

Right to Food: The Sri Lankan Experience

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Introduction

The food is an essential element for every living being in the world. Food has been a great influence in historical evolution of culture, political and economic aspects of countries around the world. Sri Lanka as a country enriches with a heritage running back to 2600 years', it has an own food culture. In the Sri Lankan culture, food is treated with the highest gratitude, respect, and generosity, expressed by sharing and offering to fellow humans, animals as well as the divine powers.¹ In the context of human rights, food plays an important role. Everyone has a right to food. The right to food is essential for a dignified life and it is vital for the realisation of many other rights, such as the rights to health and right to life. Food is important not just for survival, but also for the full development of one's physical and mental capabilities. Right to food has gained a worldwide acceptance from mid twentieth century, and through Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).² ICESCR Article 11 reads: "The states parties to present covenant

recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions." Article 11 further illustrated that "the state parties to the covenant, recognizing the fundamental right of everyone to be free from hunger, shall take in to account the problem of both food importing and exporting countries, to ensure an equitable distribution of world food supplies in relation to need."

Hence, food is a basic human right and right to food as guaranteed within the framework of human rights and at the end ensures overall human security. The concept of right to food has been developed significantly over last few decades, not only in the context of enhancing the right to food but also in connection with the most fundamental human right 'the right to life' as it relates to for example, the right to health, the right to water and the right to access to a clean environment.³

The ways and means of implementing such human right, however, especially the 'right

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¹ Sachithra Mirihana, Jagath K. Jayasinghe, Chamila V.L. Jayasinghe, Janitha P.D. Wanasindara 'Journal of Ethnic food' (2020), Volume 3 "Indigenous and Traditional Foods of Sri Lanka"

² United Nations, International Covenant on Economic, Social and Cultural Rights (United Nations Human Rights), December 1966.

³ Hossain Kamral, Raheem Dele & Cormier Shaun "Food Security: A Basic Need for Humans". Food Security Governance in the Arctic- Barents Region (April 2018) pp 5-14.

to food' and its adequacy could vary from country to country. Every state needs to take adequate and sufficient steps to ensure this right among their citizens. Therefore, in this article, I discuss the pertaining laws in Sri Lanka to ensure right to food, and how international legal regimes accepted this right, the gap between domestic laws and international laws and finally the conclusion and recommendations.

Recognition of right to food in Sri Lankan Legal Framework

The existing Sri Lankan legal framework does not provide explicit provisions right to food, but there are some implied legal provisions can be found in various Acts and Policies in Sri Lankan Law. In this part, I analyse those implied provisions to formulate some strong suggestions to Sri Lankan legal framework.

Table 1 provides the existing food laws and policies in Sri Lanka.

Figure 1: Food Laws and Policies in Sri Lanka
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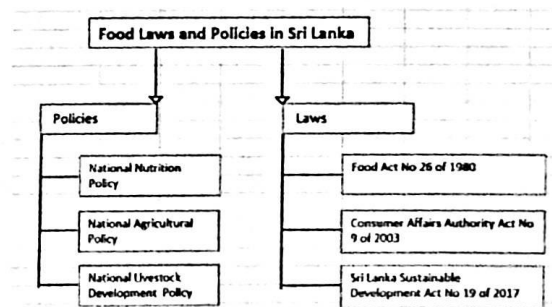
Sri Lanka as a country, does not recognize the concepts of 'right to food' or 'right to health' as fundamental rights in the prevailing constitution.⁴ Sri Lanka has not recognized explicitly right to life as a fundamental right, either. However, the supreme court of Sri Lanka recognized right to life for the individuals with some of the landmark judgements such as **Chunnakkam Power Plant case**,⁵ and in

Sriyani Silva v Iddamalagoda, Officer in Charge Police Station Payagala.⁶

Therefore, I discuss other laws and regulations to find out 'right to food' in Sri Lankan Law.

Firstly, the Food Act and subsequent amendments have referred to food safety in Sri Lanka.⁷ Article 2 of the Food Act states that:

'No person shall manufacture, import, sell, expose for sale, store or distribute any food (a) that has in or upon it any natural or added deleterious substance which renders it injurious to health; and (b) unfit for human consumption, unclean, putrid, repugnant, decayed, decomposed or diseased animal substance or decayed vegetable substance or is insect infested; adulterated items; added substance in contravention of the law; food prepared in insanitary



conditions shall not be sold'.

Further, Food Act makes provisions to consider anyone who breaches the provisions of the Act as a person who is

⁴ The constitution of the Democratic, Socialist Republic of Sri Lanka, 1978

⁵ Ravindra Gunawardena Kariyawasam v Central Environment Authority & 13 Others SC/FR /141/2015

⁶ 2 SLR 2003 p 63

⁷ The National Food Act No 26 of 1989

guilty of an offence which is liable for a conviction. The salient feature of the Food Act is, prohibiting the manufacturing, import, sale, or distribution of food unfit for human consumption, as well as the labelling, packaging, and advertising of food in a wrong or misleading manner. In addition, the Act facilitates the Chief Food Authority to authorize the sale for purposes other than human consumption of food rendered unfit for human consumption. According to Human Rights obligations, a state should protect, promote and fulfil rights which are contained in international conventions on behalf of the individuals of the country.⁸ Although Food Act covers the above-mentioned forefronts for food quality, manufacturing and distribution, it does not identify food as a right. Therefore, Food Act does not provide a solution for recognising concept of right to food which is the centre of gravity of this paper.

Secondly, the other main legislation in this regard is the Consumer Affairs Authority No 09 of 2003 (Consumer Affairs Act). Consumer Affairs Act discusses on the different aspects of protecting consumers against goods which are harmful to human life. The prime objective of this Consumer Affairs Act is "to provide better protection of consumers through the regulation of trade and the prices of goods and services and to protect traders and manufactures against unfair trade practices and restrictive

trade practices."⁹ Further, Consumer Affairs Act focuses on desirous of promoting competitive pricing wherever possible and ensure healthy competition among traders and manufactures of goods and services.¹⁰ Further, Consumer Affairs Act divides Part 1 to Part 7, for the purpose of discussing establishment of the Consumer Affairs Authority, regulation of trade, promotion of competition and consumer interest, Consumer Affairs Council, fund of the Authority and the staff of the Authority. All of these areas cover to protect the consumers, duties and powers delegated to the authority, but the Consumer Affairs Act does not provide provisions concerning the right to food.

Sri Lanka as a member of United Nation's enacted Sri Lanka Sustainable Development Act¹¹ to achieve the seventeen Sustainable Development Goals (SDGs) adopted in 2015.¹² Further, Sri Lanka intends to design, develop, and implement a National Policy and Strategy on Sustainable Development and facilitate all agencies responsible and to follow up and monitor the progress. In addition to the above objectives, the SDGs Act especially focuses to set its own national targets guided by the global level of ambition but considering national interest and circumstances and incorporate such seventeen SDGs in national planning processes, policies and strategies in the

⁸ Jeewanthi Geethani, "State Responsibility and Legal Framework of Sri Lanka in Food Safety" 2017

<http://ir.kdu.ac.lk/handle/345/1664>
(accessed 21st July 2022)

⁹ Preamble of Consumer Affairs Authority Act, No. 9 of 2003

¹⁰ *ibid*

¹¹ Sri Lanka Sustainable Development Act, No 19 of 2017

¹² *Ibid*, preamble

relevant ongoing processes in the economic, social and environmental fields. The SDGs Act focuses National policy and strategy on sustainable development under part 2, and section 11 discusses the National Policy and Strategy to be in line with on the SDGs until 2030. Even though the Act directly provides guidelines towards SDGs since 2017, the government has not taken timely relevant actions to achieve these goals in 2030. In April 2021, the former Sri Lankan president and his advisory committee decided to boycott for using chemical fertilizer in agriculture sector. Since the decision was not a wise and practical one in relating to all agrarian harvest; and therefore, the decision was revoked in April 2022. This incident provides the need for a delicate balance between SDGs and development aspects in the high-level decision-making process. One side we are compelled to achieve sustainable development goals in 2030, on the other side such radical decisions may directly impacted to unavailability of adequate food and impede the food security in the country. Although the SDG 2¹³ discusses the end hunger, achieve food security and improved nutrition, and promote sustainable agriculture, Sri Lanka is yet to achieve this goal after five years of the completion of enacting the SDGs Act. Even though, the above legislation directly relates to Food and its administration, they

do not directly accepted Food as a right of human beings.

The directive principles of state policy in the Sri Lankan Constitution¹⁴, however, recognised the right to adequate food. Article 27(14) (2)(c) of the 1978 Constitution¹⁵ stress this right stating:

“The realization by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities;”

Although it is a fundamental duty of State in terms of the Constitution of Sri Lanka to “the State is pledged to establish in Sri Lanka a democratic socialist society, the objective of the realization by all citizens of an adequate standard of living for themselves and their families, including adequate food”¹⁶ the right to food has not been explicitly included as a fundamental right in the Chapter 3 of the Constitution. Besides, the directive principles are lack of binding force as compared to the fundamental rights provisions of the Constitution.¹⁷ Fundamental rights are the rights guaranteed by the Constitution of the country and the directive principles of state policy serve as guidelines for the organs of the state while performing the functions

¹³ United Nations Sustainable development Goals(Goal 2- Zero Hunger)
<https://www.un.org/sustainabledevelopment/>
(accessed 20th July 2022)

¹⁴ The constitution of the Democratic, Socialist Republic of Sri Lanka, 1978

¹⁵ Ibid

¹⁶ Chapter VI, Article 27(14) of the Constitution of Democratic Socialist Republic of Sri Lanka, 1978

¹⁷ Article 29 of the Constitution of Democratic Social Republic of Sri Lanka, 1978

they are legally obliged to do. In Sri Lanka directive principles are designed to be mere guidelines under the Constitution and not enforceable in any court of law.¹⁸ Even though the directive principles of state policy have no binding force before the court of law under Constitution, the judiciary has taken some efforts to strike a balance between the fundamentals rights and directive principles of state policy, highlighting that the state to be bound by both set of standards Sri Lanka.¹⁹ The Supreme Court of Sri Lanka emphasized the importance of directive principles of state policy in re the Thirteenth Amendment to the Constitution Bill.²⁰ In this case, Sharvananda.CJ, observed that although directive principles are not enforceable in courts of Law, that shortcoming did not detract from their values as projecting the aims and aspirations of a democratic government. In Bulankulama and Others v Secretary, Ministry of Industrial Development and Others ²¹ Amerasinghe.J emphasized the duty on the part of the state to be in line with the directive principles of state policy. Although it is expressly declared in the Constitution that the directive principles and fundamental duties 'do not confer or impose legal rights or obligations and are not enforceable in any court or tribunal' courts have linked the directive principles to the public trust doctrine and have stated that these principles should guide state functionaries in the exercise of their powers.

¹⁸ Ibid

¹⁹ Ravindra Gunawardena Kariyawasam v Central Environment Authority & 13 Others SC/FR /141/2015

Even though the Sri Lankan Courts emphasized the importance of directive principles of state policy in certain cases, neither judicial pronouncements nor constitutional provisions impose a duty on the executive and the legislature to apply directive principles in their respective activities to accept food as a fundamental right.

Apart from the Constitution and other legislative enactments, there are some food policies enacted in Sri Lanka. National Nutritional Policy (NNP)²² is introduced in 2010, with the vision of "every Sri Lankan has access to appropriate and adequate food and nutrition irrespective of their geographical location and socio-economic status."²³ The NNP provides the following four main objectives:

1. to ensure optimal nutrition throughout the life cycle,
2. to enhance capacity to deliver effective & appropriate interventions,
3. to ensure effective management of adequate nutrition to vulnerable populations
4. to ensure food and nutrition security for all citizens

For the purpose of achieving the vision of the NNP.

Ministry of Agriculture Development and Agrarian Service introduced a National Policy for Agriculture in 2007 to achieve objectives of increase domestic agricultural production to ensure food and nutrition security of the nation; enhance agricultural

²⁰ (1987) 2 SLR 312

²¹ (2000) 3 SLR 243

²² Ministry of Healthcare and Nutrition, (2010)

²³ Ibid pp11-12

productivity and ensure sustainable growth; and to maximize benefits and minimize adverse effects of globalization on domestic and export agriculture.

Even though we have numerous laws and policies to protect and maintain quality of food, as a nation we face difficulties in finding quality food for a reasonable price. According to the Global Food Security Index (GFSI) which considered the issues of food affordability, availability, quality and safety, and natural resources and resilience across a set of 113 countries²⁴, Sri Lanka ranked in the 77 position in 2021. At the same time, Sri Lanka is not in a satisfactory level in terms of food security and affordability according to the Global Hunger Index (GHI). The GHI is designed to raise awareness and understanding of the struggle against hunger, provide a means to compare the levels of hunger between countries and regions, and call attention to the areas of world in greatest need of additional resources to eliminate hunger,²⁵ shows 17.6²⁶ score and it indicates we are in a moderate level of hunger index. The following chart shows Sri Lanka's score for GHI in the past two decades, and as depicted in the chart we have not initiated sufficient strategies to reduce the amount less than 10.

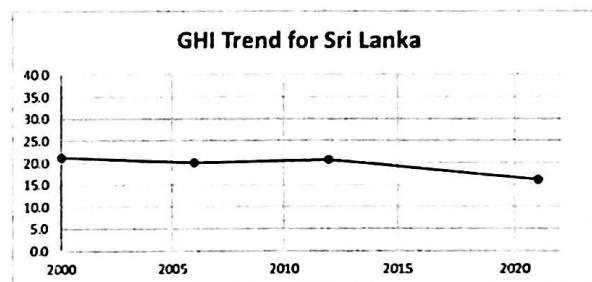


Chart 1- Source Global Hunger Index 2021

Although Sri Lanka has a national legal framework protecting consumer rights and preventing insanitary food preparations, still there are several incidents are being reported due to the lack of implementation. On one hand this may be akin to a violation of consumer rights as well as human rights of the people and this is highly affected to the economic productivity of the country on the other hand.

International recognition of the right to food

This section provides a general overview of the key elements related to the international context, state obligations and implications of the right to food. The human right to adequate food is recognized and reaffirmed in several binding and non-binding international instruments. For example, Article 25 of Universal Declaration of Human Rights (UDHR)²⁷ provides:

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and

²⁴ The Economist Group 2022, “Global Food Security Index” <
<https://impact.economist.com/sustainability/project/food-security-index/>> (accessed 28th July 2022)

²⁵ Global Hunger Index 2022, <
<https://www.globalhungerindex.org/about.html>> (accessed 28th June 2022)

²⁶ Ibid

²⁷ The United Nations’ Universal Declaration of Human Rights (UDHR), 10th December 1948

necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control."

Article 25 covers a wide range of rights, including those to adequate food, water, sanitation, clothing, housing, and medical care, as well as social protection covering situations beyond one's control. In addition, Article 11 of the ICESCR²⁸ described the right of adequate standard of living including food. Further, the CESCR General Comment No. 12 reads that right to adequate food is realized when every man, woman and child, alone or in community with others, have physical and economic access at all times to adequate food or means for its procurement.²⁹ The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients. As per the provisions of these international standards, right to adequate food must be realized progressively. However, states have a core obligation to take the necessary action to mitigate hunger as per Article 11 of ICESCR.

²⁸ United Nations, International Covenant on Economic, Social and Cultural Rights (United Nations Human Rights), December 1966.

²⁹ Office for the High Commissioner-Human Rights, "CESCR General Comment No. 12: The Right to Adequate Food (Art. 11)", Adopted at the Twentieth Session of the Committee on Economic, Social and Cultural Rights, on 12 May 1999

The Food and Agriculture Organization of the United Nation introduced seven implementation steps guideline for states to protect and uphold the concept of right to food in 2004.³⁰ They are:

1. identifying and targeting the hungry and the poor,
2. conducting a thorough assessment of existing policies, institutions and laws,
3. adopting a sound food security strategy,
4. elaborating a framework law,
5. allocating institutional roles and responsibilities,
6. monitoring progress towards established benchmarks and
7. establishing recourse mechanisms.

Hence, these international guidelines seem to have been introduced not only for urging countries to take actions, but also for betterment of the entire human beings across the world. Therefore, all the states especially, state parties of FAO have moral obligation to follow these guidelines for alleviating hunger.

The right to food is binding on States that have ratified the relevant treaty provisions.³¹ However, for it to be effective for individuals within that State, national legislation must reflect the right in such a way as to make it applicable. This may take place through its incorporation into the

³⁰ The Food and Agriculture Organization (FAO) is a specialized agency of the United Nations that leads international efforts to defeat hunger Established in October 1945

³¹. Simma, B. & Alston, P. 'The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles' (1988) 2 Australian Yearbook of International Law 82.

Constitution and through framework laws and sectoral laws.³² In some countries, international treaties are directly applicable; thus, the right to food could be protected even without being recognized specifically in the constitution or other enabling law.

A constitutional provision of a country plays a fundamental role in the realization of the right to food because it is the supreme law of a country. Further it is a body of rules that establishes and regulates a government by stipulating checks, balances and limitations of governmental authority. Therefore, it is important to find out the countries that, directly recognized the right to food through their constitutional provisions.

The Supreme Court of India in Kishen Pattnayak & another v. State of Orissa³³ has recognized the right to food under the right to life stipulated in article 21 of the Indian Constitution³⁴, with reference also to the Directive Principle of State Policy concerning nutrition, contained in Article 47. Therefore, since 1989 the concept of right to food is upheld as a fundamental right in Indian society from this pragmatic decision.

Article 27 of the South African Constitution³⁵ discusses the concept of right to food. Article 27 stipulates:

Everyone has the right to have access to health care services including reproductive health care, sufficient food and water and social security including, if they are unable to support themselves and their dependants, appropriate social assistance.

The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.

The Article 27 comes under the 'bill of right' chapter of the South African constitution and this chapter is considered as the fundamental right chapter of the constitution.³⁶ Accordingly, South Africa recognizes the concept of right to food as a fundamental right of its citizen and the government need to protect and improve this right throughout the country. Further, the South African Constitutional court interpreted in broaden way to protect the concept of right to food. Wary Holdings v Stwalo,³⁷ dealt with the legality of subdividing and selling land classified as 'agricultural land' under the Agricultural Land Act.³⁸ In its judgment the

³² Guide on Legislating for the Right to Food. FAO in Rome, 2009

³³ A.I.R. 1989 S.C. 677.I No. 196/2001 p. 48

³⁴ The Constitution of India, 1949

³⁵ The Constitution of the Republic of South Africa, 1996

³⁶ "Let's Grow South Africa Together" South African Government

<<https://www.gov.za/documents/constitution-republic-south-africa-1996>> (accessed 31st July 2022)

³⁷ CCT78/07) [2008] ZACC 12; 2009 (1) SA 337 (CC); 2008 (11) BCLR 1123 (CC)

³⁸ Subdivision Agricultural Land Act of Republic of South Africa, 1970

Constitutional Court acknowledged that the government had a responsibility not to violate anyone's right to food.

Having understood the pertaining laws and judgements in India, South Africa and above discussed International conventional coverage relating to the concept of right to food has significantly recognized and accepted compare with Sri Lankan pertaining legal framework.

Conclusion and recommendations

Implementation or enforcement of the concept is right food does not necessary mean that the people somehow get food. It means more than that and the state has to establish relevant mechanisms for carrying out its obligations to respect, protect and fulfil people's access to quality food.

As revealed in the discussion so far, in international legal framework is stronger and focus to protect and uphold food as a right. Moreover, countries like India and South Africa, courts including Supreme Courts and Constitutional Courts safeguard right to food as a part and parcel of fundamental right of their constitutions. The court proceeding of these countries may not be easy to seek remedies if their constitutions did not safeguard this as a right.

The logical consequence of the superiority of the Constitution is that it supersedes all acts of the legislature contrary to it. Consequently, such acts will not bind either the courts or the citizens. Constitutional provisions are also binding for the executive and all administrative authorities

are equally limited by its provisions. Any executive or administrative action that contravenes the constitution must be considered void, and the courts must invalidate it. Based on the recognition of a right to food in the constitution, the Supreme Court of Sri Lanka could intervene through interpretations. Although the Sri Lankan Constitution provide standard of living including adequate food in the directive principles³⁹, our directive principles are designed to be mere guidelines under the Constitution and not enforceable in any court of law. Even though the Supreme Court granted favourable decisions on directive principles, we have experiencing that those judgements are not sufficient to protect the concept of right to food. Thus, it is required to clear and explicit provisions to protect the right to food for the present generation as well as generation yet to born. Hence, there remains a compelling need to make proposal on recognizing right to food as a fundamental right in the Sri Lankan Constitution. Therefore, I suggest the concept of the right to food must align with fundamental right chapter.

³⁹ Chapter 6 of the 1978 Constitution of Sri Lanka.

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