

**THE RIGHT TO FOOD AS A FUNDAMENTAL RIGHT:
ITS STATUS AND CONSTITUTIONAL ANALYSIS**

*Dissertation submitted to Jawaharlal Nehru University in partial
fulfillment of the requirements for the award of the Degree of*

MASTER OF PHILOSOPHY

PRAMOD KUMAR



**CENTRE FOR THE STUDY OF LAW AND GOVERNANCE
JAWAHARLAL NEHRU UNIVERSITY
NEW DELHI-110067**

2011



25th of July 2011

DECLARATION

I declare that the dissertation entitled “**The Right to Food as a Fundamental Right: Its Status and Constitutional Analysis**”, submitted by me in partial fulfilment of the requirements for the award of the **Degree of Master of Philosophy of Jawaharlal Nehru University** is my own work. This dissertation has not been submitted for the award of any other degree of this University or any other University.

Pramod Kumar
Pramod Kumar

CERTIFICATE

We recommend this dissertation be placed before the examiners for evaluation.

Amita Singh
Prof. Amita Singh

(Chairperson)
Prof. Amita Singh
Chairperson
Centre for the Study of
Law and Governance
Jawaharlal Nehru University
New Delhi - 110067

Dr. Jaivir Singh
Dr. Jaivir Singh
(Supervisor)

ACKNOWLEDGEMENT

Availing any measure of help in the pursuit of one's endeavour in life is the essence of man being a social animal. No more acknowledge can express my depth, however, I must mention with gratitude to all those who aided me in the course of this work till its completion.

In writing this dissertation, we have had comments, criticism generous cooperation, unseen influence, active support and encouragement from a number of sources. I am grateful and highly indebted to my esteem supervisor Associate Prof. Dr. Jaivir Singh whose intellectual ingenuity and able guided cleared my blurred vision. My words are few to describe the kind of cooperation encouragement, sympathy and above all the concern that I received from him in the course of this exercise. Without his guidance and counsel, this piece of work would have not got the final shape. I am richly indebted to him.

I would like to acknowledge the librarians of J.N.U. Library, CSLG Library, Exim Library and ILI library who directly or indirectly have provided their extended cooperation in the collection of source for the research work.

Formal thank is not enough to my family members, without whom this work would have not been realized. I always remain indebted to my parents and my brothers Sattya Prakash, Vinod, Ajay, bhabi Vandna and sister Usha Devi for their unflagging support and steadfast appreciation that really kept me on the right track of life. I express my appreciation and thanks to Anil, Rajesh, Ramratan, Rukmani, R. Sridevi, Vinod Bhaiya, Satya Sir, Safique, and all my batch-mates who always encouraged and inspired me to do better.

In spite of having the advantage of guidance, cooperation and instructions from the able persons, I am responsible for my errors or omissions in this research work.

Pramod Kumar

Dedicated

To

My Late Babu Ji

CONTENTS

Acknowledgement

Introduction

1.0 Background	01
1.1 Meaning of the Right to Food	02
1.2 Constructing Right to Food as a Fundamental Right	04
1.3 'Right to food' in International instruments	05
1.4 Implementation of Right to food	08
1.5 Obligation and responsibility	09
1.6 Statement of the Problem	09
1.7 Objectives	09
1.8 Chapterization	10

Chapter- 1: Right to food: from moral right to legal right

2.1 Defining the term Right	11
2.2 Theories of Rights	13
2.3 Will Theory of Right	13
2.4 Interest Theory of Right	13
2.5 Division of Rights	14
2.5 Positive rights and Negative rights	15
2.6 The Right to Food as a Positive right	15
2.7 The Hohfeldian Analysis of rights and Right to Food	16
2.8 Claims	16
2.9 Power	17
2.10 Opposites and Correlatives	17
2.11 Duties	18
2.12 Legal Duty	19
2.13 Moral Duty	19

..... of the National Food Security Bill, 2010	20
Chapter-2: Right to food and Supreme Court	
3.1 Generating Rights	26
3.2 Recent Reorientation by the Supreme Court	31
3.3 The Right to Food case	33
Chapter-3: Right to Food campaigning and its construction of 'Right to food' as a 'Fundamental Right'	
4.1 Background	37
4.2 Right to Food Campaign	40
4.3 The Genesis of the Right to Food Campaign	41
4.4 Issues	42
4.5 Activities	42
4.5 The role of civil society	42
4.6 People's Union for Civil Liberties Vs Union of India and Others	43
4.7 Supreme Court's Orders	47
4.8 'Umbrella' Orders	48
4.9 Legal Power of the Supreme Court Orders	49
4.10 Various schemes and orders given by the Supreme Court	50
4.11 The Public Distribution System	50
4.12 Antyodaya Anna Yojana	52
4.13 Mid-day Meals	54
4.14 Integrated Child Development Services (ICDS)	57
4.15 Annapurna	59
4.16 Sampoorna Grameen Rozgar Yojana	60
4.17 The National Rural Employment Guarantee Act, 2005	63
4.18 Accountability of the State	63
Chapter- 4: Conclusion	65-68
Bibliography	69-73

Abbreviation

AAY	Antyodaya Anna Yojana
AIR	All India Radio
APL	Above Poverty Line
BPL	Below Poverty Line
DPSP	Directive Principles of the State Policy
ICDS	Integrated Child Development Services
ICMR	Indian Council of Medical Research
M- D-M	Mid-Day-Meals
MNERGA	National Rural Employment Guarantee Act, 2005
NFBS	National Family Benefit Scheme
NMBS	National Maternity Benefit Scheme
NOAPS	National Old Age Pension Scheme
NSAP	National Social Assistance Programme
PDS	Public Distribution System
PUCL	People's Union for Civil Liberties
SGRY	Sampoorna Grameen Rozgar Yojana
UTs	Union Territories

Latin Words

<i>dikaion</i>	Just, Righteous
<i>inter alia</i>	Including
<i>in personam</i>	Right against personal
<i>in rem</i>	Right against the World
<i>in re propria</i>	Right over property
<i>in re aliena</i>	Right over other property
<i>ius</i>	Right

Cases

Baksey v/s Board of Regents (1954) M.D. 442

BALCO (2000) 2 SCC 333

Bandhwa Mukti Morcha v/s Union of India and Others AIR 1984 SC 802

Chameli Singh v/s. State of U. P. & Others (1996) 2 SCC Pg.549

Delhi Transport Corporation v/s D.T.C Mazdoor Congress AIR 1991 SC 101

Francis Coralie v/s. Union Territory of Delhi AIR 1981 SC 746

Maneka Gandhi V/s Union of India AIR 1978, SC 598

Mohini Jain v/s. State of Karnatka (1992)3 SCC 666

Narmada Sardar Sarovar Dam Verdict on 18 October 2000

Olga Tellis v/s Bombay Munciple Corporation AIR 1986 SC 180

People's Union for Civil Liberties Vs Union of India and Others

Petition (Civil) No.196 of 2001

Pramanand Katara V. Union of India AIR1989 SC 2039

Shantistar Builders v/s. Narayan Khimalal Totame AIR 1990 SC 630

Shubhash Kumar v/s State of Bihar AIR 1991 SC 420

Sri. P.G. Gupta v/s State of Gujrat and Ors 1995(1) SCALE 653

T. M. A. Pai Foundation v/s State of Karnatka (2002)8 SCC 481

Unnikrishnan v/s. State of AP (1993)1 SCC 645 para 165

Introduction

Background

We live in an increasingly prosperous world. Yet, the estimated number of undernourished people is on the rise. It has increased to nearly 850 million. In India alone about 350 million are undernourished.¹ There is an extremely high prevalence of hunger in India. Starvation deaths are not an anomaly in India such as the notorious Kalahandi region in Orissa to Baran in Rajasthan, plight of the group of tribal's in eastern Uttar Pradesh's Sonebhadra district² and in Bundelkhand region of Uttar Pradesh and Madhya Pradesh³ are cases in force. Around 80% of Indians do not get enough to eat.⁴ According to the International Food Policy Research Institute situated at Washington, India ranks 67th in the Global Hunger Index (2010) out of 84 countries. According to the data of Right to Food Campaign, about 43% of India's children and 40% of women are malnourished moreover 50% of child deaths are due to malnutrition. One in every three Indian is underweight. The Body Mass Index (BMI) is less than 18.5 percentages. In 2004, 77% of Indians lived on less than Rs 20 a day as is reported that by the National Commission for Enterprises in the Unorganized Sector.⁵ According to Planning Commission 382 million Indians were Below Poverty Line in 2009-10 a decline of 27 million since 2004-05.⁶ These facts raise the issue of the availability of food and one important dimension of that is captured by the Right to Food.

In the discussion around the Right to Food in India it is broadly suggested that the Right to Food comes from the interpretation of the Article 21 of the Indian Constitution because the Right to Life includes Right to Food. This can be thought of as being

¹ Devi, Sridhar. *"The Battle Against Hunger: Choice, Circumstance, and the World Bank"*, (Oxford: Oxford University Press, 2008): p.1

² George, Cheriyan. *"Enforcing the Right to Food in India"*, (Helsinki, Finland: UNU World Institute for Development Economics Research, 2006): p.2

³Dainik, Jagran (Jhanshi, February 22nd 2011): p.1

⁴ Secretariat. *"National Food Security Act: an Introductory Primer on the Legal Guarantees Demanded by the Right to Food Campaign"*. (New Delhi: the Right to Food Campaign, 2010): p.6

⁵ Ibid.

⁶ Hindustantimes (New Delhi: 21st April, 2011):p.1

connected with the larger Human Right to an adequate standard of living which is contained in the 1948, Universal Declaration of Human Rights (UDHR) and The International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966. Article 25(1) of (UDHR) asserts that, 'Everyone has the Right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care and necessary social services...' The International Covenant on Economic, Social and Cultural Rights (1966) developed these concepts more fully, stressing 'the right of everyone to.....adequate food and specifying 'the fundamental right of everyone to be free from hunger'. While these propositions are important, they raise wider questions -for example why the Right to Food in India? What is the precise meaning of the Right to Food? Who has the right and obligation/duty in this regard? How is the Right to Food constructed? How is the Right to Food implemented in India?

Meaning of Right to Food

The right to food includes two words first one is *right* and second one is *food*. It is needed to know what is meant by term right and term food. There is no certain definition of right but a right can be understood as an assurance by which people can prevent harm to their selves and their things and property. According to Hohfeld right is a claim. Interest theory and will/choice theory are two theories on right. Interest theory was first proposed by Bentham (1987) and has been defended by scholars such as Lyons (1994), MacCormick (1982) and Raz (1986). Defenders of interest theories argue that a person has a right when others have duties which protect one of that person's interests.⁷ Interest theory criticized on the basis of failing to respect someone's and failing to fulfill an obligation which is not part of a right. According to interest theories, the obligation implied by a right is an obligation to the right holder because it is the right-holder's interest which is protected by the right.⁸

Will/choice theory was purposed by Hart and has been supported by scholars such as Montague and Steiner. Defenders of choice theories argue that a person has a right when others have duties which protect one of that person's choices. Choice theories have

⁷ George, W.Rainbolt. "*Rights Theory*", (Blackwell :Georgia State University, 2006):pp.3-4

⁸ Ibid, p.4

no problem accounting for the relational nature of rights. According to choice theories, the obligation implied by a right is an obligation to the right-holder because it is the right-holder's choice which is protected by the right. A central problem for choice theories is that there seem to be rights which do not protect the right-holder's choices.⁹

Now, we come on the term food. The term 'food' can be defined as any substance that people eat and drink to maintain life and growth. As a result, safe and clean water is an essential part of food commodities.¹⁰

Now, we see the meaning of right to food. The right to food embodies the practical idea that all people should have a decent standard of living, especially enough to eat, both in peacetime and in war. Like all the other economic and social rights, the right to food is really about the concern for human dignity that underlies the Universal Declaration on Human Rights.¹¹ According to the first Special Rapporteur of General Assembly, United Nations the right to food means the right to have regular, permanent and unobstructed access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free from anxiety.¹² The commitment of right to food includes obligation to respect, obligation to fulfill and obligation to protect. Where obligation to respect means that the government should not arbitrarily take away people's right to food or make it hard for them to gain access to food, obligation to fulfill means that the government must take positive actions to identify vulnerable groups and to implement policies to ensure access to adequate food by facilitating their ability to feed themselves and obligation to protect means that the government must pass the laws to prevent powerful people or organizations from

⁹ Ibid, p.5

¹⁰ Weingartner, Lioba. *"The Concept of Food and Nutrition Security"*, (Deutsche: Gesellschaft for Technische Zusammenarbeit(GTZ) GmbH, 2004): pp.1-5

¹¹ General, Secretary. *"Human right questions: human rights situations and reports of special rapporteurs and representatives"* (United Nations General Assembly,2001):p.5

¹² Ibid,p.6

violating the right to food.¹³ It shows that states have duty or obligation and citizen of the state have the right to food. Under the Constitution of India states have positive obligation in the name of Directive Principle of the State Policy (DPSP).

Constructing Right to Food as a Fundamental Right

There are two ways by which the right to food has been constructed as a fundamental right. One is by the various judgments of the Supreme Court and second way is by the complementary input of the Right to Food campaign. Thus, a very vital question is that how the Supreme Court is constructing right to food as a fundamental right? Apart from various other judgments, in 2001, a petition was filed in the Supreme Court against the Union of India and Others. The petition is based on Articles 21¹⁴, 39(a)¹⁵ and 47¹⁶ of Indian Constitution. In the petition, the basic argument was that since food is essential for survival, the right to food is an implication of the fundamental 'right to life' enshrined in Article 21 of the Indian Constitution, and that the State and Central government have violated the right to food by failing to the drought situation, and in particular accumulating gigantic food stocks while people went hungry¹⁷. On the basis of the argument of the petitioner Supreme Court has been passing orders which are helping to construct the right to food as a fundamental right. Therefore role of the Supreme Court in the construction the right to food as a fundamental right has been very crucial.

Since the construction of the Right to Food as a fundamental right has had critical input from the Right to food campaign, a series of questions can be raised about the campaign. What is the intention of the Right to Rood campaign? How the Right to Food campaign has come into being? And what are the activities? The Right to Food

¹³ Ibid, p.7

¹⁴ Article 21 of the Indian Constitution says 'No person shall be deprived of his life or personal liberty except according to procedure established by law'.

¹⁵ Article 39(a) of the Indian Constitution, 1950 says 'The State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means to livelihood'.

¹⁶ Article 47 of the Indian Constitution, 1950 says 'Duty of the State to raise the level of nutrition and the standard of living and to improve public health The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health'.

¹⁷ The Right to Food Campaign. "*Supreme Court orders on the Right to Food*" (New Delhi: Secretariat 2008): p.6

campaign is nothing but a small support group of people. The campaign is constructed from a decentralized network, which builds on local initiative and voluntary cooperation. In, 2001, Right to Food campaign has come in existence after the Right to Food case¹⁸. The activities of Right to Food Campaign include public hearings, media advocacy, rallies, padyatras, action-oriented research, dharnas and lobbying of Members of Parliament. These activities of the Right to Food Campaign have been very important in constructing the Right to Food as a fundamental right.

‘Right to food’ in International instruments

The ‘Right to food’ also has international recognition and has been inserted in various international instruments namely,

1. The Constitution of Food and Agriculture Organization.
2. World Food Summit Plan of Action, 1996.
3. Universal Declaration of Human Rights, 1948.
4. International Covenant on Economic, Social and Cultural Rights, 1966.
5. United Nations Convention on the Rights of the child, 1989.

The following are the instruments which recognizes right to food –

1. The Constitution of Food and Agriculture Organization, 1965¹⁹

It specifically mention in the preamble it is being determined to promote the common welfare by furthering separate and collective action on their part for the purpose of: raising levels of nutrition and standards of living... and thus... ensuring humanity’s freedom from hunger.

¹⁸ People’s Union for Civil Liberties Vs Union of India and Others
Petition (Civil) No.196 of 2001

¹⁹ F.A.O. “*the Right to Food in theory and practice*”,(Rome: FAO United Nation, 1998):p.46

2. World Food Summit Plan of Action, 1996²⁰

It makes the commitment towards implementation, monitoring and summarizing the Plan of Action with the cooperation of international community²¹. At the same time objective 7.4 of the 'World Food Summit Plan of Action, 1996' tries to clarify the content of the right to adequate food and the fundamental right of everyone to be free from hunger, as stated in the International Covenant on Economic, Social and Cultural Rights and other relevant international and regional instruments, and gives particular attention towards the implementation of this right as a means of achieving food security for all. In order to achieve the above objective it has laid down certain responsibilities upon the governments (in partnership with civil society) as,

a) to make every effort to implement the provisions of Article 11 of the International Covenant on Economic, Social and Cultural Rights (the Covenant) and relevant provisions of other international and regional instruments;

b) to urge States that are not yet parties to the Covenant to adhere to the Covenant at the earliest possible time;

c) to invite the Committee on Economic, Social and Cultural Rights to give particular attention to this Plan of Action in the framework of its activities and to continue to monitor the implementation of the specific measures provided for in Article 11 of the Covenant;

d) to invite relevant treaty bodies and appropriate specialized agencies of the UN to consider how they might contribute, within the framework of the coordinated follow-up by the UN system to the major international UN conferences and summits, including the World Conference on Human Rights, Vienna 1993, within the scope of their mandates, to the further implementation of this right; within the scope of their mandates, to the further implementation of this right;

²⁰ F.A.O. "*the Right to Food in theory and practice*",(Rome: FAO United Nation, 1998):p.47

²¹ Ibid

e) to invite the UN High Commissioner for Human Rights, in consultation with relevant treaty bodies, and in collaboration with relevant specialized agencies and programmes of the UN system and appropriate intergovernmental mechanisms, to better define the rights related to food in Article 11 of the Covenant and to propose ways to implement and realize these rights as a means of achieving the commitments and objectives of the World Food Summit, taking into account the possibility of formulating voluntary guidelines for food security for all.

3. Universal Declaration of Human Rights, 1948²²

Further, Universal Declaration of Human Rights, 1948 in Article 25 guarantees everyone the right to a standard of living adequate for the health and well-being of himself and his family, including food...

4. International Covenant on Economic, Social and Cultural Rights, 1966²³

Further, Article 11 lays down the responsibility upon the State parties to the covenant,

1. to recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food.... It should take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international cooperation based on free consent.

2. to recognize the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures, including specific programmes, which are needed:

a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

²² Ibid

²³ Ibid.48

b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Further, Article 2 binds each State party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

5. United Nations Convention on the Rights of the child, 1989²⁴

Article 24 of the Convention states that, (1) the States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: ...

c) to combat disease and malnutrition, including within the framework of primary health care, through, *inter alia*, the application of readily available technology and through the provision of adequate nutritious foods...

e) to ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition...

Further Article 27 of the Convention states that, States Parties, in accordance with national conditions and within their means... shall in case of need provide material assistance and support programmes, particularly with regard to nutrition...

Implementation of Right to food

As a result of the 'Right to Food' campaign and the strictures of the Supreme Court, the Right to Food has been translated into various implementable programs and policies. Prominent among these schemes are (1) Annapurna, (2) the National Programme of Nutritional Support to Primary Education, also known as 'mid-day meal scheme', (3)

²⁴ General Assembly Resolution 44/25, Annex, of 20 November 1989.

Antyodaya Anna Yojana (AAY), (4) the Integrated Child Development Services (ICDS), (5) the Public Distribution System (PDS), (6) the National Old Age Pension Scheme (NOAPS), (7) the National Maternity Benefit Scheme (NMBS), and (8) the National Family Benefit Scheme (NFBS).

Obligation and responsibility

Being a citizen of India everyone have an obligation to comply with the Supreme Court orders because law applies to everyone. However, some institutions and people have special responsibilities for the implementation of the orders. One of the prime responsibility of the government (State/Central) is prevention of hunger and starvation.

Statement of the Problem

Starvation deaths have become a National Phenomenon while there is a surplus stock of food grains in government warehouse. Right to Life mean that people who are starving and who are too poor to buy food grains free of cost by the State from the surplus stock lying with the State particularly when it is lying unused and rotting. Supreme Court of India gave guidelines with respect to the implementation of Right to Food on the basis of writ petition which is filed by People's Union for Civil Liberties (PUCL). But government consistently avoids its responsibility. However various countries have implemented Right to Food as a fundamental right and reduced the poverty levels. India which is having highest number of poor, if this right is implemented it will reduce the poverty to nil.

Objectives:

- 1- To study the present status of the Right to Food under the Constitution of India.
- 2- To study food security provided by the present welfare programs such as TPDS, Annapoorna Yojana, Antodaya Anna Yojana, MDMS, ICDS, etc.
- 3- To study analysis the scope of Right to Food, meaning, who should covered, what should be the mechanism of implementation.
- 4- To study the Right to Food movement in India and to analyze role played by judicial activism and Non-Government Organizations (NGOs) in leading this movement.

5- To study the accountability and obligation of the state in providing the Right to Food.

Chapterisation

Chapter I – Right to food: from moral right to legal right.

It discusses about ‘right’ which includes meaning of right and duty: legal duty and moral duty, classification of right, analysis of right, positive right and negative rights, how positive right and negative right is connected with the Right to Food. Criticism of the National Food Security Bill, 2010 is also discussed.

Chapter II - Right to food and Supreme Court.

It focuses on the various cases decided by the Supreme Court which led to the emergence of ‘Right to food’.

Chapter III - Right to Food campaigning and its construction of ‘Right to food’ as a ‘Fundamental Right’

It discusses the meaning of ‘right to food campaign’, issues regarding the ‘Right to Food’ and the relation of Supreme Court’s interpretation of ‘right to food’ with ‘right to food campaign’. It explains various schemes introduced by the concerned government in relation to the ‘right to food’.

Chapter IV – Conclusion.

Chapter 1

Right to food: from moral right to legal right

The demand of the Right to Food as a fundamental right is gaining momentum in India day by day. The relevant Supreme Court orders and the Right to Food Campaign are parallelly constructing the Right to Food as a fundamental right, which is otherwise self evident in Indian context noticing the Below Poverty line population who are incapable to purchase food and many of them are dying with hunger surprisingly on the other hand the governments warehouses are full of excess food grain. The term 'right to food' includes the concept of right, thus to understand the exact dimension of the right to food it is necessary to define the meaning of right, to discuss the classification of right and finally to categorize right to food in the appropriate section.

Defining the term Right

The term 'right' has emerged from the debates over the origins of rights between Jurists. The more fruitful characterization of the debate within jurists concerns when a word or phrase appeared that has a meaning close to the meaning of our modern word. This debate turns on when in history the pre-modern 'objective' sense of 'right' came also to bear our modern, 'subjective' sense of a right.²⁵ According to Finnis 'Right' in its older, objective sense means 'what is just' or 'what is fair.' Further the objective sense of 'right' is that which is expressed by the formula 'it is right that p'- where p stands for a proposition describing an actual or possible fact, as in 'it is right that promises are kept.'²⁶ Aristotle uses *dikaion*, for example, to indicate that a society is 'rightly ordered' that it express the correct structure of human relationships 'right' in this objective sense can also be imputed to individuals. For instance, Jurist Ulpian said that justice means rendering each his right (*ius*). This objective sense of 'right' is not the same as our modern idea of 'a right.' For instance, Ulpian noted that the *ius* of a parricide was to be

²⁵ Edmundson, William A., "*An Introduction of Rights*", (Cambridge City: Cambridge University Press, 2004): pp.4-14

²⁶ Ibid, 9

sewn into a sack of snakes and tossed into the Tiber.²⁷ Further subjective sense of 'right' is different in the way that it expresses a relationship between a person and a state of affairs. For instance, 'x has a right to a thing to do something'- where x stands for an individual person, or perhaps a group of individuals. The crucial difference is that the concept of objective right is a global moral evaluation of a state of affairs, while the concept of subjective right is a moral relationship between a person and a thing or action or state of affairs.²⁸ The jurists have been trying to define the term rights but still there is not a proper definition of the term 'right'. Following statement had given by jurists and scholars to define the term 'right'.

To have a right is to have a 'valid claim'.²⁹

'In the strictest sense' all rights are claims.³⁰

'A right, in the most important sense, is the conjunction of a (privilege) and a claim-right.'³¹

Rights are permissions rather than requirements. Rights tell us what the bearer is at liberty to do.³²

'No one ever has a right to do something' he only has a right that someone else shall do (or refrain from doing) something.³³

'A right is an established way of acting.'³⁴

'It is hard to think of rights except as capable of *exercise*.'³⁵

²⁷ Tierney, B., "*the Idea of Natural rights*", (Atlanta: Atlanta scholar press,1997): p.19

²⁸ Edmundson, William A., "*An Introduction of Rights*", (Cambridge City: Cambridge University Press, 2004): p. 9

²⁹ Feinberg,J., The nature and Value of Rights, *Journal of Value Inquiry*,4, 1970, pp 243-257

³⁰ Hohfeld, W., "*Fundamental Legal Conceptions*", W. Cook (ed.), (New Haven:Yale University Press, 1919): p.36

³¹ Mackie, J., "*Can There be a Rights-Based Moral Theory?*", in Waldron 1984, 1979, p. 169

³² Loudon, R., "*Rights Infatuation and the Impoverishment of Moral Theory*", *Journal of Value Inquiry*, 17, 1983, p. 95

³³ Wellman, C., "*A Theory of Rights*", (Totowa: NJ Rowman & Allanheld, 1985): p. 125

³⁴ Martin, R., "*A System of Rights*", (Oxford: Oxford University Press1993): p. 1

'A right is a *power* which a creature ought to possess.'³⁶

'All rights are essentially property rights.'³⁷

The above mentioned definitions show that there is no certain definition of the term 'right'. All jurists have different view regarding right but from the above definitions it appears that all rights are valid claim with conjunction of privilege.

Theories of Rights

Basically, there are two main theories regarding the nature of rights. They are will theory and interest theory. Each presents itself as capturing an ordinary understanding of what rights do for those who hold them.

Will Theory of Right

The Will theory of legal rights has been supported by Hegal, Kant, Hume and others. Will theorists maintain that a right makes the right holder 'a small scale sovereign?'³⁸ Will theorist affirms that the function of a right is to give its holder control over another's duty. People are the 'sovereign' of their things, in that people may permit others to touch it or not at your discretion. According to Hohfeldian will theorists affirms that every right includes a Hohfeldian power over a claim and according to colloquial will theorists all rights confer control over others' duties to act in particular ways.

Interest Theory of Right

Interest theory is propounded by the German Jurist Ihring. And it has been supported by Bentham, Austin, Lyons, MacCormick, Raz, and Kramer. Interest theory proposes that, Rights exist to serve relevant interests of the right-holder, and different, specific types of interest theory may vary according to what 'interest' is taken to be relevant. It is not to say that the interests of others or of society do not count, it is merely to focus on the

³⁵ Hart H.L.A., "*Essays on Bentham: Studies in Jurisprudence and Political Theory*", (Oxford: Clarendon Press,1982): p. 185

³⁶ Plamenatz, J., "*Consent, Freedom, and Political Obligation*", (Oxford: Oxford University Press,1938): p.82

³⁷ Steiner, H., "*An Essay on Rights*", (Oxford: Blackwell publishing, 1994): p. 93

³⁸ Hart,H.L.A., "*Essay on Bentham: Studies in Jurisprudence and Political Theory*", (Oxford: Clarendon Press, 1982): p.183

function that right has to protect the right-holder's interests, rather than interests generally.³⁹ Interest theorists maintain that the function of a right is to further the right-holder's interests. For example, a promise has a right because promises have some interest in the performance of the promise, or (alternatively) some interest in being able to form voluntary bonds with others.⁴⁰

Each theory has weak and strong aspects as an account of what rights do for right holders. The will theory captures the powerful link between rights and normative control. To have a right is to have the ability to determine what others may and may not do, and so to exercise authority over a certain domain of affairs. Thus will theory is not able to explain many rights. In the will theory there can be no such thing as an unwaivable right, where unwaivable right means a right over which its holder has no power. From the above discussion it can be proposed that interest theory is more capacious than will theory. It accepts both unwaivable rights and the rights of incompetents (who have interests that rights can protect). However, the interest theory is also misaligned with any ordinary understanding of rights.

Division of Rights

Rights have been classified by various jurists in different ways such as perfect right and imperfect right, positive right and negative right, right *in rem* and right *in personam*, proprietary right and personal right, principal and accessory right, primary and secondary right, Right *in re propria* and right *in re aliena*, Legal rights and Equitable rights, vested right and contingent right. Observing the relativity of the 'Right to Food' with positive right, now we will discuss it in the frame work of positive and negative rights. We will also discuss the positive duty and negative duty and also how positive duty and negative duty is related with the Right to Food.

³⁹ Edmundson, William A., "An Introduction of Rights", (Cambridge City: Cambridge University Press, 2004): p.121

⁴⁰ <http://plato.stanford.edu/entries/rights/> accessed on 30/05/2011

Positive rights and Negative rights

According to the nature of co-relation a right is distinguished as positive or negative. In case of positive right, the person subject to the duty is bound to do something, whereas in case of negative right, others are restrained from doing something.⁴¹ The holder of a positive right is entitled to provision of some good or service, while the holder of a negative right is entitled to non-interference. A right against assault is a classic example of a negative right, while a right to welfare assistance is a prototypical positive right.⁴² Negative rights are easier to satisfy than positive rights. Negative rights can be respected simply by each person forbearing from interfering with each other, while it may be difficult or even impossible to fulfil everyone's positive rights if the sum of people's claims outstrips the resources available. However, this difference regarding positive and negative rights disappears in the case of the enforcement of rights. For the purpose of supporting a legal system that implements the citizens' negative rights against assault may need more resources than funding a welfare system that realizes citizens' positive rights to assist. Whatever is the justificative basis for assigning rights autonomy, need, or something else? There might be just as strong a moral case for fulfilling a person's right to adequate nutrition as there is for protecting that person's right not to be assaulted.

The Right to Food as a Positive right

The Right to Food can be interpreted as a claim of individual on society. It is an entitlement to be free from hunger. The term 'freedom from hunger' indicates itself to several interpretations such as getting two square meals a day, meeting specific calories norms, avoiding nutrition-related ailments, and so on. Ideally, the Right to Food should be seen as a right to 'nutrition' as in Article 47 of the Constitution of India.⁴³ According to Hahfeld the co-relative of the claim is duty. The duty is imposed on States. Therefore, state has the duty to provide food. Duty indicates the obligation of the States. The obligations of the State are given under the DPSP of the Constitution and it is a positive

⁴¹ Paranjape, Dr. N.V., "*Jurisprudence and Legal Theory*," (Allahabad: Central Law Agency, 1997): p. 237

⁴² <http://plato.stanford.edu/entries/rights/> accessed on 30/05/2011

⁴³ Dreze, Jean. "*Democracy and Right to Food*", *Economic and Political Weekly*, Vol. XXXIX, No. 17, April 24. 2004:pp.1723-1730

obligation. The commitment of the Right to Food includes obligation to respect, obligation to fulfill and obligation to protect. The obligation to respect indicates that the government should not arbitrarily take away people's right to food or make it hard for them to gain access to food. The obligation to fulfill means that the government must take positive actions to identify vulnerable groups and to implement policies to ensure access to adequate food by facilitating their ability to feed themselves. Further, the obligation to protect refers that the government must pass the laws to prevent powerful people or organizations from violating the right to food. The Right to Food is associated with the responsibilities. The primary responsibility is surely with the states because the state alone commands the resources (economic and institutional) required to protect everyone from hunger.

According to Hohfeld the correlative of positive right and negative right are positive duty and negative duty. It implies that people have positive right to get food from the centre and state governments have positive duty to provide food to the needy people. Positive duty is given under the Directive principle of the State Policy of Indian Constitution but it is based on the availability of the resources. It means if Governments have enough food grain then Governments should endeavour to provide food to the people.

The Hohfeldian Analysis of rights and Right to Food

The American legal theorist Wesley Hohfeld (1879–1918) discovered the four basic components of rights. These four basic components of rights are known as 'the Hohfeldian incidents'. These four basic 'elements' are the power, the claim, the privilege and the immunity. He has also discussed the correlative and opposite of these components. We will argue about the Right to Food taking the two elements of 'claim' and 'power' from Hohfeldian.

Claims

Right to food is a positive obligation of the state and people have a claim to get food from the states. This means that the states have a duty to the people to provide the food. Every claim-right correlates to a duty in (at least) one duty-bearer. Not all claim-rights are

created by voluntary actions and not all claim-rights correspond to duties in just one agent. For example, a child's claim-right against abuse exists independently of anyone's actions, and the child's claim-right correlates to a duty in every other person not to abuse him/her. This example of the child's right also illustrates how a claim-right can require duty-bearers to *refrain* from performing some action.⁴⁴

Power

Privileges and claims define what Hart called 'primary rules'. Primary rules require that people should perform or refrain from performing particular actions. Indeed the primary rules for all physical actions are properly analyzed as privileges and claims. Two further Hohfeldian incidents define what Hart called 'secondary rules'. Secondary rules that specify how agents can introduce, change, and alter primary rules. The Hohfeldian power is the incident that enables agents to alter primary rules.

A has a power if and only if A has the ability within a set of rules to alter her own or another's Hohfeldian incidents. Powers can alter not only 'first-order' privileges and claims, but 'second-order' incidents as well.⁴⁵ For example an admiral has the power-right to relieve a captain of her power-right to command a ship. Rights to alter the authority of others are, as we will see, definitive of all developed legal and political systems.⁴⁶

The power is an 'active' right that concerns their holders' own action. Whereas claim is a 'passive' right that regulates the actions of others. It implies that the Right to Food is a passive right because it is a valid claim.

Opposites and Correlatives

Hohfeld has given the four incidents in tables of 'opposites' and 'correlatives'. In order to fill out the tables he added some further terminology. For instance, if a person A has a

⁴⁴ <http://plato.stanford.edu/entries/rights/> accessed on 30/05/2011

⁴⁵ Sumner, L., "*The Moral Foundations of Rights*", (Oxford: Oxford University Press, 1987): p. 31

⁴⁶ <http://plato.stanford.edu/entries/rights/> accessed on 30/05/2011

claim, then A lacks a 'no-claim'. And if a person A has a power, then some person B has a 'liability'.

Opposites⁴⁷

If A has a claim, then A lacks a No-claim.

If A has a Privilege, then A lacks a Duty.

If A has a Power, then A lacks a Disability.

If A has a Immunity, then A lacks Liability.

Correlatives⁴⁸

If A has a Claim, then Some Person B has a Duty.

If A has Privilege, then some person B has a No- Claim.

If A has a Power, then some person B has a Liability.

If A has a Immunity, then some person B has a Disability.

The above discussion show that right is not possible without duty such as A has a claim to get food then some person has a duty to provide food. This analysis is not applicable in certain case such as non-payment of a time-barred debt. It is a moral wrong but it is not a legal wrong and it is not enforceable by law.

Duties

A duty is roughly speaking an act which one ought to do, an act the opposite of which would be wrong. However, the duty and the act are not strictly identical.⁴⁹ Thus the duties

⁴⁷ Ibid

⁴⁸ Ibid

⁴⁹ Ibid, 216

and wrong are generally co-related. The commission of a wrong is the breach of duty and the performance of a duty is avoidance of wrong.⁵⁰ There are two kinds of duties, first one is Legal duty and second one is Moral duty. Duties may be Legal or it may be Moral or it may be both moral and legal at once.⁵¹

Legal Duty

Duty which is imposed and enforceable by the law is called as a legal duty such as the fundamental duty of the Indian Constitution. If people will not follow the fundamental duty then court shall direct to follow the duty.

Moral Duty

Duty which is not imposed and enforceable by the law is known as moral duty such as Directive Principle of the State Policy of the Constitution of India (DPSP). DPSP is a kind of moral duty which is not enforceable. It is based on the availability of the resources but not binding such as if the Governments have surplus of food grain then states have a moral duty to provide the food grain to the needy people. It is not binding on governments to give the food grain. Internationally, there are so many countries which have recognized the Right to Food as a fundamental right and duty imposed to the states such as Haiti, Cuba, Guatemala, Nicaragua, Colombia, Ecuador, Brazil, Paraguay, Ukraine, Pakistan, Bangladesh, Sri Lanka, Ethiopia, Malawi, Uganda, South Africa, Congo and Nigeria. Under the Indian Constitution there is no legal duty regarding the Right to Food but Supreme Court has passed the orders and directed to the government to implement the schemes and provide the sufficient food to the needy people. On the basis of the directions and orders Government enacted a bill 2010, the namely National Food Security Bill, 2010. Due to some critical point Bill could not pass in the parliament and it is under the debate. Following are the critical points of The National Food Security Bill, 2010.

⁵⁰ Paranjape, Dr. N.V., "*Jurisprudence and Legal Theory*", (Allahabad: Central Law Agency, 1997): p. 225

⁵¹ Ibid, 226

Criticism of the National Food Security Bill, 2010

India has enough food grains but, in many parts of India people are facing the problems of starvation deaths, malnutrition and committing suicide. These problems are due to lack enough and inadequate food. These are the states where people are not having enough and inadequate food for example Datia district of M.P, Bundelkhand region of Uttar Pradesh, Kalahandi district of Orissa state, Rajasthan, Bihar, Tamilnadu etc. Due to these problems in 2001, a petition has filed in the Supreme Court in the name of Right to Food case (PUCL Vs Union of India and Others). In this petition the Supreme Court has passed a series of orders and still a Supreme Court passing the orders day-day. Right to Food campaign has come into existence for the implementation of Supreme Court's orders and now various NGOs are working for the same things. This campaign started to do public hearings, media advocacy, rallies, padyatras, action-oriented research, dharnas and lobbying of Members of Parliament. On the basis of these activities government is compelled to start thinking to make Right to Food as a legal right. Then the United Progressive Alliance (UPA) promised to enact a food security law that guarantees access to sufficient food for all people, particularly the most vulnerable sections of the society Then Food Security Bill 2010 has presented in parliament. Because of some irrelevant points Food Security Bill 2010 could not pass in parliament. The irrelevant points are given below-

1. Starvation line or Poverty line?
2. Decreased food security.
3. No nutritional security.
4. No role of state governments in decision making.
5. No special authority.
6. The policy of cash transfers.

Starvation line or Poverty line

While the sections 2(b) and section 3 of the National Food Security Bill, 2010 explain that

Section 2(b) of the Bill states Below Poverty Line (BPL) Families refer to the families indentified living below the poverty line notified from time to time by the Central Government.⁵²

On the basis of analysis of section 2(b) gives is no certain criteria to identify the BPL families. And further

Section 3 of the National Food Security Bill, 2010 stats that 'Every identified BPL (Below Poverty Line) family within the number fixed under section 4(2) of the Act will be entitled to receive every month from the Government 25 kg food grains such as rice and/or wheat at subsidized issue prices fixed from time to time in a manner as may be provided under the Rules'.⁵³

Section 3 states that BPL family will be decided by the section 4(2) of this Bill. According to section 4(2) of this Bill the guidelines for identification of BPL families would be issued by the Central under the TPDS and it would be estimated by the Planning Commission of India. For the identifying the BPL family thought TPDS scheme, there are 13 socio-economic parameters i.e., type of house, availability of cloths, and size of operational landholdings, sanitation, ownership of consumer durables, food security, literacy status, status of household labour force, means of livelihood, status of children (going to school), type of indebtedness, reasons for migration from household and preference for assistance.

But, the real categorization of the population into BPL and APL was arbitrary and having defects. It resulted in the exclusion of those who urgently needed food subsidies.⁵⁴ In 2004-05 a survey was done by the National Sample Survey Organisation (NSSO) which shows that less than 30 per cent of the Indian rural population was living as BPL and therefore eligible for the TPDS. And remaining 70 per cent of the rural population were living as APL and hence not covered under the TPDS. From the all rural households falling below the poverty about 50% did not have a BPL card. In poorer States such as

⁵² Section 2(b) of National Food Security Bill, 2010 p. 1

⁵³ Section 3 of National Food Security Bill, 2010 p. 3

⁵⁴ R. Ramkumar, "Food insecurities", The Frontline, Volume 27 - Issue 15 :: Jul. 17-30, 2010



Bihar and Rajasthan, fewer than 20 per cent of households had BPL cards.⁵⁵ It is true that millions of BPL families were denied food subsidies.

Further there are other disputes about the number of BPL families under the National Food Security Bill, 2010. As per and India government norms, any person who spends Rs.12 per day on an average in rural Rs.18 in urban India based on 2004-05 prices are considered to be an Above Poverty Line (APL) and therefore cannot avail the super subsidized grains.⁵⁶ The Expert Group to Review Methodology for Estimation of Poverty headed by Suresh Tendulkar (in Tendulkar Committee) in its report to the Planning Commission in November 2009 suggested that any person who has a per capita per day expenditure of just Rs 16 in rural India and Rs 20 in urban areas will be considered Above Poverty Line (APL).⁵⁷

Only 27.2% on Indian are recorded as poor by the Planning Commission of India. In another report regarding poor State governments estimated 10.52 crore families or 45% of all Indians. The government of India presently follows that estimate of the Planning Commission of India, which happens to be the lowest of the estimates.⁵⁸ It is estimated that 6.5 crore families are below the poverty line on the basis of current definition of poverty according to National Food Security Bill, 2010 the definitions of poverty. 2.5 crore Antyodaya families considered the poorest among the poor and therefore eligible for additional subsidies.⁵⁹ But 37.2% of Indian is recorded as poor by the Tendulkar Committee.⁶⁰ Therefore the National Food Security Bill, 2010 fails to lay down the criteria to identify the poor.

⁵⁵ Ibid.

⁵⁶ Nitin, Sethi, "*APL need to get subsidized food too?*" (New Delhi: The Times of India, 2 September 2010): p.1-11

⁵⁷ Report of the Expert Group to Review Methodology for Estimation of Poverty, (New Delhi: Planning Commission of India. November 2009)

⁵⁸ "*Government to send food security bill back to rewrite desk*", (New Delhi: The Hindustan Times, 3 April 2010) pp.1-11

⁵⁹ Karat, Brinda "For inclusive approach to food security", (New Delhi: The Hindu, 30 June 2010)

⁶⁰ Report of the Expert Group to Review Methodology for Estimation of Poverty, (New Delhi: Planning Commission of India, November, 2009)

Decreased food security

The National Food Security Bill, 2010 states that ‘Every identified BPL family within the number fixed under section 4(2) of the Bill will be entitled to receive every month from the Government 25 kg food grains such as rice and/or wheat at subsidized issue prices fixed from time to time in a manner as may be provided under the Rules.’

In the Bill it is mentioned that the BPL family is entitled only 25 kg per month which is less than the current entitlement. Because the Government provides 35 kg of food grains (wheat at Rs 2 per kg, and rice at Rs 3 per kg) to the poorest families within the BPL category under the Antodaya Anna Yojana. It means under the draft Bill BPL families will get only 25 kg a month and the balance will have to be bought from the open market, virtually neutralizing the benefit of getting grains at Rs 3 a kg. These families will have to pay more and get less.

No Nutritional Security

Section 2(g) ‘Food Security’ refers to the provision of the minimum quality of food grains as prescribed under section 3 of the act⁶¹.

Therefore according to the National Food Security Bill, 2010 the definition of the food security should be limited to the specific issue of food grains security (wheat and rice) and be delinked from the larger issue of nutritional security.⁶² Even though apart from 35 kg food grains Supreme Court has given so many orders which provide for multiple entitlement on the right to food for all ages of people and sections of society which includes vulnerable groups. For example reduced prices for the PDS grain under Antyodaya Anna Yojana for vulnerable sections of society, supplementary nutrition for infants and young children under the Integrated Child Development Scheme, maternity entitlements under the National Maternity Benefit Scheme and Janini Suraksha Yojana, school mid-day meals, old age pensions and addressing the needs of the homeless and

⁶¹ Section 2(b) of National Food Security Bill, 2010 p. 2

⁶² “*Food Security Act should cover entire population*”, (The Central Chronicle, 7 April 2010).

urban poor, street children, single women and infants under six months.⁶³ Therefore under the Bill there is no nutritional security.

No role of state governments in decision making

Under section 3 of the National Food Security Bill, Central government has the power to identify the beneficiaries and the State governments do not have the right to identify the beneficiaries, extension of rights or making efforts at giving better security. Therefore this basically leads to exclusion, dichotomy and denial.

The state government of Madhya Pradesh had identified 6.6 million poor families but as per the estimates of the Central government there were only 4.12 million families as poor in the state. And the state government of Chhattisgarh also claims that it is required to spend Rs 1,800 crores per year just to provide food grains to the beneficiaries who are identified as BPL families.⁶⁴

No special authority

Under the National Food Security Bill (2010), there is no provision in the constitution to special authority/tribunal/commission or special courts to look into violations of rights and entitlements. It means that in case of violation of rights, the victims would have to approach the existing judiciary which cannot be afforded by the poor and marginalized.⁶⁵

The policy of cash transfers

Section 9 of the National Food Security Bill provides that the concerned State Governments 'shall make payment of food security allowance to the identified BPL families as provided under section 7(8) in such manner as may be prescribed in the Rules'.⁶⁶

In this section it is said that it the mandatory duty of the concerned State government that state shall make payment of food security allowance to identify BPL families. But in spite of the fact cash can never take the place of food grains. Further,

⁶³ "Ensuring food security for all", (New Delhi: The Economic Times, 31 May 2010)

⁶⁴ "India Human Rights Report", (Quarterly: Issue-1, July- September, 2010): pp. 14-19

⁶⁵ Ibid

⁶⁶ Section 9 of National Food Security Bill, 2010 p. 6

there is a maximum possibility that cash given will be spent on drinking, gambling or other useless consumption without addressing food security. Cash transfers will have a negative effect on the production of grains.⁶⁷

Above discussion it shows that Right to Food is a kind of entitlement. This entitlement is known as a positive right. Positive right co-relates with positive duty thus states have positive duty. States also have obligation to respect, obligation to protect and obligation to fulfil. On the basis of positive right Supreme Court has given the orders and directions to the Centre and State Governments to provide the food grain and implement scheme and enact the proper law.

⁶⁷ http://www.righttofoodindia.org/data/food_security_what_the_government_says_and_what_we_want.pdf
accessed on 12/04/2011

Chapter 2

Right to food and Supreme Court

Though the Right to Food has got a good deal of its content from the Right to Food Campaign as will be seen in the next chapter, previous to the Campaign and independent of it, the Supreme Court has had a good deal to say that has had an impact on the Right to Food. In this chapter we will review and comment on this case law.

Generating Rights

There are some very important cases where the Supreme Court started to recognize rights which act as inputs to the crucial Right to Food case namely PUCL V/s Union of India and Others (2001). For the first time in the case of Maneka Gandhi V/s Union of India⁶⁸ the Supreme Court held that right to life that is enshrined in Article 21 of the Indian constitution includes something more than animal instinct and also includes the right to live with dignity. The right to food and other basic needs would manifestly be included under this. Every being has a right to free from hunger, starvation, to be free from under nutrition and the basic human need for the survival of life should be respected. Further in the case of Baksey v/s Board of Regents⁶⁹ Douglas J. said that to work means to eat and it also means to live. It shows that the right to food is closely connected to right to work and right to life which is given under Article 21 of the Indian Constitution.

In the case of Francis Coralie v/s. Union Territory of Delhi⁷⁰ the question was posed by Bhagwati J. 'Is the right to life limited only to protection of limb or faculty'? Or does it go further and embrace something more? Regarding the answer to this question he said that we think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and co-mingling with fellow human beings. The same idea has been repeated in several other cases. For example take

⁶⁸ AIR 1978, SC 598

⁶⁹ (1954) M.D. 442

⁷⁰ AIR 1981 SC 746

Bandhwa Mukti Morcha v/s Union of India and Others⁷¹ - this case was related to bonded laborers. In this case Court said that the fundamental right of every one has the right to live with human dignity, free from exploitation. This right to live with human dignity is enshrined in Article 21 and it derives its life-breath from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42. Therefore, it must include protection of the health and strength of the workers, men and women, and children against abuse. Another case in this regard is Shantistar Builders v/s. Narayan Khimalal Totame⁷² In this case three Judges Bench had held that basic needs of man have traditionally been accepted to be three like Food, clothing, and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live. The difference between the need of an animal and a human being for shelter has to be kept in view. For an animal it is the bare protection of the body. For a human being it has to be a suitable accommodation which would allow him to grow in every aspect like physical, mental and intellectual.

The aim of the Constitution is to ensure fullest development of every child. It would be possible only if the child is in a proper home. It is necessary that every citizen must be ensured of living in a well-built comfortable house and reasonable home. The Court recognized the above right to shelter as a right to life under Article 21 of the Indian Constitution and upheld the validity of exemption and gave directions to effectively implement the scheme. Further, the Supreme Court said that Basic needs of man have traditionally been accepted to be three food, clothing, and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live. In the next case Shubhash Kumar v/s State of Bihar⁷³ the question posed was whether the Right to Water comes under Article 21 of the Constitution of India? In this case the Court held that Right to Water is a fundamental and human right which comes under 21 of the Constitution of India and further court said that anything which endangers

⁷¹ AIR 1984 SC 802

⁷² AIR 1990 SC 630

⁷³ AIR 1991 SC 420

the life and quality of life of a person in derogation of laws, a person can take recourse to Article 32 and 226 (Constitution of India) to that may be detrimental to the quality. In this perspective the right to food shall also include because in its dearth of absence life will come in danger or the existence to human being is likely to cease.

We turn next to the case of *Mohini Jain v/s. State of Karnataka*⁷⁴ In this case *Kuldip Singh J.* said that right to life is the compendious expression for all these rights which the courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. Article 21 now applies to various facets of life and living.

It must also be noted that the Supreme Court Judges have considered that Directive Principle of State Policy could be read together with Fundamental Rights. For example *Unnikrishnan v/s. State of AP*⁷⁵ In this case Supreme Court held that in order to treat a right as fundamental right, it is not necessary that it should be expressly stated as one in Part III of the Constitution but also that the provisions of Part III and Part IV are supplementary and complementary to each other. The judges felt that there is no difference between the two. They go on to say that it is wrong to assume that fulfillment of obligations relating to social and economic human rights would impair fundamental rights. That is why they say that Article 31-C⁷⁶ was incorporated into the Constitution which says that 'Notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing all or any of the principles laid down in Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19'. As *Glanville Austin* says that the core of the commitment to the social revolution lays in Part III and IV in the Fundamental Rights and in the Directive Principles of State Policy. These are the conscience of the Constitution. This has also caused *Bhagwati J.* to say that the core of

⁷⁴ (1992)3 SCC 666

⁷⁵ (1993)1 SCC 645 para 165

⁷⁶ 25th Amendment Act 1971

the commitment of the social revolution lies in the Fundamental Rights and directive principles of state policy⁷⁷.

We turn next to the *Olga Tellis v/s Bombay Municipal Corporation*⁷⁸ This case was basically related to right to livelihood and eviction of pavement dwellers and slums from the city of Bombay. In this case the right to dwell on pavements or in slums by the indigent was accepted, as a part of right to life enshrined under Article 21 and ejection of people from the place near to their work would be deprivation of their right to livelihood. Thus it was maintained that they will be deprived of their livelihood if they are evicted from their slum and pavement dwellings. The Constitution Bench had held that the right to livelihood is treated as a traditional right to life. Further Supreme Court recognized the right to livelihood, and observed that an 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. Such deprivation would not only denude the life of its effective and meaningfulness, but it would make life impossible to live. That which alone makes life impossible to live leave aside what makes life livable must be deemed to be an integral component of the right to life.

In another important case of *Sri. P.G. Gupta v/s State of Gujrat and Ors*⁷⁹ three judge bench of Supreme Court considered the mandate of the human right to shelter and read it into Article 19(1) (e) and Article 21 of the Constitution of India to guarantee right to residence and settlement. It was said that protection of life guaranteed by Article 21 encompasses within its ambit the right to shelter to enjoy the meaningful right to life. The preamble of the Indian constitution assures to every citizen social and economic justice and equity of status and opportunity and dignity of person so as to fasten fraternity among all sections of society in an integral Bharat. Article 39(b) enjoins the State that ownership and control of the material resources of the community are so distributed as to promote welfare of the people by securing social and economic justice to the weaker sections of the society to minimize inequality in income and endeavor to eliminate inequality in status. Article 46 enjoins the State to promote with special care social,

⁷⁷ *Mohini Jain v/s. State of Karnatka* (1992)3 SCC 666

⁷⁸ AIR 1986 SC 180

⁷⁹ 1995(1) SCALE 653

economic and educational interests of the weaker section of the society, in particular, Schedules Castes and Scheduled Tribes. Right to social and economic justice conjointly commingles with right to shelter as an inseparable component for meaningful right to life. Therefore it is held that right to residence and settlement is a fundamental right under Article 21, rendering food, shelter and clothing are minimal human rights.

Further in the case of *Shantistar Builders v/s Narayan Khimalal Totame*⁸⁰ the right to shelter was also recognized as a fundamental right by Supreme Court. In the case of *Chameli Singh v/s. State of U. P. & Others*⁸¹ it was elaborated that shelter for a human being is not a mere protection of his life and limb.. Rather, it is his home where he has opportunities to grow physically, mentally, intellectually and spiritually. The right to shelter, therefore, includes adequate living space, safe and decent structure, clean and decent surroundings, sufficient light, pure air and water, electricity, sanitation, and other civic amenities life roads, etc. so as to have easy access to his daily avocation. Right to shelter when used as an essential requisite to the right to live should be deemed to have been guaranteed as a fundamental right. Therefore the want of decent residence frustrates the very object of the constitutional animation of right to equality, economic justice, fundamental right to residence, dignity of person and right to live itself.

Moving to cases covering other similar rights - In the cases of *Mohini Jain v/s State of Karnatka*⁸² and *Unnikrishnan v/s. State of AP*⁸³ the right to education was held to be a fundamental right. Further in the case of *Delhi Transport Corporation v/s D.T.C Mazdoor Congress*⁸⁴ Supreme Court considered right to work as a fundamental right. Further, in the case of *West Bengal Farm Labourer's Association v/s The Govt. of West Bengal*⁸⁵ the right to health was recognized as a fundamental right. It was indeed the golden period of the Supreme Court lasting from the last quarter of the 70s till the middle of 90s. It was during this period that the concept of Public Interest Litigation (PIL) or Social Action Litigation came to be developed mainly for the benefit of a large

⁸⁰ AIR 1990 SC 630

⁸¹ (1996) 2 SCC Pg.549

⁸² (1992) 3 SCC 666

⁸³ (1993)1 SCC 645

⁸⁴ AIR 1991 SC 101

⁸⁵ (1996)4 SCC 37

number of poor, marginalized and socially economically weaker sections of the society and in those cases where they have suffered worst form of violation of human rights.

Recent Reorientation by the Supreme Court

Pioneered by such earlier trends, currently every High Court has a special Bench for PIL and it is similar in the Supreme Court. Public Interest Litigations (PIL) are entertained whether they fall within Article 32 or not under the Constitution of India. However it is regrettable that more recently there have been very few if any PILs for and on behalf of the poor, the Dalits and the marginalized in any of the Courts. Barring the one pending petition in the Supreme Court which is filed by PUCL on the right to food, there is little else. In the case of Narmada Sardar Sarovar Dam⁸⁶ a large number of internally displaced persons could get no relief because the Court found the policy of the Government in construction of the Dam was sufficient enough to safeguard the interests of all the persons affected by the project.

The Court rejected the plea that the fundamental rights of the tribal, when they lost their homes, and their right to livelihood, are violated. The same approach was adopted by the Supreme Court in the case of BALCO⁸⁷. While a series of crucial questions such as why this change in the approach of the Supreme Court and other Courts has taken place? Why have cases against violation of Socio-economic rights decreased? Why Courts are ignoring these human rights which are the part of right to life which fall under Article 21 of the Constitution of India?, can be asked, it is not possible for us to address these issues in detail here. However we just note that currently the vast poor have no guarantee of any judicial compassion and as is observed by Justice V. R. Krishna Iyer⁸⁸ in the case of T. M. A. Pai Foundation v/s State of Karnataka⁸⁹ that there is no gain saying the fact that social justice and equal opportunity for educational excellence at all levels have gone by default. It is the case that globalization, liberalization, privatization and marketisation have captured the Court's notice and the

⁸⁶ Verdict On 18 October 2000

⁸⁷ (2000) 2 SCC 333

⁸⁸ The Hindu date 17th December, 2002

⁸⁹ (2002)8 SCC 481

Preamble to the Constitution is de facto judicially jettisoned. These observations which are stated by the Supreme Court capably apply to all cases of violations of human rights. In certain cases it is said by the Courts that socio-economic rights are imperfect or inchoate rights and they cannot be enforced through Courts. In case of civil and political rights it stated that it can be enforced through Courts by orders of injunction whereas socio-economic rights are positive rights in their content and the enforcement of these rights require constant supervision and administrative directions to supervise their implementation. The implementation of these rights involves decisions relating to policy of the Government and also budgetary considerations.

The composition of the Courts is such that with most of the judges coming from a class of affluent and elite lawyers. The judges themselves are reluctant to consider these rights as judicially enforceable. In the matter of socio-economic rights they think that the Courts cannot provide a remedy for every injustice. But certain fundamental principles cannot be denied. In present it is too late to categorize these rights as distinct from other civil and political rights. Human rights are universal indivisible and interdependent. For example freedom of expression does not have meaning, if you are denying your right to shelter or food. In fact the denial of enforcement of socio-economic rights will eventually weaken civil and political rights. Universal Declaration of Human Rights (UDHR) itself considered an integrated, inter related scheme of rights. It is discussed in the Article 28 of UDHR that everyone is entitled to a social and international order in which the rights and freedoms set forth in his Declaration can be fully realized⁹⁰. The importance of socio-economic and cultural rights was understood by Supreme Court when it started reading Fundamental Rights and DPSP together. The experience of judicial interference in the matter of acknowledging and implementing Socio-economic rights shows that it had its own impact inasmuch as the Government had to think twice before acting in derogation of these rights. It is true that the Supreme Court is granted mostly declaratory reliefs and on the basis of declared guidelines, the execution and enforcement of the orders were all left to the executive.

⁹⁰ Article 28 of UDHR,1948

The Right to Food case

The demand of Right to Food is as a fundamental is basically started from 2001 in India. Because in 2001, there was a huge drought- struck which affected a number of States to large extent and it continued for months and it results in the acute poverty and complete lack of access to food grains and it led to the starvation of the people in large number. Central government had excess good grains in its storehouses, which were not being disseminated. The protest in the country over lack of access to food grains got momentum. The central government denied about the starvation deaths. In this regard one PIL filed by People's Union for Civil Liberties (PUCL) therefore there is only one pending case on Right to Food. People's Union for Civil Liberties v/s Union of India⁹¹. In this case Supreme Court has passed a series of orders. Generally the approach of the Supreme Court seems to be to identify the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children and then distribute food grains to them through various schemes, such as Targeted Public Distribution Scheme (TDPS) for BPL families, Antyodaya Anna Yojana, Mid-day Meal Scheme and Annapurna Scheme. And also give assistance to them through National Old-age Pension Scheme, Integrated Child Development Scheme, National Maternity Benefit Scheme, etc.

The Supreme Court is constantly giving directions to implementation of these schemes. Beyond any doubt this approach of Supreme Court is a humanistic approach. But necessary thing is a shift from the domain of benevolence to that of a right. Right to food is not charity. It should be an enforceable 'Right as an art of adequate standard of living'. It is something more than food for survival. It is discussed as ingredient of 'adequate standard of living'⁹². It means nutritious food for the purpose of maintaining adequate standard of living. It also includes fulfillment of various other rights. Article 11(2) of ICESCR are having certain measures which are (1) to improve methods of production, conservation and distribution, (2) making use of technical and scientific knowledge, (3) reforming agrarian systems, (4) regulating food importing and

⁹¹ Writ Petition No.196 of 2001

⁹² Articles 11(1) & (2) of ICESCR, 1966

exporting and above all, (5) access to food adequate in terms of nutritional quality and quantity.

It has been saying regarding the Right to Food that it is a test on the question of justifiability of the Right. It is extremely doubtful whether the Court will formulate? What is the exactly meaning of Right to Food? What are the main problems to fulfillment of the Right to Food? Whether Court is able to formulate the frame work of rights for policy and action? These questions have arisen in the case of all socio-economic rights, despite the judges in the past showing an innovative path.

Judges of the Indian Courts still think that judicial enforcement of these rights is not executable and also it is inappropriate. They are not ready to consider that a denial of right to shelter, health or livelihood is as much a violation of human rights as an infringement of fundamental freedom under Article 19. They are thinking that these rights are beyond their concern and also considering the socio-economic rights are still 'outside the law' and because generally there is no question of adjudication. But the main question among us is how do we implement the socio-economic rights? If the Courts are improper institutions, whether we should leave it to the political and administrative organs of the State? It is not possible to abolish judicial role or direction to ensure that the State lives up to its positive obligations as incorporated in ICESCR? Whenever there is any breach of any rights as Civil, political, social, economic or cultural there has to be a remedy because there is principle where there is right there is remedy which is based on latine maxim '*ubi jus ibi remedium*'. The judiciary is still the best guarantee for a just remedy. Supreme Court held Right to Clean Water⁹³, Right to Shelter⁹⁴, Right to Livelihood⁹⁵ and Right to Health⁹⁶ are the human rights and fundamental rights. These rights were not given under the Constitution of India but on the basis of human need Court had held that those rights are human rights as well as fundamental rights. But still Right to Food is not a fundamental right which is basic need of human being. Without food human being cannot exist in the world. How Right to Food is related to fundamental

⁹³ Subhas Kumar V. State of Bihar AIR 1999 SC 240

⁹⁴ Shantistar Builder V. Narayan Khimala Totame AIR1990 SC 630

⁹⁵ Olga Telis V. Bombay Municipal Corporation AIR1986 SC 180

⁹⁶ Pramanand Katara V. Union of India AIR1989 SC 2039

right? Since Fundamental rights are the same as human rights. Human right is the rights relating to life, liberty, equality and dignity of individual which are constituted or embodied in the international Covenants and enforceable by Courts in India. Therefore right to food is a fundamental right. All the human rights relating to life, liberty, equality and dignity of the individual are recognized by statutes. All fundamental rights are human rights and all human rights are fundamental rights.

The Chairperson (Justice Verma) of NHRC has discussed the case of 'Right to Food'. When there were reports of deaths in 1996-97 by starvation in the districts of Bolangir, Kalahandi and Naupada of State of Orissa.⁹⁷ The petition was filed by the Indian Council of Legal Aid and Advice before National Human Right Commission. Director General of NHRC and Secretary General did on the spot enquiry. The Commission heard a number of official and non official persons. On the basis of all hearing the Commission set out definite solid interim measures like as (i) Public Health Care, (ii) Rural water supply scheme, (iii) Rural Development Schemes to generate employments (vi) Social Security Schemes (v) Water and Social Conservation measures and further directed the State Government to constitute a committee to examine Land Reform question in those districts. On the basis of the Supreme Court decisions. NHRC noticed that there is a fundamental right to be free from hunger. Right to free from hunger is connected with right to food. The Right to Food means the right to food at appropriate nutritional levels.⁹⁸ It also means that the quantum of relief to those in distress must meet those levels in order to ensure. Right to Food is actually secured and does not remain a theoretical concept. It is secured only when he is assured of all facilities to develop himself. He is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. Right to live guaranteed in any civilized society implies the Right to Food, water, decent environment education, medical care and shelter. These are basic human rights known to civilized society. All civil, political, social and cultural

⁹⁷ www.escri-net.org/usr_doc/suresh_article.doc accessed on 22/03/2011

⁹⁸ Ibid

rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights.⁹⁹

Above discussion shows that how Supreme Court has turned to interpret the 'Right to Food' as a fundamental right which is captured by Article 21 of the Indian Constitution.

⁹⁹ Ibid

Chapter 3

Right to Food campaigning and its construction of 'Right to food' as a 'Fundamental Right'

Background

As a first step we begin by recapitulating a series of facts which form the necessary background to illuminate both the Right to Food and the Right to Food Campaign. The Right to Food Campaign always raises the issues regarding the Right to Food and come with these issues in the Supreme Court. Supreme Court has been passing the orders and directing to the Governments on the basis of these issues since 2001. This is the connection between Supreme Court and the Right to Food campaign.

Globally, the number of persons going to bed hungry increased from 800 million in the year 2000 to over one billion in 2010¹⁰⁰. More than 200 million people in India are denied the Right to Food¹⁰¹ and with some 230 million undernourished people this indicates 27% of all undernourished people in the world are in India¹⁰². Due to lack of adequate nutrition 57 million children are under-weight which is one third of all underweight children in the world¹⁰³. Large numbers of people die due to chronic hunger over a longer period of time and this is of wider consequences than famine¹⁰⁴. According International Food Policy Research Institute India is ranked 66th ranks in the Food and Agriculture Organization's Global Hunger Index (2008) of 88 countries but recently it has come on 67th ranks in the Food and Agriculture Organization's Global Hunger Index (2010) out of 84 countries recorded by International Food Policy Research Institute¹⁰⁵. When we talk about number of poor in India then we get measures from many committees. According to Wadhwa Committee there are 20 crore poor persons, 8.25

¹⁰⁰ Swaminathan, M.S "*Distribute, procedure, store and sow*", (New Delhi: The Hindu, 14th September, 2010)

¹⁰¹ R, Suranjita, "*Right to Food: Some Issues and Challenges: A Case Study of Kalahandi*", Mainstream, Vol. XLVIII, No 9, February 20, 2010

¹⁰² R. Ramkumar "*Food insecurities*", The Frontline, Volume 27 - Issue 15 :: Jul. 17-30, 2010

¹⁰³ Shiva, Vandana, "*Why is every 4th Indian Hungry? The Causes and Cures for Food Insecurity*", (New Delhi: The Hindu, 31 July, 2009)

¹⁰⁴ Dreze, Jean and Sen, Amartya, "*Hunger and Public Action*", (Oxford :Clarendon Press, 1989): P. 267

¹⁰⁵ IFPRI. 2010. 2010 Global Hunger Index: Background Facts and Key Findings. Washington, DC accessed on 4/04/2011

crore according to Tendulkar Committee, 20 crore according to Arjun Sengupta Committee, 10.5 crore according to State Government, 7 crore according to Planning Commission 7 crore and 7.5 crore according World Bank¹⁰⁶. India is one of the most undernourished countries in the world because 70% of the children under five in India are anemic and 40% of the women have chronic energy deficiency. According to figures released by United Nation World Food Programme (WFP) last year and over 42% of India's population of 1.35 billion lives below poverty line¹⁰⁷. Further in the period 1999–2001, India was estimated to have 213,700,000 undernourished people, more than any other country in the world, and more than all the countries of Sub-Saharan Africa taken together¹⁰⁸. Thus it can be seen that extreme poverty has been a constant feature of India. The United Nations Development Programme in its 2010 Human Development Report as poor states that about 645 million people or 55% of the population of India are against much-criticized official poverty figure of 27.2%¹⁰⁹.

This picture of hunger juxtaposed with food surpluses and stocks, the contrary impact of globalisation on agriculture and rising food prices resulting in widespread food insecurity, hunger and malnutrition and, media reports of starvation deaths makes the Supreme Court rulings in response to public interest litigation very important indeed.¹¹⁰ It is true that the country now produces enough food to feed its entire people. When there are rapid increases in hunger in some parts of India, it is now usually attributed to short-term natural events such as hurricanes or droughts, not to food shortage or poverty. Hunger 'outbreaks' are described as transitory, episodic events and temporary deviations from the norm. India no longer suffers through large-scale famines, as it has in the past¹¹¹. Thus even with hunger and rampant malnourishment present, the government has not without being prompted paid enough attention to ensuring food security. In the recent past the most the Indian Government has done is that in 1965, India introduced universal Public Distribution System (PDS) with the aim of (a) maintaining stability in the prices of

¹⁰⁶ Shankar, Ravi "Rotten Grain and Hunger Poor", (New Delhi: Jansatta, 10th September, 2010)

¹⁰⁷ R, Aruna, "Food security", the Frontline, Volume 27-issue17:: Aug. 14-27,2010

¹⁰⁸ Food and Agriculture Organization 2003, p.31

¹⁰⁹ Shrinivasan, Rukmini, "55% of India's population poor: Report", (New Delhi: The Times of India, 15 July 2010)

¹¹⁰ Hasan, Zoya, "Legislating against hunger", (New Delhi: The Hindu, 27 Aug. 2009)

¹¹¹ George Kent foreword by Jean Ziegler, "Freedom from Want :The Human Right to Adequate Food" (Washington, D.C: Georgetown University Press, 2005) :p.143

essential commodities across regions; (b) ensuring food entitlements to all sections at reasonable and affordable prices; and (c) keeping a check on private trade, hoarding and black-marketing¹¹². The PDS was converted into Targeted PDS (TPDS) in 1997 through classification of its population into Above Poverty Line (APL) and Below Poverty Line (BPL) categories. Only those households classified as BPL were made eligible for subsidized purchase of commodities from ration shops.¹¹³ It is against this background that recently the Right to Food has been brought-up by citizen's organizations to challenge the scandalous persistence of endemic hunger in India¹¹⁴.

Thus the Right to Food campaign and Supreme Court are considering that Right to Food as a fundamental right because food is the basic need of the life. Under the Indian constitution it is written that no one shall be deprived of his personal life and liberty except procedure establishment by law¹¹⁵. As of yet the Supreme Court has not declared that Right to Food is a fundamental right but in the Supreme Court a petition is pending on which basis Supreme Court is giving orders day to day by which Supreme Court is more or less considering Right to Food as a fundamental right. As we have said earlier the major question is how Right to Food is being constructed? Before the answer of this question it is important to discuss 'what is mean by term 'the Right to Food'. The term 'Right to Food' can be considered as freedom from hunger. This can be interpreted in two different ways, associated with different readings of the term 'hunger'. In a narrow sense, hunger refers to the pangs of an empty stomach. Furthermore, the Right to Food can be understood as the right to have two square meals a day throughout the year¹¹⁶. On the basis of analysis we interpret hunger in a broader sense, and see it as under nutrition. Therefore the Right to Food (i.e. to be free from under nutrition) basically links with a wide range of entitlements. Right to Food means not only the food but also other requirements of good nutrition such as clean water, health care, and even elementary education.

¹¹²R. Ramkumar, "Food insecurities", The Frontline, Volume 27 - Issue 15 :: Jul. 17-30, 2010

¹¹³ Ibid

¹¹⁴ Jean Dreze, "Right to Food: From Court to The Streets" p. 2

¹¹⁵ Article 21 of Indian Constitution, 1950

¹¹⁶ Jean Dreze, "Right to Food: From Court to The Streets" p. 1

There are two sources of constructing the Right to Food in which first one is by the judgments of Supreme Court which is complemented by activities of the Right to Food campaign. Basically the Right to Food campaign is outgrowth of Supreme Court on the hearing of petition filed by People's Union for Civil Liberties, Rajasthan in April, 2001. This case shows a great advance in the justifiability of the Right to Food as a fundamental and human right. In this case Supreme Court has given a series of orders. It is essential to discuss as to why a petition was filed by People's Union for Civil Liberties what are the facts of that case? It is also important to see what the legal arguments are given by PUCL. Further we also need to see the nature of the Right to Food campaign - how it came into being and what are activities of the Right to Food campaign. Since all this has involved civil society we need to see the role of civil society in this regard. Crucial to understanding this list, are the series of orders passed by the Supreme Court regarding schemes it has associated with the Right to Food. We begin by discussing the right to food campaign which has come due to file the petition by People's Union for Civil Liberties, Rajasthan in April 2001.

Right to Food Campaign

Right to Food campaign is constructed from a decentralized network, which builds on local initiative and voluntary cooperation. It has a small 'support group' (presently consisting of Jean Drèze, Harsh Mander, Kavita Srivastava and Colin Gonsalvez), which is handling the Supreme Court hearings and also playing a basic facilitating role in the larger campaign. The members of the support group participate in the Right to Food campaign in their personal capacity, without remuneration¹¹⁷. The Right to Food campaign is committed to the realization of the Right to Food in India. It is considered that everyone has a fundamental right to be free from hunger and under-nutrition. Realizing this right requires not only equitable and under sustainable food systems, but also entitlements relating to livelihood security such as the right to work, land reform and social security. The primary responsibility for guaranteeing these entitlements rests with the state. Lack of financial resources cannot be accepted as an excuse for abdicating this responsibility. In the present context, where people's basic needs are not a political

¹¹⁷ www.righttofoodindia.org/data/sourcebook.doc accessed on 20/02/2011

priority, state intervention itself depends on effective popular organization¹¹⁸. There are steering committees of Right to Food campaign which are given below.

1. National Federation of Indian Women(NFIW)
2. People's Union for Civil Liberties(PUCL)
3. Human Right Law Network(HRLN)
4. Jan Swasthya Abhiyaan(JSA)
5. National Campaign for People's Right to Information(NAPM)
6. National Alliance of People's Movement(NAPM)
7. Bhartiya Gyan Vigyaan Samiti(BGVS)
8. National Campaign Committee for Unorganized Sector Workers(NCC-USW)
9. Nation Campaign for Dalit Human Rights(NCDHR)
10. Nation Confederation of Dalit Organizations(NACDOR)
11. New Trade Union Initiative(NTUI)
12. Former 'Support Group' of the Right to Food Campaign
13. Breastfeeding Promotion Network of India(BPNI)

The Genesis of the Right to Food Campaign

In April 2001, a petition was filed in Supreme Court by the People's Union for Civil Liberties (PUCL), Rajasthan on the name of 'Right to Food'. The Right to Food campaign has come on the basis of the Supreme Court's hearing on the Right to Food, held in response to a same petition. In this case petitioner demands that the country's gigantic food stocks be used without delay to protect people from starvation and hunger. Supreme Court hearings have been held at regular intervals (many more are expected during the next year or two), and important 'interim orders' have already been issued. Yet, it soon became clear that the legal process would not take us very far on its own. This motivated the effort to build a larger public campaign for the Right to Food.¹¹⁹

¹¹⁸ <http://www.righttofoodindia.org/campaign/campaign.html> accessed on 23/2/2011

¹¹⁹ <http://www.righttofoodindia.org/campaign/campaign.html> accessed on 23/2/2011

Issues

The Right to Food campaign has already taken up broad aspects of the Right to Food. In the Supreme Court, Right to Food campaign have argued that the best way to protect the Right to Food would be to introduce an all-India 'employment guarantee' programme, supplemented with social security arrangements for those who are unable to work. Other fundamental issues of the Right to Food campaign include (1) effective implementation of all nutrition-related schemes (2) introduction of cooked mid-day meals in all primary schools (3) reform and expansion of the public distribution system (4) realization of the right to work, especially in drought-affected areas. Further issues are expected to be taken up as the campaign develops.

Activities

A wide range of activities have been initiated to pursue those issues which are given up. The activities of Right to Food campaign include public hearings, media advocacy, rallies, padyatras, action-oriented research, dharnas and lobbying of Members of Parliament. For example, this kind of activities took place across the country as part of a national 'day of action on mid-day meals' on 9 April 2002. This event was instrumental in persuading several state governments to initiate cooked mid-day meals in primary schools. Similarly, sustained lobbying activities by members of the Right to Food campaign have played a major role in the introduction of a large-scale programme of food-based social security for destitute households, announced by the Prime Minister on 15 August, 2002. Plans are underway for similar campaign activities focusing on the right to work during the next few months¹²⁰. It needs to be realized that these activities have taken place because the initial Supreme Case orders provided a catalyst for the activities and coming together of the Right to Food campaign. While we will now go on to discuss the Supreme Court's orders, but before that it is important to acknowledge the role of civil society because it plays a major role in implementing the Supreme Court's orders.

The role of civil society

Civil society is composed of groups and associations organized voluntarily, devoted to the cause of collective good, independent of state and of any other vested interest like as

¹²⁰ www.righttofoodindia.org/data/sourcebook.doc accessed on 20/02/2011

Right to Food campaign. Basically civil society highlights the role of citizens, their action groups, mission-driven, community organizations as a vibrant mode of people's participation¹²¹ for examples through social audits, rallies, protests and grassroots mobilization. The role of civil society has largely been one of informing the Court about details related to the need to enhance funding, providing specific budget information, and presenting monitoring reports on the allocation and utilization of funds by both State and central governments¹²².

People's Union for Civil Liberties Vs Union of India and Others¹²³

Summary fact of the Case

India was having enough and excess good grain and various schemes were functioning to distribution of food. Even though these schemes were in place, starvation deaths had occurred in the state of Rajasthan. After this, a petition was filed in the Court by the People's Union for Civil Liberties (PUCL) to enforce both the food schemes and the Famine Code, which is a code permitting the release of grain stocks in times of famine. On April 16, 2001, the People's Union of Civil Liberties placed three major questions from Supreme Court of India through a petition.

1. Starvation deaths have become a National Phenomenon while there is a surplus stock of food grains in government warehouse. Does the right to life mean that people who are starving and who are too poor to buy food grains free of cost by the State from the surplus stock lying with the State particularly when it is lying unused and rotting?
2. Does not the right to life under Article 21 of the Constitution of India include the right to food?
3. Does not the right to food which has been upheld by the apex Court imply that the State has a duty to provide food especially in situations of drought to people who are drought affected and are not in a position to purchase food?

¹²¹ Fadia, Dr. B.L. and Fadia Dr. Kuldeep, "*Public Administration*", (Agra:Sahitya Bhawan Publications, 2006):p.777

¹²² Food and Agriculture Organization "*Budget Work to Advance the Right to Food: 'Many a slip'*", (Rome: United Nations, 2009): p. 85

¹²³ People's Union for Civil Liberties Vs Union of India and Others
Petition (Civil) No.196 of 2001

This petition was placed in front of the Supreme Court in a situation where the Food stocks of India had reached unprecedented levels while hunger intensified in drought affected areas and elsewhere. In these circumstances the People's Union for Civil Liberties (Rajasthan) took an action and filed a petition in the Supreme Court on name of Right to Food. Initially, the petition was filed against the Food Corporation of India (FCI), the Government of India, and six state governments, in the specific context of inadequate drought relief. Subsequently, the petition was extended to the larger issue of chronic hunger, with all states and union territories as respondents. The legal basis of the petition was Article 21 of the Indian Constitution. The guarantee of the right to life is given under Article 21 of the Indian Constitution, and imposing a duty upon the state to protect it. This right is fundamental. The Supreme Court has held in the so many cases that the right to life includes the right to live with dignity, right to livelihood¹²⁴, and all that goes along with it, including the Right to Food. The essential argument of the petitioner was that the response to the drought situation by central and state governments constitutes a clear violation of this right. The petition pointed out that the state is neglecting to provide food security through breakdown of the public distribution system (PDS). The failures of the PDS arise at various levels but most prominently its availability has been restricted to families living below the poverty line (BPL). According to Indian Council of Medical Research (ICMR) the monthly quota per family cannot meet the nutritional standards till yet. Even this is implemented erratically. A survey had been taken in Rajasthan which indicated that only one third of the sample villages had regular distribution of food in the preceding three months and with no distribution at all in one sixth of them. The recognition of below the poverty line (BPL) households was also highly unreliable. The assistance amount which was proving to BPL households through the PDS was less than five rupees per person per month.

The petition also pointed out the insufficiency of government relief works. Famine Codes useable in various states regularize the provision of these works and make them compulsory when drought is declared. Despite being essential for relief to give work to 'every person who comes for work on a relief work', the Rajasthan government

¹²⁴ Olga Tellis v/s Bombay Municipality Corporation AIR 1986 SC 180

had followed a policy of 'labour ceilings', which then limited employment to less than 5 per cent of the drought affected population through the government's own statistics. The real employment has been even lower and it has been reported many places that government has failed to pay the legal minimum wage. The petition destroys completely one official excuse for both these problems, name are the lack of funds. The Supreme Court has already held that insufficiency of funds cannot excuse the failure to fulfill constitutional obligations. That excuse is not singularly applicable, given the availability of huge food stocks. With little success the state government has several times requested free grain for relief works from the central government. However, its failure to utilize the quantities already allotted to it undermines its own case. In the order dated 23/07/01 of the case PUCL Vs Union of India others Supreme Court says 'In our opinion, what is of utmost importance. The utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women, destitute men who are suffering the danger problems of starvation, pregnant and lactating women and destitute children. Particularly, in those cases where do they or the members of their family not have sufficient funds to provide food for them? In case of famine, there may be shortage of food, but here the situation is that amongst plenty there is scarcity. Plenty of food is available, but distribution of the same amongst the very poor and the destitute is scarce and non-existent leading to mal-nourishment, starvation and other related problems.

Further in another order dated 20/08/01 the Supreme Court says 'The anxiety of the Court is to see that the poor, the destitute and the weaker sections of the society do not suffer from hunger and starvation. The prevention of the poor, the destitute and the weaker sections of the society is one of the prime responsibilities of the Government (Central or State). How this is to be ensured that this would be a matter of policy which is best left to the Government. Further the Court has to be satisfied and may have to ensure that the food grains which are overflowing in the warehouses, particularly of FCI warehouses, and which are more than enough, should not be wasted because food grain is being wasted by dumping into the sea or eaten by the rats. Without any implementation only schemes are nothing. The fundamental important is that the food must reach the hungry'.

In furtherance of these goals, the Supreme Court passed the series of orders in this case to giving directions to Central Government and all the State governments for the implementation of several schemes like the Public Distribution System (PDS), Sampoorna Grameen Rozgar Yojana (SGRY), Mid-Day Meal Scheme (MDMS), National Social Assistance Programme (NSAP) which includes the National Old Age Pension Scheme (NOAPS), National Maternity Benefit Scheme (NMBS), Antyodaya Anna Yojana (AAY), Integrated Child Development Scheme (ICDS), the National Family Benefit Scheme (NFBS) and the Annapurna scheme. The Supreme Court issued an order highlighting the fact with respect to the SGRY that the State Governments must be compatible to the Scheme guidelines and make sure that there is a complete ban on Contractors and labour displacing machines. On the directions of Supreme Court several states have been started Noon-meal schemes. The Supreme Court had also directed State governments to complete the proper identification of the BPL families and start the implementation of the AAY and the schemes under the National Social Assistance Programme (NSAP). In the order dated 28/11/01 Supreme Court has also said that that in order to ensure transparency in the implementation of these schemes, wide publicity must be given by displaying the details of these schemes in the Panchayat Offices, Fair Price Shops and schools. It also directs the All India Radio (AIR), Doordharshan and the other media to publicize various schemes and the orders. The Supreme Court has appointed Dr.N.C.Saxena as the Commissioner on Food Security with Advisors and Nodal Officers in every state, whose joint role will be to monitor the implementation of these schemes and give periodical reports to the Supreme Court.

This is the first case in which Supreme Court is considering that food is the basic need of the life which is protected under Article 21 of the Indian constitution, 1950¹²⁵. It means food is proportional directly to life. It mean without food life cannot be exist. According to Halhfeldian right and duty are correlative¹²⁶. This indicates that there is right means duty is also there. It means people's right is indicating that governments (state and central) have obligations (duties) such as obligation to respect, obligation to

¹²⁵ Article 21 (constitution of India, 1950) says "No person shall be deprived of his life or personal liberty except according to the procedure established by law".

¹²⁶ George W.Rainbolt, "*Rights Theory*", (Blackwell Publishing :Georgia State University, 2006): pp.1-2

protect and obligation to fulfill that right whereas obligation to respect indicate the government should not arbitrarily take away people's Right to Food or make it difficult for them to gain access to food and obligation to protect indicate the government must pass laws to prevent powerful people or organizations from violating the Right to Food and government must also establish bodies to investigate and provide effective remedies if right is violated and obligation to fulfill indicate the government must take positive actions to identify vulnerable groups and to implement policies to insure access to adequate food by facilitating their ability to feed themselves¹²⁷. Obligation to fulfill is indicate positive right which is given under part IVth of Indian constitution as the name of Directive Principles of The State Policy (DPSP). Therefore Supreme Court has been directing to the states government and central government to protect, fulfill and respect this right and also has been passing series order. This is an important petition on 'Right to Food' in which Supreme Court is constructing Right to Food as a fundamental right. For the implementation of Supreme Court's orders Right to Food campaign playing major role through dharnas, rallies, padyatras, media advocacy, action-oriented research, include public hearings, and lobbying of Members of Parliament to construct right to food as a fundamental right.

Supreme Court's Orders

In the first major interim order of PIL¹²⁸ was passed by the Supreme Court on 28th November 2001. This order basically focuses on eight food-related schemes. Those schemes are (1) Annapurna, (2) the National Programme of Nutritional Support to Primary Education, also known as 'mid-day meal scheme', (3) Antyodaya Anna Yojana (AAY), (4) the Integrated Child Development Services (ICDS), (5) the Public Distribution System (PDS), (6) the National Old Age Pension Scheme (NOAPS), (7) the National Maternity Benefit Scheme (NMBS), and (8) the National Family Benefit Scheme (NFBS). Basically, the interim order on dated 28th November 2001 is converted into legal entitlements the benefits of these eight 'schemes'. It means, if person is not getting full quote of 35 kg of grain per month at the official prices (Rs 3/kg for rice and

¹²⁷ Ziegler, Jean, "*Report of the Special Rapporteur on Right to Food*", (Commission on Human Right, 20 march 2006): pp16-18

¹²⁸ People's Union for Civil Liberties Vs Union of India and Others
Petition (Civil) No.196 of 2001

Rs 2/kg for wheat) though that person has an Antyodaya card then that person can claim his due as a matter of right, by going to Court if necessary. The interim order in the case of mid-day meals passed to giving a legal protection of existing entitlements and also directed the government to replace monthly 'dry rations' of grain with daily, cooked mid-day meals.

The fundamental idea of this order was that the government should implement these food-related schemes to protect the right to food. If government will not implement these schemes then government will be accountable. The schemes which are covered by the order dated on 28th November 2001 became the object of further orders over the years. The orders and schemes are summaries in the brief discussion of 'umbrella' orders which pertain to all these schemes¹²⁹. Why do we say 'umbrella' orders? The reason behind it Supreme Court has been passed a series of orders in that PIL. And also need to give brief discussion of those schemes and their object and also what orders is given by the Supreme Court to implement of those schemes.

'Umbrella' Orders

In this 'umbrella' orders the most of the interim orders are related to particular schemes (for example the Public Distribution System or the Integrated Child Development Services) but some of them apply 'across the board' to all the important schemes. Umbrella orders include some important orders which are discussing below.

An order on dated 17th September, 2001 passed by Supreme Court which is related to full utilization of grain quotas. In this order the Supreme Court directed all the State Government to immediately lift the entire allotment of food grain from the Central Government under the various Schemes and disburse the same in accordance with the Schemes¹³⁰. Again Supreme Court passed another order dated on 8th May, 2002. This order is basically related to accountability to Gram Sabhas. In this order Supreme Court directed the Gram Sabhas that the Gram Sabhas are entitled to conduct a social audit into

¹²⁹ Right to Food Campaign, "*Supreme Court orders on the Right to Food*", (New Delhi: Secretariat, August 2008): pp.15-16

¹³⁰ Supreme Court Order dated 17th September 2001.

all Food/Employment schemes and to report all instances to misuse of funds to the respective implementing authorities, who shall on receipt of such complaints, investigate and take appropriate action in accordance with law and the order also said that Gram Sabhas have power to see the proper implementation of the various schemes and have access to important information relating to various schemes and selection of beneficiaries and the disbursement of benefits¹³¹.

Further another order passed by Supreme Court dated on 29th October, 2002 which is related to responsibility for compliance. In this order Supreme Court said that the Chief Secretaries of the concerned states shall be responsible for any persistent default in compliance with orders¹³². Further the order dated on 27th April, 2004 passed by Supreme Court in which Supreme Court said that scheme should not be discontinued without the prior approval of this court¹³³.

Legal Power of the Supreme Court Orders

The legal power of the Supreme Court is given under the Articles 129¹³⁴ and 142¹³⁵ of the Indian Constitution. These Articles discuss that Supreme Court has power to punish anyone who will not follow the Supreme Court decisions and orders.

¹³¹ Supreme Court Order dated 8th May 2002

¹³² Supreme Court Order dated 29th October, 2002

¹³³ Supreme Court Order dated 27th April, 2004.

¹³⁴ Article 129 says about Supreme Court to be a court of record The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself

¹³⁵ Article 142 says about Enforcement of decrees and orders of Supreme Court and unless as to discovery, etc

(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or orders so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe

(2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself

Various schemes and orders given by the Supreme Court

We now turn to various schemes and orders of the Supreme Court and look at them in detail.

1) The Public Distribution System

The Public Distribution system of essential commodities had been in existence in India during the inter-war period. PDS had emanated from the critical food shortages of 1960 with its focus on distribution of food grains in urban scarcity areas. Till 1992 the PDS was a general entitlement scheme for all consumers without any specific target. In June, 1992 Revamped Public Distribution System (RPDS) was launched in 1775 blocks throughout the country¹³⁶. The Public Distribution System (PDS) scheme is basically related to distribution of food grain and other essential commodities at subsidized prices through 'fair price shops'. The essential commodities are wheat, rice, sugar and kerosene etc. Every family is supposed to have a ration card. In 1997, the PDS was 'targeted' different ration cards were issued to households 'Below the Poverty Line' (BPL) and those 'Above the Poverty Line' (APL), and each category has different entitlements. In present BPL and APL households are getting 35 kg. Of grain per month, but the price of grain for APL households is higher than BPL households. Being high price of grain for APL household, APL households do not purchase grain from the PDS. Therefore, in practice the PDS is confined to BPL households.

The Antyodaya cards were introduced as a sub-category of BPL cards in 2001. But, Supreme Court later held that the Antyodaya programme should not be confined to those with a BPL card¹³⁷. Therefore Antyodaya cards have become a separate card, which is distinct from either BPL or APL. Some households also have other cards, such as Annapurna cards. In the case of PDS Supreme Court has given these relevant orders which are given below.

¹³⁶<http://fcamin.nic.in/dfpd/EventDetails.asp?EventId=26&Section=PDS&ParentID=0&Parent=1&check=0> accessed on 24/02/2011

¹³⁷ Supreme Court Order dated 2nd May 2003.

Supreme Court Orders

In the order of on dated 28th November 2001 Supreme Court directed to the state governments that complete the identification of BPL families and issuing of cards and commencement of distribution of 25 kg grain per family per month within 1st January, 2002¹³⁸. But the entitlements of BPL family were increased from 25kg grain to 35kgs per month.

Supreme Court also directed the government on several occasions to ensure that all ration shops open regularly. In one of the very first interim orders states by the Supreme Court dated 23 July 2001 it is directed that the States ensure that all the PDS shops, are re-opened and start functioning within one week from today and regular supplies made, if PDS shops are closed. Similarly in another interim order Supreme Court said that the respondents shall ensure that the ration shops remain open throughout the month, during fixed hours, the details of which will be displayed on the notice board¹³⁹. And further in another order Supreme Court¹⁴⁰ said that the licenses of PDS dealers and shop-keepers should be cancelled on the ground of (1) if they do not keep their shops open throughout the month during the stipulated period (2) if they fail to provide grain to BPL families strictly at BPL rates and no higher (3) if they keep the cards of BPL households with them (4) if they make false entries in the BPL cards (5) if they engage in black-marketing or siphoning away of grains to the open market and hand over such ration shops to such other person/organizations. And also Supreme Court had given permission to BPL household buy the ration in installments and has encouraged awareness generation. Further there are Supreme Court's orders related to Antyodaya Anna Yojana.

Comments

1.The Central Government's 'PDS (Control) Order' of August 2001 and the Supreme Court orders on the PDS should be read together because this Order contains sweeping

¹³⁸ Supreme Court Order dated 28th November 2001

¹³⁹ Supreme Court Order dated 8th May 2002

¹⁴⁰ Supreme Court Order dated 2nd May, 2003

directions for holding FPS managers and others accountable. It is important also to read Essential Commodities Act with these two sets of orders. Then these three sets of orders (Supreme Court orders, PDS Control Order and Essential Commodities Act) can be used quite effectively to ensure that people get their due.

2. The BPL list is inherently subject to criticism. There is a lot of evidence that the 'BPL list' is highly unreliable because well-off households often have a BPL card while poor households have an APL card, if they have a card at all. This is partly because the 'BPL survey' used for identifying families below the poverty line is fundamentally flawed. This issue has been taken up in Supreme Court hearings from time to time.

2) Antyodaya Anna Yojana

This scheme was launched in 2000. The aim of this scheme is to provide special food-based assistance to destitute households. A special ration cards (Antyodaya card) are given to these households. On the basis of these cards they are entitled to special grain quotas at highly subsidized prices. These cardholders are entitled to 35 kg of grain per month, at Rs 2/kg for wheat and Rs3/kg for rice. Initially, 1crore families were covered by the Antyodaya scheme but this was later expanded to 1.5 crore families and then 2 crore families¹⁴¹.

Supreme Court Orders

Supreme Court's Orders which were passed for the Public Distribution System also apply to Antyodaya Anna Yojana (AAY) because AAY is a component of PDS. For instance, Supreme Court in the order dated on 23rd July 2001 directed the State Governments to ensure regular supply of grain to the ration shops applying AAY. Further the State Governments were requested to consider providing grain free of cost to those people who are so poor that they are unable to lift their quota, even at the highly subsidized AAY prices¹⁴².

¹⁴¹ Right to Food Campaign, "*Supreme Court orders on the Right to Food*",(New Delhi: Secretariat, August 2008): pp.22-23

¹⁴² Supreme Court order dated 28th November, 2001

(a) Supreme Court directed the Central government that the government formulates the scheme to extend the benefits of the Antyodaya Anna Yojana to the destitute section of the population¹⁴³.

(b) Supreme Court declared six priority groups and said that all households belonging to this priority groups would be entitled to Antyodaya cards, in the one order¹⁴⁴. These six priority groups are given below¹⁴⁵.

(1) Primitive tribes.

(2) Widows and other single women with no regular support.

(3) Households with a disabled adult and assured means of subsistence.

(4) Old persons (aged 60 or above) with no regular support and no assured means of subsistence.

(5) Infirm, aged, disabled, destitute men and women, pregnant and lactating women, destitute women.

(6) Households where due to old age, lack of physical or mental fitness, social customs, need to care for a disabled, or other reasons, no adult member is available to engage in gainful employment outside the house.

(c) In the order of Supreme Court¹⁴⁶ which is passed in April 2004, the Court asked the central government to direct the state governments that to accelerate the issue of Antyodaya cards especially to primitive tribes and further guidelines issued to state government shall be implemented in letter and spirit.

(d) In October 2004, Supreme Court directed the State Governments to complete the identification of AAY families and the distribution of AAY cards within the end of the year and to begin the distribution of grain to AAY cardholders 'immediately'. Further,

¹⁴³ Supreme Court order dated 29th October 2002

¹⁴⁴ Supreme Court order dated 2nd May 2003

¹⁴⁵ Right to Food Campaign, "*Supreme Court orders on the Right to Food*", (New Delhi: Secretariat, August 2008): pp.23-24

¹⁴⁶ Supreme Court Order dated 20th April, 2004

AAY cardholders should not be made to pay, directly or indirectly any amount other than which is fixed by the government to pay for supply taken¹⁴⁷.

Comments

The order of Supreme Court dated on 2nd May 2003 is the most important order, through which six 'priority groups' are entitled to Antyodaya cards as a matter of right. However, the government is yet to come up an effective process to ensure that all households in these priority groups are identified and covered under AAY. The 'primitive tribes' is easy because on the basis of group (primitive tribes) some states have distributed the Antyodaya cards to most families. However, the other groups have no simple means of claiming an Antyodaya card as a matter of right.

3) Mid-day Meals

Mid-day Meals scheme has come in existent after the direction of the Supreme Court's order of 28th November 2001. In this order Supreme Court directs state governments to start providing cooked mid-day meals in primary schools. All children who attend a government or government-assisted primary school are now entitled to a cooked, nutritious mid-day meal every day. Mid-day meal in primary school is an important step towards the right to food. Because mid-day meals help to protect children from hunger and if the meals are nutritious, they can facilitate the healthy growth of children. The scheme of mid-day meals has many other useful purposes. For example, this scheme helps to promote regular school attendance of children and mid-day meals contribute not only to the right to food but also to the right to education. This scheme also helps to reduce castesism by sitting and having meal together and also reduce the gender gap in school participation, provide an important source of employment for women, and liberate working women from the burden of having to feed children at home during the day. And further the scheme of mid-day meals can be seen as an opportunity to impart nutrition education to children and also as a source of economic support for the poorer sections of

¹⁴⁷ Supreme Court Order dated October 17th, 2004

society. Therefore Supreme Court order on mid-day meals has been widely welcome, especially among disadvantaged sections of society¹⁴⁸.

Supreme Court Orders

Supreme Court crucial orders dated on 28th November 2001 and 20th April 2004 passed on mid-day meals and further orders have been issued from time to time also. Order of 28th November 2001 was the landmark order in which Supreme Court clearly directed all State Governments to introduce cooked mid-day meals in primary schools.

The State Governments /Union Territories to implement the Mid Day Meal Scheme by providing every child in every Government and Government assisted Primary Schools with a prepared mid day meal with a minimum content of 300 calories and 8-12 grams of protein each day of school for a minimum of 200 days¹⁴⁹.

This direction was supposed to be completed within six months. But it could not be completed by the State Governments. Therefore Supreme Court issued a series of follow-up orders to speed up the implementation of earlier orders, improve the quality of mid-day meals, and address various concerns raised in the Commissioners' reports on 20th April 2004. These orders include the following.

The orders¹⁵⁰ which were passed by the Supreme Court 20th April 2004 were related to Timely compliance, No charge, Priority to SC/ST cooks and helpers, Extension to summer vacations in drought-affected areas, Kitchen sheds, Quality improvements and Fair quality of grain and Extension to Class 10. In these Timely compliance indicates all such States and Union Territories who have not fully complied with the order dated 28th November, 2001 shall comply with the said directions fully in respect of the entire State/Union Territory... not later than 1st September, 2004, No charge indicates the meal is to be provided free of cost, Priority to SC/ST cooks and helpers indicates in appointment of cooks and helpers, preference shall be given to Dalits, Scheduled Castes

¹⁴⁸ Right to Food Campaign, "Supreme Court orders on the Right to Food", (New Delhi: Secretariat, August 2008): p.26

¹⁴⁹ Supreme Court Order dated 28th November, 2001.

¹⁵⁰ Supreme Court Order dated 20th April, 2004.

and Scheduled Tribes, Extension to summer vacations in drought-affected areas indicates in drought-affected areas, mid-day meal shall be supplied even during summer vacations, Kitchen sheds indicates the Central Government was directed to 'make provisions for construction of kitchen sheds and also to contribute to the cooking costs', Quality improvements indicates attempts shall be made for better infrastructure, improved facilities (safe drinking water etc.), closer monitoring (regular inspection) and other quality safeguards as also the improvement of the contents of the meal so as to provide nutritious meal to the children of the primary schools, Fair quality of grain indicates The Food Corporation of India (FCI) is to ensure provision of fair average quality grain for mid-day meals. Joint inspections of the grain are to be conducted by the FCI and State Governments. If the food grain is found, on joint inspection, not to be of fair average quality, it will be replaced by the FCI prior to lifting and Extension to Class 10 indicates the Government of India was directed on 20th April 2004, to file an affidavit within three months, 'stating as to when it is possible to extend the scheme up to 10th Standard in compliance with the announcement made by the Prime Minister'. In response to this, an affidavit was filed by the Department of Elementary Education (Ministry of Human Resources Development) in 2004, but the Court is yet to examine it.

The Court observed in October 2004 that some progress had been made with the implementation of earlier orders on mid-day meals. The feedback was received from the States which was showed that implementation was being held up by a lack of funds in many cases. Then Central Government directed by the Court to provide financial assistance of 'one rupee per child per school day' to meet cooking costs¹⁵¹. Further the Court passed the order¹⁵² in which Court clarified that the duty to monitor the implementation of the mid-day meal scheme 'essentially lies with the Central Government', again the Court stressed the urgency of the situation and directed that 'every child eligible for a cooked meal under the Mid-Day Scheme in all States and Union Territories shall be provided with the said meal immediately'.

¹⁵¹Right to Food Campaign, "*Supreme Court orders on the Right to Food*", (New Delhi: Secretariat, August 2008): p. 28

¹⁵² Supreme Court Order dated 7th October 2004

Comments

About 10 crore children are having a cooked mid-day meal at school per day. But, the quality of mid-day meals remains quite poor in many states. The content of the meal is inadequate, health safeguards are lacking and social discrimination is common. And nothing has been done to extend mid-day meals beyond the primary stage. Further action is required to consolidate the gains that have been made and to ensure that mid-day meals live up to their promise.

4) Integrated Child Development Services (ICDS)

The Integrated Child Development Services (ICDS) Scheme was launched in 1975. ICDS Scheme represents one of the world's largest and most unique programmes for early childhood development¹⁵³. ICDS is the only major national programme that addresses the needs of children under the age of six years. It seeks to provide young children with an integrated package of services such as supplementary nutrition, health care and pre-school education. Because the health and nutrition needs of a child cannot be addressed in isolation from those of his or her mother, the programme also extends to adolescent girls, pregnant women and lactating mothers¹⁵⁴. Anganwadis scheme is also covered by ICDS. Presently there are 7 lakh anganwadis in the country, covering 40 million children according to report of Government of India, Department of Women & Child Development¹⁵⁵. These 40 million children is less than one fourth of all children in the 0-6 age group. Therefore the coverage of ICDS is far from universal. Further most states have very low quality of ICDS services. Therefore the Court orders are centrally aimed at achieving 'universalisation with quality' within a reasonable time frame.

¹⁵³ <http://wcd.nic.in/icds.htm> accessed on 2/04/11

¹⁵⁴ Right to Food Campaign, "*Supreme Court orders on the Right to Food*", (New Delhi: Secretariat, August 2008): pp.29-30

¹⁵⁵ Status Report on ICDS, (Government of India: Department of Women & Child Development, 31 March 2005).

Supreme Court Orders

In case of ICDS Supreme Court's order was related to 'universalize' ICDS. In this order¹⁵⁶ Supreme Court direct the Governments (State and Union) to implement the Integrated Child Development Scheme (ICDS) in full and to ensure that every ICDS disbursing centre in the country shall provide as under

- (a) Each child up to 6 years of age to get 300 calories and 8-10 gms of protein.
- (b) Each adolescent girl to get 500 calories and 20-25 grams of protein.
- (c) Each pregnant woman and each nursing mother to get 500 calories & 20-25 grams of protein.
- (d) Each malnourished child to get 600 calories and 16-20 grams of protein.
- (e) Have a disbursement centre in every settlement.

Even though order was passed by Supreme Court but virtually nothing was done to implement it. Therefore several hearings on ICDS were held in the Supreme Court in April 2004 and Supreme Court passed the orders on 7 October 2004. In this orders¹⁵⁷

- (a) Supreme Court directed the Government of India to increase the number of anganwadis from 6 lakh to 14 lakh habitations.
- (b) Supreme Court also asked the Government to reconsider the 'one rupee per child per day' norm for supplementary nutrition. Further it effectively directed this norm to be raised to 'two rupees per child per day', with the Central Government and State Government contributing one rupee each.
- (c) ICDS services should never restrict to BPL families (BPL shall not be used as an eligibility criteria for ICDS).
- (d) Contractors shall not be used for supply of nutrition in Anganwadis and preferably ICDS funds shall be spent by making use of village communities, self-help groups and Mahila Mandals for buying of grains and preparation of meals.

¹⁵⁶ Supreme Court Order dated 28th November, 2001

¹⁵⁷ Supreme Court Orders dated 7th October, 2004

- (e) The Central Government and States/UTs shall ensure that all amounts allocated are sanctioned in time so that there is no disruption whatsoever in the feeding of children.
- (f) Local women's self-help groups and Mahila Mandals should be encouraged to supply the supplementary food distributed in anganwadi centers. They can make purchases, prepare the food locally, and supervise the distribution.

Comments

In the orders of April and October 2004 Supreme Court gave a useful wake-up call to the government for the universalization of ICDS. The universalization of ICDS was included in the National Common Minimum Programme of the UPA Government in May 2004. The National Advisory Council submitted detailed recommendations for achieving 'universalization with quality' in October 2004, and some 'follow-up recommendations' in February 2005.¹⁵⁸ The expenditure of the Central Government on ICDS was roughly doubled (from Rs 1,500 crores to Rs 3,000 crores) in the Union Budget 2005-2006.¹⁵⁹

However, there has been little progress in terms of the situation on the ground. The enlargement of ICDS is torturously slow and there is no evidence of any substantial quality improvement. The Central Government is yet to submit an affidavit to the Supreme Court stating the time frame for universalization of ICDS. And at the time of writing (October 2005), the enhanced Budget allocations for 2005-6 are yet to be made operational.¹⁶⁰

5) Annapurna

The Annapurna Scheme was launched on 1st April 2000. The target group consists of 'senior citizens' who are eligible for an old age pension under the National Old Age

¹⁵⁸ www.nac.nic.in accessed on 19/05/2011

¹⁵⁹ Right to Food Campaign, "*Supreme Court orders on the Right to Food*", (New Delhi: Secretariat, August 2008): p.35

¹⁶⁰ Ibid.

Pension Scheme (NOAPS)¹⁶¹, but are not actually receiving a pension. The beneficiaries, to be identified by the Gram Panchayat after giving wide publicity to the scheme, are entitled to 10 kgs of grain per month free of cost through the Public Distribution System (special ration cards are issued to them for this purpose). The intention appears to be to provide some sort of emergency food security to elderly persons who are waiting for a pension to be sanctioned to them under NOAPS. However, the coverage of Annapurna itself is very limited. In 2002-3 this scheme was 'transferred' to the State Plans, like NOAPS¹⁶².

Supreme Court Orders

In the case of Annapurna scheme the Supreme Court directed the States/Union Territories to identify the beneficiaries and distribute the grain latest by 1st January, 2002 and also calls for prompt implementation of Annapurna scheme as with other food-related schemes in the order¹⁶³.

Comments

The condition of Annapurna is not very clear. It seems to have been set up in a half-hearted manner, and never really 'took off'. The coverage by the Annapurna scheme is very limited. Also, the scheme being discontinued in particular states, in violation of Supreme Court orders. Ideally, those who are eligible for Annapurna should be promptly covered by the National Old Age Pension Scheme.

6) Sampoorna Grameen Rozgar Yojana

Sampoorna Grameen Rozgar Yojana (SGRY) was initiated in August 2001. This is a basically sponsored employment scheme and officially aimed at generating 100 crore person-days of employment each year. The SGRY is open to all rural poor who are in need of wage employment and desire to do manual and unskilled work in and around

¹⁶¹ Note – National old age scheme (NOAPS) is a scheme which provides 'old age pensions' to senior citizens (aged 65 years or more). This launched in 1995.

¹⁶² Right to Food Campaign, "*Supreme Court orders on the Right to Food*", (New Delhi: Secretariat, August 2008): pp.40-41

¹⁶³ Supreme Court Order dated 28th November, 2001.

his/her village/habitat according to the official guidelines. The SGRY have two objectives in which the primary objective is to provide additional wage employment in rural areas, thereby provide food security and nutritional levels and secondary objective is the creation of durable community, social, economic assets and infrastructural development in rural areas.¹⁶⁴ The employment preference shall be given to non agricultural unskilled wage earners, agricultural wage earners, marginal farmers, members of the Scheduled Castes/ Scheduled Tribes, women and parents of child labour withdrawn from hazardous occupations, parents of handicapped children or adult children of handicapped parents who is interested to work for wage employment¹⁶⁵.

Supreme Court Orders

Relevant orders related to SGRY were issued by the Supreme Court on 28th November 2001, 8th May 2002, 2nd May 2003, and 20th April 2004.

1-In the order dated on 8th May 2002 Supreme Court ordered which include¹⁶⁶

- (a) to speedy implementation of SGRY by the Central Government and State Governments
- (b) Priority Groups -the respondents shall focus the SGRY programme towards agricultural wage earners, non agricultural unskilled wage earners, and marginal farmers and, in particular, SC and ST persons whose wage income constitutes a reasonable proportion of their household income and to give priority to them in employment, and within this sector shall give priority to women.
- (c) Court prohibited using of contractors.
- (d) Ordered to Gram Panchayats that employment generation proposals will prepare by Gram Panchayats in accordance with the SGRY guidelines for creation of useful community assets that have the potential for generating sustained and gainful employment.

¹⁶⁴ Right to Food Campaign, “*Supreme Court orders on the Right to Food*”,(New Delhi: Secretariat, August 2008): pp 43-44.

¹⁶⁵ Government of India “*Guidelines for Sampoorna Grameen Rozgar Yojana*” (New Delhi: Ministry of Rural Development, 2002): p. 1.

¹⁶⁶ Supreme Court Order dated 8th May 2002.

(e) Court said that Gram Sabhas are entitled to conduct social audits of SGRY (and indeed of all food-related schemes). The implementing authorities shall investigate and take appropriate action in accordance with law on receipt of any complaint of misuse of funds from the Gram Sabhas.

2-In another order¹⁶⁷ the Supreme Court directed the government to 'double' the scale of SGRY because of drought problems. This is prevailing in large parts of the country. The present SGRY system should be expanded at least doubled in terms of allocation of food-grain and cash for the months of May, June, and July. The directions for doubling the food grains as also cash in terms of the order dated 2nd May, 2003 was extended on 20th April 2004.

3-In this order¹⁶⁸ Supreme Court included the following order-

(a) Wage payments would be timely which indicates wage payments under SGRY are to be made on a weekly basis.

(b) Court directed to the State Governments/UTs to pay minimum wages to the workers under the Scheme and also directed to 'stop use of labour displacement machines' under SGRY,

(d) Court said that there should be transparency this means access to all public documents including all muster rolls shall be allowed to such persons who seek such access and the cost of supplying documents shall not be more than the cost of providing copies of the documents.

Comments

Most of the above orders of Supreme Court are routinely violated in most states. Some specific instances, such as the violation of Court orders on SGRY in Badwani District (Madhya Pradesh), have been taken up by the Commissioners or even referred to the Supreme Court through Interim Applications. But even there, attempts to seek redressal

¹⁶⁷ Supreme Court order dated 2nd May, 2003

¹⁶⁸ Supreme Court Order dated 20th April, 2004.

have been partially successful at best. Further, the National Rural Employment Guarantee Act, 2005 is also helping to get enough food through employment.

7) The National Rural Employment Guarantee Act, 2005

Indian Parliament enacted 'The National Rural Employment Guarantee Act, 2005' (NREGA) in August 2005. In 2009, NREGA is converted in MNREGA. Under this Act, anyone who is willing to do unskilled manual labour at the statutory minimum wage is instilled to being employed on public works within 15 days (subject to a limit of 100 days per household per year'), or failing that, to an unemployment allowance. The Act creates durable legal entitlement, helps laborers to enforce their rights, and includes strong provisions for transparency and accountability¹⁶⁹.

Accountability of the State

State can play crucial role in ensuring and providing food to the people because it has facilities for the storage of food grain in the warehouses to provide people for their consumption as per their requirements. When people die just because of dearth of food or in the absence of food whilst Government has sufficient food grain stock in the warehouses, the State should be held accountable for those people who are losing their life because of lack of food. State has a positive obligation to do something in order to enforce this right and if state failed to meet its obligations, it can very well be called in the court of law for the same.

The State is obliged to provide food to the people because it is duty of the State to look after the people and their need. An obligation has been casted on then State in this regard under Article 47 of the Constitution of India. It gives a precise vision that the people who are unable to by food for them and entitled it by the State. In the situation hat threatened critically to prejudice the right to food the State is obliged to offer assistance, by way of direct food support or access to lucrative employment. The Supreme Court has acted to precisely recognizing State accountability in this regard. The State's

¹⁶⁹Right to Food Campaign, "*Supreme Court orders on the Right to Food*", (New Delhi: Secretariat, August 2008): p.47

accountability is to confirm, those have the duty to fulfill their obligations to those who have the rights. When any right is violated somebody is called into account and in this regard since the right to food is also a human right the State has a duty to protect the human rights of the people. If it fails to perform this duty it can be obviously held accountable. Such duty shall be seen as performed only when sufficient food will ensured to the people that provide life with full dignity.

Now having developed a general and broad sense of how the Right to Food has come into being, a time has come to view right to food is made legally binding from a manifestly legal point of view. This involves thinking of the stipulations of State's legal, moral duty and responsibility to provide sufficient food to its citizens. There is need of benevolence to that of right of the citizens. The most fundamental of the mechanisms of accountability is for rights holder themselves to have effective remedies through that they are able to complain and have the Government's actions corrected. It is omitted in India's system for tackling right to food. Where there are no proper and effective remedies, there are no effective rights. In the long term, effective remedies are needed to solve and cure the alarming and distressing situation.

The above discussion shows that Supreme Court has power to construct the 'Right to Food'. The right to food is playing a measure role to construct the 'Right to Food' as a fundamental right.

Chapter 4

Conclusion

India is an agriculture country and 70% population depends on agriculture. In this situation, if any person dies due to hunger or starvation, it is really pitiable and shame for the country and the government of the day. Though India has enough good grain to eat but still people are facing the problems of malnutrition and hunger. For example, in, 2001 people had died due to starvation and malnutrition in Rajasthan and Orissa. One PIL filed in the Supreme Court. On the basis of PIL Supreme Court has passed a series of orders and directed to the government to find out the people who belong Below Poverty Line. Further, Court directed to the government to provide sufficient food. In spite of the directions and orders still, India has numerous families under 'Below Poverty Line'. Further, Supreme Court has time and again directed and ordered the government to construct right to food related schemes and implement it. So, it is important to discuss the dimensions of the right to food.

Legal approach

Nationally, there are some legal instruments on right to food. For example,

Under the Indian constitution there are some articles, which are closely connected with right to food. For example Articles 21, 39(a), 47.

Article 21 of the Indian Constitution says 'No person shall be deprived of his life or personal liberty except according to procedure established by law'.

Article 39(a) of the Indian Constitution, 1950 says 'The State shall, in particular, direct its policy towards securing that the citizens, men and women equally, have the right to an adequate means to livelihood'.

Article 47 of the Indian Constitution, 1950 says 'Duty of the State to raise the level of nutrition and the standard of living and to improve public health The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State

shall Endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health’.

In these Articles the words life, an adequate means to livelihood, nutrition and improvement of public health includes right to food.

Judicial approach

The Supreme Court in various decisions protected the vulnerable, poor and depressed classes of the society. For the first time Supreme Court in *Maneka Gandhi V. Union of India*¹⁷⁰ observed that the right to life that is enshrined in Article 21 of the Indian Constitution means something more than animal instinct in includes that right to live with dignity. In it right to food and other necessities would manifestly include and all those aspects include and those worth living. Every being has a right to be free from hunger, starvation, to be under nutrition and basic human needs for the survival of the life. Further the Court in *Bandhua Mukti Morcha v. Union of India*¹⁷¹ reiterated its earlier view and said that right to life includes, right to quality life not mere animal existence. The quality of life include, right to a quality not mere animal existence. The quality of life can be realized only when right to food shall be realized.

Finally, in the petition *PUCL V. Union of India and Others*¹⁷² Supreme Court considered right to food is a fundamental right and gave a series of orders. In 2001, there was a huge drought–stuck which affected a number of states to large extent and it continued for months and it result in the acute poverty and complete lack of access of food grain and it led to the starvation of the people in large number. And the Central Government had excess food grain in its storehouses, which were not being disseminated. The protest in the country over lack of access to food grains got momentum. The Central Government denied about the starvation deaths. In this regard a PIL filled by PUCL in the Supreme Court. Supreme Court sought legal enforcement of right to food. It was contended by the petitioner that the right to food is an implication of the fundamental

¹⁷⁰ AIR 1978, SC 598

¹⁷¹ (1984) 3 SCC 161

¹⁷² Petition (Civil) No.196 of 2001

'right to life' enshrined in Article 21 of the Indian Constitution. It was observed by the court that government is bound to provide foods when it has surplus stock in the warehouse. And state is duty bound to provide in such case especially when people are affected by drought and are not in a position to by food on their own. If, State fails to do so. Then it would be violation of fundamental right to life enshrined under Article 21 of the Constitution. It was the very first time when a distinct right to food was being recognized under Article 21 by the Supreme Court.

Right to Food Campaign

It is a group of people. It is demanded from Supreme Court to make the Right to Food as a fundamental right in its petition. Though, the petition is still pending, but the Supreme Court has given the directions regarding right to food related schemes and reform. The activities of the campaign include action-oriented research, dharnas, media advocacy, padyatras, public hearings, rallies and lobbying of Members of Parliament.

Right to food is something which is not restrained to one, two or three country. It is evident as a number of international statutes have given place to right to food and numerous countries are member of these statutes like Haiti, Cuba, Guatemala, Nicaragua, Colombia, Ecuador, Brazil, Paraguay, Ukraine, Pakistan, Bangladesh, Sri Lanka, Ethiopia, Malawi, Uganda, South Africa, Congo and Nigeria.

Indian Judiciary through its wide, liberal and progressive interpretation has recognized Right to Food as a fundamental right implicitly included under Article 21 of the Indian Constitution. Despite it neither the constitution nor any status recognized it as right due to which it is not justifiable but Supreme Court very well tried to make it justifiable in a very renowned, PUCL V. Union of India and Others, 2001 case.

Food is important for all life it may be human being or others. Food is essential element for the energy of human being and others. Energy is the basic requirement for the life. It means food is directly proportional to energy and energy is directly proportional to life. It shows that food is directly proportional to life. It means food is important for human life and others life.

As, discussed above that food is directly proportional to life. For the survival of life food is the basic need. There are three approaches by which we can say that right to food would be fundamental right.

Real problems connected closely in enforcing right to food

- 1- Mostly, surplus food grains often obliterate and decompose in the warehouses.
- 2- Supply of insufficient quality of grains.
- 3- The supply of poor quality of the grain to the ration shops.
- 4- Structural problems, like endemic corruption, lack of transparency and accountability.
- 5- Poor economic policies, inadequate training and orientation of government of government officials lead to a weak system for implementing the schemes.
- 6- Lack of a mechanism for timely evaluation of various schemes.
- 7- Dalits were discriminated in Public Distribution Scheme.
- 8- People do not have money even to buy food from PDS because of being poverty.
- 9- Women were also discriminated.
- 10- Lack of grievance redressal system and unsatisfactory administration, leading to unequal distribution of the food grains.

State level commissioners should be appointed, who shall look after and take the matter in to consideration in case of any problem or fault on the part of the government. He would also redress the grievances of the people in regard to the implementation of programmes and schemes. State should be held accountable if anybody's right is being violated or any being is losing life due to lack of food.

Bibliography

Articles and Magazine

Dreze, Jean. *'Democracy and Right to Food'*, Economic and Political Weekly, Vol. XXXIX, No. 17, April 24. 2004:pp.1723-1730

Dreze, Jean. "Right to Food: From Court to the Streets," 2001:p.1

URL= <http://www.righttofoodindia.org/data/dreze-courts.pdf> accessed on 22/02/2011

Mackie, J. "Can There be a Rights-Based Moral Theory?" In Waldron 1984:pp.168-181

R, Aruna. *Food security, the frontline*, Volume 27-issue17: Aug. 14-27, 2010.

R. Ramkumar. *Food insecurities*, The Frontline, Volume 27 - Issue 15: Jul. 17-30, 2010.

R, Suranjita, *Right to Food: Some Issues and Challenges: A Case Study of Kalahandi*, Mainstream, Vol. XLVIII, No 9, February 20, 2010.

Weingartner, Lioba, *The Concept of Food and Nutrition Security*, Deutsche: Gesellschaft for Technische Zusammenarbeit(GTZ) GmbH, 2004.

Books

Dreze, Jean and Sen, *Amartya Hunger and Public Action*, Oxford: Clarendon Press, 1989.

Edmundson, William A. *An Introduction of Rights*, Cambridge: Cambridge University Press, 2004.

F.A.O. *the Right to Food in theory and practice*, Rome: FAO United Nation, 1998

Fadia, Dr. B.L. and Fadia, Dr. Kuldeep, *Public Administration*, Agra: Sahitya Bhawan Publications, 2006,

Fitzgerald, P.J., *Salmond on Jurisprudence*, New Delhi: Universal Law Publication Co. Pvt. Ltd. 2004.

George, Cheriyan. "Enforcing the Right to Food in India," Helsinki, Finland: UNU World Institute for Development Economics Resdearch (UNU-WIDER) 2006.

- George Kent foreword by Jean Ziegler. *Freedom from Want: The Human Right to Adequate Food*, Washington, D.C: Georgetown University Press, 2005.
- George W. Rainbolt, *Rights Theory*, Georgia State University: Blackwell Publishing, 2006.
- Government of India, *Guidelines for Sampoorna Grameen Rozgar Yojana*, New Delhi: Ministry of Rural Development, 2002.
- Hart, H.L.A., *The Concept of Law*, Oxford: Oxford University Press, 1961.
- Hart, H.L.A., *Essay on Bentham, Studies in Jurisprudence and Political Theory*, Oxford: Clarendon Press, 1982
- Hohfeld, W., *Fundamental Legal Conceptions*, W. Cook (ed.), New Haven: Yale University Press, 1919
- Martin, R., *A System of Rights*, Oxford: Oxford University Press, 1993
- Pandey, B.N. *Indian of Constitution*, Allahabad: Allahabad Law Publication, 1950.
- Paranjape, Dr. N.V., *Jurisprudence and Legal Theory*, Allahabad: Central Law Agency, 1997.
- Plamenatz, J., *Consent, Freedom, and Political Obligation*, Oxford: Oxford University Press, 1938.
- John, Salmond, *Salmond on Jurisprudence* (12th edition), London: Sweet and Maxwell, 1966.
- Right to Food Campaign, *National Food Security Act: an Introductory Primer on the Legal Guarantees Demanded by the Right to Food Campaign*, New Delhi: Secretariat, 2010.
- Steiner, H., *An Essay on Rights*, Oxford: Blackwell Thomson, 1994.
- Sumner, L., *The Moral Foundations of Rights*, Oxford: Oxford University Press, 1987.
- Right to Food Campaign, *Supreme Court orders on the Right to Food*, New Delhi: Secretariat, August, 2008
- Thomson, J., *The Realm of Rights*, Cambridge: Harvard University Press, 1990.

Tierney, B., *The Idea of Natural rights*, Atlanta: Scholar press, 1997.

Wellman, C., *A Theory of Rights*, Totowa, N.J.: Rowman & Allanheld, 1985.

Bill and declarations

National Food Security Bill, 2010

International Covenant on Economic Social and Cultural Rights, 1966

United Declaration on Human Rights, 1948

Journal

Louden, R., "Rights Infatuation and the Impoverishment of Moral Theory," *Journal of Value Inquiry*, 17, 1983: p. 95

Feinberg, J., "The nature and Value of Rights," *Journal of Value Inquiry*, 4, 1970: pp. 243-257

News

Dainik Jagran, 22nd February 2011.

Hasan, Zoya. "Legislating against hunger," *The Hindu*, 27 Aug. 2009.

Haq, Zia "Government to send food security bill back to rewrite desk," *The Hindustan Times*, New Delhi, 3 April 2010.

Hindustan times, New Delhi, 21st April, 2011.

Karat, Brinda. "For inclusive approach to food security", *The Hindu*, 30 June 2009.

Mehta, Pradeep S. "Ensuring food security for all," *The Economic Times*, 31 May 2010.

Nitin, Sethi. "APL needs to get subsidized food too?" *The Times of India*, 2 September 2010.

Shankar, Ravi. "Rotten Grain and Hunger Poor", *Jansatta*, 10th September, 2010.

Shiva, Vandana. "Why every 4 Indian are Hungry? Causes and Cures for Food Insecurity," *The Hindu*, 31st July, 2009.

Shrinivasan, Rukmini. "55% of India's population poor: Report", *The Times of India*, 15 July 2010.

Swaminathan, M.S. "Distribute, procedure, store and sow", *The Hindu*, 14th September, 2010.

The Hindu, New Delhi, 17th December, 2002.

The Hindu, New Delhi, 31 July, 2009.

Reports

United Nations General Assembly, *Human right questions: human rights situations and reports of special rapporteurs and representatives*, 2001.

URL. <http://www.righttofood.org/new/PDF/A56210.pdf> accessed on 25/02/2011

Asian Centre for the Human Rights, *India: Human Right Report*, first issue quarterly July-September 2010.

URL. <http://www.achrweb.org/> accessed on

28/02/2011

United Nation Commission on Human Right, *Report of the Special Rapporteur on Right to Food*, 20 March 2006.

URL. www.unhcr.org/refworld/country,,,MISSION,IND,,45377b210,0.html accessed on 30/04/2011

Government of India: Department of Women & Child Development, *Status Report on ICDS*, 31 March 2005.

Planning Commission of India, *Report of the Expert Group to Review Methodology for Estimation of Poverty*. November 2009.

URL. planningcommission.nic.in/reports/genrep/rep_pov.pdf accessed on 22/02/2011

Supreme Court Orders

Supreme Court Order dated 17th September 2001.

Supreme Court order dated 28th November, 2001.

Supreme Court Order dated 8th May 2002.

Supreme Court Order dated 29th October, 2002.

Supreme Court Order dated 2nd May, 2003.

Supreme Court Order dated 20th April, 2004.

Supreme Court Order dated 27th April, 2004.

Supreme Court Order dated 7th October 2004.

Supreme Court Order dated 17th October, 2004.

Websites

<http://www.righttofoodindia.org/data/sourcebook.doc> accessed on 20/02/2011

http://www.escri-net.org/usr_doc/suresh_article.doc accessed on 22/02/2011

<http://www.righttofoodindia.org/campaign/campaign.html> accessed on 23/2/2011

<http://wcd.nic.in/icds.htm> accessed on 2/04/11

2010 Global Hunger Index: Background Facts and Key Findings. accessed on 4/04/2011.

http://www.righttofoodindia.org/data/food_security_what_the_government_says_and_what_we_want.pdf accessed on 12/04/2011

<http://fcamin.nic.in/dfpd/EventDetails.asp?EventId=26&Section=PDS&ParentID=0&Parent=1&check=0>, accessed on 24/02/2011

<http://www.nac.nic.in> accessed on 19/05/2011

<http://plato.stanford.edu/entries/rights/> accessed on 30/05/2011

