CHAPTER IV

RIGHT TO FOOD AS AN INDISPENSABLE COMPONENT OF
RIGHT TO DEVELOPMENT

A. Introduction

(a) Right to Development and Right to Food

Right to development has been established as an inalienable human rights but it is also pertinent to mention here that it is a combination of so many components rights. Although this is undeniable truth that the rights philosophy does not permit either a prioritisation of human rights or a trade-off between different sets of human rights, but a conflict between different rights may at times be inevitable. Serious resource constraints or some insurmountable technical consideration may create situations where realising a particular right may require giving up some other desired goals or not realizing fully some other rights.56

It has to be kept in mind that right to development does not permit the progress at the cost of derogation of other rights. However, this conflict has ventilation in the form that the right to development, based on progressive realization of all the rights and a process of rights-based, economic growth, has a greater flexibility in resolving such problems of trade-off, without violation of any human rights. Since theses rights are build on increments on the levels of the different rights, when a technically binding constraint presents the equal improvement in different rights, the corresponding programme to realizing the right will have to include a mechanism to decide on the sequence and the rate of improvement of the different rights

without allowing the current level of enjoyment of any single right to fall. The rights-based economic growth, by expanding the availability of resources, would also facilitate this process. There need be no violation of a right, only some rights would improve faster than others.\textsuperscript{57}

The fact of the matter is that all rights and corresponding freedoms can not be realized instantly and concurrently, it is therefore prudent, practical and pragmatic to focus in the beginning initially on some important areas that may be regarded as basic to all other rights. The Independent Expert on the right to development Dr. Arjun Sengupta has identified the rights to food, health and education as basic or indispensable components of the right to development. Therefore he is of the opinion that in the beginning it would make it relatively easier to focus on these three basic rights.\textsuperscript{58}

The obligation relating to right to adequate food are linked to the level of realization of other rights and this become significant when considering the realization of right to food as an element of right to development. The human rights approach to development lies in the maximizing the benefits for the worst-off. A programme of realizing right to food is closely linked to reduction of poverty. Thus, poverty reduction and empowerment of the poor requires this exercise to be sustainable. This would also necessitate a development policy focused on a change in the structure and income generation, with the poorest region growing faster. In this background recognition and realization of right to food is very crucial component of right to development. Although every society can set or chose its priority according to their own societal needs and preferences but

\textsuperscript{57} Id. at 60.
\textsuperscript{58} Id. at 157-158.
Food security is seen as the starting point of realization of the right to development.

(b) Relationship between Social Justice and Right to Food

One cannot even dream of justice, be it social, political or economic in a society which is not free from hunger. A country may have a constitution full of golden promises of justice and equality for all, but if it cannot ensure two meals in a day for its poor citizens then all the tall claims of being a just society are only false claims. As it has been aptly observed that, there are only seven meals between civilization and anarchy. In this background, food security for citizens becomes the backbone of any society which claims to strive for social justice.

Food security is the base of social justice. Therefore the policies and laws should be directed towards the achievement of food security which ultimately leads to social justice. The concept of minimal social justice includes right to have food, therefore in any possible dialogue about the social justice, needs to explore intricacies and complexities of promises which every independent nation makes through constitution, but the issue is how these promises can be translated into actions, which includes the minimal conception of justice i.e. having two meals with dignity. Until or unless any academic critical engagement with these set of issues doesn’t adhere to right to food as one of the basic rights it cannot claim to be civilized and humanitarian in ethos.

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59 Id., at 101-02.
60 As quoted in an article by Arvind Subramanian, “How to Respond to Global Food Crisis”, The Hindu, New Delhi, at 13, May 19, 2008 (Experts Say Global Food Price hike Threaten Political Stability), according to Josette Sheeran some experts say there are only seven meals between civilization and anarchy, because when people miss seven meals the most important thing becomes surviving and keeping their children alive. For Details see www.friendsofivfp.org/atf/cf/190E7E160-957C-41E4-9FAB87E2B662894B as accessed on 16.05.2008.
The right to food has close link with entitlement patterns in society and their gendered nature, the disabling effects of persistent hunger, presence or absence of social safety like employment guarantee, nutrition scheme for children, degree of importance given to propriety or land rights, hunger deaths, forceful dislocation, right over natural recourses and social exclusion. All these have close relation with the quality of available social justice. Talking about the food security is basically talking about the very basic right of human beings which is very essential for existence. Food security is one of the most important pillars of social justice. To understand this it would be pertinent to refer Amartaya Sen who is also talking about the “Capability” concept that is regarding the enhancement of the capabilities of human beings so that they can strive for their basic needs and ultimately to a just society. Rawl’s theory of social justice is primarily based on five principles which are as follows:

- Basic right principle.
- The equal liberty principle.
- The fair equality of opportunity principle.

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61 Aamartya Sen observed that there are number of social and economic employment, rising food prices poor public distribution system, which led to hunger deaths of the deprived section of society. Amartya Sen’s contribution to the welfare and development economics is the concept of capability which is a conceptual frame work for evaluating welfare states in terms of social justice and human welfare. For more insight in to the concept refer to Amartya Sen's capability approach by Wiebke Kuklys, Springer publisher. http://www.springerlink.com/content/t48665vn10142587/ as accessed on 28.11.2010.

• The modified difference principle and
• Social economic democracy principle.

Among all the above mentioned principles, the basic right principle is the fundamental principle of social justice, which demands the minimum level of material well being, it includes basic needs i.e. those needs which must be met in order to remain a normally functioning human being and a socially responsible citizen. It is in this context that food security or freedom from hunger is important. If hungry people are not provided with this basic need i.e. right to have access to food, and then it is considered as gross violation of social justice. Rawls talks about the conception of minimal justice i.e. also the part of distributive justice. It is pertinent to understand how two sets of theoretical problems of hunger and food security dealing with the redressal of distributive justice and the recognition of gross inequality as basic denominators of substantive rights to the people of a particular state. The very concept of basic right principle which includes security and subsistence right is the prerequisite of social security. In other words, even in a highly capitalized and market oriented society there should be guarantee of having two meals with dignity. If the policy and ultimately laws of any state fails to provide this basic subsistence right which is the fundamental principle of social justice, then that system fails even in the basic test of social justice. The principle of distributive justice advocates the allocation of equal material goods to all the members of a society, but Rawls alternative distributive justice system to which he calls ‘difference principle’ allows allocation that does not follow to strict equality. He says that as long as the inequality has the effect that the least concern advantage in the society is materially better off than they would be under a strict equality. It is here that distributive justice ensures at least minimal rights to the citizen of a
state. Every state must respect, protect and fulfill (it includes two steps i.e. facilitate and provide) right to food.

8. Dimensions and Dilemmas of Food security: an International Scenario

At present it is well known that there is a sea of hungry people in this world despite of the fact that the world today has the technology and sufficient food to feed every one on this earth. At this juncture this question becomes relevant that when the world has sufficient food to feed every one why there are so many hunger deaths world wide? Hunger today is a prominent issue on the international human rights agenda. More than one billion people on the planet are chronically hungry. Every year between 13 and 18 million die of hunger and starvation in this world. Today, 1.1 billion people live on less than one US dollar per day out of which 430 million are in South Asia, 325 million in Sub-Saharan Africa, 260 million in East Asia and the Pacific, and 55 million in Latin America. The global food and fuel crisis has hit Haiti harder than perhaps any other country, pushing a population mired in extreme poverty towards starvation and revolt. Mud cakes have become staple diet for entire families in Haiti. In this situation of paradox some thorny issues are bound to occur regarding the world hunger and prevalent social and political structures at the national and international level. A question is always asked whether the present social economic and political regime is just regime from the point of view of food security and social justice, whether the present system

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is sufficient and effective to prevent the hunger deaths and to provide basic rights of Rawlsianism conception of minimal justice. These issues related to food security can be empirical or normative in character. Some of the questions which can be raised regarding the conceptual understanding of the basis of right to food are as follows:

- Whether some of the states have crossed their limits to feed their citizens?
- Whether the food security should be addressed at micro level or macro level?
- Whether the food security is a question of right or discretion (charity)?
- How far the states should go in recognizing and implementing the right to food.
- Besides the domestic governments, how the international community can be made responsible to address the problem of hunger?

It is perhaps with these questions in mind, this issue has to be examined that how international society has responded to the problem of food security/insecurity. In subsequent paragraph various international instrument will be explored for the purpose of verifying the fact that what is the concern of international community regarding those sea of hungry people who are not only power less but also voiceless. The irony is that those ill fated people are in fact unaware and uninformed of these instruments. For them it is not more than a useless paper until or unless these promises actually turn out to be practical reality.

The obligation to respect the right to food requires states to refrain from taking measures that affect access to food negatively.
This obligation reflects the fact that the right to adequate food is primarily to be realized by the right holders themselves through their economic and other activities. States are supposed not to interfere with the lawful activities of their citizens which are helpful in ensuring the accessibility of food. It is the pious duty of the state to ensure that even private person doesn’t hinder this rightful claim. The obligation to protect requires states to take measures to ensure that third parties do not deprive right-holders of their access to food. This means that the state could be held liable for violations of the right to food committed by third parties where it shows lack of due diligence to prevent the violation or to respond to it. The obligation to fulfill requires states to support the efforts of individuals and groups to gain access to adequate food. The whole humanity is divided into various strata or classes. There are layers within layers in this human society. This stratification is also reflected in the realms of food security. There prevail various kinds of discrimination, deprivation and suppression regarding the accessibility and availability of food. Food has also been used as a tool for social subjugation. Food security is not just a means of filling the empty stomach with grains but it is an important issue of the world view of social justice paradigm. The role of food, a basic necessity of life, in fostering freedom is important. Access to quality food ensures nutrition and nutrition ensures growth of human beings (both physical and mental) which ultimately leads to self esteem and finally it lays down the base of a more just society, because we can expect a healthy society only when the very unit of society is filled with self esteem and dignity.

Although one can trace back the history of human rights to ancient time but as far as the standardization and universalisation of human rights is concern it all begins from the conscious effort of United Nations and Universal Declaration of Human Rights. And it is very much clear that in the very beginning the right to food was recognized as one of the vital human rights. One can trace the human right to adequate food from the wider human right to an adequate standard of living enshrined in the UDHR. According to Article 25 (1) of the UDHR, Everyone has the right to a standard of living adequate for the health and well being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
Today there are so many other international treaties\textsuperscript{67} which

1\textsuperscript{67} Declarations and Resolutions related to the Right to Food

  • Principles 4 and 8 of the Declaration of the Rights of the Child state: “The child shall have the right to adequate nutrition, housing, recreation and medical services . . . . The child shall in all circumstances be among the first to receive protection and relief”.
— The Universal Declaration on the Eradication of Hunger and Malnutrition (1974)
  • The Universal Declaration proclaims: “Every man, woman, and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties”.
— The Declaration on the Protection of Women and Children in Emergency and Armed Conflicts (1974)
  • The Declaration states that women and children finding themselves in armed conflict in the struggle for peace, or who live in occupied territories, shall not be deprived of shelter, food, medical aid or other inalienable rights.
— The World Employment Conference (1976)
  • Headline 2 of the World Employment Conference reads: “Basic needs, as understood in this Programme of Action, include two elements. First, they include certain minimum requirements of a family for private consumption: adequate food . . . . Second they include . . . safe drinking water . . .”.
— The World Food Programme (1977)
  • In the fourth statement of the World Food Programme, food is an aid to economic and social development especially to the most vulnerable and neediest groups. Special emphasis is placed on projects in the neediest countries. Also emergency food needs and promoting world food security in accordance with the UN and the FAO are noted.
— The Declaration of Principles of the World Conference on Agrarian Reform and Rural Development (1979)
  • The Declaration says in article 1(7): “Believing that poverty, hunger and malnutrition retard national development efforts and negatively affect world social and economic stability and that their eradication is the primary objective of world development . . .”. Article 1(14) underlines, “Recognizing that the UN system has a responsibility to formulate a new international development strategy and that the Food and Agriculture Organization, under the terms of its constitution, has an explicit obligation to elaborate those parts of this new strategy in regard to food . . .”.
— The Codex Alimentarius Commission of the Code of Ethics for International Trade (1979)
  • The Codex Alimentarius Commission recognized that adequate, safe, sound and wholesome food is a vital element for the achievement of acceptable standards of living and that the right to the individual and his family is proclaimed in the Universal Declaration of Human Rights of the United Nations. In article 2(1) it underlines, “This code applies to all food introduced into international trade”, and it continues in article 2(2), “This code
put states under obligation to ensure accessibility of adequate food to its citizens. These instruments also recognize the right to food as part of the right to an adequate standard of living, focusing especially on the need for freedom from hunger. The Preamble to the Constitution of the Food and Agricultural Organisation (FAO), 1965, declares that ‘ensuring humanity’s freedom from hunger’ is one of its basic purposes.

Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) puts an obligation on the State parties to recognize this right it provides that, “the States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent”. Under the same article in paragraph 2, it has been declared that

“The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and
establishes standards of ethical conduct to be applied by all those concerned with international trade in food”.

— The International Conference on Nutrition (ICN) World Declaration on Nutrition (1992)

• The Declaration referred to international cooperation in the implementation of the right to food by stating: “Bearing in mind the right to an adequate standard of living including food, contained in the Universal Declaration of Human Rights, we pledge to act in solidarity to ensure that freedom from hunger becomes a reality”.

— The Rome Declaration on World Food Security (1996)

• The Rome Declaration states in article 1: “We the Heads of State and Government, or our representatives, gathered at the World Food Summit at the invitation of the FAO, reaffirm the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger”.

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through international co-operation, the measures, including specific programmes, which are needed”.

The United Nations Convention on the Rights of the Child, 1989 (CRC) in fact addresses the issue in the right perspective and a larger issue further than hunger that is of child nutrition. The convention under article 24(1)(c) look forward to State parties to take suitable actions to fight against the disease and malnutrition. It provides that,

“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 and clean drinking-water, taking into consideration the dangers and risks of environmental pollution; through the provision of adequate nutritious food, clean drinking water and health care”.

In the same convention Article 27(3) emphasizes that State parties ‘shall, in case of need, provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing’.

In the late 1990s, work on the human right to adequate food at the global level centered on a mandate from the World Food Summit (WFS) held in Rome in November 1996. The objective of the summit was to renew global commitment at the highest political level to eliminate hunger and malnutrition, and to achieve sustainable food security for all. At WFS, a Plan of Action was adopted aimed at reducing the number of undernourished people, estimated to be about 800 million in 1996, to half that number by 2015. The Plan of action
contained seven commitments that were to act as guiding principles for those involved in formulating policies to implement the plan at the national and international levels. It also spelt out objectives and actions for the implementation of these commitments. The Plan of Action stipulates the need to clarify the content of the right to adequate food and the fundamental right of every one to be free from hunger and to give particular attention to the implementation and full progressive realization of this right as a means of achieving food security for all'. It also calls upon the UN High Commissioner for Human Rights', to better define the rights related to food in Article 11 of the ICESR and to propose ways to realize these rights', in consultation with relevant treaty bodies, specialized agencies and UN programmes and appropriate inter governmental mechanisms.

The operational concept of the right to food as used by the FAO is that of food security. ‘Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life’. During the WFS in Rome, the plenary of the parallel NGO forum proposed a Code of Conduct (here in after, CoC) on the right to adequate food. The CoC discusses the normative content of the right to adequate food, the corresponding obligations of State and non state actors, the role of civil society and the means and methods of implementation.

The CoC specifies that the ultimate objective of the right to adequate food is the achievement of nutritional well being and, therefore, the right to food needs to be understood in a much broader sense as the right to adequate food and nutrition. The CoC has been given recognition by the Office of the United Nations High Commissioner for Human Rights. The drafting of the CoC was followed by a series of expert consultations, conferences and studies.
culminating in the publication of General Comment 12 (here in after, GC 12) on 12 May 1999 by the UN Committee on ESCRs. GC 12 is considered to be the most authoritative interpretation of the right to adequate food.

While reaffirming the definition of right to food in the CoC, the Comment adds:

"The right to adequate food shall, therefore, not be interpreted in a narrow or restrictive sense which equates it with a minimum package of calories, proteins and other specific nutrients. The right to adequate food will have to be realized progressively".

Five years after the Rome meeting, the WFS invited the FAO Council in June 2002 ‘to establish an Inter-governmental Working Group (IGWG), with the participation of stakeholders, in the context of the WFS follow-up, to elaborate, in a period of two years, a set of voluntary guidelines to support Member States’ efforts to achieve the progressive realization of the right to adequate food in the context of national food security. The FAO was asked, in close collaboration with relevant treaty bodies, agencies and programmes of the UN system, to assist the IGWG, which is to report on its work to the Committee on World Food Security. The IGWG was established at the 123rd Session of the FAO Council held between 28 October and 1 November 2002.68

The Right to Development approach in development programme will be concerned with the most efficient provision of goods and services to realize a set of targeted objectives defined as human rights. This approach incorporates the interpretation of the

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68 Supra note 1 at 74 – 77.
CESCR has provided in its various General Comments (GC) regarding the availability, accessibility, acceptability and adaptability of the goods and services relating to food, education and health.69

The notion of availability of food, as set out in the CESCR’s GC 12, entails

— Feeding oneself directly from the productive land or other natural resources.

— A well-functioning processing and distribution system that can move food from the site of production to where it is needed in accordance with demand.

— It is not enough for food to be physically available. It is not just a question of availability of food; it must fulfill the following criteria.

• Satisfy dietary needs (energy and nutrients including the micronutrients like iron, vitamin and iodine);

• Be culturally acceptable (fit in with prevailing food or dietary culture);

• Be safe (free of toxic elements and contaminants);

• Be of good quality (in terms of, for example, taste and texture).

The availability of the food is not sufficient but should be accessible also. The accessibility has been given wide meaning and it includes physical as well economic accessibility. Economic accessibility implies that the personal or household financial cost

69 Id. at 85-87.
associated with the acquisition of food for an adequate diet should not be so high as to compromise other basic needs. As resources available to an individual or household are limited, an increase in the cost of acquisition of food for an adequate diet could lead to a cutting back on other items of essential expenditure. However, socially vulnerable groups and impoverished segments of the population may need attention through special programmes to facilitate economic accessibility.

Physical accessibility implies that adequate food must be accessible to every one. The sections of the population deserving special attention and prior consideration in this respect have been identified as the physically and mentally vulnerable which may include infants and young children, elderly people, the physically disabled, the terminally ill and people with persistent medical problems. The victims of natural disasters or people living in disasters-prone areas and other disadvantaged groups have also been identified as deserving special attention.

The right to food also contains an element of sustainability. Adequate food must also be accessible in ways that are sustainable, that is, the long term availability as well as accessibility of food must be ensured.

The world community has recognized the gravity of the situation and accepted the challenge posed to the whole humanity, to fight this crisis. In 2000, the U.N. Millennium Summit declared that halving the proportion of the people, who suffer from hunger between 1990 and 2015, is a key Millennium Development Goal (hereinafter MDG). Also in 2000, the U.N. Commission on Human Rights appointed a Special Rapporteur on the Right to Food in order to respond fully to the necessity for an integrated and coordinated approach in the promotion and protection of the right to food. In
2004, the U.N. Food and Agricultural Organization unveiled the Voluntary Guidelines on the Right to Adequate Food. Right to food campaigns have also firmly taken their roots in countries all over the globe, including Brazil, India, and South Africa.70 Today so many countries explicitly or implicitly refer to the right to food or a related norm in their constitutions or through legal measures. The MDGs were adopted by all the members of the United Nations. The first MDG concerns the eradication of extreme poverty and hunger. The MDGs represent virtually universal acceptance of the right to be free from hunger, which is the core minimum component of the right to food. In recent studies of the problem of domestic and world hunger, a broader consensus has emerged to put hunger high on the agenda.72 There is a consensus that the problem is so grave that states alone can’t win over this monster, therefore even the non state actors should also be roped in for this fight against hunger. At present the effective implementation of the right to food is undermined by the state-centric focus and jurisdictional constraints of International human rights law. The existing human rights legal framework is ill-equipped to deal with violations committed by non-state actors, such as transnational corporations, and other non-state actors.73 There is also the need to locate the right to food outside the international treaty law framework to ensure the accountability on the basis that the right to food has acquired a status of customary international law.74 Today because of the technological advancement the world has gained this confidence that hunger can be ended in this century. For the first time in history, humanity possesses the technology and the

71 The Right to Food in practice ; implementation at the national level, for details and list of the countries which provides such guarantees see http://www.fao.org/docs/emisupload21479abi189_en.pdf as accessed on 28.11.2010.
72 Supra note 11.
73 Supra note 10 at 10.
74 Ibid.
resources to eradicate hunger. As it was also noted by M.S. Swaminathan\textsuperscript{75} that, some major developments in science and technology like biotechnology, space technology and information technology have made economic transformation and social upliftment not only feasible but also most desirable from the point of view of ecologically and economically sustainable development. The only hindrance is the lack of political will at the level of leadership and commitment to work at grassroots level to achieve this target.

C. Right to Food: An Indian Scenario

While at present there is no doubt that the right to food debate has acquired almost the central place in any public debate regarding entitlement issues but the fact of the matter is that this issue was raised way back by none other but the greatest patriot Bhagat Singh. He said,

"Lots of well meaning people get satisfaction by distributing food grain all their life amongst the poor and the weak. But these people fail to understand that the problem of hunger and poverty in India cannot be solved by doing charity".\textsuperscript{76}

The awareness that the right to food is one of the most critical rights to be claimed in a post-colonial democracy such as India is one of the gains of the rights movement. Food riots particularly in the recent wake of globalization, structural reforms, rising inflation and food prices, have occurred in many parts of the globe, including Asia

\textsuperscript{75} For full discussion on these technological development see: “Malthus and Population Growth” by M.S. Swaminathan \url{http://www.nfdindia.org/lec14.htm} as accessed on 21.6.2009.

Today we take pride in declaring India as the largest democracy of the world but this pride disappears in a moment when this bitter truth is brought forth that this very country is the home of world’s largest number of hungry and malnourished people. On the threshold of 62 momentous years of Independence, the nation is justifiably proud of its myriad achievements. Among these is the remarkable success in eliminating widespread famines and the impressive increase in food production. Nonetheless, there is a long road to be travelled before the vision of a truly food secure India is achieved. A staggeringly large number of undernourished about 214 million people are chronically food insecure. Many more, varying about 40 million, are exposed to natural disasters. About 50 per cent of children are undernourished. There is a high prevalence of anemia and other micronutrient deficiencies. Chronic hunger and under nutrition is the worst tribulation of the poverty that still plagues millions of households in India. India continues to be the site of the most unconscionable levels of chronic hunger and deprivation. The National Nutrition Monitoring Bureau estimates that nearly 40% of the adult population in India has a Body Mass Index of less than 18.5, which implies chronic energy deficiency of epic proportions, bordering on a national humanitarian crisis. As it is well known, there are large differences between and within the Indian states in dimensions such as per-capita income, educational attainment, child mortality, longevity and the female/male population ratio. There are also large differences in the anthropometric status of children across

79 Ibid.
the Indian states. There is wide scope for activism on all fronts like social, political and legal etc to make India a country free from hunger. One specific field where a reorientation of priorities is much needed at this time is that of food policy of particular concern is the scandalous phenomenon of mounting food stocks against a background of widespread hunger. The need for equity-oriented reform in the Indian economy, the critical importance of addressing nutritional problems, and the role of democratic practice in giving voice to the underprivileged.

(a) The Present Status of Food Security: A paradox

Today India is among one of the fastest growing economies in the world. The whole world is keeping a close eye on this emerging economic and political power. But at the same time it is also a well known fact that India is the fastest growing country in the world in terms of absolute number of people added to the population each year. Our population is projected to become even larger than that of China by the middle of the next century. The area of land devoted to crops has expanded one and half times since the mid 18th century. Eighty percent of the new crop land was formerly under forests and woodlands. India has also made an impressive progress in overcoming the threat of 1943 West Bengal famine, which killed more than 3 million people. It was India’s last and largest famine although India also faced serious food shortages in the first few decades of independence. Since independence in 1947, however, concentrated investment in agricultural production and rural infrastructure has quadrupled the production of rice and wheat, and India has become self-sufficient in basic food production. With rapid transport of food grains to areas facing shortages under the Public

See: Supra note 22.
Supra note 20.
Food Distribution System, India has conquered the threat of large-scale famines even though many regions are regularly affected by droughts, floods, cyclones and other natural disasters. Although the growth in food grain production has slowed in recent years it has remained above population growth rate, so at the national level India has enough food to feed its population. But despite this booming economy, increased area under cultivation and huge investment in agriculture, India is still a heartrending example of how food sufficiency at the aggregate level has not translated into food security at the household level. The abundance of food grains is a misleading indicator of the Indian food grain supply situation on at least two accounts first, the fact, that the godowns are overflowing insinuates that the farmers must be well and at the same time, as India is a net exporter of food grains, the population should be well-fed, which obviously is not the case, second, the activists, jurists, non-governmental organizations and at times the judicial machinery itself formulate everybody’s Right to Food. Many years after the “Green Revolution” which brought India self-sufficiency, food security is once again widely discussed among various circles and on different levels.

The development and introduction of “green revolution” or “land-saving” agricultural technologies in the mid sixties helped to raise the growth rate in food production above the rate of growth in population. Today, the food security challenge is no longer just one of physical access to food but it is becoming one of economic access

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86 Supra note 20.
of food. Today inadequate purchasing power is the major cause of malnutrition. Because of growing loss in the biological potential of the soil and increasing biological impoverishment of the country due to deforestation and loss of biological diversity. Nonetheless, despite these impressive gains household-level food security has not been achieved, levels of malnutrition, undernourishment and poverty remain very high and there are signs that hunger and food insecurity have increased since the second half of the 1990s incidently this was the period when debates for open economy, liberalization, privatization globalization were being discussed at various forum.

The Planning Commission of India announced in its tenth Five Year Plan that the state is holding food grains surplus in its storehouses, as monsoons were good and the agricultural methods were improved. But on a more cautious note the Commission adds, that: Ironically, even as the godowns of the Food Corporation of India are overflowing, stray cases of starvation deaths are still being reported. A civilized society in the21st century cannot allow this to happen. Most recently some cases of hunger death have been reported from Jhabua in Madhya Pradesh. There is some evidence of heightened nutritional deprivation during the last two or three years, a period of severe drought in large parts of the country. Over the same period, there has been an unprecedented accumulation of food grains stocks on the part of the central government-from about 18 million tones in early 1998 (close to the official ‘buffer stock’ norms) to well over 50 million tones. To put these staggering numbers in perspective, it may help to think of the current stock as the equivalent of about one tones of food for each household below

\[^{10}\text{10}^\text{th} 5\text{ year plan ch 3.4.1 at 365 As quoted in supra note 32.}\]
the poverty line. If all the sacks of grain lying in state warehouses were lined up in row, the line would stretch for one million kilometers or so- more than twice the distance the distance from the earth to the moon.92

It is matter of great grief and sorrow that even after the transformation of Indian state from a police state to a welfare state we are still carried by the same colonial mentality where a authority can’t be held liable for the death of citizen due to hunger while godowns are overflowing with food grains or being eaten by rates or thrown in to sea. As it was observed.

The colonial Famine Codes developed since the 1880s to codify and prescribe State responses to cataclysmic famines which took tens of thousands of lives continue to cast a long shadow over responses of the State to hunger, even though both the nature of famine and the political economy of the State have been completely transformed in free India. State authorities continue to regard starvation as a temporary aberration caused by rainfall failures rather than as an element of daily lives. The effort remains to craft minimalist responses, to spend as little money as is absolutely necessary to keep people threatened with food shortages alive. And the duties of State officials are not legally binding, in ways that they cannot be punished for letting citizens live with and die of hunger.93

\footnote{Supra note 28 at 337.}
\footnote{The silent tragedy of hunger, \textit{The Sunday Magazine, The Hindu}, April 05, 2009 \url{http://www.sacw.net/article877.html} as accessed on 15.01.2010.}
Today it seems that this paradox situation of food security (insecurity) in India is basically because of some structural reasons, although in 1990s India saw a period of sustained economic growth. India moved towards a more market-oriented economy, but benefit of this economic revolution were mainly harped by urban and middle class Indians. This development was uneven because it ignored the rural India and it failed to create or enhance the capability of poor rural India which lead to lower standard of life and ultimately to a starving India. While these massive food stocks are meant to contribute to the country’s ‘food security’, that objective is clearly not well served when the stocks are built by depriving hungry people of much needed food during drought years. Further, the current stocks are more than three times as large as the official buffer stock norms. 94

(b) Food Security Regime in India

As mentioned above that in India, food insecurity mainly exist because of structural and policies of the state rather than traditional reasons like seasonality, crop failure, natural calamity lack of asset and HIV/AIDS etc. Given this paradoxical situation regarding this food insecurity in a food surplus state when the protagonist of the right to food demand for at least minimal food security it does not mean that the State must provide for each and every individual an equal amount of food. Only those unable to provide for themselves for reasons beyond their control should be covered by some social safety net mechanism. States also have a core obligation to; at least, provide the minimum essential level required to be free from hunger.95 It is under these special circumstances that it becomes very important how India responds to this much debated right through its

94 Supra note 28 at 337.
constitution, legislations and other law enforcing institutions. It will also be pertinent to observe that how our courts have given wide meaning to right to food at the practical level. India has achieved freedom from traditional reasons like food supply and is even able to export excess food grain. But today the policies have led to the accumulation of food stock, while at the same time most of the undernourished in the world live in India.96

(c) Commitment under International Law:

As it has been noted above there are so many international treaties under which world community has vouched for the implementation of the right to food. But at the same time it is well known that though International Covenants may sound conducive for and protective for the right to food,97 but until or unless those international law are translated in to domestic laws or at least supported by some mechanism under domestic legislation or policies the above mentioned right can’t be effectively implemented.

As a responsible member of international community, India has always played a crucial role in the proliferation of international law/treaties in general and the cause of human rights in particular. It has not been just a policy matter of the successive governments in India but it is a constitutional commitment which provides that it is bound to follow the international laws which it has ratified. India is a party to the ICESCR, the main international instrument protecting the right to food, although it has still to submit a report to the Committee on Economic, Social and Cultural Rights. India has ratified all international treaties relevant to the right to food, including the International Covenant on Civil and Political Rights (Article 6), the Convention on the Rights of the Child (Article 24 and 27) and the

96 Supra note 20.
97 Ibid.
Convention on the Elimination of All Forms of Discrimination against Women (Article 12 and 14). This means that, under its international commitments, the Government of India is obliged to ensure the right to food to all Indians.

(d) Status of Food Security under Constitution and the Role of the Supreme Court

India’s struggle for freedom was not just against the foreign occupation of our land but it was also a struggle for a more just society, for human dignity for equality for freedom against social evils and feudalism. All these aspirations of the people of India were enshrined in the constitution of India, which is considered one of the most progressive constitutions. The Constitution prohibits discrimination and recognizes almost all human rights. Part III of the Constitution provides for Civil and political rights known as fundamental rights and is enforceable into the Supreme Court and High Courts directly through writ petition. Part IV is regarding economic, social and cultural rights which are described as directive principles of State policies. These policies are not enforceable into the court of law but nevertheless it plays a significant role in the governance of the country. Article 47 of the Constitution states that: “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”. Although the right to food is not directly justifiable, its inclusion in the directive principles of State policy serves to guide interpretation of fundamental rights, including the right to life protected by article 21.

But the Supreme Court has adopted a marvelous technique in interpreting Directive Principles, in the light of fundamental rights for achieving some the objectives of social transformation in India. In the Indian jurisprudence, there was an extensive debate revolving
around the two legal categories of Fundamental Rights and the Directive Principles of State Policy. While the enforceability of fundamental rights is very much clear the exact position concerning the Directive Principles had to be evolved. The Directive Principles are not directly enforceable, which means that nobody can derive any subjective right from them until the Supreme Court by way of its discretionary powers to create law itself reading the Directive Principles more and more into the Fundamental Rights, the Directive Principles have no real significance. The Supreme Court with its wider stance began utilizing the socio-economic rights to illuminate and expand the meaning of the Fundamental Rights. Thus the courts in India arrived at reading obligations from the Directive Principles into Fundamental Rights of Part III, especially into the Right to Life enshrined in Article 21. In this way the Supreme Court declared that the right to livelihood is an integral facet of the right to life. The joint reading of Article 21 together with Article 39 and Article 47 place the issue of Right to Food on a high constitutional level. Besides above mentioned Articles, other Articles like 23 (protection against exploitation), 38 (just social order), 43 (living wage condition) can also be helpful for the effective implementation of this right.\footnote{Ibid.}

Although the debate regarding the right to food, has always been discussed in Indian socio political arena but it has never been so prominent as it is today, especially after the writ petition filed by People's Union for Civil Liberties against the government of India in 2000 after the hunger deaths in Rajasthan and very positive response from the Supreme Court. This writ petition, in fact revolutionized the whole debate in a totally new perspective that is very much clearly visible shift from moral obligation to a right based approach. But before discussing the above mentioned writ petition (final decision is
yet to be delivered, but till date more than 47 interim order have been passed.

Way back in the case of *Kesavananda Bharati v. State of Kerala*, which is one of the mile stones in the constitutional history of India and is known as “Basic Structure” case, it was observed that the object of the people in establishing the Constitution was to promote justice – social and economic –, liberty and equality. The modus operandi to achieve these objectives is set out in Parts III and IV of the Constitution. While discussing the other aspects it was observed that freedom from starvation is as important as the right to life. Again in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, the Court held that right to life means the right to live with basic human dignity. A question was raised in this case regarding the scope of article 21. While answering this question, the honourable court held that it means more than mere physical existence and it 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, shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, free movement and commingling with fellow human beings. Again in *Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors.*, famous as slum dwellers case, was a case of forceful eviction of slum dwellers from pavements of Bombay (now Mumbai) by the Bombay Municipal Corporation (as it was then). Their dwellings were also demolished by Municipal Corporation. This action was challenged on the ground of violation of fundamental rights under Articles 19 and 21. The honourable Court held that the scope of the right to life conferred by Article 21 is not just limited to mere animal existence but its implications are very wide. If the right to livelihood is not

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1. AIR 1973 SC 1461.
treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood. The Court also observed that persons have to eat to live. Again in 1989 first ever case specifically related to right to food or starvation deaths came for the consideration before the supreme court in a case of, *Kishen Pattanayak & another v. State of Orissa,*\(^\text{102}\) in this case the petitioner wrote a letter to the Supreme Court and brought to the notice of the court the large number of starvation deaths due to poverty in the Kalahandi in Orissa. It was pleaded before the court that the state government be directed to take steps to endow with immediate relief to affected persons, in the present case even though the court recognized the individual’s right to food as an integral part of right to life however the court’s directions were to take macro level actions to embark upon the problems. Direction were as such implementing irrigation projects ensure fair selling price of paddy and appointing a Natural Calamities Committee but none of these measures actually affected the petitioner directly. Thereafter the honorable Supreme court referred to Article 25 of Universal Declaration of Human Rights, in *Peerless General Finance and Investment Co. Ltd. v. Reserve Bank of India,*\(^\text{103}\) and observed that Right to life includes the right to live with basic human dignity with the necessities of life such as nutrition, clothing, food, shelter over the head, facilities for cultural and socio-economic well being of every individual.

Once again in a case of *P.G. Gupta v. State of Gujarat,*\(^\text{104}\) the Court interpreted Article 21, that is, right to life in the light of Article 11(1) of the International Covenant on Economic, Social and Cultural Rights which laid down that the State being party to the Covenant recognizes the right of everyone to an adequate standard of

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\(^{102}\) AIR 1989 SC 677.
\(^{103}\) (1992)2 SCC 343.
\(^{104}\) (1995) supp 2 SCC 182.
living for himself and for his family, including food, clothing and housing, and to the continuous improvement of living conditions. And held that to the poor, settlement with a fixed abode and right to residence guaranteed by Article 19(1) (e) remain more a teasing illusion unless the State provides them the means to have food, clothing and shelter so as to make their life meaningful and worth living with dignity. It is also observed that food, shelter and clothing are minimal human rights of the Constitution of India. Similarly in a striking case of Kapila Hingorani v. State of Bihar, it was brought to the notice of the honourable apex court of India that employees of state owned corporations and public undertakings are being not paid their salaries for months. Several of them died of hunger and some of them committed suicide because of financial constraint. The honourable court held that State cannot escape its liability when human rights problems of such a magnitude involve starvation deaths. While deciding the case, the Court referred to Article 11 of the International Covenant on Economic, Social and Cultural Rights, and approved that human beings have a right to food and that hunger is violation of human rights. The Court held that lack of access to food is in violation of the human right to food, and issued various directives to ensure that no starvation deaths occur.

But the issue took a serious turn and reached to a new dimension in the year 2001 when the press reported on people dying from starvation, especially in the drought-stricken regions of Rajasthan, the food grains got rotten in the government storage facilities. Reports suggested that food was being thrown into the sea or exported internationally at highly subsidized prices to reduce storage costs rather than being distributed to the hungry and starving people. It is in this background People’s Union for Civil Liberties (PUCL) filed the civil writ petition. This is popularly referred as

right to food case. The writ petition is still pending in the Supreme Court however the court has given several interim orders to address the issues of starvation and hunger deaths. An analysis of Supreme Court interim orders can be helpful in understanding the progress made in the realization of right to food.

Interim orders applicable on various schemes related to right to food as follows:

(d.1) Although the majority of the interim orders are focused towards a specific schemes, some of them pertinent to all the important schemes. The apex court passed the following interim orders which are applicable in general:

(d.1.1) Responsibility for compliance: Chief Secretaries of the concerned states “shall be held responsible” for any “persistent default in compliance with orders”. 107

(d.1.2) Accountability to Gram Sabhas: “The Gram Sabhas are entitled to conduct a social audit into 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 taken appropriate action in accordance with law”. 108

(d.1.3) Access to information: “The Gram Sabhas are empowered to monitor the

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106 PUCL v. Union of India and Others, Civil Writ Petition No. 196/2001. Interim orders of the Supreme Court regarding Right to Food in PUCL case is available on http://www.righttofoodindia.org/data/scordersprimer.doc as accessed on 25.11.2010. The researcher would like to acknowledge the valuable ideas borrowed from the right to food campaign website.

107 Ibid. (Supreme Court Interim Order dated 29th October, 2002).

108 Ibid. (Supreme Court Interim Order dated 8th May 2002).
implementation of the various schemes and have access to relevant information relating to, inter alia, selection of beneficiaries and the disbursement of benefits”.  

(d.1.4) Dissemination of Court orders: Chief Secretaries have been directed “to translate and permanently display” the orders dated 28th November, 2001 and 8th May, 2002 “on all the Gram Panchayats, school buildings and fair price shops”. The Central Government is to give “wide publicity” to these orders through All India Radio and Doordarshan. 

(d.1.5) Schemes not to be discontinued: “No scheme covered by the orders made by this Court shall be discontinued or restricted in any way without the prior approval of this Court”. 

(d.1.6) Full utilization of grain quotas: “We direct all the State Governments to forthwith lift the entire allotment of food grains from the Central Government under the various Schemes and disburse the same in accordance with the Schemes”. 

In order to deal with the issue, the apex court gave various other directions,
which were related to some specific schemes which are as follows:

(d.2) The Public Distribution System: The Public Distribution System (PDS) is a means of distributing food grain and other basic commodities at subsidized prices through “fair price shops”. If it is used properly and with long term vision, it can be very effective tool or institutional mechanism to deal with issues related to hunger. However because of higher issue price for Above Poverty Line (APL) families it becomes difficult for them to purchase the grains from PDS shops. That is why in practical terms PDS is restricted to Below the Poverty Line (BPL) families. Every family is supposed to have a ration card. Different ration cards were issued to households BPL and those APL, and each category has different entitlements. Today, both BPL and APL households are entitled to 35 kgs of grain per month, but the issue price is higher for APL households.

In 2001 Antyodaya cards were introduced as a sub-category of BPL cards. However, the Supreme Court later stated that the Antyodaya programme should not be restricted to those with a BPL card. Thus, Antyodaya cards have become a separate card, distinct from either BPL or APL. Some households also have other cards, such as Annapurna cards. Following are the interim orders of the Supreme Court regarding PDS:

(d.2.1) Identification of BPL families: On 28th November 2001, the Court directed the State Governments...
“To complete the identification of BPL families, issuing of cards and commencement of distribution of 25 kgs. grain per family per month latest by 1st January, 2002”. 113

(d.2.2) Accessibility of ration shops and regular supply of grain: It appears from the orders of the apex court that it was aware of the problem of non accessibility of grains due to irregular opening or closing down of PDS, shops. That is why in its various orders it emphasizes on the effective accessibility of food grains. On several occasions, the Supreme Court directed the government to ensure that all ration shops open regularly. For instance, one of the very first interim orders (dated 23 July 2001), states:

“We direct the States to see that all the PDS shops, if closed, are re-opened and start functioning within one week from today and regular supplies made”.

Similarly, an interim order dated 8 May 2002 states:

“The respondents shall ensure that the ration shops remain open throughout the month, during fixed hours, the details of

113 Ibid. (Supreme Court Interim Order dated 28th November 2001).
which will be displayed on the notice board”.114

(d.2.3) Accountability of PDS dealers: The Supreme Court also took serious note of PDS dealers and their involvement in irregularity. It gave clear message for PDS, dealers that the licenses of PDS dealers and shop-keepers should be cancelled if they: “(a) do not keep their shops open throughout the month during the stipulated period; (b) fail to provide grain to BPL families strictly at BPL rates and no higher; (c) keep the cards of BPL households with them; (d) make false entries in the BPL cards; (e) engage in black-marketing or siphoning away of grains to the open market and hand over such ration shops to such other person/organizations”. It was further held that the concerned authorities/functionaries would not show any laxity on the subject.115

(d.2.4) Permission to buy in installments: Keeping in mind the purchasing capacity of BPL people in rural areas, instruction was given that they should be allowed to purchase the food grains in installments. Arrangements

114 Ibid. (Supreme Court Interim Order dated 8th May 2002).
115 Ibid. (Supreme Court Interim Order dated 2nd May, 2003).
must be made to “permit the BPL household to buy the ration in installments”.116

(d.2.5) Awareness generation: Awareness of the government policies and schemes are very crucial for the success of it. The directions were given for its wide publicity of their programme and entitlement there in. It was stated “Wide publicity shall be given so as to make BPL families aware of their entitlement”.117

(d.2.6) Identification of BPL/ Revision of BPL list: Orders relating to the “BPL list” are also relevant to the Public Distribution System, since the BPL list is the basis on which BPL and APL ration cards are distributed. But at the same time it has been crucial issue also. At different point of time different criteria has been adopted by the government. It has also been observed that at the same point of time there are different views regarding BPL in India ( eg Tendulkar Committee report and planning commission of India is having different view on the issue) . The Central and State Governments have been directed to “frame clear guidelines for proper identification of BPL families”118, and no-one is supposed to be removed from

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116 Ibid.
117 Ibid.
118 Ibid. (Supreme Court Interim Order dated 8th May, 2002).
the BPL list until the time as the Court deliberates this matter.\textsuperscript{119}

(d.3) Antyodaya Anna Yojana: This is one of the most ambitious schemes of the government which was launched in the year 2000. Under this scheme special food-based assistance is provided to destitute households. These households are given a special ration card (an "Antyodaya card"), and are entitled to special grain quotas at highly subsidised prices. Today, Antyodaya cardholders are entitled to 35 kg of grain per month, at Rs 2/kg for wheat and Rs 3/kg for rice. Initially, the Antyodaya scheme covered 1 crore families, but this was later expanded to 1.5 crore families and then 2 crore families. Apex court has given some of the following directions:

(d.3.1) since there is close relationship between PDS and AAY, therefore it is obvious that orders related to the Public Distribution System also apply to Antyodaya Anna Yojana (AAY), since AAY is a component of the PDS. For instance, the order of 23\textsuperscript{rd} July 2001 directing State Governments to ensure regular supply of grain to the ration shops applies to AAY also.

(d.3.2) Supreme Court was kind enough to take care of the poorest in this country as the State Governments were requested to consider providing grain free of cost to those who are so poor that they are unable

\textsuperscript{119} Ibid. (Supreme Court Interim Order dated 5\textsuperscript{th} May, 2003).
to lift their quota, even at the highly subsidised AAY prices.\textsuperscript{120}

\textbf{(d.3.3)} The Central Government “shall formulate the scheme to extend the benefits of the \textit{Antyodaya Anna Yojana} to the destitute section of the population”.\textsuperscript{121}

\textbf{(d.3.4)} On 2\textsuperscript{nd} May 2003, the Supreme Court declared that all households belonging to six “priority groups” would be entitled to \textit{Antyodaya} cards.\textsuperscript{122}

The following groups of persons were directed to be included in priority groups:

\textbf{(d.3.4.1)} Aged, infirm, disabled, destitute men and women, pregnant and lactating women, destitute women;

\textbf{(d.3.4.2)} widows and other single women with no regular support;

\textbf{(d.3.4.3)} old persons (aged 60 or above) with no regular support and no assured means of subsistence;

\textbf{(d.3.4.4)} households with a disabled adult and assured means of subsistence;

\textsuperscript{120} Ibid. (Supreme Court Interim order dated 28\textsuperscript{th} November, 2001).
\textsuperscript{121} Ibid. (Supreme Court Interim order dated 29\textsuperscript{th} October 2002).
\textsuperscript{122} Ibid. (Supreme Court Interim order dated 2\textsuperscript{nd} May 2003).
(d.3.4.5) 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;

(d.3.4.6) Primitive tribes.

(d.3.5) It was ensured that the procedural formalities should not come in the way of the above mentioned priority group person. Therefore possession of BPL card is not a mandatory condition for the entitlement under AAY. The Central Government was directed to issue guidelines to this effect.123

(d.3.6) In April 2004, the Court asked the Central Government to direct the State Governments to “accelerate the issue of Antyodaya cards especially to primitive tribes”. It was directed, “the guidelines issued to State Governments shall be implemented in letter and

123 Ibid. (Supreme Court Interim Order dated 20th April, 2004).
spirit". After some time again in October 2004, the State Governments were directed to complete the identification of AAY families and the distribution of AAY cards "by the end of the year", and to begin the distribution of grain to AAY cardholders "immediately". The court further held that, the AAY cardholders "should not be made to pay, directly or indirectly, any amount other then what they are liable to pay for the supply taken".125

(d.4) Mid-Day Meals: A mid-day meal is one of the mega projects which have been initiated by the government of India. This is one of the most revolutionary steps towards the right to food. This scheme has multiplier effect. It is not only about the accessibility of food but also targeted at health, education and so many other entitlement dimensions.

The Supreme Court order of 28th November 2001 directed State Governments to start providing cooked mid-day meals in primary schools. Every child who attends a government or government-assisted primary school is now entitled to a cooked, nutritious mid-day meal every day.

124 Ibid (Supreme Court Order dated 20th April, 2004).
125 Ibid (Supreme Court Order dated October 17th, 2004).
The provision of cooked mid-day meals in primary schools is an important step towards the right to food. Indeed, mid-day meals help to protect children from hunger and if the meals are nutritious, they can facilitate the healthy growth of children. Mid-day meals also serve many other useful purposes. For instance, they are quite effective in promoting regular school attendance, and in that respect mid-day meals contribute not only to the right to food but also to the right to education. Mid-day meals also help to undermine caste prejudices, by teaching children to sit together and share a common meal. They 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. Beside from this, mid-day meals can be seen as a source of economic support for the poorer sections of society, and also as an opportunity to impart nutrition education to children. For all these reasons, the Supreme Court order on mid-day meals has been widely welcomed, especially among disadvantaged sections of society. As of now there have been two crucial Supreme Court orders on mid-day meals: on 28th November 2001 and 20th April 2004, respectively. Further orders have been issued from time to time also. The landmark order of 28th November 2001 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 days."126

This was supposed to be done within six months. But most State Governments took much longer, prompting the Supreme Court to issue stern reminders to them from time to time (e.g. on 2nd May 2003). A series of follow-up orders were issued on 20th April 2004, to speed up the implementation of earlier orders, improve the quality of mid-day meals, and address various concerns raised in the Commissioners’ reports. Following issues were dealt within Supreme Court orders.

(d.4.1) Timely compliance: The Supreme Court directed “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”.127

(d.4.2) No charge: It was held that the meal is to be provided free of cost. Money for the meal is not to be collected from parents or children under any circumstances.128

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126 Ibid. (Supreme Court Interim Order dated 28th November, 2001).
127 Ibid. (Supreme Court Interim Order dated 20th April, 2004).
128 Ibid.
(d.4.3) Priority to SC/ST cooks and helpers: The Apex Court gave priority to SC/ST, cooks and helpers by stating that “In appointment of cooks and helpers, preference shall be given to Dalits, Scheduled Castes and Scheduled Tribes”.129

(d.4.4) Extension to summer vacations in drought-affected areas: Another remarkable direction was to supply mid-day meal in drought affected areas during summer vacations.130

(d.4.5) Kitchen sheds: The Central Government was directed to “make provisions for construction of kitchen sheds” and also to contribute to the cooking costs.131

(d.4.6) Quality improvements: Directions were issued for quality improvement.

“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”.132

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129 Ibid.
130 Ibid.
131 Ibid.
132 Ibid.
(d.4.7) Fair quality of grain: 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 and 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.133

(d.4.8) Extension to Class 10: On 20th April 2004, the Government of India was directed 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.134

Although there were some initiative for the implementation of the orders, but the feedbacks received from the States have made explicitly clear that there are so many hindrances in the implementation such as finance. The Court then directed the Central Government to provide financial assistance of “one rupee per child per school day” to meet cooking costs. The Court also clarified that the responsibility to monitor the implementation of the mid-day meal scheme “essentially lies with the Central Government”.135 Again, the Court stressed the urgency of the

133 Ibid. (Supreme Court Interim Order dated 28th November, 2001).
134 Ibid. (Supreme Court Interim Order dated 20th April, 2004).
135 Ibid. (Supreme Court Interim Order dated 17th October 2004).
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”.

(d.5) Integrated Child Development Services (Popularly known as ‘Anganwadi’): There was a need for a comprehensive policy which targets the requirement of the children who are below six years of age. ICDS fulfill this objective. It seeks to provide young children with an integrated package of services such as supplementary nutrition, health care and pre-school education. One can’t think of addressing this issue without bringing the mother of child into the picture. Because the health and nutritional 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 mothers. These services are provided through ICDS centres, also known as “anganwadis”. Today there are 7 lakh anganwadis in the country, covering 40 million children.136

The so called numbers of ‘Anganwadi’ may appear numerically big on the paper, but still most of the children in the country are not covered under the scheme. A lot needs to be done in this regard. The Supreme Court is making an effort in this direction and its interim orders are basically trying to achieve universalisation of ICDS within a reasonable span of time and without compromising with quality. With this

objective in hand Supreme Court gave the following orders on this scheme. The Hon’ble Supreme Court held:

"We direct the State Governments, / Union Territories 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": ¹³⁷ Again it was held

(d.5.1) Each child up to 6 years of age to get 300 calories and 8-10 gms of protein;
(d.5.2) Each adolescent girl to get 500 calories and 20-25 grams of protein;
(d.5.3) Each pregnant woman and each nursing mother to get 500 calories & 20-25 grams of protein;
(d.5.4) Each malnourished child to get 600 calories and 16-20 grams of protein;
(d.5.5) Have a disbursement centre in every settlement.

The above mentioned orders of the court gathered the dust in files of government offices. However the system woke-up from its deep slumber by a jolt given by the orders of the court. In April 2004, several marathon hearings on ICDS were held in the Supreme Court and detailed orders were issued, followed by further

¹³⁷ Supra note 51 (Supreme Court Interim Order dated 28th November, 2001).
orders on 7 October 2004. The important orders are as follows:

(d.5.6) The Supreme Court directed the Government of India to increase the number of *anganwadis* from 6 lakh to 14 lakh habitations, and to “file within three months an affidavit stating the period within which it proposes to increase the number of *anganwadi* centers (AWCS) so as to cover the 14 lakh habitations”.138

(d.5.7) The Court also asked the Government to reconsider the “one rupee per child per day” norm for supplementary nutrition. In fact, 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.139 The hon’ble court further held:

(d.5.8) All the State Governments/ UTs shall allocate funds for the ICDS on the basis of one rupee per child per day, 100 beneficiaries per AWCS and 300 days feeding in a year, i.e. on the same basis on which the centre makes the allocation.

(d.5.9) All sanctioned AWCs were to be made fully operational immediately.140

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138 Ibid. (Supreme Court Interim Orders dated 7th October, 2004).
139 Ibid.
140 Ibid. (Supreme Court Interim Order dated 29th April, 2004).
(d.5.10) All SC/ST habitations should have an anganwadis “as early as possible”. Until the SC/ST population is fully covered, all new anganwadis should be located in habitations with high SC/ST populations.\(^{141}\)

(d.5.11) “All State/UTs shall make earnest effort to cover the slums under the ICDS”.\(^{142}\)

(d.5.12) ICDS services should never be restricted to BPL families (“BPL shall not be used as an eligibility criteria for ICDS”).\(^{143}\)

(d.5.13) “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”.\(^{144}\)

(d.5.14) ICDS funds provided by the Central Government under the Pradhan Mantri Gramodaya Yojana (PMGY) should be fully utilised by the State Governments. Further these funds supplement, and not substitute for, ICDS funds provided by the State Governments.\(^{145}\)

(d.5.15) “The Central Government and States/UTs shall ensure that all amounts allocated are sanctioned in time so that there is no

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\(^{141}\) Ibid. (Supreme Court Interim Order dated 7th October, 2004).

\(^{142}\) Ibid.

\(^{143}\) Ibid.

\(^{144}\) Ibid.

\(^{145}\) Ibid.
disruption whatsoever in the feeding of children".146

(d.5.16) "All State Governments/UTs shall put on their websites full data for the ICDS schemes including where AWCS are operational, the number of beneficiaries category-wise, the funds allocated and used and other related matters".

(d.5.17) 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.147

(d.6) National Old Age Pension Scheme: Any welfare, state can’t ignore especially the needs of its senior citizens. They have their own peculiar types of problems which need to be targeted in a specific manner. NOAPS covers some of such aspects. This programme was launched in 1995 for senior citizen or those who are 65 years or above. Under this scheme male or female who are not having any means of subsistence are provided monetary help.

However it would be pertinent to mentioned have that this scheme is a kind of joint venture of centre and state governments. While the central governments contribute Rs.75 rest of the contribution depends on the state government .Therefore the cash amount varies from

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146 Ibid.
147 Ibid.
state to state. There is huge gap between the claimant and funds available under the scheme. The paucity of funds is one of the major hindrances in effective implementation of this programme.

But after almost 8 years in 2002-03, the Annapurna Scheme along with National Family Benefit Scheme was finally transferred to the state government. It became the part of the state plans. This was done to do some minor administrative reform. Under the new administrative procedure the central government use to provide grant in cash to state governments and the state government is responsible for running the scheme. However this administrative change didn’t bring the desired result. In fact there was some adverse impact in the form of diversion of funds, delayed release to beneficiaries, no monitoring by the central government. Following Supreme Court orders were passed regarding this:

(d.6.1) State governments have been directed to complete the identification of persons entitled to pensions under NOAPS, and to ensure that the pensions are paid regularly.\footnote{Ibid. (Supreme Court Interim Order dated 28\textsuperscript{th} November, 2001).}

(d.6.2) Payment of pensions is to be made by the 7\textsuperscript{th} day of each month.\footnote{Ibid.}

(d.6.3) The scheme must not be discontinued or restricted without the permission of the
Supreme Court.\textsuperscript{150} This actually applies to all the schemes covered by the interim order of 28\textsuperscript{th} November 2001. However it is particularly relevant to schemes such as NOAPS, because these schemes are quite “fragile”: there are no strong lobbies to defend them, and they often come under the financial axe when State Governments face a financial crisis.

(d.6.4) The NOAPS grants paid by the Central Government to the State Governments under “Additional Central Assistance” should not be diverted for any other purposes.\textsuperscript{151}

(d.7) National Family Benefit Scheme: It is one of the social security schemes where assistance is provided to the BPL families on the demise of their “primary bread winner” member. And Rs 10,000 is provided for accidental deaths and Rs 5,000 is provided on account of natural deaths. The payment is disbursed to the surviving head of the family after a local enquiry. The following orders were passed by the Supreme Court.

(d.7.1) As with other food-related schemes, the Supreme Court order of 28\textsuperscript{th} November 2001 calls for prompt implementation of the National Family Benefit Scheme. BPL families are to be paid Rs 10,000 within

\footnotesize{\textsuperscript{150} Ibid. (Supreme Court Interim Order dated 27\textsuperscript{th} April, 2004).}  
\footnotesize{\textsuperscript{151} Ibid. (Supreme Court Interim Order dated 18\textsuperscript{th} November, 2004).}
(d.9.2) As with NOAPS, this scheme is not to be discontinued or restricted in any way without the permission of the Supreme Court.  

(d.9.3) On 9th May 2005, the Supreme Court refused to allow the Government of India to phase out NMBS and provide maternity benefits under a new scheme, Janani Suraksha Yojana (JSY). The reason for this refusal is that it is not clear whether the new scheme preserves all the benefits available under NMBS, as the government claims. The Court requested the government to submit further information on JSY, and asked the Commissioners to “examine the matter in depth and file a report”. “Meanwhile, the existing National Maternity Benefit Scheme will continue”.  

(d.10) Sampoorna Grameen Rozgar Yojana: It was argued by the petitioners in right to food case that the entitlements for the food have close connection with right to work. In fact assurance of right to work in a way assures the right to access to food. It was natural consequence of the petition that during the hearing right to work had been discussed. Sampoorna Grameen Rozgar Yojana is one of such project. This centrally sponsored scheme was launched in 2001.

158 Ibid. (Supreme Court Interim Order dated 27th April, 2004).  
159 Ibid. (Supreme Court Interim Order dated 9th May, 2005).
According to the official guidelines: “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 his/her village/habitat. The primary objective of the scheme is to provide additional wage employment in rural areas, thereby provide food security and nutritional levels. The secondary objective is the creation of durable community, social, economic assets and infrastructural development in rural areas. While providing employment preference shall be given to agricultural wage earners, non agricultural unskilled wage earners, marginal farmers, women, members of the Scheduled Castes/ Scheduled Tribes and parents of child labour withdrawn from hazardous occupations, parents of handicapped children or adult children of handicapped parents who want to work for wage employment”.¹⁶⁰ The Supreme Court passed the following orders:

(d.10.1) Speedy implementation: Several directions were issued (notably on 8th May 2002, 20th April 2004 and 17th October 2004) to the effect that SGRY should be implemented “expeditiously” by the Central Government and State Governments. In particular funds should be released on time and fully utilised, and SGRY funds should not be “diverted” for other purposes.¹⁶¹

¹⁶¹ Supra note 51. (Supreme Court Interim Orders dated 8th May, 2002).
(d. 10.2) Priority groups: “The respondents shall focus the SGRY programme towards agricultural wage earners, non-agricultural unskilled wage earners, 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”.  

(d. 10.3) Doubling of SGRY: On 2nd May 2003, the Court directed the government to “double” the scale of SGRY, in view of drought conditions prevailing in large parts of the country:

“The present SGRY system should be expanded, at least doubled, both in terms of allocation of food-grain and cash for the months of May, June, and July”. On 20th April 2004, this direction was extended: “The directions for doubling the food grains as also cash in terms of the order dated 2nd May, 2003 shall be applicable this year also”.  

(d. 10.4) Timely wage payments: Wage payments under SGRY are to be made on a weekly basis.

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162 Ibid.
163 Ibid. (Supreme Court Interim order dated 2nd May, 2003).
164 Ibid (Supreme Court Interim Order dated 20th April, 2004).
(d.10.5) Ban on contractors: The use of contractors is “prohibited”.\(^{165}\)

(d.10.6) Minimum wages: “The State Governments/UTs are directed to pay minimum wages to the workers under the Scheme”.\(^{166}\)

(d.10.7) Ban on labour-displacing machines: The State Governments were also directed to “stop use of labour displacement machines” under SGRY.\(^{167}\)

(d.10.8) Role of Gram Panchayats: Gram Panchayats are entitled to “frame employment generation proposals in accordance with the SGRY guidelines for creation of useful community assets that have the potential for generating sustained and gainful employment”. Further, “these proposals shall be approved and sanctioned by the Gram Panchayats and the work started expeditiously”.\(^{168}\)

(d.10.9) Social audits: Gram Sabhas are entitled to conduct social audits of SGRY (and indeed of all food-related schemes). On receipt of any complaint of misuse of funds from the Gram Sabhas, the implementing authorities

\(^{165}\) Ibid (Supreme Court Interim Order dated 8\(^{th}\) May, 2002).

\(^{166}\) Ibid (Supreme Court Interim Order dated 20\(^{th}\) April, 2004).

\(^{167}\) Ibid.

\(^{168}\) Ibid. (Supreme Court Interim Order dated 8\(^{th}\) May, 2002).
shall “investigate and take appropriate action in accordance with the law”.169

(d.10.10) Transparency: “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”.170

Besides these above mentioned interim orders of the court, The National Rural Employment Guarantee Act 2005 (NREGA now MNREGA) was unanimously passed by the Indian Parliament in August 2005. Although Supreme Court has not specifically commented on in the interim orders regarding the Employment Guarantee Act. Nevertheless, these interim orders are indirectly applicable to proper implementation of MNREGA as public works programmes are often refer to, in the order, for instance regarding prompt payment of wages. Since the proper execution of MNREGA is very crucial for realization of right to food sooner or later it comes for scrutiny before the apex court.

This Public Interest Litigation brought the issue of the right to food as a human right back into public debate. It is the State’s responsibility to be proactive about hunger and malnutrition which still survive despite surging economic growth and agricultural production171. The significance of the Right to Food Case has to be considered in this comprehensive background. Therefore interventions by the Supreme Court through interim orders in this case became decisive. The magnitude of the impact of this case can be anticipated by the following observation of Biraj, one of the

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69 Ibid.
70 Ibid. (Supreme Court Interim Order dated 20th April, 2004).
71 Supra note 51.
commissioners appointed by the Supreme Court in right to food case.

He observed:

The Right to Food Case is perhaps the longest continuing mandamus in the world on this issue. It is also one of the largest and most complex litigations involving a wide range of state and civil society actors in India. More than 400 affidavits have been filed so far; over 60 interim applications have been submitted and more than 47 interim orders have been passed by the SC in this case over the years. The Supreme Court in an interim order on November 28, 2001, converted most food and employment-related schemes into "legal entitlements". This also implies that the Government of India and state governments cannot change these schemes without the permission of the SC till the final judgment is passed in this case. The campaign hopes that this case will culminate in the right to food becoming a fundamental right that can be made justifiable in any court of law in the country. The interim orders of the SC reflect the growing complexity of the case and the diverse issues being covered. The orders on universalising access to food, especially for children-related to mid-day meals and the ICDS-have been landmarks. On November 28, 2001, the Supreme Court directed state and central governments to universalise the mid-day meals and provide hot, cooked meals to all primary school children in India. The interim order also universalised the ICDS programmed.
making it mandatory for government to provide supplementary nutrition and the other five services under the ICDS to all children below the age of six, all pregnant women and nursing mothers and adolescent girls.¹⁷²

Encouraged by this positive response of the apex court the activists and ordinary citizens have started approaching High Courts from every nook and corner of the country on matters related to the right to food and the deficiency in the realization of the schemes by state governments with the interim orders of the SC. The initial interim orders of the court were the moral and legal victory of the activists and their focus shifted to more and more intervention by the judiciary on the execution of those recently acquired legal entitlements.¹⁷³ It is copiously lucid that the Supreme Court of India has been very liberal in interpreting various provisions of the Constitution to protect the right to food as basic human right, by keeping in mind the philosophy of the land of Daridra Narayana and sociological jurisprudence, so that even the most deprived and marginalized segment of the society should have not only the fragrance but also the taste of the so called solemnly sovereign socialist democratic India.

The above mentioned triumph of the right to food activists is not the ultimate goal or solution of starving people of India. There is no substitute for an unequivocally guaranteed Fundamental right to food. Therefore, right to Food activists will experience a breakthrough only when, like in the case of the Right to Education, Supreme Court rulings were forged into Article. 21 A which guarantees that the state shall provide free and compulsory education

¹⁷² Supra note 25.
¹⁷³ Ibid.
to all children of the age of six to fourteen years.\textsuperscript{174} Although the right to food movement is moving in the right direction but even then the apex court painfully observed that its orders directed states and Union of India to enforce a famine code and to immediately release surplus food grains had not been complied with by some state governments. Hence, the war against hunger is not yet over.

(e) Supreme Court and Executive Again on Loggerhead

From the very inception of the constitution, conflict between the judiciary and legislature in general and executive in particular has been one of the important tag mark of the Indian polity. There had been so many occasion where it appeared that the nation is heading towards a logger head or constitutional crisis. But the credit goes to maturity of the Indian democratic set-up, at every occasion ultimately something fruitful and positive has emerged the nation out of those conflicts. Very Recently in the wake of unprecedented rise in the price of food commodities and continuous reports of hunger deaths and framers suicides while the food grains were rotting in the government warehouses the Supreme Court has passed path breaking order to tackle problem of food grains rotting in godowns, the Supreme Court asked the Centre to consider distributing them at “very low cost” or “no cost” as a short term measure. A Bench of the supreme court consisting of Justices Dalveer Bhandari and Deepak Verma passed an order on 12\textsuperscript{th} August 2010 while taking on record the affidavit filed by the Centre in response to the suggestions made by the Supreme Court on July 27, 2010. This order was widely covered by various news paper and media in the country. An excerpt from a national daily\textsuperscript{175} would be helpful to throw the light on the nature of this order. The excerpts is as follows:

\textsuperscript{174} Supra note 20.
\textsuperscript{175} The Hindu, New Delhi at 1, August 12\textsuperscript{th}, 2010.
The Bench, after hearing Additional Solicitor General Mohan Parasaran, for the government, and senior counsel Colin Gonsalves, for petitioner People's Union for Civil Liberties, in its order said to deal with the problem of foodgrains, "which is rotting", the government could consider increasing the quantum of food supply to the population Below Poverty Line (BPL), opening the fair price shops for all the 30 days in a month and distribute foodgrains to the deserving population at a very low cost or no cost. It was further observed.

The Bench referred to the affidavit filed by Union Food Secretary Alka Sirohi and said "a serious endeavour has been made to give a clear answer to all the queries raised by us in our last order. On why the facilities of the Public Distribution System [PDS] be not discontinued for people who are Above Poverty Line [APL], the Centre said that after meeting the total allocation of the population in the Antyodaya Anna Yojana and the BPL categories, the remaining foodgrains are allocated to the States and Union Territories for distribution to APL population".

The Bench said: "That is precisely what the Court had in mind when the previous order was passed".

On computerisation of PDS across the country, the Bench said: "The Union of India, in principle, has agreed to the complete computerisation of the entire PDS, which means computerisation from
the godown of the Food Corporation of India to the ultimate beneficiary to ensure greater transparency of the entire PDS. Looking to the urgency of this matter, we request the Union of India to expedite the whole process and submit a comprehensive report to this Court as early as possible and in any event within six weeks from today [Thursday].

In its order, the Bench pointed out that the Centre had stated that there had been record procurement of wheat and rice in the last three years as a result of which the central pool stocks reached the level of 604.28 lakh tonnes on June 1, 2010. “Due to high procurement of wheat and rice during the last three years and insufficient covered storage space available in the country to store the procured stock, 178 lakh tonnes of wheat was stored in Covered and Plinth [CAP] storage, as on June 1, 2010. CAP storage involves storage on elevated plinths with polythene covers specially made for this purpose”.

The Court made it clear that the Centre must ensure food security of the country. In view of record procurement which the Centre was not able to properly store and preserve, it would be appropriate that the Centre might take some long term and short term measures to solve the problem. It said: “Permanent solution lies in constructing adequate storage facilities. The Union of India may consider constructing at least
one large Food Corporation of India godown in every State and consider the possibility of construction of one godown in every division if not in every district of the State”.

It wanted the PDS to be strengthened particularly, in tribal and drought-prone areas of the country. On the petitioner's submission that though the Centre was allocating 35-kg of wheat/rice per family, the State governments were not distributing it in the same proportion, the Bench asked the States to file affidavits in that respect within one week. The Bench directed the matter to be listed for further hearing on August 31 after filing of replies and rejoinders”.

When the issue was taken to the government for the response very astonishingly it responded that the above mentioned order is just a directive and not binding on the government. In response to that the supreme court has taken a tough stand and made it clear that its August 12, 2010 directive to distribute grain at “no cost” or “very low cost” was an order and not a suggestion as made out by Agriculture Minister Sharad Pawar.\footnote{The Hindu, New Delhi, at 1, September 1\textsuperscript{st}, 2010.} In the wake of the concern expressed by the Supreme Court at rotting food grains, the Union government decided to release an additional 2.5 million tones of rice and wheat to the States for distribution to the poor under the Targeted Public Distribution System. The grain will be sold at Below Poverty Line (BPL) rates in the next six months. It was also decided to overhaul the PDS, including upgrading the number of eligible BPL families. The numbers under consideration are between 7.7 crore to 8.14 crore, depending on which population census they are based on.
At present, 6.52 crore families are categorized as BPL. The decisions were taken at a meeting of the Empowered Group of Ministers (EGoM) on Thursday. The Union government will respect the Supreme Court’s decision on free distribution of grain to the poor, Agriculture Minister Sharad Pawar said in the Lok Sabha that. This government respects the decisions of all courts and will also pay attention to the member’s suggestions, he said, responding to the issue raised by leader of the opposition Sushma Swaraj. “What ever needs to be done will be done”.

However, the Prime Minister within a week responded back and gave a piece of advice to the Supreme Court that it should not interfere in the policy matters which is an exclusive domain of the legislature. He said,

“I respectfully submit that the Supreme Court should not go into the realm of policy formulation. I respect the sentiments behind the (court) decision that when food grains are rotting and people are suffering from deprivation, then some way should be found to ensure that the food needs of the deprived sections are met. But quite honestly it is not possible in this country to give free food to all the poor people”.

Again The Prime Minister referred the Tendulkar committee and according to which 37 per cent of the population is below the poverty line and he raised the question regarding the feasibility of distribution of free food as per the direction of the court. He said, “How are you going to give free food to such a large segment of the

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177 The Hindu, New Delhi, at 1, September 3rd, 2010.
178 Supra note 121.
population”. He vouched that his government is committed to ensure that food is made available to the poor at an affordable price. “But to say that we can give food grains free, quite frankly, if we do that on a large scale you would destroy the incentive of our farmers to produce more food and if there is no food available for distribution what will you distribute?”179

There is no doubt that free distribution of food to BPL families is having its own practical difficulties but this piece of advice from very political head of the executive has not been taken in good taste by the civil societies and those who are fighting for the cause of right to food as fundamental right. His concern for the incentive to the farmers has also not found favours from the experts it has been aptly observed 180 as follows:

There is a widespread conviction that high prices help the poor, because it is a form of subsidy to the agriculture sector, which is the main source of livelihood of a large number of poor households. But this reasoning is at best incomplete, since it is also the case that many more poor people in India buy much of their food on the market, and tend to be adversely affected when food prices go up. For casual labourers, migrant workers, slum dwellers, rickshaw pullers, rural artisans, and many other deprived sections of the population, cheaper food would be blessing.

Temporarily keeping prices up by storing food at massive public expense is not an effective way of helping needy farmers. This is particularly so

179 The Hindu, New Delhi, at 1, September 7th, 2010.
180 Supra note 28 at 338-339
during drought years, when ‘supporting’ food prices by storing large amounts of food carries a serious danger of undermining the food entitlements of large sections of the population.

Indeed, it is rather disturbing that massive procurement operations continued and even intensified right through the recent drought. At a time of widespread hunger in drought-affected areas, the government was busy hoarding food on an unprecedented scale and striving to keep prices up, making it that much harder for drought-affected people to buy food on the market.

Similar opportunities exist today to make constructive use of the available food stocks. In particular, these resources could be used to implement social security programmes such as employment schemes, school meals, in-kind transfers to the destitute, and an expansion of the public distribution system.

Again it should not be forgotten that this situation of ‘hunger amidst plenty’ is an extreme case of lopsided priorities, related in turn to sharp inequalities of political power. The government has been quite responsive to the demands of privileged farmers who are supposed to be the main beneficiaries of procurement operations, even boosting minimum support prices against expert recommendations. By contrast, the needs of the hungry millions have counted for very little in the formulation of recent food policies. It is pertinent to mention that the recent observation by the prime minister who is also an economist is the reflection of same sentiment of the lopsided priorities and sharp inequalities of power.
A country may have great constitution full of golden promises to its citizens yet civil societies organizations have crucial role to play like a strict teacher in school, putting pressure on all spheres of government, as well as in assisting vulnerable groups to empower themselves to claim their rights and improve their access to recourse mechanisms, including the courts.\footnote{Supra note 20.}

The very nature of developing India provides the much required fuel for a vibrant and strong civil society movement and activism in India for addressing hunger and poverty. There are number of projects initiated by civil society which have had important impact on the fight against hunger and malnutrition and the fight for the rights of the most vulnerable in different regions across India. NGOs like Food First Information and Action Network (FIAN)\footnote{FIAN is an international membership based organisation. FIAN’s institutional members are its national and regional sections which are legal entities in their own right and have their own membership and elected decision-making bodies. For details see http://www.fian.org/about-us/who-we-are as accessed on 26.11.2010.} have been very much concerned in promotion of the right to food and critical of violations in different regions of India. At present the Right to Food Campaign,\footnote{For details on right to food in India campaign see the website: www.righttofoodindia.org as accessed on 27.11.2010.} an umbrella of organization of activist for right to food has started working together subsequent to the success of the public-interest litigation filed by the People’s Union for Civil Liberties(hereinafter PUCL). These organizations are mobilizing public opinion against starvation by using legal strategies. The Right to Food Campaign has organised public hearings in states like Jharkhand, Orissa, Madhya Pradesh, Rajasthan etc and has made the government officials to hear personal grievances of people suffering from hunger, and has also played a monitoring role in trying to ensure the implementation of Supreme Court orders under...
the PUCL case. The Campaign makes the best use of the 2005 Right to Information Act to confront misuse of power and frauds, demanding that information on entitlements and ration cards be made publicly available. They also ensure through the National Employment Guarantee Act 2005 that employment and working conditions are considered as part of the right to food.

In no other case role of NGO is as explicitly visible as it is visible in right to food campaign. During this campaign, the Indian social movements mainly development organizations and organizations for the protection of human rights found the unprecedented support from the Supreme Court. In the Court’s judges, after personally going out into the field to assess the matter, acknowledged that government guilty of violation of the right to food and ordered the setting up, as soon as possible and at all levels, of aid programs for the poorest. It is hoped that after the final judgment social movements demanding the fulfillment of the right to food would have a real possibility of seeing their demands transformed into a concrete improvement of the lives of those whom they are defending.184

The movement for the right to food is at its historical and critical juncture today in India. There is no doubt that today India ranks as low as 66th in the Food and Agriculture Organizations’ World Hunger Index of 88 countries.185 Paradoxical situation of hunger deaths in a food surplus country has already been highlighted, yet there is an immense hope and scope for the resurgence of India

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185 As quoted by Brinda Karat in an article, “For inclusive approach to food security”, The Hindu, New Delhi, at 10 June 30th 2009, see also “Hunger Alarm”, at 89-92, Frontline December 3, 2010.
not being just a food surplus country but also a hunger free country. It is the time to adopt new outlook and change the mindset and launch an evergreen revolution designed to enhance productivity, without associated ecological harm. At present, because of a sustained effort of civil society groups working for the realization of this right and positive response of the apex court of the country, there at least a public opinion has been formed in favor of this right. This positive atmosphere can also be judged from the fact that almost all the national parties like the Congress (I), BJP, CPI (M), and

86 M.S. Swaminathan “Saving rural livelihoods & strengthening food security”, The Hindu, New Delhi, at 10 April 15th, 2008.
87 CONGRESS (I) PROMISED—“Along the lines of NREGA, we will enact a National Food Security Act. The Indian National Congress pledges to enact a Right to Food law that guarantees access to sufficient food for all people, particularly the most vulnerable sections of society. The Indian National Congress pledges that every family living below the poverty line either in rural or urban areas will be entitled, by law, to 25 kgs of rice or wheat per month at Rs 3 per kg. Subsidised community kitchens will be set up in all cities for homeless people and migrants with the support of the Central government”. http://aicc.org.in/new/manifesto09-eng.pdf (as accessed on 2 July 2009).
88 BJP promised—“FOOD SECURITY WE WILL MAKE INDIA HUNGER-FREE The BJP views food security as integral to national security. The spectre of a looming food crisis haunts the developing world as never before. With the agriculture sector suffering on account of the Congress’ gross negligence, India faces a real threat of food scarcity. With India becoming a net importer of food under Congress rule, there is genuine concern about food security. Three factors have contributed to increasing food scarcity and the resultant sense of growing insecurity among the masses. First, the real income of workers and farmers has not kept pace with the rising cost of food, thus reducing their purchasing power. Second, the public distribution system has been severely crippled by the Congress-led Government which has been more interested in importing food grains and selling them at a high price than in securing the needs of the people. Third, with an additional 55 million people pushed below the poverty line over the last five years, there is widespread malnourishment. The economic recession has only worsened the situation and made it grimmer; especially for workers in the unorganized sector. The BJP believes people have the right to food. To ensure food security for all and eliminate hunger, we will: 1. Provide 35 kg of rice or wheat every month to BPL families at Rs 2 per kg under an improved and expanded Antyodaya Anna Yojana. This will be available against ‘Food Coupons’ redeemable at both PDS and private outlets. 2. Allocate more funds for expanding, universalising and improving the functioning of the Public Distribution System. 3. Preventing families from slipping below the poverty line. 4. Setting up community kitchens in extremely impoverished areas with the help of NGO through shared funding. 5. Aggressively addressing the problem of widespread malnutrition, especially by expanding the scope of the existing mid-day meal scheme. 6. Encouraging the production of cereals and discouraging the conversion of fertile farmland for dubious industrial projects. 7. Ensuring a sufficient level of food stocks are maintained to meet any exigencies due to possible global food crisis which could be severely debilitating and make imports prohibitively expensive if not impossible. As accessed on 2 July 2009 www.bjp.org/images/pdf/election_manifesto_english.pdf.
CPI\textsuperscript{190} have promised, in their election manifestos for 15\textsuperscript{th} Lok Sabha elections, to work towards food security. It appears that there is an emerging consensus among all parties, irrespective of their political ideologies, at least on one issue, that there is an acute problem of food insecurity and there is a need to do some thing urgently regarding the food security, however, they may suggest different methods to tackle the issue. The present UPA government is planning to bring a Food Security Bill,\textsuperscript{191} the President, in her address to Parliament on June 4, 2009, announced:

"[G]overnment proposes to enact a new law – The National Food security Act- that will provide a statutory basis for a framework which assures food security for all. Every family below the poverty line in rural as well as urban areas will be entitled, by law, to 25 kg of rice or wheat per

\textsuperscript{189} CPI(M) Promissed:"To ensure food security the CPI (M) advocates: Reintroduction of the universal PDS and abandoning the targeted PDS based on flawed poverty estimates; Provision of food grains at subsidized rates in the PDS Expansion of the Antodaya scheme to cover wider sections of the rural and urban poor; Special measures to include tribal communities in Antodaya coverage; Supplying 14 essential commodities including sugar, pulses and edible oils under the PDS; Reversing the cut in food grain allocations to the States under the PDS and giving States their full quota of grain; Strengthening the FCI and expanding of FCI godowns, particularly in the Eastern and North Eastern regions; Curbing procurement of food grains by private corporates and MNCs Checking Price Rise of Essential Commodities The CPI (M) considers the following steps as essential to check price rise: Reduction of retail prices of petrol and diesel by cutting the customs and excise duties on oil; Banning futures trading in all agricultural commodities as per the recommendations of the Parliamentary Standing Committee; Taking stringent action against hoarding of essential commodities; Strengthening the provisions of the Essential Commodities Act to deal with hoarding and black-marketing; Strengthening disclosure norms for private stocks of food grains" Communist Party Of India (Marxist)Manifesto For The15th Lok Sabha Elections, 2009 http://www.cpiim.org/manifesto.pdf as accessed on July 2, 2009.

\textsuperscript{190} CPI promised -SOCIAL SECURITY :Party will demand universal Public Distribution System (PDS) to ensure food security. It will also demand housing to all by making right to housing as a fundamental rights.Comprehensive coverage of Old Age pension scheme. CPI supports the demand for same pension for same rank. Party will also strive to universalise with quality Integrated Child Development Scheme (ICDS).CPI ELECTION MANIFESTO-2009 CPI ELECTION MANIFESTO-2009, http://allindiapeoplesmanifesto.files.wordpress.com/2009/04/cpi-manifesto-20091.pdf as accessed on 3\textsuperscript{rd} July 2, 2009.

\textsuperscript{191} However, various doubts have been raised about the proposed Bill by a senior politician, Brinda Karat for details see supra note 129.
month at Rs. 3 per kg. this legislation will also be used to bring about broader systematic reform in the public distribution system".  

And the country is watching eagerly whether this piece of legislation will transform the whole debate from a charity paradigm to a legal entitlement; and whether it will be effective and different.

In this direction The National Advisory Council, which is headed by none other than Smt Sonia Gandhi has provided a broad frame work to achieve the goal of food for all and forever. The proposals are as follows:  

(a) A phased programme of implementation of the goal of universal public distribution system. This will start with either one-fourth of the districts or blocks in 2011-12 and cover the whole country by 2015, on lines similar to that adopted for the Mahatma Gandhi National Rural Employment Guarantee Programme (MGNREGP).

(b) The swift initiation of programmes to insulate pregnant and nursing mothers, infants in the age group of zero to three, and other disadvantaged citizens, from hunger and malnutrition.

Prof. M.S. Swaminathan suggests four pre-requisites for sustainable food security. Those are as follows:

(c) Food production -

(c.1) Production should be adequate to provide balanced diet for over 1.2 billion persons. Over a
billion cattle and other farm animals need feed and fodder. The recommendations of the National Commission on Farmers (NCF) made in five reports submitted to the Minister of Agriculture between 2004 and 2006, and the National Policy for Farmers placed in Parliament in November 2007 need to be implemented.

(c.2) A conservation–cultivation–consumption–commerce chain should be promoted in every block.

(c.3) The widening of the food basket through the inclusion of nutritious millets, the main streaming of nutritional considerations in the National horticulture Mission, and the consumption of salt fortified with iron and iodine will help reduce chronic protein-energy under-nutrition and hidden hunger caused by the dietary deficiency of micro nutrients such as iron, iodine, zinc, Vitamin A and Vitamin B12. A sustainable food security system can be developed only with home-grown food, not import

(d) Food procurement:

(d.1) Procurements should cover not only wheat and rice but also jowar, bajra, ragi, minor millets and pulses.

(d.2) Farmers are now worried that the government may lower the minimum support price (MSP) to reduce the subsidy burden. This will kill the food security system. The MSP should be according to the NCF
formula of C2 (that is total cost of production) plus 50 per cent.

(d.3) The actual procurement price should be fixed at the time of harvest, taking into account the escalation in the cost of inputs like diesel since the time the MSP was announced.

(e) Food preservation -

(e.1) Safe storage of procured grain is the weakest link in the food security chain. India is yet to develop a national grid of modern grain silos. Post-harvest losses are high in food grains and in perishable commodities such as fruits and vegetables. A Rural Godown Scheme was initiated in 1979, but it is yet to take off. The government called off the “Save Grain” campaign some years ago, ending a relevant programme in the context of food security.

(f) Food Distribution -

(f.1) There are States such as Tamil Nadu, Kerala and Chhattisgarh where the PDS is being operated efficiently. The challenge is to learn from the models and convert the unique into the universal.

(f.2) India has to shift from viewing food security at the aggregate level to ensuring nutrition-security at the level of each individual.

(f.3) Attention is paid to soil health care and enhancement, water conservation and efficient use, adoption of climate resilient technologies,
timely supply of needed inputs at affordable prices, credit and insurance and producer-oriented marketing.

(f.4) In India there is still a gross mismatch between production and post-harvest technologies. This results in the spoilage of food grains and missed opportunities for value addition and agro processing. The use of agricultural biomass is generally wasteful and does not lead to the creation of jobs or income.

(f.5) In the field of absorption of food in the body, it is important to ensure clean drinking water, sanitation.

(f.6) The Rajiv Gandhi Drinking Water Mission, the Total Sanitation programme and the National Rural Health Mission are all important for food security.

The freedom from hunger and malnutrition is a fundamental human right of every women, man, youth and child. Universal and sustainable food security is part and parcel of reaching the social economic and human development objective governments agreed upon at world conferences. As already observed in this paper that there are large number are of international pronouncement on the right to food, on the basis of which some people even argue that the right to food is now a part of international customary law. However, in 21st century the basic human right to food is under threat. Recent food riots in Indonesia and some of the African countries raise the eye brows. Even in India hunger deaths and suicide of farmers came in to light. Now the battle against hunger is in the centre of the development discourse in India. As observed earlier also that union
government seriously contemplating to bring a food security Bill, it reflects that the government has realized that without addressing the issue of hunger it can’t achieve social justice. As it was aptly remarked by Shashi Tharoor that human right in one memorable phrase starts with breakfast. Lasting peace can’t be achieve unless large population groups finds ways to break from the poverty and is able to acquire at least two meals in a day. Therefore every legal system must ensure freedom from hunger to ensure social justice and to protect human dignity.