



Policy Brief for Parliamentarians

Challenging Federalism: Centre-State Relations and the NFSB

After over 60 years of India's independence, the persistence of hunger and malnutrition in the country has made it necessary to ensure a legal guarantee of food security. This can only be sustainable if attention is paid to three distinct issues: availability (with priority to local production), accessibility (social and economic access), and absorption (the conversion of food intake into nutritional well-being). This involves food security in a wider sense, of assured social and economic access to all persons at all times of sufficient and culturally appropriate nutritious food as is required to live an active life with good health. Adequate nutrition also depends on a wide range of non-food entitlements, relating for instance to sanitation, drinking water, healthcare, social security, information, and even the distribution of power and resources within the family.

The National Food Security Bill (NFSB), 2011 was introduced in the Parliament on 22 December 2011. The Government Bill restricts itself to *food entitlements* as an aspect of the right to food, and is largely based on the entitlements of food under various schemes, which have been expanded on the directions of the largest running mandamus right to food by the Hon'ble Supreme Court of India. In this limited sense, it is not a bill that protects food security but is restricted to prescribing entitlements for different categories and hence should be called a Food Entitlements Bill. These food entitlements relate primarily to the duty of central, state and local governments and to provision of food to the people, through subsidised grain, direct feeding programmes or related interventions.

Division of Powers between Centre and States in Indian Constitution

Article 1 of the Indian Constitution describes

India as a 'Union of States', with provisions for Legislative, Financial and Administrative division of powers between the Union and States. For the purpose of policy making, under Article 246, the subjects of governance are divided into Union, State and Concurrent lists. But the residuary powers on the Concurrent List that rests with the Union (Article 254(1)) and Parliament's power to supersede and legislate on any matter in the State List by 2/3rd majority of the Rajya Sabha (Art. 249), are some of the legal provisions of the primacy of the Union in the legislative matters.

On administrative relations, Sarkaria made the following observation: "Federalism is more a functional arrangement for cooperative action, than a static institutional concept. Article 258 (power of the Union to confer powers, etc on states in certain cases) provides a tool by the liberal use of which cooperative federalism can be substantially realised in the working of the system. A more generous use of this tool should be made than has hitherto been done, for progressive decentralisation of powers to the governments of the states." The Commission further noted that to ensure uniformity on the basic issues of national policy, with respect to the subject of a proposed legislation, consultations may be carried out with the state governments individually and collectively at the forum of the proposed Inter-Governmental Council.

The Powers of the Central and State Governments in the NFSB

The NFSB 2011 gives sweeping powers to the central government, in violation of the spirit of federalism as prescribed in the Indian Constitution.

The bill leaves the involvement of the local self governments to the state governments. The powers of the central government in the NFSB include determining entitlements for various groups, state-wise coverage, sharing of costs for various schemes, grievance redressal mechanisms and reforms, while the implementation of the schemes are the responsibility of state governments. The bill also does not specify when different provisions of the Act come into force.

We examine the implications of these in light of the schemes as they are presently being implemented in the states:

1. Entitlements of Foodgrains - Targeted Public Distribution Scheme (TDPS)

Public Distribution Scheme became a targeted scheme for the below poverty line households since 1997. Following the Hon'ble Supreme Court orders in *PUCL vs. UOI* (CWP 196/2001), the scheme has been running with differential degrees of its outreach and efficacy in every state. However, the court orders entitled the most vulnerable to an Antyodaya card with an entitlement of 35 kg of foodgrains at prices of Rs. 2 per kg for wheat and Rs. 3 per kg for rice every month. These sections include the aged, infirm, destitute, disabled, and single women of no assured means of subsistence and primitive tribes (SC Order dated 02 May 2003).

The bill envisages the continuation of TPDS by naming the new category as priority and general households, without taking into account that there is a widespread failure of targeting. The failure of the methods used for targeting/identifying BPL households are in the results of several national household surveys,¹ all showing that about half of all poor households in rural areas do *not* have a BPL card.

Chapter II, Section 3 states "Entitlements under the Targeted Public Distribution System will be seven kilograms of foodgrains per person per month for priority households and not less than three kilograms of foodgrains per person per month for general households, at subsidised prices specified in Schedule I.

"The entitlements shall extend up to seventy-five per cent of the rural population and up to fifty per cent of the urban population."

The powers of the central government are:

- Determining the state-wise coverage of priority and general households (Section 14).
- Prescribing how priority and general households are to be identified (Section 15).
- Allocation of foodgrains to states (Section 30).
- Prescribing PDS issue prices under Schedule I.

Table 1 on the next page presents tentative estimates of NFSB foodgrain allocations from the Central Government to state governments, as a proportion of their current allocations (last two columns). Most states stand to gain from NFSB, in terms of foodgrain allocations, but four major states (Himachal Pradesh, Jammu & Kashmir, Kerala and Tamil Nadu) are significant losers. The biggest gainers are Bihar, Uttar Pradesh, Rajasthan, Madhya Pradesh, Gujarat and Jharkhand.

Section 15(1) of the NFSB states, "Provided that no household falling under the exclusion criteria, to be prescribed by the Central Government, shall be included either in the priority households or general households". Many states today have universalised (in full or with limited exclusions only) the entitlements of foodgrains under the public Distribution system as part of recognizing the right of food to all. However, this section will not allow these states to continue with the universal scheme.

States such as Tamil Nadu and Kerala have already protested the Bill on these grounds. Other states like Orissa, Chhattisgarh, and A.P. too have followed the principle of exclusion for a more transparent system and to reduce leakages. The criteria of inclusion and exclusion however have been determined by each state in accordance with the prevailing situation and ease of implementation.

Moreover, the allocation of foodgrains as per number of persons in the priority or general category is in fact now subjudice in the Hon'ble Supreme Court in WPC 196/2001 (Right to Food) and the courts have questioned the basis of allocation of foodgrains by the centre according to estimated figures of poverty in the state.

The PDS entitlements must therefore be universally provided without differentiating between different people based on poverty ratios, and allocations made to states on basis of their demand and estimation of the specially vulnerable food-insecure populations.

2. Entitlements for the Specially Vulnerable

Prescribing the "schemes" through which destitute persons, the homeless and other needy persons are to receive food assistance (Sections 8, 9 and 11).

The idea of a uniform method of addressing the most vulnerable through a centralised scheme disregards the powers of the state governments as well as the diverse situations in the different states of the most vulnerable populations. While providing basic entitlements, what is required is that affirmative action is taken to ensure that special needs of vulnerable groups such as children, the aged,

Table 1

States	Current TPDS allocation, 2010-11 (lakh tonnes)	Estimated NFSB allocations(lakh tonnes)	NFSB allocation as a ratio of current allocation (%)
Andhra Pradesh	33.2	30.2	91
Assam	14.1	13.9	99
Bihar	33.8	63.5	188
Chhattisgarh	10.9	14.1	129
Gujarat	16.3	23.0	141
Haryana	6.1	7.0	115
Himachal Pradesh	4.75	1.9	40
Jammu & Kashmir	7.57	3.2	42
Jharkhand	12.4	17.5	141
Karnataka	20.7	24.5	118
Kerala	12.3	7.9	64
Madhya Pradesh	24.0	38.6	161
Maharashtra	40.9	44.2	108
Orissa	21.2	25.1	118
Punjab	7.45	7.1	95
Rajasthan	17.8	28.8	162
Tamil Nadu	37.2	26.0	70
Uttar Pradesh	63.4	101.5	160
Uttarakhand	4.1	3.9	93
West Bengal	33.0	40.2	122
INDIA	437.9	527.4	120

disabled, single women, dalits, tribal people and migrants are addressed. Apart from these there will be region specific vulnerable populations, such as the salt pan workers in Rann, positive affected persons, nomadic tribes etc. State governments and local self governments are best suited to not only identify such populations, but also develop appropriate schemes to meet their needs.

3. Imposing Conditionalities by the Centre for Allocation of Foodgrains to States

Centre has observed that the autonomy to states comes with obstructions and have thus suggested Targeted Public Distribution System reforms. It further added that the public distribution system is marred with leakages; over capacity of *mandis*; financial position of the state agencies; training; lack of quality inspection mechanism for storage and movement of foodgrains.

Some of the powers of the central government under the bill are as follows:

- Prescribing when the coverage of the PDS is to be extended to general households, and the PDS reforms that are required before this extension (Section 3(3)).
- Prescribing the amount and terms of the “food security allowance” to be paid by state governments in case of a failure of food entitlements (Sections 13).
- Providing funds instead of foodgrains to state governments (“in case of short supply of foodgrains”) “in such manner as may be prescribed” (Section 31).

The central government is not bound by this bill to undertake any reforms to ensure timely financial provisioning, decentralised procurement, storage and allocations of food grains. Over the last decade, many of the states have carried out reforms in the PDS leading to increased outreach & offtake from the PDS. The most successful reforms have been led where there is greater decentralisation in procurement, transparency and community engagement. The additional costs of such reforms have been borne by

the state governments. Secondly, linking reforms with entitlements under the food scheme will essentially deny the rights in poorly governed states. The nature of reforms also includes cash transfers which do not take into cognisance the growing dependence of the populations on the PDS which constitute around 20% of rural populations, and 14% as reflected in the results of the 66th round of NSSO. If the provision of foodgrains itself is discontinued, governments will not continue procuring the grains from the farmers, which will rob them of security and dis-incentivise production.² Cash transfers cannot be a substitute for basic services being introduced in the first place.³

4. Incongruence of the Central Guidelines for Implementation in States

The provisions for nutrition for different groups under the NFSB are prescriptive in nature. For instance, the central government has the powers to “Prescribe “type” and “nutritional standards” for cooked meals and take-home rations (for midday meals, ICDS, etc.) under Schedule II. This includes the power to replace cooked meals with “ready to eat meal or take-home ration” (Sections 2(11), 4, 5, 6).

With the variable dietary patterns of different regions in the country and availability of diverse nutritional sources, such strict straitjacketed norms do not allow for any community participation in choice of meals and the required flexibilities to decide content at local self governments or state level. The nutritional standards should be set by the state government, with benchmarking the minimum necessary requirement for a balanced diet.

The above provisions have already led to entry of corporations and industries in the provisioning through a standardised package of supplementary nutrition instead of locally produced culturally appropriate foods.

Similar concerns are with maternity benefit schemes. For example, in maternity entitlements, the Central Government guidelines on Janani Suraksha Yojana of 2005 are not in conformity with the Hon’ble

Supreme Court directives of 20 November 2007. Following this and taking cognisance of the state specific maternity programmes, the nature and scope of benefit is more than the Central Government guidelines. The draft NFSB does not give any insight on the ongoing state specific maternity programmes, in addition to the Central norms.

5. Financial Implications of the Bill on States

The Bill which is drafted based on the subject which is in concurrent list, has not made any elaborate provisions of the role of the inter-state council on managerial autonomy and the role of the Finance Commission to work with the State Finance Commissions and State Food Commissions for clear provisions on the grants-in-aid to the states and resource mobilisation at the Panchayats and Municipalities of the state.

The cost sharing of each of the schemes has been left to the discretion of the centre. The bill gives the power to the central government for prescribing mandatory guidelines for all relevant schemes, as well as the sharing of costs between state and central governments for specific schemes (Sections 4, 7, 8, 9, 11, and 47).

There is no mention of the role of Finance Commission, which as one of the core recommendations determines the principles which should govern the payment of the Union grants-in-aid of the revenue of the states. The states have claimed that going by the provisions of the Act, maintenance and construction of storage will require huge expenditures from states. Supply system would also require additional expenses. On another note, since the state governments have expressed discontent over the ambiguity in cost sharing, especially w.r.t. the range of entitlements under the special category (Chapter II, Section 8). Currently there are no free food provisions for homeless/disaster affected households and migrant population in the state (except with subsidised food schemes operational in few of the states). The states are to 'share' the costs on these even as they are to identify 'vulnerable households'. Unlike the RTE Act 2009, there is no mention of

- a) Concurrent responsibility of providing funds to the Centre and State Government.
- b) Estimates on capital and recurring expenditures for the implementation of the provisions of the Act.
- c) Grants-in-aid of revenues to be determined in consultation with the state government.
- d) Reference of Finance Commission to examine the need for additional resources to be provided to any state government for carrying out the provisions of the Act.

6. Silence on the Production, Procurement and Storage of Foodgrains

The most important section on food availability through incentives to agriculture production and decentralized procurement has been left out in the bill. The Bill makes mention of procurement only in Schedule III, under 'Provisions for Advancing Food Security'. This Schedule only provides for what Governments shall "*strive to progressively realise*" (Section 39).

There is no guarantee given by the centre to assure that minimum support price is made available to all farmers. This would require reforms in the manner in which food is currently being procured and stored across the country. The state agriculture ministers from the food production deficit states and the food production surplus states have raised the need for more food procurement centres to be set up. Storage too needs to be shifted to where the food is being consumed rather than where it is being produced. Haryana have highlighted paucity of storage and slow movement of foodgrains and asked for Special Purpose Vehicle for a dedicated freight corridor link of railways with roads.

Production of millets, pulses and oilseeds is inadequate due to low and uncertain prices and insufficient investment. If all foodgrains including millets, pulses and oilseeds are procured locally at stable and remunerative prices for distribution under the schemes such as PDS, ICDS and MDMS, this will give a boost to the production of these crops. This will

especially benefit small farmers and rural women who are primarily engaged in the agriculture sector and among the most food insecure populations in the country.

Conclusion

Government can ensure a successful and sustainable implementation of any legislation, with the focus on the key factors on the administrative and financial status of the state government w.r.t. the Bill provisions. Consultation with states and local body participation through centres of autonomous decision making, transparency, accountability and grievance redressal mechanism have to be followed thereafter. The comments from the state government shall be dealt constructively to avoid large scale regional imbalance in the provisioning of the services. It is a battle which shall lead to a win-win situation for all.

Notes

1. National Sample Survey (61st Round, 2004-05); Third National Family Health Survey (2005-06); and Indian Human Development Survey (2004-05).
2. Refer Jayati Ghosh, "Cash Transfers as the Silver Bullet for Poverty Reduction: A Sceptical Note", 45(1) *Economic and Political Weekly* 67 (May 21, 2011).
3. Refer Jean Dreze, "The Cash Mantra", available at <http://www.indianexpress.com/news/the-cash-mantra/788791>.

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