

COVID-19 Pandemic in India: The Right to Food

A Briefing Paper

Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists (ICJ) promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952 and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

® COVID-19 Pandemic in India: the Right to Food

© Copyright International Commission of Jurists, June 2020

The International Commission of Jurists (ICJ) permits free reproduction of extracts from any of its publications provided that due acknowledgment is given and a copy of the publication carrying the extract is sent to their headquarters at the following address:

International Commission of Jurists
P.O. Box 91
Rue des Bains 33
Geneva
Switzerland

COVID-19 Pandemic in India: The Right to Food

A Briefing Paper

India on the Brink of Hunger Crisis during COVID-19 Pandemic

Briefing Paper on India's Legal Obligations to Guarantee the Right to Food particularly to People Living in Poverty During COVID-19

The Head of the World Food Program, David Beasley, warned the UN Security Council on 21 April, 2020 that as a result of COVID-19 the world is facing a threat of a "hunger pandemic" in addition to the COVID-19 pandemic.¹ Certain sections of India's population that are living in poverty,² such as the informal sector workers, homeless persons, and the others who are excluded through or marginalized by India's food public distribution system, are facing increasingly high levels of hunger after the country went into lockdown.

India went into voluntary quarantine on March 22, 2020 and then a nationwide lockdown from March 24, 2020. The Indian authorities have indicated that the lockdown will continue until at least May 3, 2020. Informal sector workers, and others, who ordinarily survive on meager and unreliable daily wages,³ have lost access to a regular income since March 22, 2020 and have, at best, limited access to government support.

This Q & A sets out several human rights concerns that have arisen from the lockdown particularly for people living in poverty, and the associated human rights laws and policies. It provides recommendations for the Indian state to meet its obligation to guarantee the human *right to food* of *all* people, including people living in poverty.

What are the principal concerns regarding the right to food faced by people living in poverty in India since the COVID-19 lockdown started?

Impacts of COVID-19 on Access to Food in India. The Global Hunger Index 2019 ranks India as suffering from a "level of hunger that is serious".⁴ According to media reports, there have already been a number of deaths from lack of food or financial distress.⁵ As a result of COVID-19, an estimated 400 million informal sector workers in India "are at risk of falling deeper into poverty during the crisis".⁶ COVID-19 has resulted in loss of livelihood for millions of people in India.

¹ David Beasley's Statement to UN Security Council - WFP Chief warns of hunger pandemic as COVID-19 spreads, 21 April, 2020, available at <https://www.wfp.org/news/wfp-chief-warns-hunger-pandemic-covid-19-spreads-statement-un-security-council>

² Poverty has been described by the CESCR as "a human condition characterized by the sustained or chronic deprivation of the resources, capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other civil, cultural, economic, political and social rights" E/C.12/2001/10, para. 8.

³ International Labour Organization, "India Wage Report: Wage policies for decent work and inclusive growth", 2018, available at https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new-delhi/documents/publication/wcms_638305.pdf.

⁴ India, 2019 Global Hunger Index, Welthungerlife, available at <https://www.globalhungerindex.org/india.html>

⁵ Media reports have documented at least 251 deaths caused by the lockdown. See <https://theishgn.com/projects/covid19-india/non-virus-deaths/>

⁶ International Labour Organization, "ILO Monitor: COVID-19 and the world of work,

Its impact has been particularly acute for informal sector workers, many of whom are internal migrant workers.⁷ This vulnerability is compounded by long-standing social and structural discrimination based on caste, religion and gender.⁸ Several million persons, including informal sector workers living in deprived urban and rural areas lack access to adequate food, as well as information about the availability of community kitchens. There are reports indicating that some people who have stepped outside their homes to access food from community kitchens are being beaten by police.⁹

Indian Government's Relief Measures. The Indian Government announced a set of policy measures including a "relief package" for people living in poverty of Rs. 1.7 lakh crore on March 26, 2020, three days after the mandatory lockdown, which included food security and direct cash transfers for daily wage workers and other people living in poverty.¹⁰ Under this scheme, the approximately 800 million ration card holders have been offered free 5 kgs rice, 1 kg pulses for free for the next 3 months.¹¹ Concerns have been raised that more than 100 million low-income persons, who should qualify for ration cards but have been unable to obtain them, have been unable to access food grains through the food public distribution system (PDS)¹². Moreover, many that did not qualify for subsidized

Second edition-Updated estimates and analysis", 7 April, 2020, page 6, available at https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/briefingnote/wcms_740877.pdf

⁷ According to a Stranded Workers Action Network's report published on 15 April, 2020, which surveyed 11,000 workers, 50 percent of 2957 workers did not have rations to last them a single day; 96 percent of 9403 workers had not received rations; 70 percent of 2483 workers had not received cooked food from the Government; and 78 percent of 2758 workers had less than five USD left. See Stranded Workers Action Network "21 days and counting : COVID-19 lockdown, migrant workers, and the inadequacy of welfare measures in India", April 15, 2020, available at <http://publications.azimpremjifoundation.org/2272/>.

⁸ Kunal Purohit, "India COVID-19 lockdown means no food or work for rural poor", *Al Jazeera*, 3 April, 2020, available at <https://www.aljazeera.com/news/2020/04/india-covid-19-lockdown-means-food-work-rural-poor-200402052048439.html>

⁹ Manjeet Sehgal, "Coronavirus lockdown in Chandigarh: Daily wage workers are surviving on donated food", *India Today*, 2 April, 2020 available at <https://www.indiatoday.in/india/story/coronavirus-lockdown-chandigarh-daily-wage-workers-food-condition-1662638-2020-04-02>. See Rohan Venkataramakrishnan, "The Indian Police must understand that coronavirus cannot be beaten with a lathi", March 26, 2020, *Scroll.in*, available at <https://scroll.in/article/957269/the-indian-police-need-to-understand-that-coronavirus-cannot-be-beaten-with-a-lathi>

¹⁰ Finance Minister announces Rs 1.70 Lakh Crore relief package under Pradhan Mantri Garib Kalyan Yojana for the poor to help them fight the battle against Corona Virus, Ministry of Finance, 26 March, 2020 available at <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1608345>. The scheme has been widely criticized as inadequate because it meets less than half of the "3.75 lakh crores required to fulfill the minimal "emergency measures". See "Concerned citizens' response to the COVID 19 relief package announced by the finance minister", *The Caravan*, 27 March, 2020 available at <https://caravanmagazine.in/noticeboard/citizens-response-to-covid-relief-package-nirmala-sitharaman>

¹¹ Finance Minister announces Rs 1.70 Lakh Crore relief package under Pradhan Mantri Garib Kalyan Yojana for the poor to help them fight the battle against Corona Virus, Ministry of Finance, 26 March, 2020 available at <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1608345>. In addition the monthly quota of 5 kg food grain that is provided at subsidized rate has been increased to 7 kg of food grain per month.

¹² The Indian Public Food Distribution System (PDS) is the largest food distribution welfare programme in the world. The Public Distribution System (PDS) facilitates the supply of food grains and distribution of essential commodities to a large number of poor people through a network of Fair Price Shops at a subsidized price on a recurring basis. It has a network of more than 4 lakh Fair Price Shops. See Department of Food and Public

food in the past are now likely to require food subsidies, as food insecurity has increased substantially in light of COVID-19 leading to massive loss of livelihood.¹³ Meanwhile, the Indian Government is said to hold three times the buffer stock of food, that it normally procures.¹⁴

What are India's legal obligations to guarantee the right to food?

International Law: India, has an obligation under the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which it is a party, *to respect, protect and fulfill a range of human rights, including the right to food.* Article 11 of ICESCR provides for the right to food as a component of the more general right to an "adequate standard of living". The United Nations Committee on Economic, Social and Cultural Rights (UN ESCR Committee), the supervisory body charged with the authoritative interpretation of the ICESCR, has indicated that the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfillment of other human rights.¹⁵

The UN Guiding Principles on extreme poverty and human rights, adopted by the UN Human Rights Council, require that States "[e]nsure effective distribution mechanisms that recognize market shortcomings to make adequate food physically and economically accessible to persons living in poverty"¹⁶

While some components of the right to food may be progressively realized there are certain minimum core obligations that India and other States must immediately undertake, including:

1. To use maximum available resources to "ensure for everyone under [the State's] jurisdiction access to the minimum essential food" which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger",¹⁷ even during natural or other disasters.¹⁸
2. To ensure that there is no discrimination in access to food on prohibited grounds, such as race, colour, sex, language, age, religion, political or other opinion, national or social origin, property, birth, disability, age, nationality, marital and family status, sexual orientation and gender identity, health status, place of residence and economic and social situation, or other status.¹⁹
3. To ensure that "specially disadvantaged groups" are given priority

Distribution, Ministry of Consumer Affairs, Food and Public Distribution, available at <http://epds.nic.in>

¹³ Kabir Agarwal, "Six Charts Show That India Needs to (and Can Afford to) Universalise PDS", *The Wire*, 18 April, 2020, available at <https://thewire.in/food/covid-19-lockdown-food-pds-india>

¹⁴ Siraj Hussain, "COVID-19 Lockdown: How India Can Provide Food Grains to Stranded Migrant Labourers", *The Wire*, 18 April, 2020, available at <https://thewire.in/rights/covid-19-lockdown-india-food-grains-stranded-migrants>

¹⁵ ESCR Committee, General comment No. 12: The Right to Adequate Food (Art.11 of the Covenant), U.N. Doc. E/C.12/1999/5, para 4.

¹⁶ A/HRC/21/39 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/154/60/PDF/G1215460.pdf?OpenElement>

¹⁷ ESCR Committee, General comment No. 12: The Right to Adequate Food (Art.11 of the Covenant), U.N. Doc. E/C.12/1999/5, para 13.

¹⁸ ESCR Committee, General comment No. 12: The Right to Adequate Food (Art.11 of the Covenant), U.N. Doc. E/C.12/1999/5, para 6.

¹⁹ ESCR Committee, General comment No. 12: The Right to Adequate Food (Art.11 of the Covenant), U.N. Doc. E/C.12/1999/5, para 18; ESCR Committee, General comment No. 20: Non-discrimination in Economic, Social and Cultural Rights (Art. 2(2) of the Covenant). U.N. Doc. E/C.12/GC/20.

consideration with respect to access to food.²⁰

As on 17, April, 2020, the ESCR Committee has issued a statement highlighting State parties' obligations in the context of COVID-19. It recommended the adoption of several measures including: payment of wages and benefits to all workers;²¹ providing social relief and income support to ensure food and income security to all those in need;²² subsidizing the cost of essential foodstuffs;²³ and ensuring the unrestricted flow of essential goods including staple foods.²⁴

Domestic Law: Indian jurisprudence has laid the foundation for protection of the right to food as a fundamental right,²⁵ which is aligned with India's international obligations. According to the Supreme Court, the right to life (Article 21) is to be interpreted as including the right to food,²⁶ and therefore the right to be free from hunger and starvation.²⁷ In the landmark case, *PUCL v. UOI*, a public interest litigation was lodged against the Indian Government arguing that the Government had violated the right to food by not distributing its excess food stockpile when people were hungry and starving in drought affected areas. The Court stated that the case highlighted the breakdown of the food public distribution system and the inadequacy of drought relief efforts.²⁸

The Supreme Court therefore directed the Government "to see that the poor and the destitute and the weaker sections of the society do not suffer from hunger and starvation"²⁹ and to provide food to disadvantaged groups including "... destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them."³⁰

The Court also directed the Indian Government to identify and include people who are living in poverty in its food-based schemes, and confirmed that the

²⁰ ESCR Committee, General comment No. 12: The Right to Adequate Food (Art.11 of the Covenant), U.N. Doc. E/C.12/1999/5, para 14.

²¹ ESCR Committee, Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights, E/C.12/2020/1, Para 15.

²² ESCR Committee, Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights, E/C.12/2020/1, Para 15.

²³ ESCR Committee, Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights, E/C.12/2020/1, Para 17.

²⁴ ESCR Committee, Statement on the coronavirus disease (COVID-19) pandemic and economic, social and cultural rights, E/C.12/2020/1, Para 20.

²⁵ *People's Union for Civil Liberties v. Union of India & Others*, 2001, Supreme Court, Writ Petition (civil) 196/2001.

²⁶ Supreme Court of India, *Shantistar Builders v. Narayan Khimalal Totame*, (1990) 1 SCC 520. In addition, directive principles of state policy indicate that State must direct its policies at ensuring an adequate means of livelihood (article 39), and raising the level of nutrition and standard of living of its people (article 47). These are not justiciable.

Shantistar Builders at para 9 - It is also worth remembering that while Article 37 states that the Directive Principles "shall not be enforceable by any court", it goes on to emphasize that these Principles "are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws" (Article 37)

²⁷ *People's Union for Civil Liberties v. Union of India & Others*, 2001, Supreme Court, Writ Petition (Civil) 196/2001, Order dated 29 October, 2002.

²⁸ *People's Union for Civil Liberties v. Union of India & Others*, 2001, Supreme Court, Writ Petition (civil) 196/2001, Order dated 20 August 2001.

²⁹ *People's Union for Civil Liberties v. Union of India & Others*, 2001, Supreme Court, Writ Petition (civil) 196/2001, Order dated 20 August 2001.

³⁰ *People's Union for Civil Liberties v. Union of India & Others*, 2001, Supreme Court, Writ Petition (civil) 196/2001, Order dated 23 July 2001.

Government would be held responsible for hunger and starvation.³¹ The Court has also said that the deprivation of the right to livelihood can be challenged as a violation of the right to life guaranteed by article 21 of the Constitution.³²

What right to food issues does India's COVID-19 response raise?

Anticipating and Addressing Impacts of Lockdown Measures on People Living in Poverty. The Government has failed to provide a plan capable of meeting the food requirements of all people in India when it announced the lockdown. The first lockdown on March 24 was announced with four only hours' notice, and the second lockdown on April 14 was announced with one day's notice. In addition to not providing a relief measure plan following the lockdown, the inadequate notice period did not give people adequate opportunity to make plans to ensure that they would have access to adequate food. Moreover, people who try to access food from community kitchens that have sprung up are harassed and beaten by the police.³³ The failure to plan adequately for the food needs of the Indian population, has contributed to rights violations associated with the right to food for those living in poverty.

Access to Justice to Prevent Violence and Discrimination in Access to Food and Livelihood. The Government must ensure that laws are enforced in a non-discriminatory manner, and that acts of violence are redressed. This includes an obligation to exercise due diligence to ensure that private individuals and businesses do not act to impair enjoyment of the right to food. Unfortunately, there are regular media reports regarding violence and discrimination. Muslim persons in particular have faced severe discrimination.³⁴ Muslim vegetable and fruit vendors have been prevented access to neighborhoods in Delhi and Rajasthan, and have been beaten up.³⁵ Gujjar milkmen in Jammu, Himachal Pradesh, and Punjab have faced boycott as well as physical violence while trying to sell milk.³⁶ The failure to enforce criminal law, including the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, for preventing acts of violence and discrimination, and to ensure the protection of food vendors is incompatible with India's obligation to protect the right to food.

³¹ People's Union for Civil Liberties v. Union of India & Others, 2001, Supreme Court, Writ Petition (civil) 196/2001, Order dated 17 September 2001.

³² Supreme Court of India, Olga Tellis and Ors. v. Bombay Municipal Corporation and Ors., 1986 AIR 180.

³³ Manjeet Sehgal, "Coronavirus lockdown in Chandigarh: Daily wage workers are surviving on donated food", *India Today*, 2 April, 2020 available at <https://www.indiatoday.in/india/story/coronavirus-lockdown-chandigarh-daily-wage-workers-food-condition-1662638-2020-04-02>

³⁴ This has been exacerbated by prejudicial statements and news coverage blaming the Muslim community for the spread of COVID19 due to the fact that a large number of cases have been linked to one gathering by a Muslim group between March 13-15. Akash Bisht et al, "How Tablighi Jamaat event became India's worst coronavirus vector", *Al Jazeera*, 7 April, 2020, available at <https://www.aljazeera.com/news/2020/04/tablighi-jamaat-event-india-worst-coronavirus-vector-200407052957511.html>

³⁵ Aditya Menon, "Attacks on Muslims in the Name of Covid-19 Surge Across India", *The Quint*, 8 April, 2020 available at <https://www.thequint.com/news/india/coronavirus-muslims-attacked-covid19-karnataka-haryana>

³⁶ Aditya Menon, "Attacks on Muslims in the Name of Covid-19 Surge Across India", *The Quint*, 8 April, 2020 available at <https://www.thequint.com/news/india/coronavirus-muslims-attacked-covid19-karnataka-haryana>. See also Pallavi Sareen, "Jammu: Gujjar Milkmen Facing Boycott Supply Free Milk to Quarantine Centres", *The Wire*, 17 April, 2020, available at <https://thewire.in/communalism/jammu-gujjar-milkmen-facing-boycott-supply-free-milk-to-quarantine-centres>

Fair distribution of food relief. The Government of India has an obligation to implement appropriate policies and programs in particular for people living in poverty to ensure their right to food and directly provide food to those who are unable to feed themselves. The Government must use the maximum of its available resources, including food stocks, to ensure the fulfilment the right to food. The Government does not appear to be fully utilizing its buffer stock of food grains to prevent hunger and starvation. This is despite reports that nearly half of internal migrant workers may not have food rations to last a full day, and more than 90 percent had not received food rations from the Government.³⁷ The Government should use its buffer stock to prevent hunger and starvation, as has previously been held by the Indian Supreme Court. In addition, the Government must address structural flaws in the implementation of emergency measures, which prevent access to food for people living in poverty, such as lack of ration cards as well as lack of inter-state portability of ration cards for those who would otherwise qualify under the food public distribution system.

What does the International Commission of Jurists recommend?

The Indian Government has fallen short of ensuring the State meet its obligations regarding the right to food of its inhabitants, particularly those living in poverty. The ICJ therefore calls on the responsible Indian authorities to:

1. Direct Provision of Food:

- Introduce a mechanism to ensure adequate accounting of the food needs of those living in poverty, as well as other persons from groups in situations of vulnerability, such as daily wage workers. This should include adequate notice and assistance to those communities to take measures to plan for extended periods of lack of access to income;
- Act to address minimum essential needs of food to the maximum of its available resources, including through use of its buffer food stock, or other appropriate mechanisms;
- Prevent and act swiftly to remedy supply chain disruptions in provision of foodstuff and ensure dissemination of information about the availability of essential services such as community kitchens and fair price shops;

2. Legal Enforcement:

- Ensure prompt access to justice for acts of discrimination and criminal violence against food vendors under Indian Penal Code as well as under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989;
- Take all necessary measures including, where appropriate, initiating criminal prosecution, to hold police accountable for acts of violence or mis-treatment in enforcing lockdowns and other measures;

³⁷ See Stranded Workers Action Network "21 days and counting : COVID-19 lockdown, migrant workers, and the inadequacy of welfare measures in India", April 15, 2020 , available at <http://publications.azimpremjifoundation.org/2272/>

3. ***Information Circulation:***

- Provide regular, accurate, evidence-based information on the spread of COVID-19 to the general public and publicly contradict false information to prevent discrimination and crimes committed against Muslim persons.

Commission Members

March 2019 (for an updated list, please visit www.icj.org/commission)

President:

Prof. Robert Goldman, United States

Vice-Presidents:

Prof. Carlos Ayala, Venezuela

Justice Radmila Dragicevic-Dicic, Serbia

Executive Committee:

Justice Sir Nicolas Bratza, UK

Dame Silvia Cartwright, New Zealand

(Chair) Ms Roberta Clarke, Barbados-Canada

Mr. Shawan Jabarin, Palestine

Ms Hina Jilani, Pakistan

Justice Sanji Monageng, Botswana

Mr Belisário dos Santos Júnior, Brazil

Other Commission Members:

Professor Kyong-Wahn Ahn, Republic of Korea

Justice Chinara Aidarbekova, Kyrgyzstan

Justice Adolfo Azcuna, Philippines

Ms Hadeel Abdel Aziz, Jordan

Mr Reed Brody, United States

Justice Azhar Cachalia, South Africa

Prof. Miguel Carbonell, Mexico

Justice Moses Chinhengo, Zimbabwe

Prof. Sarah Cleveland, United States

Justice Martine Comte, France

Mr Marzen Darwish, Syria

Mr Gamal Eid, Egypt

Mr Roberto Garretón, Chile

Ms Nahla Haidar El Addal, Lebanon

Prof. Michelo Hansungule, Zambia

Ms Gulnora Ishankanova, Uzbekistan

Ms Imrana Jalal, Fiji

Justice Kalthoum Kennou, Tunisia

Ms Jamesina Essie L. King, Sierra Leone

Prof. César Landa, Peru

Justice Ketil Lund, Norway

Justice Qinisile Mabuza, Swaziland

Justice José Antonio Martín Pallín, Spain

Prof. Juan Méndez, Argentina

Justice Charles Mkandawire, Malawi

Justice Yvonne Mokgoro, South Africa

Justice Tamara Morschakova, Russia

Justice Willly Mutunga, Kenya

Justice Egbert Myjer, Netherlands

Justice John Lawrence O'Meally, Australia

Ms Mikiko Otani, Japan

Justice Fatsah Ouguergouz, Algeria

Dr Jarna Petman, Finland

Prof. Mónica Pinto, Argentina

Prof. Victor Rodriguez Rescia, Costa Rica

Mr Alejandro Salinas Rivera, Chile

Mr Michael Sfard, Israel

Prof. Marco Sassoli, Italy-Switzerland

Justice Ajit Prakash Shah, India

Justice Kalyan Shrestha, Nepal

Ms Ambiga Sreenevasan, Malaysia

Justice Marwan Tashani, Libya

Mr Wilder Tayler, Uruguay

Justice Philippe Texier, France

Justice Lillian Tibatemwa-Ekirikubinza, Uganda

Justice Stefan Trechsel, Switzerland

Prof. Rodrigo Uprimny Yepes, Colombia



**International
Commission
of Jurists**

P.O. Box 91
Rue des Bains 33
CH 1211 Geneva 8
Switzerland

t +41 22 979 38 00

f +41 22 979 38 01

www.icj.org