ensure that every Indian has access to food in accordance with their human rights. The delegation was concerned by the many obstacles still facing daily by the communities met with during the mission.

With respect to structural issues such as laws, policies and institutions, the study revealed lack of coherence, insufficient capacity to implement, and a lack of cooperation between the central government and various departments. In addition, the paper pointed out that the government failed to express clear support for the right to food as an overarching policy framework for coordination between ministries and for the development of long-term strategies against hunger. Since nutrition is a multi-sectoral problem, it requires attention on many fronts. Development influences nutrition in the same way that nutrition influences development. Therefore, it is critical to address the issue of nutrition through development policy instruments that would foster improved nutrition as well as direct nutrition intervention for particularly vulnerable groups.