

LEGAL ASPECT OF STARVATION

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1. What is Starvation?

According to Chambers Dictionary Starvation means to suffer extreme hunger, to cause to starve, to afflict with hunger, to deprive of food. Amartya Sen in his book Poverty and Famines observed that Starvation *is the characteristic of some people not having enough food to eat. It is not the characteristic of there being not enough food to eat.*

2. Famine & Starvation – The Policy Discernment :

At one time Famine was included as a kind of Natural Calamity. Famine indicates a state of extreme paucity of food due to complete failure of crops consecutively for more than one year and acute form of human distress as well as acute distress to animals and birds on account thereof. With the development of quick transport and communication facilities and with improvements in the food production situation in the country, the conditions of famine could not be said to appear on any local failure of rains. Hence at present the question of declaration of Famine does not arise. Still starvation occurs at individual and family level. It is a paradigm shift of policy which ignores the other indicators of famine.

3. Classification of Starvation:

There are two types of Starvation recognised by Medical Jurisprudence they are Acute and Chronic. Let us analyse in detail:

- a) Acute Starvation:** Acute Starvation is seen when the necessary food has been suddenly and completely withheld. In Acute Starvation the feeling of hunger lasts for the first thirty to forty eight hours and is succeeded by pain in the epigastrium, relieved by pressure, and accompanied by intense thirst. After 4 to 5 days of starvation, general emaciation and absorption of the sub-cutaneous fat begins to occur. The eyes appear sunken and glistening. The pupils are widely dilated, the cheeks are hollow and the bony projections of the face become prominent. The lips are dry and cracked, tongue dry and coated with thick fur and breath is foul and offensive. The voice becomes weak, faint and inaudible, apathy and fatigue are predominant. The skin is dry, rough, wrinkled and baggy, emitting a peculiar disagreeable odour, the pulse is usually weak and slow but accelerates on slightest exertion. The temperature is usually subnormal, the diurnal variation reaching 3.28° F instead of 0.3°F to 1°F as in the normal body. The abdomen is sunken and the extremities become thin and flaccid with loss of muscular power, some oedema appears on the face and feet. There is at first constipation, the motion being dry and dark, but later towards death, diarrhoea or dysentery generally supervenes. The urine is scanty, turbid and highly concentrated and shows evidence of acidosis. The loss of weight is most marked and constant. The loss of two-fifths or forty percent of the body weight ordinarily ends in death. Total
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starvation also causes excessive protein break down and may cause fainting due to diminution in extra cellular fluid volume as a result of sodium loss. The intellect remains clear till death though in some cases, delusions and hallucinations of sight and hearing may be met with. Occasionally delirium and convulsions or coma precede death.

- b) Chronic Starvation:** In Chronic Starvation the emaciation is more marked and death may occur after a prolonged period from some inter current diseases, such as anaemia, malaria, pneumonia, bronchopneumonia, meningitis, enteritis, tuberculosis, typhus etc. because of diminished resistance as a result of hypoproteinaemia.

Starvation or inanition results from the deprivation of a regular and constant supply of food, which is necessary to keep up the nutrition of the body. Starvation can be divided into two types viz. dry types of cases and wet types of cases.

The Dry Cases were characterised by extreme emaciation, fatigue, mental apathy, diuresis and loss of weight varying from 39 to 50 percent of the original weight. In the severe cases the pulse was impalpable, the blood pressure unobtainable and the colour was grossly cyanotic. Slight oedema was seen on feet.

In the Wet cases there was gross oedema which affected feet, legs, arms and face was frequently associated with ascites and pleural effusions. Pyrexia and watery diarrhoea were common in both the types of cases. The men were eunuchoid in appearance and the women in many cases had acquired male characteristics. There were complete loss of moral standards and human kindness. Anaemia was usually present.

4. Consequence of Starvation:

Fatal Period: Death occurs in 10 to 12 days if both water and food are totally deprived. If food alone is withdrawn life may be prolonged for a long period, say from 6 to 8 weeks or even more. This is, however, influenced by certain conditions such as age, sex and condition of the body and its environment etc.

Age: Children suffer most from want of Food. Old people require less nourishment than young adults and can therefore, stand the deprivation of food better but not for a longer period owing to the weakening of their vital functions.

Sex: Females can withstand starvation for longer period than males, as they have a relatively greater amount of adipose tissue in their bodies and ordinarily consume less food.

Condition of the Body: During Starvation man undergoes a series of metabolic adaptations in order to deprive energy from adipose tissue and to conserve to the utmost his protein reserves. Brain utilises ketoacids, B-hydroxybutyrate and acetoacetate to spare glucose and protein. It is, therefore, natural that fatty, healthy people are likely to endure the withdrawal of food better and longer than thin, lean and weak persons.

5. **Medico-Legal Aspect of Starvation:**

- A. Whether Death was caused by Starvation:** One must always bear in mind that there are certain pathological conditions, viz. Malignant disease, progressive muscular atrophy, Addison's disease, Diabetes Mellitus, Tuberculosis, Pernicious Anaemia and Chronic Diarrhoea which lead to progressive wasting and emaciation of the body. It is, therefore, very necessary to examine carefully all the internal organs and to search for the existence of any of these diseases while holding post-mortem examination, before one can give the opinion that death occurred from Starvation.

Homicidal Starvation is met with in the case of old, helpless or feeble minded persons and children of infants and usually associated with cruelty, neglect and deliberate withholding of food by those for whom it is the duty to provide food. The Govt. has a primary duty under Article 47 read with the Public Assistance provision under Article 41 for those who suffer from undeserved want.

- B. Accidental Starvation:** Accidental Starvation may occur during famines. The Orissa Relief Code which replaced the Bihar and Orissa Famine Code 1930 assumes that it is no longer necessary to include famine as a kind of natural calamity. Therefore, a Starvation death is usually denied or else the Govt. will be responsible for failure of its Constitutional primary duty.

However, all Starvation Death should be examined to find out whether it was Homicidal, Accidental or Suicidal in nature. Keeping Children and Women starved or to force them to begging or to commit some other crime which are declared as offences almost always go un-investigated. Keeping people starved is also a cruelty, which is an offence under the Penal Code in certain circumstances. Therefore, Starvation cases and Starvation Death in affected areas would be treated as a piece of information, which require investigation and correction. The Legal Support Intervention has, therefore, a role to play for concerned voluntary agencies.

6. **Proof of Starvation Death:**

Since independence both the Union and Provincial Govt. have been denying the occurrence of starvation deaths as well as famines. They do so conveniently because these words are undefined. The present practice of the Govt. across the country is to seek a medical certificate which gives evidence about starvation. Very often such medical certificate suggests that the stomach was not empty and the real cause was a disease related to stomach disordered. Since, starvation is not fasting, the starving person does eat things which are not proper food. Starvation death can be proved by the general standard of under-nutrition and malnutrition prevalent in a particular locality and by making an assessment of income of the person concerned.

- 7. Supreme Court on Starvation:** In 1985, the Supreme Court received a letter from a social worker Shri Kishen Pattanayak, about the growing instances of deaths due to drought, famine and starvation in the district of Kalahandi and Koraput in Orissa. The government of Orissa was accused of utter failure in protecting the lives of the citizens of these two districts. The court requested the District Judge of Kalahandi to enquire and submit a report.

The District Judge in his report found that there were no starvation deaths and that the government relief measures had been implemented. Disposing of the case in 1989, the Court recorded the objections of the petitioners to the report. However, it accepted the stand of the state government that all relief measures had been put into operation without actually finding out if that was the case at the ground level.

- 8. The Right to Food – The Global Standard:** The right to adequate food and the fundamental right to be free from hunger, is a matter of international law, specifically enshrined in a number of human rights instruments to which states are committed. The United Nations has identified access to adequate food as both an individual right and a collective responsibility. The 1948 Universal Declaration of Human Rights says: **Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food.**

The International Covenant on Economic, Social and Cultural Rights (1966) stressed: **The Fundamental Right of everyone to be free from hunger.**

This means that the state has an obligation to ensure, at the very least, that people do not starve. As such, this right is intrinsically linked to the right to life. In addition, however, states should also do everything possible to promote full enjoyment of the right to adequate food for everyone within their territory – in other words, people should have physical and economic access at all times to food that is adequate in quantity and quality for a healthy and active life.

- 9. Right to Livelihood – Legally Speaking:** The sweep of the Right to Life conferred by Article 21 of the Constitution of India is wide and far-reaching. It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of the death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because, no person can live without the means of living, that is, the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only denude the life of its effective content and meaningfulness but it would make life impossible to live. And yet, such deprivation would not have to be in accordance with the procedure established by law, if the right to livelihood is not regarded as a part of the right to life. That, which alone makes it possible to live, leave aside what makes life liveable, must be deemed to be an integral component of the right to life. Deprive a person of his right to livelihood and you shall have deprived him of his life.

Article 39(a) of the Constitution, which is a Directive Principle of State Policy, provides that the State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means of livelihood. Article-41, which is another Directive Principle, provides inter alia, that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work in cases on unemployment and of undeserved want. Article 37 of the Constitution provides that the Directive Principles, though not enforceable by any Court, are nevertheless fundamental in the governance of the country. The principles contained in Article 39(1) and 41, must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights. If

there is an obligation upon the state to secure to the citizens and adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right to life conferred by Article 21 of the Constitution.

- 10. Legal Intervention:** Right to life is a fundamental right. It includes Right to adequate means of Livelihood. However, there is no law to prevent hunger. The result is that when a person steals a bread to meet his hunger it is a crime, but at the same time omission on the part of the system of governance to prevent starvation is not considered to be a crime. This is the peculiarity of the present system of law. Virtually there is no vicarious liability of the State in matters of preventing hunger. In spite of this the law is not totally ineffective. A serious legal intervention can make a whole lot of change in the life of people who are starving. There are instances where Public Interest Litigation played a significant role. At present there exists two options to initiate actions for non-compliance or omission with regard to prevention of hunger and consequential starvation death. Firstly, a Public Interest Litigation can be initiated in the Supreme Court of India or even in respective High Court of different States seeking direction to the State to make necessary policies and schemes for prevention of hunger. Of course, in such cases the Court asks Govt. to enforce existing social security schemes instead of asking for immediate food security. Immediate food security is necessary in cases of hunger and starvation because a person who is starving cannot undertake work which are available under different employment generation and food for work programme. Besides, a Court proceeding takes a long time to come to an end. Secondly, petitions can also be moved in National Human Right Commission and State Human Right Commissions where it is possible to get an interim relief to prevent starvation. Some times the Commission also lingers in reaching at a logical conclusion.

In spite of all this human failures and errors in living up to the expectations of the starving people there is the scope for using law for preventing hunger. Such legal actions may work to put pressure on the Govt. to consider making policies for eradication of starvation deaths for all time to come. A legal battle very often influences public policies. Thus, Public Interest Litigation can be an advocacy tool to engage policy makers to change their attitude towards starvation and hunger. In a nutshell it can help in preventing entitlement failures and deprivations which cause starvation.

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