

The right to food and its hurdles in its enforcement under the WTO-

A Study in relation to implications in India

1. The Right to Food: A Brief Context

- The right to food is recognized under **Article 25 of the Universal Declaration of Human Rights (1948)** and **Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966)**.
- It obligates states to ensure that every individual has **physical and economic access** to sufficient, safe, and nutritious food.
- In India, it has been read into **Article 21 (Right to Life)** by the Supreme Court in cases like *PUCL v. Union of India (Right to Food Case, 2001)*.

2. WTO and Food Security

The WTO deals with international trade rules, including agriculture. Food security and subsidies often clash with WTO obligations, because:

- **Agreement on Agriculture (AoA)**: Limits subsidies and domestic support for farmers.
- **Trade-Related Intellectual Property Rights (TRIPS)**: Impacts access to seeds, agricultural technology, and affordable food production.
- **Sanitary and Phytosanitary Measures (SPS)**: Allow restrictions on food imports/exports based on health standards, which sometimes function as trade barriers.

3. Hurdles in Enforcing the Right to Food under WTO

a. Subsidy Restrictions (Agreement on Agriculture)

- WTO rules categorize subsidies as *Green Box* (permissible), *Amber Box* (trade-distorting, limited), and *Blue Box* (production-limiting but allowed).
- Developing countries like India face limits on subsidies for food security programs (e.g., Minimum Support Price for farmers, public stockholding for food distribution).
- Example: India's **Public Distribution System (PDS)** and **National Food Security Act (2013)** often come under WTO scrutiny for being "trade-distorting."

b. Public Stockholding Programs

- Developing nations purchase food grains at fixed prices for welfare schemes.
- WTO rules cap such subsidies at **10% of the value of production** (based on 1986-88 prices, which are outdated).

- This makes it difficult to run large-scale food security programs without being challenged at WTO.

c. TRIPS and Seed Patents

- TRIPS obliges countries to recognize intellectual property rights over seeds and biotechnology.
- This can hinder small farmers' traditional practices of saving and sharing seeds, affecting availability and affordability of food.

d. Export Restrictions and Global Trade Pressures

- Countries often restrict food exports to ensure domestic supply (e.g., India restricting rice exports in 2022).
- But WTO discourages such restrictions, pressuring governments to prioritize trade over domestic food security.

e. Market Access and Dumping

- Subsidized agricultural exports from developed countries (like US and EU) flood developing markets, hurting local farmers.
- This undermines food self-sufficiency and makes enforcement of the right to food dependent on **volatile global markets**.

f. Sanitary and Phytosanitary (SPS) Standards

- WTO allows health and safety standards, but these are often used as protectionist tools.
- Developing countries may find it hard to meet strict standards, reducing their food export opportunities and affecting farmers' incomes.

4. Judicial and Policy Tensions

- In India, courts have made food a justiciable right (Right to Food Case), but **WTO obligations limit the government's freedom** to expand subsidies or stockpiling programs.
- The tension is between **constitutional/social obligations** (to ensure food security) and **international trade commitments** (to prevent market distortions).

5. Way Forward / Possible Solutions

- **Revising WTO Rules:** Developing nations demand that outdated subsidy limits (based on 1986-88 prices) be updated to reflect inflation and current production levels.
- **Special and Differential Treatment:** Developing countries should be given more flexibility under WTO to pursue food security policies.
- **Peace Clause:** WTO's Bali (2013) and Nairobi (2015) decisions gave temporary protection for food stockholding programs — but these are not permanent.

- **Strengthening Domestic Laws:** Countries like India must ensure strong national frameworks (like NFSA, 2013) regardless of external trade pressures.
- **Promoting South-South Cooperation:** Developing nations can coordinate at WTO to push for recognition of food security as a **human right** overriding trade restrictions.

The **right to food**, though fundamental, is constrained by WTO rules on subsidies, stockholding, intellectual property, and trade restrictions. While the WTO prioritizes trade liberalization, countries like India face the challenge of balancing **international obligations with constitutional duties** to provide food security. Enforcement hurdles lie in the tension between **market-based trade rules** and **human rights-based entitlements**.

How the WTO-linked laws and obligations (particularly those affecting the right to food) have been implemented in India, and how India has responded by shaping its laws of action (constitutional, legislative, and policy measures)

1. Implementations of WTO-linked Rules on Indian Society

a. Food Security Programs under WTO Scrutiny

- India runs one of the world's largest food welfare systems — the **Public Distribution System (PDS)** and the **National Food Security Act (NFSA, 2013)**.
- WTO's limits on agricultural subsidies and stockholding directly affect these schemes.
- Despite pressures, India continues to provide subsidized food grains to ~800 million people, meaning WTO rules are implemented in **modified ways**, balancing trade obligations with social necessity.

b. Subsidy Policies Adjusted to WTO Categories

- India restructured its subsidies to fit WTO's "**Green Box**" (permissible subsidies like rural development, research, environmental protection).
- Fertilizer subsidies, minimum support price (MSP), and food procurement continue but are defended under WTO's "**special and differential treatment**" for developing countries.

c. TRIPS Agreement and Its Social Impact

- The TRIPS regime led to stronger intellectual property protections in India through the **Patents (Amendment) Acts 1999, 2002, 2005**.
- This affected access to seeds and medicines. For agriculture, companies like Monsanto patented seeds, influencing farmer dependency.
- Socially, this has created concerns of **farmers' rights vs. corporate rights**, pushing India to legislate the **Protection of Plant Varieties and Farmers' Rights Act, 2001 (PPVFR Act)** to balance TRIPS with food sovereignty.

d. Export Restrictions and Domestic Prices

- WTO discourages export bans, but India often restricts exports of essential grains (like rice and wheat) to keep domestic prices stable.
- While this protects local consumers, it sometimes hurts farmers who could earn more through exports.

e. Impact of Dumping and Imports

- Cheap subsidized imports (like edible oils or dairy) affect Indian farmers' livelihoods.
- This forced India to strategically use **tariffs and quantitative restrictions** while still complying with WTO obligations.

2. India's Shaping of "Laws of Action" in Response

India has actively shaped its laws to balance **WTO commitments** with **domestic constitutional duties** (especially the right to food under Article 21).

a. Constitutional and Judicial Backing

- The Supreme Court in the **Right to Food Case (PUCL v. Union of India, 2001)** expanded Article 21 to include food security.
- This gave constitutional primacy to food over trade obligations.
- Thus, when WTO rules clash with food rights, India leans on constitutional obligations to justify its policies internationally.

b. National Food Security Act (NFSA), 2013

- Passed in the WTO era, it made food a **legal entitlement** for two-thirds of India's population.
- Despite WTO disputes, India continues implementing NFSA, showing its legislative action is **people-centric, not trade-centric**.

c. Agricultural Laws and MSP System

- India maintains the **MSP system** for key crops, even though it risks breaching WTO subsidy limits.
- MSP ensures farmer protection and supports procurement for food security schemes.
- India has consistently lobbied at WTO for **permanent protection (peace clause)** for such stockholding programs.

d. Plant Varieties and Farmers' Rights Act (2001)

- To counter TRIPS obligations that favor corporate seed patents, India enacted this law, granting farmers:
 - Rights to save, use, sow, resow, exchange, share, or sell farm produce.

- Protection from complete corporate control over seeds.
- This law reflects India's proactive shaping of legislation to **protect traditional agriculture and food rights** within WTO frameworks.

e. International Negotiations (Shaping Global Action)

- India has consistently led the coalition of developing countries (G-33) at WTO, demanding flexibility for food security programs.
- In the **Bali (2013) and Nairobi (2015) Ministerial Conferences**, India pushed for the "Peace Clause," allowing developing countries to continue stockholding food for security without WTO penalties.
- Thus, India not only shapes its own laws but also influences the **global discourse on trade and food rights**.

f. Use of Exceptions in WTO Agreements

- India often invokes **Article XX of GATT (General Exceptions)** to justify measures that protect public health, food security, and rural livelihoods.
- This legal strategy allows India to reconcile its trade actions with WTO obligations.

3. Social Outcomes of Implementation

- **Positive Impacts:**
 - Millions fed under NFSA and PDS despite global trade restrictions.
 - Farmers protected (partially) from international price volatility via MSP.
 - Preservation of traditional seed practices through PPVFR Act.
- **Challenges:**
 - Rising disputes at WTO over India's subsidy levels (e.g., rice subsidies challenged by US, EU).
 - Farmers' distress due to global dumping and rising cost of patented inputs.
 - Balancing consumer affordability with farmers' profitability under export restrictions.

WTO laws have shaped Indian policy, but India has also **assertively shaped its own legal framework** to prioritize food security and farmer protection. Through laws like the **NFSA, MSP system, PPVFR Act**, and by using its constitutional obligations as shields, India ensures that the **right to food is not compromised by trade liberalization**. At the same time, India influences global negotiations, pushing WTO towards recognizing **food security as a human right**.

The right to food, enshrined in international human rights law and recognized in Indian constitutional jurisprudence under Article 21, has increasingly come into conflict with the international trading regime administered by the World Trade Organization (WTO). India, with its deep structural poverty and persistent issues of hunger, has attempted to craft a legal and policy framework that guarantees access to food, while simultaneously negotiating global obligations under the WTO. The efficiency of these laws, particularly when examined through the lens of judicial pronouncements, legislative enactments, and trade law negotiations, has been the subject of wide debate among legal experts, economists, and policymakers. Opinions on their efficiency diverge depending on whether one emphasizes normative rights, practical enforcement, or international trade consistency.

Constitutionally, the efficiency of India's right to food framework has been strongly defended by scholars such as Upendra Baxi, who sees the jurisprudence of the Supreme Court as a critical bulwark against the pressures of globalization. He points to the landmark *People's Union for Civil Liberties v. Union of India* (2001) case, in which the Supreme Court read the right to food into Article 21 and directed the government to implement a series of schemes including the mid-day meal program and public distribution system reforms. In Baxi's analysis, the efficiency of Indian law lies in the way the judiciary expanded rights beyond abstract declarations and turned them into enforceable entitlements, compelling the state to act. This capacity to transform socio-economic rights into justiciable guarantees stands in contrast to many jurisdictions where such rights remain aspirational. Former Supreme Court judge P. B. Sawant similarly emphasized that legislation such as the National Food Security Act of 2013 (NFSA) enhances efficiency by creating binding entitlements for citizens. Yet, he also cautioned that real efficiency depends not just on the existence of rights but on the ability of the administration to deliver them without corruption, leakages, or bureaucratic inertia.

Economists and activists, too, have weighed in on the efficiency of food security laws. Jean Drèze, long associated with India's right to food campaign, has argued that the NFSA was a milestone because it shifted the discourse from welfare to rights. By legally entitling nearly 800 million people to subsidized food, the law offered a framework that was both inclusive and large in scale. He notes, however, that efficiency is partial because the system continues to be plagued by exclusion errors in identifying beneficiaries, chronic underfunding, and leakage within the Public Distribution System. Thus, while the law creates a strong normative framework, its efficiency in delivering actual results to people at the margins remains contested. Amartya Sen, who has consistently argued for a broad view of food security encompassing nutrition and freedom of choice, concurs that the move toward rights rather than charity marks an efficient reorientation of governance. Yet Sen also stresses that efficiency must be measured in terms of the quality of food and nutrition, not just in terms of caloric intake. In his assessment, India's dependence on grain-centric food distribution makes the system vulnerable, and the WTO's restrictions on subsidies further limit the government's ability to diversify and improve nutrition outcomes.

The efficiency of India's procurement and subsidy policies, particularly the Minimum Support Price (MSP) system, has been another major area of debate. Economist Abhijit Sen emphasized that MSP is essential in stabilizing farm incomes and ensuring adequate procurement to maintain the food security system. In his view, MSP is efficient in achieving twin goals: supporting farmers and ensuring stocks for distribution. However, WTO restrictions on subsidies, particularly those classified as "trade distorting" under the Agreement on Agriculture, pose significant hurdles to sustaining this system. Sen and other trade experts have therefore argued that efficiency would be enhanced by restructuring subsidies into

WTO-compliant “Green Box” measures such as infrastructure, rural development, and environmental programs. C. Raj Kumar, a prominent legal scholar, has taken the argument further by noting that India’s strategy of invoking the “peace clause” at WTO negotiations demonstrates a form of legal efficiency. By securing temporary exemptions from strict subsidy limits, India has effectively defended its domestic food security programs while avoiding sanctions. He terms this “strategic compliance,” whereby India complies enough to stay within the system but continues to defend its social legislation vigorously.

The field of intellectual property rights and seed laws presents another dimension of the debate. Shamnad Basheer, a leading intellectual property scholar, observed that India’s Protection of Plant Varieties and Farmers’ Rights Act of 2001 is a unique example of legal efficiency. Unlike many countries that implemented WTO’s TRIPS Agreement in ways that favored corporations, India’s law balanced international obligations with farmers’ rights to save, re-sow, and exchange seeds. This approach, according to Basheer, demonstrates how Indian law can be efficient in defending small farmers while remaining globally compliant. Anita Rampal, however, highlights that such legal efficiency is undermined in practice because farmers often lack the awareness or resources to claim their rights. Thus, while the law may be innovative and efficient on paper, its efficiency in practice depends on grassroots implementation and dissemination of information.

Negotiation strategies at the WTO itself have been a critical marker of efficiency. Prabhash Ranjan, an international trade law scholar, has argued that India’s role in leading the G-33 coalition to defend the interests of developing countries shows a form of “efficient resistance.” By delaying stricter enforcement of subsidy rules and pushing for a permanent solution on public stockholding for food security, India has managed to buy time for its domestic policies. Yet Ranjan also warns that this efficiency is temporary, as the peace clause is not a permanent exemption, and India must work towards a structural resolution. Former WTO appellate body judge James Bacchus, from an international trade perspective, has expressed skepticism about India’s approach. While acknowledging the legitimacy of India’s food security concerns, he argues that such measures distort global trade and may be seen as inefficient in the broader economic sense. This divergence underscores the central tension: what appears efficient for India’s social welfare may be viewed as inefficient from the perspective of global trade orthodoxy.

Beyond trade and procurement, experts also question the administrative efficiency of India’s food laws. Administrative lawyers highlight the persistent problem of corruption and leakages in the Public Distribution System, which reduce the efficiency of the NFSA in practice. Human rights scholars argue that efficiency should not be measured solely by cost-effectiveness or administrative neatness but by the extent to which people are able to access food with dignity and regularity. In this light, efficiency becomes synonymous with inclusiveness, accessibility, and respect for fundamental rights. Policy analysts take a broader view, pointing out that unless the laws also address deeper structural problems such as farmers’ indebtedness, the epidemic of farmers’ suicides, climate change, and the need for nutrition diversity, efficiency will remain limited to short-term food grain access without tackling long-term food security.

The synthesis of these opinions reveals a complex picture. On one hand, India’s laws have been praised for their normative efficiency. The constitutional expansion of the right to food, the enactment of the NFSA, the MSP system, and the unique seed laws have all been identified as legal innovations that

protect citizens against hunger while fending off the pressures of globalization. On the other hand, practical efficiency remains in question. Problems of implementation, bureaucratic failure, corruption, international trade disputes, and exclusion errors mean that rights often do not translate into realities.

What emerges from expert assessments is a duality of efficiency. Legally and normatively, India's food laws are efficient because they embed the right to food within the framework of enforceable rights and defend these rights in international forums. But administratively and practically, efficiency is compromised by systemic governance failures, WTO restrictions on subsidies, and the state's limited capacity to ensure quality nutrition. Experts like Drèze and Sen emphasize the need to expand the scope of efficiency beyond calorie distribution to include nutrition, dignity, and sustainability. Trade lawyers such as Ranjan and Kumar see efficiency in India's negotiation strategies but caution that these are not long-term solutions. Intellectual property experts like Basheer demonstrate how India's laws can balance obligations and rights, but practitioners highlight the gap between legal text and social reality.

In conclusion, the efficiency of India's food laws under the WTO framework must be understood as layered and contested. The judiciary has played a crucial role in making the right to food justiciable, and Parliament has enacted legislation that provides legal entitlements to millions. Economists and human rights advocates underline the normative progress made by shifting from welfare to rights. At the same time, the constraints imposed by the WTO, the practical failures of distribution systems, and the limited scope of current nutrition policies reveal serious challenges to efficiency. Legal experts, therefore, see these laws as efficient in their design and intent but limited in their delivery and sustainability. The broader lesson is that efficiency in socio-economic rights cannot be measured in narrow trade or cost terms alone but must be evaluated in relation to the lived realities of hunger, the dignity of access, and the ability of a nation to reconcile its constitutional promises with global economic obligations.