CHAPTER-3

LEGAL REGIME FOR FOOD SECURITY

I. Prelude

“Striving to ensure that every child, woman and man enjoys adequate food on a regular basis is not only a moral imperative and an investment with enormous economic returns; it also signifies the realization of a basic human right”

Jacques Diouf, Director-General, FAO¹

India is starving. While its gross domestic product has been climbing steadily in recent years,² its rates of malnutrition and starvation-related disease and death remain staggeringly high.³ These numbers are even more surprising when examined in contrast to countries in a similar development position, such as China,⁴ because such comparisons reveal the paradox of India’s increased aggregate wealth combined with its stagnant and in some cases decreasing nutritional intake. Food Security is a vital human right that, if denied, renders human life stunted, painful, or null. Logically, because humans must eat to stay alive, and because they must have adequate nutrition in order to flourish - that is, to undertake, economic, cultural, and political activities that define our modern human existence - food security should be treated as a core human right and attended to with commensurate vigor. And yet, people continue to

doubt the justifiability of the right to food, or how it might be enforced and realized at a national level through constitutional recognition. India, however, has taken a different approach, opting not to allow the violation of what it recognizes as a human right to occur without remedy. Rather, India has found the right to food to be both legally justifiable\(^5\) and deserving of national legislation.\(^6\) It is this landmark initiative by India to establish and explicate the food security provision that is the subject matter of this research.

A Country's Constitution plays a fundamental role in the realization of the right to food and food security provisions because it is the supreme law of the land\(^7\) and the source of all political power within a nation. It is a body of rules that establishes and regulations of government by stipulating checks, balance and limitations of governmental authority.\(^8\) The constitutionality of every law and act of Government is one of the most important political principles of democracies and universally accepted rule of Law norms. The logical consequence of the superiority of the constitution is that it supersedes all act of the legislature contrary to it. Consequently, such acts will not bind either the courts or the citizens. Constitutional provisions are also binding for the executive, so all administrative authorities are equally limited by its provisions. Any executive as administrative act that contravenes the provisions of the constitution must be considered void and the courts must invalidate it.

Because of a food Security provisions in the constitution, the constitutional court or the highest court of a country has the power of

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\(^6\) Alka Sirohi, Secy. of the Ministry of Consumer Affairs, Food & Pub. Distribution, Dep't of Food & Pub. Distribution, Government of India, to Chief Secretaries of State, Govt. of India, D. O. No. 8-27/2009-BP-III (June 4, 2009),  
\(^7\) For explicit claim, see inter-alia, the Constitution of Australia Preamble; the Canadian Constitution Act, 1982, Art 552; the Constitution of Italy. For implicit claims, see inter-alia, the Constitution of India.  
\(^8\) In the absence of a formal codified set of Laws, traditions and existing legal and political systems may provide enduring constitutional principles. These countries (Canada, England, Israel and New Zealand) have no written Constitution in one single document, but rather a number of basic Laws that are primary law guiding society.
judicial review. This means that it declares certain laws unconstitutional if they violate the food security provision, and the person whose rights have been breached. This is an enormous impact on the realization of the right to food because a successful claim may lead to the reform of legislation or policies found to violate that right. The inclusion of a specific provision on everyone's right to food, particularly, which of children and women, within the constitution has significant merit in providing legal protection of the right to food, as such, and in ensuring freedom from hunger.

India has demonstrated a commitment to ensuring food security\(^9\) and to realizing the right to food by legally establishing a basic nutritional floor for all citizens. In a landmark interlocutory opinion in the case of People's Union for Civil Liberties, the Supreme Court of India directly addressed food security in the Indian context and explicitly established a constitutional human right to food in India. In this watershed order, the Supreme Court not only held that specific government food schemes constituted legal entitlements under a constitutional right to food,\(^{10}\) setting out in detail minimum allocation levels of food grains and supplemental nutrients for India's poor, but also outlined how those government schemes were to be implemented.\(^{11}\) With its incorporation of economic and social rights

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\(^9\) While we understand them to be slightly different in meaning, researcher uses the phrases "right to food" and "food security" interchangeably in this research. We use "right to food" to mean that all people should have the ability to feed themselves in a way that meets their specific nutritional needs. We use "food security" to mean that, at a household level, the household has enough assets to purchase the food they cannot provide for (i.e., grow or rise) themselves. At a national level, food security means that a country must undertake policies to ensure that the supply of food available in the country is adequate to meet the basic nutritional needs of all of its citizens. This research adopts the position that "if the world's food supply were evenly divided among the people of the world, there would be enough food for everybody," and that the law can and should be used to achieve this goal; Howard D. Lathers and Phillips Foster, "The World Food Problem: tackling the causes of Under nutrition in the Third World" 3d ed., Lynne Reinner Publishers, 144 (2004) (interpreting FAO data that the world produces more food in terms of calories than are needed by the entire global population).

\(^{10}\) *Supra* n. 5 at 518.

\(^{11}\) People's Union for Civil Liberties v. Union of India, Writ Petition (Civil) No. 196 of 2001. (Nov. 28, 2001 interim order).
into the Indian constitutional framework, People’s Union for Civil Liberties stands as one of the few instances of adjudication on the right to food, despite the global food, financial, and environmental crises that currently make food availability and the right to food increasingly urgent topics.

The People’s Union for Civil Liberties however, stands as merely one historical moment in the progression of this ongoing trend for the establishment and enforcement of a right to food through constitution in India. Initially sparked by a crisis marked by severe drought, hunger, and unemployment in India, People’s Union for Civil Liberties was first filed in July 2001 as a Public Interest Litigation in the State of Rajasthan on behalf of the poor who had not received the required employment and food relief as mandated by the Rajasthan Famine Code of 1962.\(^\text{12}\) Resting on constitutional precedent defining the right to life as “the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition,” the petitioners sought enforcement of a constitutional right to food under Article 32 of the Constitution of India in response to inadequate government drought relief measures and failure to provide subsidized food grains to eligible beneficiaries.\(^\text{13}\) The judgment currently applies to all state governments and addresses a myriad of issues, including hunger, child nutrition and development, and unemployment.\(^\text{14}\) The case remains open, as closing orders have not yet been issued.

Analyzing the fulfilment of the right to food in the Indian context, researcher argue that successes achieved by the case are directly attributable both to distinctive aspects of the Constitution of India and to a unique interaction between civil society, the People’s Union for Civil Liberties litigation, and the Commission appointed by

\(^{12}\) Ibid.

\(^{13}\) Ibid.

the Supreme Court to monitor enforcement of People’s Union for Civil Liberties interim orders.

Researcher commences his analyses of the explication and fulfilment of a right to food in India by defining the food security and by outlining how food security has been conceptualized in legal frameworks. Food Security in India has been founded primarily in Indian constitutional law and, specifically, in an Indian constitutional right to life, researcher devote his research to elements of Indian constitutional law that created the legal authority for the PUCL litigation and the reading of a right to food into the Indian Constitution.

Legislative measures for the implementation of Food security provisions are part of States’ obligations under Article 2 of the Covenant. General Comment 12 recommends in particular the adoption of framework law as a major instrument in the implementation of national strategy concerning the Right to Food. Such a regulatory framework of law although not mandatory would be very useful for the reasons like, it would allow allocation of clear responsibilities to different governmental agencies, which would result in greater accountability and such legislation could provide room for participation in decision-making by formalizing the role of community, Non-Government Organisations and civil society at large. It would also allow defining which aspect is actionable and the recourse in case of violations (e.g. Ombudspersons, Human Rights Commissions and the Courts).

The Parliament of India has extensive powers. It has the power to make laws on matters, which are given in the Union list and the

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15 M. Vidar, Implementing the Right to Food: Achievement, Shortcomings and Challenges: Advantages of Framework Law, Keynote address by FAO Legal Officer, Indian Social Institute, New Delhi, India organized by FIAN International with support from GDS, 11 (24-26 February 2003); retrieved from www.fao.org/legal/Right to Food/statements/india.doc>on 16/08/13/4:30P.M.

16 HRI/GEN/1/Rev.4, p. 66, para. 29.
Concurrent list. Article 249 provides that Parliament can legislate on any matter given in the State List if the Council of States passes a resolution by a two-thirds majority declaring that such matter or matters are of national importance and interest. On the other side, the very basic aim of the Constitution is to make India successful welfare state. Without food security provisions, the aim of Constitution cannot be achieved.

While constitutional provisions are described in rather broad terms, a framework law on food security and the right to food can elaborate further on this right and thus make it operational in practice. The term "framework law" refers to a legislative technique used to address cross-sectoral issues. Framework legislation lays down general principles and obligations, and leaves it to implementing legislation and the competent authorities to determine specific measures to be taken so as to realize such obligations, possibly within a given time limit.

There are many advantages in adopting a framework law on food security. The content of the right as well as the obligations of state authorities can be spelled out in some detail; institutional arrangements can be made and a stable basis for a better distribution of responsibilities; better coordination and more meaningful full monitoring can give a precise definition of the scope and content of this human right, set out obligations for State authorities and private actors, establish necessary institutional mechanism and provide the legal basis for subsidiary legislation and other necessary measures to be taken by the competent State authorities. It can also establish a right to remedy clarify the role of human rights institution and provide the basis for subsidiary legislation.

Framework law strengthens government accountability by providing for better monitoring, access to courts and administrative

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recourse mechanism and also by helping government officials to have a better understanding of their role. The Committee on Economic, Social and Cultural Rights recommends the adoption of a framework law as a major instrument in the implementation of a national strategy for food security.\textsuperscript{18} The Food and Agriculture Organization Guide on Legislating for Food Security\textsuperscript{19} provides a full analysis of the optimal content of right to food framework law.

\textbf{II. The International Legal Regime for Food Security}

Before beginning research on India’s specific jurisprudential progression towards finding and founding a constitutional right to food, it is important to note that adequate legal guarantees to the right to food existed prior to the establishment of a right to food in India. Indeed, the right to food has been enshrined in international legal documents for over half a century and is a part of the modern international human rights framework that has both influenced and been influenced by India.\textsuperscript{20} However, unlike more general international agreements, national action on behalf of the right to food, such as the People’s Union for Civil Liberties litigation in India, requires an effort by the state to produce a more detailed development of the right and its contextual operationalization.

The domestic contexts in which the right is operationalized are sufficiently diverse such that both national and local actions are necessary to adequately respond to the needs on the ground. Moreover, changing national and local situations also necessitates the construction of a more flexible framework of national action so that urgent right to food violations may be quickly addressed. Thus, international human rights law regarding the right to food relies

\textsuperscript{18} General Comment 12 of ESER : The Right to adequate food (Article 11 of the Covenant). UN Doc. E/C/12/1999/5, para.29, (5May, 1999).


largely on national action for implementation. That being said, the national and the international human right to food interact and inform each other. Progress at one level can be translated into progress at the other, and so it is important to understand the larger international framework in which the Supreme Court case exists. Many national constitutions take into account the food security provisions or some of its aspects. Constitutional recognition of the food security provisions can be classified into four broad categories.

Firstly, explicit and direct recognition, as a human right in itself or as part of another, broader human right. Twenty-three countries of the world recognize these provisions explicitly as an individual human right as independent right. Nine of these countries recognize the right as independent right applicable to everyone, ten stipulate the provision of food security for specific category of the population only, such as children. Five countries have constitutional provisions that stipulate the right to food explicitly as being part of another human right. This is often worded in ways similar to Article 11.1 of International Covenant on Economic, Social and Cultural Rights as part of a human right to an adequate standard of living, to a quality of life or to development. Some constitutional rights protect aspects of the right to food and refer explicitly to the right to food component of the main right in question. This sub-category could be described as constitutional rights that provide explicit recognition of

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21 South Africa, Article 27, "1. Everyone has the right to have access to [---]; b. sufficient food and water; and c. social security, including, if they are unable to support themselves and their dependent, appropriate social assistance." 2. The State must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights."

22 Colombia, Article 44, "Children have fundamental rights to: life, integrity, health and social security, and adequate food."

23 Belarus, Article 21, "Every individual shall exercise the right to a dignified standard of living, including appropriate food, clothing, housing and likewise a continuous improvement of necessary living conditions."

24 UN Declaration on the Right to Development, proclaimed in 1986 by UN General Assembly resolution 41/128.
one aspect of the right of food. The sub-category includes the right to food as part of the right to work.25

Secondly, countries whose constitution do not make explicit reference to food or nutrition but guarantee other human right in which the right to food is implicit, according to their normal meaning in International Law. These rights include the right to adequate or decent standards of living, to well-being, to a means necessary to live a dignified life, to development, and to a standard of living not below the subsistence level.26 Rights such as the right to a minimum wage ensuring existence compatible with human dignity, 27 to social security, assistance for the destitute, special assistance and protection of (orphaned) children,28 aid for (working) mother before and after childbirth, and for the disabled and the elderly, all necessarily provide implicit protection of aspects of food security. Some countries even stipulate special protection to the case of loss of the family breadwinner.29

Thirdly, countries that do not recognize food security provision explicitly in their substantive provisions or bills of rights refer nonetheless to the right to food or food security, to raising the level of nutrition and standard of living in the provisions that set out the

25 Brazil, Article 7,
"The following are rights of urban and rural workers, among others that aim to improve their social conditions:..... IV- nationally unified minimum wage, established by law, capable of satisfying their basic living needs and those of their families with housing, food, education, health, leisure, clothing, hygiene, transportation and social security, with periodical adjustments to maintain its purchasing power."

26 Ethiopia, Article 43,
"The Right to Development(1) The people of Ethiopia as a whole and each Nation, Natinality and people in Ethiopia in particular, have the right improved standard of living and to sustainable development.... (4) The basis aim of development activities shall be to enhance citizen's capacity for development and to meet their basic needs...."

27 Islamic Republic of Iran, Article, 29 [Welfare Rights].
"(1) To benefit from social security with respect to sentiments unemployment, old age, disability, absence of a guardian and benefits reality to being standard, accidents, health services, and medical care and treatment provided through insurance or other means, is accepted as a universal right."

28 Moldova (Art 50(2)), Spain (Article 39(2)).

29 Kazakhstan (Art. 27).
objectives or directive principles of state policy. Directive principles are statements of principles. They often represent the values to which a society aspires although at the time of drafting they may not reflect a broad societal reality. Very often these constitutional provisions guide government action, particularly in the socio-economic field, but are not considered providing for individual or justifiable rights.

The use of directive principles varies from country to country. In India, although the directive principles began as unenforceable guidelines, an active Supreme Court of India interpreted the constitutional right to life to include the right to food, based on the constitutional provisions in the Directive Principles of the State Policy. Of course, such directive principles include implicit reference to the right to food in many, if not most, constitutions by referring to general wellbeing or social justice objectives.

Lastly, there are many other countries whose constitutional guarantee other human rights in which the food security provisions are not necessarily implicit. This is the case in particular with regard to the right to life and the right to be free from torture and degrading treatment. Thus, the absence of direct recognition of the right in a state constitution does not mean that the right to food is much unprotected in the country. Depending on a country’s legal tradition, other human rights can be interpreted as including the right. A combination of other constitutional provisions together with general

30 Sri Lanka, Art. 27, “The State is pledged to establish in Sri Lanka a democratic socialist society, the objective of which includes (c) the realization by all citizen of an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions, and full enjoyment of leisure and social and cultural opportunities.”

31 Constitution of India, Article 21.

32 The right to life is generally not seen to include the right to service, but the UN Human Rights committee in its General comment 6 (Article 6 ICC PR), Para. 5, (30 April 1982), “noted that the right to life has been too after narrowly interpreted. The expressions “inherent right to life” cannot be properly understood in a restrictive manner and the protection of this right requires that States adopt positive measures. So State parties must take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.”
state policy commitments or directive principles may be used to advance the implementation of this right. For instance, there may be state policies or the promotion of well-being, the right to work and the right to social security (in case of unemployment of inability to work) which can be relied upon in combination with constitutional rights. As mentioned earlier, in India the fundamental right to life has been expanded by the court with reference to directive principles. This creates a dynamic relationship between the Fundamental Rights and the Directive Principles of the Constitution, and an avenue to enforce the latter as individual rights.

There is no shortage of international legal documents enshrining the right to food to which India is a party. Access to food was first declared a right in the United Nations' 1948 Universal Declaration of Human Rights, and shortly thereafter was enshrined in the International Covenant on Economic, Social and Cultural Rights, to which India is a party. The Committee on Economic, Social and Cultural Rights has further defined the right to food in its General Comment 12. Other international legal instruments that India has ratified and that further articulate the right to food include the Convention on the Rights of the Child and the Convention on the

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33 Human Rights Library, Univ. of Minn., Ratification of International Human Rights Treaties—India, (providing a list of the human rights treaties that India has ratified); Retrieved from http://www1. umn. edu/humanrts/research/ratification-india.html on 8/9/2013/03:20PM
36 Supra n. 33.
37 U.N. Econ. & Soc. Council [ECOSOC], Comm. on Econ., Soc., and Cultural Rights, "Substantive Issues Arising in the Implementation of the International Covenant on Economic, Social and Cultural Rights: The Right to Adequate Food" (Art. 11), E/C.12/1999/5 (defining the right to food as realized when "every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement"). (May 12, 1999).
Elimination of All Forms of Discrimination against Women. In addition to these legal obligations, India has signed up to such political declarations as the 1996 Rome Declaration of the World Food Summit, pledging its political commitment to ensuring its citizens access to adequate food. Despite declaring that such a right exists, none of these legal texts is particularly specific in defining what a state party must do in order to ensure the right to food. Thus, it is particularly important for states, such as India, to give shape to this right through national programs.

Interestingly, while India’s right to food has legal precedent in international human rights law and international legal frameworks, most of the work to enforce and fulfill a right to food has not been presented in international human rights language. Rather, the right to food has been framed primarily as a national fundamental right, founded on unique principles of Indian constitutional law. Indeed, India’s right to food is reflective of a commitment to ensuring a baseline of nutrition for its constituents through the operationalization of domestic legal institutions and governance structures. This adherence to domestic human rights norms is perhaps best conveyed in the textual language of both the petitions


41 A particularly useful framework for conceptualizing what the right to food should entail is articulated by ECOSOC, (explaining that the parties to the ICESCR are obligated to respect, protect, and fulfill this right).

42 Supra n.5 at 518; see also supra n. 11.

43 Supra n.11.
and interim orders encompassed by the People's Union for Civil Liberties litigation. These draw primarily on arguments founded on domestic legislation and legal precedent and not on India’s obligations to uphold or fulfill rights articulated in international human rights treaties and agreements.44

India’s reliance on domestic law to identify, adjudicate, and implement a constitutional right to food reflects a more general confidence in its own sovereignty and position vis-à-vis international human rights bodies when it comes to espousing and upholding human rights. While the Indian Constitution requires the State to “foster respect for international law and treaty obligations,”45 greater institutional emphasis is placed on internalizing those norms and strengthening the capacity of national instruments to deliver on them. This commitment to enforcing human rights through domestic means is reflected in India’s third periodic report submitted under Article 40 of the International Convention on Civil and Political Rights46 to the Human Rights Committee, which states:

India firmly believes that in the matter of implementation of the provisions of the Covenant, what is of paramount importance is the country’s overall performance and its resolve to translate into reality the enjoyment of right by its people, to be viewed from the Constitution and the laws as well as the effectiveness of the machinery it provides for enforcement of the rights.47

India’s dedication to its Constitution and laws is illustrated in an analysis by Rajat Rana of 46 Supreme Court decisions regarding human rights from the years 1997–2008, which suggests that the Supreme Court rarely relies on or follows international human rights rights

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44 Ibid.
45 Constitution of India; Article 51.
norms in reaching a decision.\textsuperscript{48} While the justices mention international human rights norms in their opinions, those norms do not regularly play a significant role in reaching a final decision. Rather, emphasis is on the Court's own precedents.\textsuperscript{49} Further analysis of Supreme Court cases suggests that the Court is likely to explicitly follow international human rights norms in reaching a decision only in the absence of any domestic law that provides for effective enforcement of the human rights in question. In \textit{Apparel Export Promotion Council v. A.K. Chopra},\textsuperscript{50} for example, the Court notes that "courts are under an obligation to give due regard to the International Conventions and Norms for construing domestic laws more so when there is no inconsistency between them and there is a void in domestic law."\textsuperscript{51} That India has not signed the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights \textsuperscript{52} is perhaps further evidence of its preferred reliance on domestic mechanisms to protect, promote, and fulfill the right to food and its reluctance to share the authority to do so with external or international adjudicative bodies.

Thus, though subject to the International Covenant on Economic, Social and Cultural Rights and other international legal documents promoting economic and social rights, India relies mostly on domestic law and has devoted the majority of its attention to incorporating human rights, such as the right to food, into the Indian Constitution. Given that the right to food in the Indian context has been founded and fought within a domestic legal framework, it is to this framework that we now direct our discussion.

\begin{footnotesize}
\begin{enumerate}
\item Ibid.
\item AIR. 1999 SC 625.
\item \textit{id.} At 634.
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III. Legal Regime for Food Security in India

The Constitution of India explicitly provides for food security, thereby offering robust national protection that is likely more accessible to Indian citizens than similar safeguards provided by international bodies. Explicitly, Article 47, located in the Directive Principles section of the Constitution, creates a “duty of the State to raise the level of nutrition and the standard of living and to improve public health.” Given the inspirational and non-justifiable nature of the Directive Principles, however, most of the development of the food security provision has occurred within the context of Article 21, which includes a right to life and is located within the enforceable and justifiable Fundamental Rights section of the Constitution.

The fact that People's Union for Civil Liberties transformed food programs into legally enforceable entitlements is particularly significant in light of the origins and framework of the Indian Constitution, as the Constitution emphasizes civil and political rights over economic, social, and cultural rights, by placing Economic, Social and Cultural Rights—such as the right to food—under the heading of non-justifiable “directive principles of state policy.” Only through judicial orders promulgated through People’s Union for Civil Liberties and its preceding litigation have Economic, Social and Cultural Rights been made judicially enforceable in India as constitutional rights.

In order to provide a comprehensive analysis of how and why the Supreme Court came to recognize the right to food as a justifiable

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53 In general, domestic institutions are literally more accessible—they are geographically closer and their proceedings are conducted in a similar language to the one of the rights holder. The principle of exhaustion—that rights holders must exhaust domestic remedies before seeking redress and remedy at the international level—also makes domestic institutions a more likely starting point for those pursuing human rights claims.

54 Constitution of India; Article 47 explains: “The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

55 Supra n. 11.

56 Constitution of India.
fundamental right, rather than as an inspirational judicial principle, this research provides a thorough analysis of India's Constitution and judicial traditions, and of the contemporary legal environment immediately preceding and surrounding the original People's Union for Civil Liberties petition, as well. Researcher begin by briefly tracing the drafting of the Indian Constitution, outlining its journey from colonial independence to its current state as a judicial basis for robust furtherance of social and economic rights. Assessing the Constitution as it functions today, we next examine the right to food's constitutional foundation. Finally, we analyze India's tradition of judicial activism and how the Court has used constitutional interpretation to bypass legislative action.

In India, under the Constitution, there is no fundamental right to food but the fulsome of justifiability of the right to food comes from a much boarder “right to life and liberty” as enshrined in the Constitution. The Fundamental Rights guaranteed the right to life, and the right to food is at the heart of the right to life. The State has a related duty to ensure that no one goes hungry. Even Article 21 of the Fundamental Rights, lays down that no person shall be deprived of life or personal liberty, except according to procedure established by law. If the right to livelihood is not treated as a part of the constitutional right to life would be to deprive him of his means of livelihood to the point of abrogation. Such deprivation would not only deny the life of its effective content and meaningfulness but it would make life impossible of live.

There is close nexus between life and the means of livelihood and as such that which alone makes it possible to like, must be deemed to be an integral component of the right to life. The State may not, be affirmative action, be compellable to provide adequate means of livelihood or work to the citizens, but any person who is deprived of his right to livelihood except according to just and fair procedure

57 Supra n. 17.
established by law, can challenge the deprivation as offending the right to life conferred by the constitution.\textsuperscript{58}

The right is a fundamental right enforceable against the State; and judicial decisions have imposed on the state. For example, a person who cannot pay for medical expenses must be given free medical treatment and that too, without delay. It is an irony that this Article has covered a wide spectrum like Acquired Immuno Deficiency Syndrome and employment;\textsuperscript{59} beauty contests;\textsuperscript{60} health;\textsuperscript{61} and housing;\textsuperscript{62} etc. However, since the passing of decisions in \textbf{Maneka Gandhi v. Union of India}\textsuperscript{63}, Article 21 now protects the right to life and personal liberty of citizens not only from executive action but also from legislative action. However, apart from perpetual starvation death, not a single case yet dealt under this Article, though there is a clear provision of right to food under it. The basic requirements such as food, shelter and clothing have no place in the Fundamental Rights.

In recent years, the battle against hunger has been placed at the centre of the development discourse of India. This has come about mainly due to the efforts of the Right to Food Campaign and as a direct result of a writ petition filed in the Supreme Court of India. The petition was filed by the People’s Union for Civil Liberties in April 2001 to seek legal enforcement of the right to food. This case, popularly known as the Right to Food Case\textsuperscript{64} has since become a relying point for trade unions, activities, grass root organizations and Non-Government Organizations to make the right to food a justifiable right.

In Indian judiciary especially the Supreme Court, has or many occasions reaffirmed that the right to life in Article 21 does not means

\textsuperscript{58} Constitution of India; Article 21.
\textsuperscript{59} Mr. X of Bombay Inhabitant vs. M/S ZY, AIR Bombay 406.
\textsuperscript{60} Chandra Rajkumari vs. Police Commissioner, Hyderabad, AIR 1998 A.P. 309.
\textsuperscript{61} State of Punjab vs. Mahinder Singh Chawala, AIR 1997 SCC 1225.
\textsuperscript{62} Bakshi, 2001- Francis Coralie v. Union Territory of Delhi AIR 1978 SC 597. Supra n.10 at 597.
\textsuperscript{63} AIR 1981SC 746.
\textsuperscript{64} Supra n. 11.
merely animal existence but living with human dignity; it would include all aspects which life meaningful, complete and living”. Other statutory constitutional Institutions like the National Human Rights Commissions have also stated: “There is a fundamental right to be free from hunger”.

In the Constitution of India, many rights are provided for Indian citizens. Some of them are provided as fundamental right and some rights are provided as directive principles of state policy. Article 21 of the constitution of India guarantee a fundamental right to life and personal liberty. The expression “Life” in this Article has been judicially interpreted to mean a life with human dignity and not mere survival or animal existence. In the light of this, the State is obliged to provide for all those minimum requirements which must be satisfied in order to enable a person to live with human dignity, such as education, health care, just and humane conditions of work, protection against explanation etc. Therefore, the Right to Food is inherent to a life with dignity.66

The realization of a right to food in India has been largely dependent on progressive aspects of the Indian Constitution that provide for comparatively easy incorporation of human rights principles into Indian constitutional law, especially in regards to Economic, Social and Cultural Rights. India’s Constitution was born out of the struggle against colonialism and reflects revolutionary principles67 that appear progressive even today. At the same time, it is also a recognizably twentieth century Cold War Document in that it embodies the conflict between Civil and Political Rights in the

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65 Ibid.
67 Austin Granville commented, “The Indian Constitution is first and foremost a social document. The majority of its provisions are either directly aimed at furthering the goals of social revolution or attempt to foster this revolution by establishing the conditions necessary for its achievement.”; P.L. Mehta & Neena Verma, Human Rights Under The Indian Constitution: The Philosophy and Judicial Gerrymandering, Deep & Deep, New Delhi 42 (1999); (quoting Austin Granville, The Indian Constitution: Cornerstone of a Nation, Oxford University Press, Bombay 245 (1966)).
“Western” world and Economic, Social and Cultural Rights in the Communist world.\(^{68}\) The drafting history of the Indian Constitution sheds light on these tensions and the balance between rights that it has achieved.

One reading of India’s Constitution is that its framers were caught between crafting a constitution appropriate to the Indian context and replicating existing common law constitutions.\(^{69}\) Historical accounts indicate that the earliest constitutional movement focused on Civil and Political Rights rather than Economic, Social and

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\(^{68}\) This division of two “generations” of rights should be understood in the Cold War context in which it was crafted. India’s constitutional drafters worked contemporaneously with and with reference to the drafters of the Universal Convention, the ICCPR, and the ICESCR (“Most of the Articles of the Universal Declaration of Human Rights, 1948 and two International Covenants are building blocks of human rights jurisprudence in India.”). Commentators have noted that “it strikes a peculiar balance between [an individual’s] political rights and socio-economic justice.”

\(^{69}\) In addition to referencing British rights, India’s constitutional drafters turned to the Constitution of the Irish Free State of 1921, the Constitution of the United States, and the Constitution of Canada.

Shashi P. Mishra, Fundamental Rights and the Supreme Court: Reasonableness of Restrictions, Deep & Deep, New Delhi, 27 (1985),

“Yet, the context in which the Indian Constitution was being drafted was one that prompted a closer look at social and economic rights. “At the time of independence in 1947, India was in the grip of a serious food crisis. . . .”;


“The drafting history of Articles 21 and 22 provides records that the drafters discussed the postcolonial nature of the Constitution and their unique post-colonial obligations to protect the rights of the most vulnerable populations. Statements were made admonishing against a repetition of British domination: “[T]his autocracy is in our blood and it is showing signs everywhere . . . . We are ruling our people in a manner much less generous than the aliens did; . . . if you want to safeguard the freedom of the people and their liberty, there should be a more radical provision in the Constitution than what has been proposed in the current draft of Article 21.”;

B.L. Hansaria, Right to Life and Liberty under the Constitution: A Critical Analysis of Article 21, Bombay, 13 (1993),

“Drafters also made reference to the need for wider judicial review as providing the flexibility future generations of rights holders would require. “[J.H. Larry] was of the view that if the clause [Article 21] stood as it was, ‘the whole Constitution becomes lifeless.’ So, unless the amendment was accepted, Larry said, ‘You will not earn the gratitude of future generations.’ This indicates that Article 21’s drafters contemplated the idea of a ‘living’ constitution sufficiently adaptable to changing conditions to continuously provide and protect human rights. The resulting original document is thus a blend between the two forces of existing common law constitutions and the unique Indian context.”

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Cultural Rights. This emphasis can be explained by the limited models of constitutions available as references at the time. In addition to looking to British rights, India's constitutional drafters turned to the Constitution of the United States, the Constitution of the Irish Free State of 1921, and the Constitution of Canada. Thus, India's initial constitutional references were limited to former Commonwealth countries whose constitutions predominantly emphasized Civil and Political Rights.

Economic, Social and Cultural Rights do, nevertheless, occupy an important place in the Indian Constitution: India was ultimately established as a social welfare state and its Constitution has defined and recognized justice as social, economic, and political. However, after constitution drafting was resumed upon India's independence in 1947, the economic and social rights articulated in the Constitution were distinguished from justiciable civil and political "fundamental rights." The Economic, Social and Cultural Rights enumerated in Articles 36 through 51 were labeled "directive principles," deemed non-justifiable, and accompanied by the instruction that "the provisions contained in this Part shall not be enforceable by any court."

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70 Hansaria, supra n. 69, at 7.
72 Hansaria, supra n. 69, at 7. The drafters also referenced Articles 31 to 34 of the Japanese Constitution. These articles of the Japanese Constitution were drafted by the United States and enumerated defense rights such as right to counsel.
73 The preamble designates India as a "socialist . . . republic." Constitution of India, pmbl.; Mehta, supra n. 67, at 46 "The directive principles enunciated in India's constitution aim at the betterment of the individual as an integrated component of the society. Elimination of inequality of income opportunities and status and securing a just social order, is the philosophical foundation of Part IV, embodying the concept of the welfare state."
74 Mehta explains the interplay between the social, economic, and political principles enunciated in the Indian constitution: The Preamble of the Constitution together with the Fundamental Rights and Directive Principles constitute the Bhagwad Gita of Indian Sociological Jurisprudence. Its core principles make the people of India the ultimate sovereign, the country socialist, democratic and republican in character in order to secure to all its citizens justice—social, economic and political. Mehta, supra n. 67, at 41.
75 Constitution of India, Article, 36-51.
76 Ibid., Article 37.
However, the Indian Constitution is arguably somewhat paradoxical in its incorporation of Economic, Social and Cultural Rights but refusal to attach any enforceability to them, this inherent contradiction can be explained by India’s holistic understanding of its Constitution and the interdependent relationship between its “fundamental rights” and its “directive principles.” Indeed, while the Constitution distinguishes between Civil and Political Rights and Economic, Social and Cultural Rights, it also embodies a synthesis of the two. The structure and drafting history of the Indian Constitution eschews a strict dichotomy between Civil and Political Rights and Economic, Social and Cultural Rights, implying instead an inseparable relationship between the two that is often obscured and misinterpreted due to the difference in the modes of realization that the drafters had envisioned for them. Structurally, the Indian Supreme Court’s constitutional construction frequently refers to the equal importance of and relationship between the Preamble, Fundamental Rights, and Directive Principles. Additionally, the drafting history of the Constitution strongly suggests that the division into judicially and non-judicially enforceable sections was meant to be a temporary deference to India’s status as a newly independent state still suffering under the weight of colonialism:

The Non-enforceability clause only provides that the infant state shall not be immediately called upon to account for not fulfilling the new obligations laid down upon it. A state just awakened to freedom with its many pre-occupations might be crushed under the burden unless it was free to decide the order, the time, the place and the mode of fulfilling them.

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77 Mehta, supra n. 67, at 48

78 Commentators, such as Subhash C. Kashyap, have noted this essential relationship and stated that “the democratic socialists spelt out in the Preamble and Directive Principles of our Constitution is meant to provide the rich content in which the fulfillment of the Fundamental Rights has to be achieved.” ; Mehta, supra n. 67, at 48

79 Mehta, supra n. 67, at 49 (referencing Bandhua Mukti Morcha v. Union of India, A.I.R. 1984 S.C. 802.)
The temporary nature of the distinction and the interdependence between the two sections of the Constitution in turn lends constitutional backing to the more recent judicial dismantling of these barriers, discussed below.

i. The Right to Life and Food Security

Evidence of constitutional synthesis between Civil and Political Rights and Economic, Social and Cultural Rights in the Indian context is perhaps nowhere more apparent than in the Supreme Court's interpretation of and judicial activism with respect to Article 21, a fundamental principle that protects the right to life. Article 21 of the Indian Constitution has been interpreted by the Indian Supreme Court to mean the right to life with dignity. Most importantly, the Court has further interpreted the right to life with dignity to include the right to food, affirmatively incorporating the right to food—originally a directive principle—into Article 21 and thereby transforming it into a justifiable and enforceable fundamental right.

This act of judicial interpretation is particularly interesting, given that nothing in the plain text of Article 21 indicates that it should be read to include this or any other Economic, Social and Cultural Rights. While the drafters worded Article 21's title broadly—“Protection of Life and Personal Liberty”—the text—“No person shall be deprived of his life or personal liberty except according to procedure established by law”—seems focused on judicial safeguards such as protections against arbitrary arrest and detention. Article 21's location in the Constitution also implies that it was originally constructed as a procedural guarantee against the arbitrary deprivation of liberty. It is sandwiched between Articles 20, “Protection in respect of conviction for offenses,” and 22, “Protection against

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80 Supra n. 05 at 516,518 and see also supra n. 67, at 516,518
81 Ibid.; (“The right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition.”).
82 The plain text of Article 21 will be familiar to American readers, as it is modeled on the 5th and 14th amendments of the U.S. Constitution. Hansaria, supra n. 69, at 6.
arrest and detention in certain cases," whose titles and text leave little room for more expansive interpretations. However, unlike Articles 20 and 22, which are much more detailed, the drafters wrote Article 21 without any reference to specific criminal procedure.\(^3\) Article 21 has relatively broad language thus perhaps affords some judicial latitude when interpreting the right to life.

The drafting history of Article 21 also supports the idea that the drafters intended it as a protection for the rights of the accused. The plain text of Article 21 will be familiar to American readers, as it modeled on the 5th and 14th amendments of the U.S. Constitution.\(^4\) Over the two years or so that it took to develop the Indian Constitution, drafters presented various versions of Article 21 and debated the scope of judicial review that would be constitutionally granted to Supreme Court justices. Proponents of more modest judicial review carried the day.\(^5\) At no point did the protracted debate reference Economic, Social and Cultural Rights or other types of rights that should be made available under Article 21.\(^6\) The presence of prolonged debate regarding competing ideas for Article 21 and the absence of reference to broader notions of "life," together with the decision not to include language supporting broader judicial review, suggests that judicial interpretation has transformed Article 21 into

\(^3\) Hansaria, supra n. 69, at 10; "Article 22 is very intimately connected with Article 21. The first two clauses of that article contain very valuable safeguards relating to personal liberty of an individual." The drafting history of Articles 21 and 22, originally numbered Articles 15 and 15A, also indicates their close relationship: It was due to the intention to protect against arbitrary arrest and detention "that article 15A was introduced 'making . . . compensation for what was done then in passing Article 15.' In other words 'the substance of the law of due process' was being provided by the introduction of Article 15A." (Quoting Constituent Assembly Debates, Vol. IX, 1949, p.1497.

\(^4\) Id. at 6.

\(^5\) The drafters that favored more power in the judiciary advocated the inclusion of the phrase "in accordance with due process" so that judges could rule on whether the law was just and fair as opposed to simply applying the black letter of the law. This language was not included in the final text. Its exclusion indicates that a majority of the founders were against wide powers of judicial review, at least in this specific context. See id. at 7–10.

\(^6\) Supra n.69.
something very different from what was originally envisioned by the drafters.

As People’s Union for Civil Liberties demonstrates, the Indian Supreme Court has taken significant strides away from the original meaning of Article 21. However, the interpretation of Article 21 as including the right to food is not without a constitutional basis. The drafting history of the Constitution is supportive of the flexible, human rights oriented approach to constitutional interpretation embodied by the expansion of Article 21. While jurists of other Commonwealth jurisdictions might recoil at the idea of importing principles located in a section, entitled “Directive” and designated as non-justifiable into an Article located in a section denoted as “Fundamental” and judicially enforceable, Indian legal history not only tolerates but upholds this move.

ii. Human Rights Based Approach to Constitutional Interpretation

The Indian Supreme Court has occupied a key place in the procurement of the Constitution’s guarantees since the Constitution’s drafting. The Constituent Assembly originally described the Court as “the guardian of the social revolution” that they hoped to codify and further in the Constitution. As previously mentioned, the Constitution’s drafting history indicates that the non-enforceable nature of the Directive Principles was intended to be temporary and modifiable when the country became ready to enforce them. As early as 1970, the Supreme Court addressed the Court’s mandate to progressively interpret the Constitution to realize the social and economic justice envisioned at India’s independence:

The provisions of the Constitution are not erected as the barriers to progress. They provide a plan for orderly progress towards the social order contemplated by the preamble to the Constitution. . .

87 Austin, supra n. 67 at 169.
88 Supra n. 67 and accompanying text.
[Part III and Part IV] are complementary and supplementary to each other. . . The mandate of the Constitution is to build a welfare society in which justice social, economic and political shall inform all institutions of our national life. The hopes and aspirations aroused by the Constitution will be belied if the minimum needs of the lowest of our citizens are not met."

The Court’s ability to independently interpret when society has reached the point at which the Directive Principles should be applied derives from its position as the final arbiter of every aspect of the Constitution, including constitutional amendments. Recent decisions and scholarly writing by judges anchor this judicial activism in the human rights purposes and ideals of the Constitution. More specifically, the judiciary has taken up the struggles of “the poor, the weak, and the destitute” that “seek protection of the court against


"Academics studying the influence of judicial activism on human rights have pointed out: Let me make clear that the objective for which we are trying to use juristic activism is realization of social justice. Judges in India are not in an uncharted sea in the decision-making process. They have to justify their decision-making within the framework of constitutional values. This is nothing but another form of constitutionalism which is concerned with substantiation of social justice. I would call this appropriately “social activism”—activism which is directed towards achievement of social justice.;

J. Reddy, in Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India, AIR 1981 SC 298, 335,

"Justice Reddy provided a clear example of the role judicial activism has played in developing the relationship between Directive Principles and Fundamental Rights: Because Fundamental Rights are justiciable and Directive Principles are not, it was assumed, in the beginning, that Fundamental Rights held a superior position under the Constitution than the Directive Principles, and that the latter were only of secondary importance as compared with the Fundamental Rights. That way of thinking is of the past and has become obsolete. It is now universally recognised that the difference between the Fundamental Rights and Directive Principles lies in this that Fundamental Rights are primarily aimed at assuring political freedoms to the citizens by protecting them against excessive State action while the Directive Principles are aimed at securing social and economic freedom by appropriate State action. The Fundamental Rights are intended to foster the ideal of a political democracy and to prevent the establishment of authoritarian rule but they are of no value unless they can be enforced by resort to Courts. So they are made justiciable. . . It does not mean that Directive Principles are less important than Fundamental Rights or that they are not binding on the various organs of the State.
exploitation, injustice and tyranny." This constitutional anchor articulates boundaries for judicial activism and should serve to prevent the judiciary from rolling back human rights or acting to preserve the status quo.

The Indian judiciary's resort to the object and purpose of the Constitution as a whole and the need to review the Fundamental Rights in light of both the preamble and the Directive Principles might be termed the "basic structure principle." The basic structure principle is a method of constitutional interpretation that relies on the structural relationship between the Preamble, Fundamental Principles, and Directive Principles. The Supreme Court has utilized this principle in combination with the text of the Constitution, which denotes the Directive Principles as "fundamental." Referencing Article 37's imperative that the Directive Principles are "fundamental in the governance of the country and [that] it shall be the duty of the State to apply these principles in making laws," judges have reasoned that they must use the Directive Principles as interpretive lenses for understanding both the Constitution and the laws passed by the legislature.

91 Mehta, supra n. 67, at 71.
92 Bhagwati, supra n. 90, at 566.
93 Constitution of India.
94 Judge Reddy remarked in Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India, AIR 1981 SC 335 that:
95 Article 37 of the Constitution emphatically states that Directive Principles are nevertheless Fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. It follows that it becomes the duty of the Court to apply the Directive Principles in
Thus, the modern Supreme Court has delineated a complimentary relationship between the Fundamental Rights and Directive Principles, the result of which is to engage in a synergistic dialectic between the two. Further, the Supreme Court has stated that Article 21 in particular should be read together with the Directive Principles. This relationship renders the "non-enforceable" Directive Principles properly justifiable in a court of law and instructs the Court to interpret Fundamental Principles, such as Article 21, as including Directive Principles, such as the right to food.

iii. Constitutional Interpretation to Bypass Legislative Action

The human rights purposes of the Constitution afford the judiciary the power to modify Article 21 without having to wait for legislative action. The Supreme Court has held that its charge of judicial review gives it the power to nullify on substantive grounds an amendment to the Constitution if the amendment changes "the basic structure or framework of the Constitution," making it the only Court

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96 Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225, 2070, "Our decision must depend upon the postulate of our Constitution which aims at bringing about a synthesis between Fundamental Rights and the Directive Principles of State Policy, by giving to the former a pride of place and to the latter a place of permanence. Together, not individually, they form the core of the Constitution. Together, not individually, they constitute its true conscience."

97 R. Tehmton Andharyajina, Judicial Activism and Constitutional Democracy in India Bombay : N.M. Tripathi Private Ltd. ; Littleton, Colo. : Fred B. Rothman & Co., 1 (1992), "Four decades after the Constitution was brought into force, its most conspicuous feature has been the expansion of the Indian judiciary and its pre-eminence over the other two political branches of government viz., the legislature and executive."

in the world with the final say over the text and interpretation of the Constitution.  

The Court's human rights jurisprudence rests on its ability to review the various branches of government. Justification for such modifications derives from the role of the judiciary as a check on executive and legislative excess together with the role of the judiciary as the protectors of human rights. Indeed, according to Chief Justice Bhagwati, "the object of the Human Rights jurisprudence is to humanize State agencies and to make the State accountable to the use of power only for public good." The inability of the legislature to violate the Fundamental Principles when making law and Article

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99 Nick Robinson, Expanding Judiciaries: India and the Rise of the Good Governance Court, 8 Wash U. Global Stud. L. Rev. 1, 3 (2009);

"Nick Robinson states that the Indian Supreme Court has "come to sit as what amounts to a court of good governance over the rest of the government—some say seriously realigning India's constitutionally envisioned separation of powers." He describes how at one point the Supreme Court struck down the amendment to the Constitution enacted under Indira Gandhi's government in 1975 that would have removed judicial challenge to the Election law, thereby demonstrating its ability to have the final say on Constitutional amendments, particularly ones that limit the constitutional power and role of the Court." Id. at 31-32 (citing Indira Nehru Gandhi vs Shri Raj Narain & Anr., AIR. 1975 SC 2299, 2340).

100 Supra n.93 at 298 and 335; Reddy, J., concurring;

"The role of the Supreme Court in what some would call "law making" or "governing" should not, however, be overstated: It is unimaginable that any Court can compel a legislature to make a law. If the Court can compel Parliament to make laws then Parliamentary democracy would soon be reduced to an oligarchy of Judges. It is in this sense that the Constitution says that the Directive Principles shall not be enforceable by Courts."; Shish Mani Tripathi, The Human Face of the Supreme Court 241 (1993);

"Likewise, the breadth of executive functions inherently limits the capacity of the judiciary to oversee government action: The executive role of the court is, however, eyewash. For, no one should hope, as the court itself did not, that it would supervise the routine administration of the country. It simply cannot. What it has succeeded in achieving is to stimulate the conscience of the nation in general and of the government in particular and reminded them of their solemn obligations." Mool Chand Sharma, Justice P.N. Bhagwatil: Court, Constitution & Human Rights Univeraal Book Traders, 8 (1995)

102 Constitution of India, Article 13:

"Laws inconsistent with or in derogation of the fundamental rights.- (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void. (2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void. (3) In this article, unless the context otherwise requires,—(a) "law" includes
37’s command that the legislature must employ the Directive Principles when making law\(^\text{103}\) combines with the Supreme Court’s power of judicial review and ability to enforce the Fundamental Principles located\(^\text{104}\) in Article 32 and its original jurisdiction over disputes that arise between the federal government and a state/states or between two states. It is this striking power exercised for the realization of the human rights articulated in the Constitution, these being in turn interpreted in light of the existing social context, which makes the Indian judiciary uniquely equipped to implement human rights obligations, such as the right to food.

The development of Public Interest Litigation, the mechanism utilized to litigate People’s Union for Civil Liberties, further demonstrates that India’s judicial activism is anchored in the realization of human rights as articulated in India’s Constitution. In **S.P. Gupta and others v. Union of India and Others** (Judges’ Appointment and Transfer Case),\(^\text{105}\) Chief Justice Bhagwati addressed the vexing problem of how cases of government injury to the public interest, rather than injury by a private party, can reach the court by

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\(^{103}\) Constitution of India, Article 37:

> "The provisions contained in this Part shall not be enforced by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws."

\(^{104}\) Constitution of India, Article 226:

> (1) Remedies for enforcement of rights "The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed; (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this part; (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2); (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution; Constitution of India, Article 32," The Constitution grants India’s High Courts a parallel power of judicial review."

creating Public Interest Litigation. The Public Interest Litigation system uniquely addresses situations in which there is compelling evidence of legal injury caused to the public interest but no individual with proper standing to bring a claim.\textsuperscript{106}

Chief Justice Bhagwati undertook several innovative moves to create the Public Interest Litigation system. First, he removed the standing requirement present in private interest litigation, making it possible for any person to bring a case on behalf of others too impoverished or otherwise prevented by hardship from reaching the court.\textsuperscript{107} This move appears radical in light of the historical weight of standing requirements, but it provides a mechanism that is adequately congruent to its end goal of addressing violations that create the social harms that obstruct the most vulnerable classes' access to court. Second, he articulated a "new category of rights in favour of large sections of people," meaning Economic, Social and Cultural Rights for the most impoverished, that gives rise to corresponding duties of the State.\textsuperscript{108} This move created a judicial mandate to use the Directive Principle to review the actions of coordinate branches, thereby changing the Court's scope of review over other governmental branches. In order to perform the Court's new duties on behalf of Economic, Social and Cultural Rights, Chief Justice Bhagwati modified the Court's techniques of judicial review regarding administrative action and regulatory agencies by describing as imperative "active intervention of the State and other public authorities" in order to secure Economic, Social and Cultural Rights.

\textsuperscript{106} Shrish Mani Tripathi, \textit{supra} n. 100, at 61-65.
\textsuperscript{107} \textit{supra} n.105; the court held that,

"Explaining the grounds for bringing a case under the PIL system: Where a legal wrong . . . is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right . . . and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of public can maintain an application for an appropriate direction, order or writ in the High Court and, in case of breach of any fundamental right . . . in this Court under Article 32 seeking judicial redress for the legal wrong."

\textsuperscript{108} \textit{Id.} at 524.
and protect the most vulnerable classes. This brings a decision by even a single government official into the scope of judicial review if it has an effect on the public interest.

People's Union for Civil Liberties has further developed both Public Interest Litigation jurisprudence and constitutional interpretation of Article 21 as the right to life with dignity. Similar to the reasoning behind the Public Interest Litigation system, the Court has cited Article 21 as a mechanism for ensuring and protecting the rights of the most vulnerable classes in its fulfillment of its duty to protect the general social welfare. In the same year that Chief Justice Bhagwati created Public Interest Litigation, the Court expanded the meaning of the right to life under Article 21 to mean the right to live with dignity rather than simply the right not to have one's life taken. The Court articulated this right as including "necessaries . . . such as adequate nutrition." People's Union for Civil Liberties joins a line of Article 21 cases that have found the constitutional right to life with dignity to include, among other things, the right to proper

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109 Id. at 524, "Amongst these social and economic rights are freedom from indigency, ignorance and discrimination as well as the right to a healthy environment, to social security and to protection from financial, commercial, corporate or even governmental oppression."

110 In Vikram Deo Singh v. State of Bihar, AIR. 1988 SC 1782, "the Supreme Court explained the role of Article 21 in protecting the welfare of every Indian citizen: We live in an age when this Court has demonstrated, while interpreting Article 21 of the Constitution, that every person is entitled to a quality of life consistent with his human personality. The right to live with human dignity is the fundamental right of every Indian citizen. And so . . . the State recognizes the need for maintaining establishments for the care of those unfortunates, both women and children, who are the castaways of an imperfect social order and for whom, therefore, of necessity, provision must be made for their protection and welfare. Id. at 1783.

111 Francis Coralie Mullin v. Adm'r, (1981) 2 SCR 516, 517-18 (India). Supra n.10 at 516,517-518, "The Court expanded Article 21 to include a more comprehensive right to life as follows: The right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival . . . . The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings."

112 Ibid.
living conditions; the right to livelihood; and the right to health, all of which are closely related to the right to food.

India’s constitutional guarantee of a right to food is perhaps not unique amongst the world’s constitutions. According to the Food and Agricultural Organization of the United Nations, twenty-two national constitutions explicitly mention a right to food that applies to the entire national population, while several other constitutions provide for a right to food through a right to life with dignity or related social welfare rights. What is significant about the Indian example, however, is that the Supreme Court has taken these general legal obligations and given them teeth by specifically explicating the right in concrete policy terms and by establishing oversight mechanisms for the enforcement of this specific content. People’s Union for Civil Liberties takes a great leap forward in advancing the right to food by providing specific definitions of what the right to food entails, clear demarcations regarding who receives the food, the form in which it is received, and, very importantly for purposes of enforcement, which bodies must provide for the right. People’s Union for Civil Liberties thus sets India apart and makes it a leader amongst nations seeking to legally enforce the human right to food.

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113 People’s Union for Democratic Rights v. Union of India, AIR. 1982 SC 1473.
114 Olga Tellis v. Bombay Mun. Corp., AIR. 1986 SC180, 194, “Deprive a person of his right to livelihood and you shall have deprived him of his right to life.”
117 There is some indication that there is a global trend for the role of courts to shift toward the “good governance” role embodied by the Indian Supreme Court; Robinson, supra note 99, at 59-66. However, even amongst leading human rights courts of the world (e.g., South Africa’s Constitutional Courts), India’s cases remain the most prolific and far reaching.
iv. **Directives Principles of State Policy to Ensure Food Security**

The economic welfare approach has been incorporated in chapter IV as the Directives Principles; however aim at the establishment of a welfare state based on socialistic principles. These principles provides that the State shall strive to promote the welfare of the people by securing and protecting a social order in which justice, social, economic and political wisdom shall inform all the institutions of national life.\(^{118}\)

The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vacations.\(^{119}\) Burden lies upon the State to direct its policy towards securing that the citizens, men and women equally have the right to an adequate means of livelihood.\(^{120}\) It also provides that the State shall regard the raising of the level of nutrition and standard of living of its people and the improvement of public health as among its primary duties.\(^{121}\)

The framers of the Constitution were conscious of the fact that political democracy alone is not enough; hence, they were endeavoring to promote the concept of a welfare State\(^{122}\) by laying down these fundamental principles of social and economic order, which, fearing the wrath of the public, the legislations and the executive could not easily ignore. It is an ironical situation that apart from constitutional provision for food, hunger and starvation death are very common in


\(^{119}\) Constitutional of India, Article 38, Clause (2) [inserted by the Constitutional (44th Amendment) Act, 1978.]

\(^{120}\) Constitutional of India, Article 39.

\(^{121}\) *Ibid.*; Article 40.

\(^{122}\) Constitutional Assembly Debate, Vol. III, 1949, pp. 494-95,
the country. Access to food, being at the care of existence and an inalienable human right.

The citizen's right to be free from hunger enshrined in Article 21 is to be ensured by the fulfilment of the obligations of the State set out in Article 39(a) and 47. The reading of Article 21 together with Article 39(a) and 47, places the issue of food security in the connect perspective, thus making the Right to Food a guaranteed Fundamental Rights which is enforceable by virtue of the Constitutional remedy provided under Article 32 of the Constitution. The requirements of the Constitution preceded and are consonant with the obligations of the State under the International Covenant of the Economic, Social and Cultural Rights to which India is a party. That covenant, in Article 11, expressly recognizes the right of everyone to an adequate standard of living, including adequate food.123

The concept of Social Justice124 consists of diverse principles essential for the orderly growth and development of personality of every citizen. 'Social' justice is then an integral part of justice in the generic sense. Justice is the genus, of which social is one of its species. Social justice is a dynamic devise to mitigate the suffering of the poor, weak, dalits, tribals and deprived sections of the society and so elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex charge to relieve the poor etc., from handicaps, penury, toward off distress and to make their life livable, for greater good of the society at large. The aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation and constitutional goal. In a developing society like ours, where there is vast gap of inequality in

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123 Air India Statutory Corporation v. United Labour Union, AIR 1997 SC 645.
status and of opportunity, law is a catalyst, rubicon to the poor etc. to reach the ladder of Social justice.

The Constitution, therefore, mandates the State of accord justice of all members of the society in all facets of human activity. The concept of social justice enables equality to flavor and enliven the practical content like food security of life. Social justice and equality are complementary to each other so that both should maintain their vitality.

The Constitution directs the State to make provisions for securing just human conditions and for maternity relief. The State also try to secure by suitable legislation on economic organization or in any other way, to all workers, agricultural, industrial or otherwise, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities, and in particular, the State shall endeavour to promote cottage industries on an individual or co-operation basis in rural areas. This Article refers to a “living wage” and not “minimum wage”. The concept of living wage includes in addition to the bare necessities of life, such as food, shelter and clothing, provisions for equation of children and insurance etc.

Constitution also imposes duty upon the State to raise the level of nutrition and the standard of living of its people and the improvement of public health. In particular, the State should bring about prohibition of the consumption except for medical purpose of intoxicating drinks and of drugs, which are injurious to health. It is clear that the main objective in enacting the directive principle appear to have been to set standards of achievements before the legislature

\[126\] Constitution of India, Article 42.
\[127\] Ibid.; Article 43.
\[128\] Ibid.; Article, 47.
and the executive, the local and other authorities, by which their success and failure can be judged. It was also hoped that those failing to implement the directives might receive a rule awakening at the polls. It should, however, be noted that the directive principles do no impose any particular brand or pattern of economic or social order. They lay down the goals, which may be achieved through various means, which have to be devised from time to time.

Instead of becoming an obstacle, the judiciary has now taken itself the responsibility of implementing the Directive Principles. In its recent judgment, the courts have declared many directives as fundamental rights and have enforced them. For example, equal pay for equal work,\(^{129}\) protection of children from exploitation, Abolition of Child Labour in Hazardous Works,\(^{130}\) Free and compulsory education of children below the age of 14 years\(^{131}\) and Right to Work and medical assistance to workers.\(^{132}\)

v. Constitutional Provisions for Scheduled Caste and Scheduled Tribes

Apart from Constitutional provisions of economic interests of the weaker sections, starvation death and hunger are the common phenomena among Scheduled Castes and Scheduled Tribes population. Since the Green Revolution, the agriculture production has increased manifold. There is a bumper stock of food grain in the country; nevertheless, the starvation death is perpetual phenomena. The starvation deaths in a number of locations in the country like Baran in Rajasthan, Dhule and Thane in Maharashtra, Kalahandi and Keonjhar in Orissa are the most highlighted. But the majority of victims by the starvation are the tribal people. The victims in Guna district of Madhya Pradesh and Barar district of Rajasthan are

\(^{129}\) Randhir Singh vs. Union of India AIR, 1982 SC 879; Constitution of India, Article 39 (d).
\(^{130}\) Constitution of India, Article 41.
\(^{132}\) Constitution of India, Article 47.
Sahariya tribe, but most of the victims of this tribe are the children, who are working in illegal stone quarries.\textsuperscript{133}

According to the 1981 census, 90 percent of all sahariya in Madhya Pradesh are employed in agriculture, either as cultivators or labourers. Drought means large-scale unemployment to them and finally they work in stone quarries. Not too long ago, the hunting-gathering Sahariyas survived on minor forest produce and a kind of shifting agriculture. When forests started dwindling fast around the time India gained independence and in subsequent years, the Sahariyas started tilling lands of other people mostly Jats, Gujjars and Sikh farmers of the area. Untrue to the exploitation cruelties of the non-forest world, they were easily made to lapse into a life of bonded labour. Though freed after the passage of the Bonded Labour Act.

Right to life enshrined in Article 21 means something more than survival akin to animal existence, but the right to live with human dignity with minimum substance status of the tribals in the scheduled area. It would itself be an opportunity to the tribals to improve their social and economic status and a source of their economic endowment and empowerment and would give them dignity of person, social and economic status and an opportunity to improve their excellence.\textsuperscript{134}

The Constitution clearly provides right to food to the Scheduled Castes and Scheduled Tribes People, which reads, “The State shall promote with special care, the education and economic interests of the weaker sections of the people and, in particular, of the Scheduled Castes and Scheduled Tribes and to protect them from social injustice and all forms of exploitation”.\textsuperscript{135} Similarly, imposes a duty on the State to raise the level of nutrition and the standard of living of its people and the improvement of public health.\textsuperscript{136} However, these

\textsuperscript{133} Social Action, Vol. 54 July-September, 2004. p. 312.
\textsuperscript{134} Hyderabad Abrasives & Minerals Ltd v. State of A. P., AIR 1997 SC 3297.
\textsuperscript{135} Constitution of India, Article 46.
\textsuperscript{136} Supra n. 128
Directive Principles undoubtedly embody the main objectives of a socialist pattern of society.

Nevertheless, neither the experts on Constitution nor the legislators are bothered to take initiative for legislation on the provisions of above-mentioned provisions. Food Security is not only the question of survival, though it is the prime requirement. The Supreme Court ordered the government to ensure that food reaches the people in response to a Public Interest Litigation\textsuperscript{137} filed by the People Union for Civil Liberties on the ground that the right to life guaranteed by Article 21 of the Constitution includes the right to food which is being violated by the deliberate dismantling of the Public Distribution System.

However, it is a crime against the Indian citizen if there is ever one starvation death when there are 60 million tones of cereals in the warehouse of the Food Corporation of India and the State Governments. The Centre is prepared to sell cereals to exporters at the same subsidized prices, it changes to consumers below the poverty line but it not willing to aid States to those most in need.

Today, all elements of India's food security policy are being dismantled under the pressure of World Bank and World Trade Organization. Starvation is the inevitable result of policies promoting sudden withdrawal of the role of the state and reckless dependence or markets to bring food to the poor who have no purchasing power. Thus, famine and starvation have returned to India for first time since the Great Bengal Famine of 1942, which was created by British imperial free-trade policy. Amartya Sen,\textsuperscript{138} shows that it was not lack of food but the lack of entitlements and food rights which causes starvation deaths

\textsuperscript{137} Supra n. 11.
vi. Panchayat: the Most Powerful Constitutional Apparatus to Ensure Food Security

India deserves commendation for realizing the food requirement of its swelling population. The farm sector has ably responded to the food security issue. Today, India has achieved self-sufficiency in food grain production and is able to export the surplus. In spite of great strides in production of foodgrain, food insecurity and inequitable distribution of food continue to plague the country. The problem is not the production but impaired access to the food specifically by the most vulnerable groups.

India has witnessed green revolution and is reading for the second round of green revolution with newer form technologies and innovations in family systems. The farming community has demonstrated its coping capacity without letting down their performance despite a quite high frequency of crises in agriculture sector. Yet, many go hungry every day. Malnourishment among children keeps going high. What has gone wrong then? A close examination of persisting food security scenario underlines three major issues related to food Security-Availability, Affordability and Access. These are inter-related. If food is available, can it be afforded by the needy families? If affordable, can it be easily accessed? The most important question is that who is not getting food any why? Of course the poor who are either geographically away from the food distribution points or do not have enough money to afford it.

India ranks 66 among 88 countries according to Global Hunger Index 2008 released by International Food Policy Research Institute. The Index has been developed on three main criteria-calorie deficiency, Child malnutrition and child mortality. Over 200 million people in India have been reported to be unsure about accessing daily bread. The incidence of poverty amongst tribal communities persists
challenging. 139 It simply means that either system has not reached out them or it is not working properly.

The emerging food services underline the role of village _panchayat_ the most powerful constitutional apparatus of democracy at the grassroots level. They (Village Panchayat or Gram Sabha) can act efficiently to allow the needy to exercise right to food. The most important aspect is that the Gram Sabha draws powers from the Constitution. Its decisions are unchallenged. The food Security issue can be efficiently addressed by active and empowered Gram Sabha, which is expected to be in a leading role in implementation mechanisms of the National Food Security Act.

There are number of reason how and why Gram Sabha could bring about food Security in the needy households. The scrutiny of Below Poverty Line families by the Gram Sabha and review the Below Poverty Line list is the responsibility of Gram Sabha. The monitoring of functioning of fair price shops and making them accountable to the people are the two major tasks Panchayt can easily to. Besides, the need can be helped to exercise their rights to food. The malfunctioning of fair price shops has often been reported. The Gram Sabha can keep a strict vigil over the fair price shops. The Right to Information is another tool to bring about transparency in stocks. Although, the Government of India has prescribed a system to involve Gram Sabha and Gram Panchayat in food distribution system but educating the Gram Sabha about responsibility, right and duties need to be taken up on a war footing. Verification of ration cards by the Gram Sabha or Gram Panchayat is possible with basis trainings either by voluntary sector or directly through state sponsored training sessions.

After the implementation of 73rd Amendment provisions of the Constitution, the development initiative and government is the facilitator. To make the government as facilitator from the role of a provider, people have to take initiatives and accept new

responsibilities. Their participation in the development activities will bring accountability on the part of the government. People have to assess their requirement and chalk out schemes and programmes and government has to participate in their programmes by facilitating the people to carry out their programmes on their own, their affiants on their own. Therefore, the new system envisages a new task of building the capacity of the leader and the people.\footnote{Supra, n. 133 at 311.}

In the sixty-five years of governance after the Constitution came into being, the centralized planning has achieved tremendous results in microeconomics of this country and yet the rural realities have not been changed drastically towards achieving development. In order to provide basic facilities, to make use of the facilities to growth and to bring economic activities planning exercise has to be done at the micro level. Now this concept gained currency and planning exercise has to be initiated at different levels starting from Gram Panchayat.

It is imperative in decentralization of power that people should take more responsibilities and discharge the same effectively and efficiently to deliver the service with quality to the people. To perform the responsibilities, capacity of the people have to increased. Till date, people have developed an attitude that the government would provide everything and people have to receive the same. Now the role has been reversed. People have to manage their affairs on their own. Therefore, the new system envisages a new task of building the capacity of the leaders and the people. In a market driven economy for every act people require skill and efficiency. Another important aspect is that for right to food, a Village Planning Forum, which should be a body of members of the village Panchayat and representatives of the village, and the Village Planning Forum will be mechanism to plan and to bring about co-ordination in village programmes between the village Panchayat and the local communities.
In Madhya Pradesh 141 a project was launched with the help of Department for International Development United Kingdom is operated in 3000 remote villages in nine predominantly tribal districts—Dhar, Jhabua, Badwani, Aalirajpur, Sheopur, Mandla, Dindari, Annappur and Shahdol. The project has evolved a Gram Sabha model for sustainable development of the rural poor. The project is addressing livelihoods issues of tribal families through Gram Sabha model for sustainable development of the rural poor. The project is addressing livelihoods issues of tribal families through Gram Sabha, which takes collective decision of how money should go to the actual beneficiaries from Gram Kosh grant as loan. The targeted beneficiaries in Gram Sabha meeting tell the Gram Sabha how they should be helped. Thus, they have been given privileges to express their choice of livelihood activities. The project stands specific activities. The project stands as facilitator and gives technical advices and inputs on specific activities. The approach needs an active and sensitive Gram Sabha for good results.

Therefore, strengthening of Gram Sabha on rights, duties and entitlements is one of the major tasks of the projects. Similar approach has been applied to address food insecurity. Thanks to the Mahatma Gandhi National Rural Employment Guarantee Act, that has reduced the food deficient days and migration largely. The Gram Sabha meetings have prescribed a number of initiatives to resolve food Security issues. Grain Banks have come up in a substantial number. Village Emergency Funds and village Relief Funds have also been set up to meet financial requirement of the poor during crisis. No rate of interest is taken from the ultra poor. The villages have done their poverty mapping through a comprehensive well-being ranking exercise. Consequently, each village has a list of well-off, manageable, poor and ultra-poor families. The ranking is based on movable and immovable assets. Gram Sabha knows well the poor and the ultra-

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141 Supra n. 139 at 27.
poor families that face the food deficient days and therefore such families get priority in getting benefit under community sponsored livelihoods initiatives. The Below Poverty Line list does not secure the purpose many a time and the neediest families remain unlisted.  

_Gram Sabha_ or village _Panchayat_ must be informed about the food Security related issues and is actively involved in food distribution networking. Rural India may be surpassed. The participation of the rural poor in policymaking and strategic planning must be enlisted for the best results.

**vii. Democratic Control of the Food System: A Constitutional Mandate**

Food Security is among the basic economic and social right that were meant to lay the foundation for particularly democracy in India. This connection, however, has been largely ignored in public policy since independence. Endemic hunger has been passively tolerated, and is barely noticed in public debates and democratic politics. This neglect of social issues in general, and of chronic hunger in particular, is often attributed to "lack of political will". Since in this light, the deafening silence surrounding hunger and nutrition issues in India is an invitation to reflect on the nature and limitations of Indian democracy.

Indian democracy has one minor flaw, namely that most people are unable to participate is it due to economic insecurity, lack of education, social discrimination and other forms of disempowerment. In short, Indian democracy is trapped is a vicious circle of exclusion and elitism. Because underprivileged sections of the population are excluded from active participation in democratic politics, their aspirations and priorities are not reflected in public policy. The root of the problem was indentified quite early by Dr. Ambedkar in the context of his argument for linking political democracy with economic and social democracy. “On the 26th January 1950”, he said, “We are

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142 Id. At 23.
going to enter into a light of contradictions. In polities we will have equality and in social and economic life we will have inequality”. The contradiction is still with us today, and in some respects at least, the problem is even intensifying at this time of growing inequality and elitism. India is in some danger of becoming a “business driven society”, to use Noam Chomsky’s telling characterization of US democracy. It is in this context that there is an urgent need to revive the concern with economic and social rights expressed in the Directive Principles of the Constitution, including the right to food. Indeed, as mentioned earlier, the main object of the Directive Principles was precisely to lay the foundation of “economic and social democracy”.

In a democracy like India, the primary responsibility associated with food security is surely with the state, because the state commands the resources required to protect everyone from hunger, and because the state is generally responsible for safeguarding constitutional rights. However, the right to food is not the responsibility of the state alone. To illustrate, suppose that researcher come across someone who is dying of starvation on the street. If researcher able to do something about it and if researcher recognize that, every citizen has a right to be free from hunger, it would clearly not be right for researcher to wash his hands of the situation and say that it is the responsibility of the State. The fact that the state bears the primary responsibility for letting this happen does not absolve researcher from his duty of intervening, if researcher in a position to

144 See Noam Chomsky, World Order, Old & New. There are many interesting similarities between Ambedkar and Chomsky’s views on democracy, ever though Ambedkar was rather less critical of state power. It is perhaps not an accident that both were strongly influenced by Jhon Dewey, an outspoken critic of the concentration of power who viewed policies as “the shadow cast on society by big business” (quoted in Chomsky, 1998, p. 37).
145 Whether the Directive Principles went for enough in that respect is another matter. Ambedkar’s own blueprint for a "Socialist Constitution", sketched in an early memorandum submitted to the Constituent Assembly (Amberkar, 1948), included more sweeping change in economic institutions, especially property rights.
do so. In other words, in some circumstances at least, the responsibility for protecting the right to food is a shared responsibility, involving not only the State but also other institutions or individuals.

To take another example, suppose that a girl is undernourished because she does not get a fair share of food within the family. Clearly, her right would be violated. However, who is responsible? At some level, State responsibility would be involved, since the State has an overarching duty to eradicate social discrimination. But surely, the girls’ parent would also bear substantial part of responsibility for this situation. Hence again there is a difficulty in appointing responsibility for protecting the right to Food.

Democratic control of the food system is the ultimate test of democracy. Rapid changes in policies and legislation linked to trade liberalization have threatened food security. People's food security needs to be built both locally and nationally. Land, water and Biodiversity (including seeds and livestock), which are the vital resources that make food security possible, should stay under the democratic control of peasants and farmers. Changes in land reform legislation and the removal of land ceiling laws, under trade liberalization and structure adjustment programmes, are creating a free markets in land and will have the inevitable consequences of alienating land on a large scale from millions of small and marginal peasants.

Security of land is a central tenet of democracy in an agricultural society, where the majority of the people derive their livelihood from the land. There is an urgent need that rights to natural resources should be decentralized and vested the local bodies such as Panchayats, cooperatives and local community organizations. Panchayat bodies should be legally empowered to have jurisdiction over all functions listed in the 11th scheduled of the Constitution of India, in order to protect peoples' right to: food, land, water, biodiversity, livelihood and employment.
The right to food is one of the basic economic and social rights that are essential to achieve "economic democracy", without which political democracy is at best incomplete. Indeed, there is an obvious sense in which mass hunger is fundamentally incompatible with democracy in any meaningful sense of the term. Under nutrition levels in India are among the highest in the world and the improvement of nutrition indicators over time is very slow. There is also some evidence of increasing disparities in nutritional achievements between rural and urban areas as well as between boys and girls in the nineties. Nutrition situation in India is a sort of "silent emergency"; little attention is paid to it in public debates and democratic politics. This illustrates a more general feature of India democracy its tremendous lack of responsiveness to the needs and aspirations of the underprivileged. Against this background, economic and social rights have a crucial role to play as built-in safe guards against the elitist biases of public policy.

The food security is a somewhat complex right that does not readily translate into well-defined entitlements and responsibilities. The scope for enforcing it through the courts can be significantly enlarged, but serious difficulties are involved in making it fully justifiable. Nevertheless, the right to food can bring new interventions within the realm of possibility in at least three different ways; through legal actions, through democratic practice, and through public perceptions.

If the food security is to be achieved, it needs to be linked with other economic and social rights, such as the right to education, the right to work, the right to information and the right to health. These economic & social rights complement and reinforce each other. Taken in isolation, each of them has its limitations, and may not even be realizable within the present structure of property rights. Taken together, however, they hold the promise of radical change in public priorities and democratic politics. This is why it is so important to
revive the Directive Principles of the constitution as well as the visionary conception of democracy that informs them.

IV. Legal Framework for Food Security in India

Recent years have witnessed an increase in interest in the adoption of legal framework on the food security. Such laws are often known as food security laws rather than right to food laws but the effect is similar, as long as the right to food is clearly spelled out. Existing legal framework tends to define the food security provisions and establish institutional arrangements for food security, frequently with the participation of civil society. However, the treatment of obligations and remedies is not always very thorough, nor is it clear that they add to the justifiability of food security.

Another new development is sectoral legislation\textsuperscript{146} that gives a fact to the right to food in different ways. For instance the Brazilian law on school feeding\textsuperscript{147} recognizing a right to school feeding and also mandates that at least 30 per cent of the programme funding be spent on procurement from family farms. Ten countries have already adopted these laws or decrees; Argentina\textsuperscript{148}, Bolivia\textsuperscript{149}, Brazil\textsuperscript{150}, Ecuador\textsuperscript{151}, Guatemala\textsuperscript{152}, Indonesia\textsuperscript{153}, Nicaragua\textsuperscript{154}, Peru\textsuperscript{155}, El

\begin{itemize}
  \item\textsuperscript{146} Retrieved from http://hdr.undp.org/sites/default/files/reports/266/hdr_05_complete.pdf >on 23/10/2013.
  \item\textsuperscript{150} Law No. 11346, 2006. Establishing the National Food and Nutritional Security System (SISAN). Decree No. 6273, establishing the Inter ministerial Chamber for Food and Nutritional Security, 2007.
  \item\textsuperscript{152} Decree 63 of 16th October 2009 which establishing the National Food and Nutrition Security Council (CONASAN).
\end{itemize}
Salvador\textsuperscript{156} and Venezuela.\textsuperscript{157} Draft right to food, food security, nutrition security or food sovereignty law have been developed in additional countries; Honduras, India, Malawi, Mexico, Mozambique, Paraguay, South Africa, Tanzania and Uganda. There are new draft to strengthen, update or replace existing legislation in El Salvador, Nicaragua, and Peru.

In India, these legislations have an impact on a wide section of the population with diverse needs, and therefore different interventions are required. For instance, for infants, food security requires focusing on breast feeding, maternal health, safe drinking water, etc; in the case of vulnerable groups such as the aged, disabled and widows, pensioners are needed along with the Public Distribution System, whereas for the urban destitute, community kitchens will be required to compliment the Public Distribution System. At the very least, the Food Security Act would have to build on four major types of interventions: nutrition schemes for children, the Public Distribution System, social assistance for vulnerable groups (e.g., pensions, \textit{Aantoydaya Anna Yojana}) and other interventions. These should cover not only rural areas but also urban areas, or at least urban slums. In rural areas, these interventions are best seen as complimentary to Mahatma Gandhi National Rural Employment Guarantee Act.


\textsuperscript{156} Decree No. 118-2009 PCM, establishing the multi-sectoral commission on food security, 2002; decree No. 139/02/PCM. Confirming the Technical Committee of the Multi-sectoral Commission on Food Security, 2002.

There are several reasons for children to have the first claim under these legislations. Research on nutrition has unambiguously demonstrated that it is in the 0-3 age group that nutritional interventions are most required to ensure that subsequent growth of the child is adequate. In terms of the new law, this would imply strengthening the Integrated Child Development Services, especially the services provided for children in the 0-3 age group. “Infant and young child feeding” services may need to be included under the Integrated Child Development Services. These services would include breast feeding, counseling and support. Maternity entitlements (including income support for childbirth) are important to address the abysmal level of under nutrition in the country.

Given the vulnerabilities faced by very large section of the rural (and to a lesser extent, urban) poor, the Public Distribution System place and important role in the realization of food security. Universal Public Distribution System should form the basis of the food security legislation, with “expanded” entitlements for those who are poor and vulnerable. Insofar as the right to food is about nourishment, the Public Distribution System should also provide access to subsidized pulses and oil to at least those with expanded entitlement. A Universal Public Distribution System supplying cereals, pulses and oil is necessary because in spite of improvements in income, frequent fluctuations in earning continue to drive households back into poverty. Moreover, improvements in nutrition indicators have been


159 Though Children aged 0-3 years are covered by the ICDS, the current interventions are not adequate and often not implemented. It is not easy for such young children to come daily to the anganwadi, nor is it easy to organize effective programmes based on home visits or take-home rations. Retrieved from http://nipccd.nic.in/reports/icdsvol3.pdf on 20/11/2013.

160 The Supreme Court order whereby Rs. 2/child/day is to be spent for supplementary nutrition for children aged 0-6 years should be interpreted to cover children in the age group of 0-6 months, using this is fund breast feeding, counseling and support. Retrieved from http://sa.indiaenvironmentportal.org.in/files/Right%20to%20Food%20Act.pdf on 20/11/2013.
altogether unsatisfactory at least partly because the Indian diet remains cereals dominated.

Special attention needs to be given to the food-insecure in urban areas. This would require adequate coverage of urban households under the Public Distribution System. The legislation should have provisions for community kitchens for those who may not be able to access Public Distribution System entitlements (e.g., migrants without ration cards, homeless, and other destitute)\(^{161}\). Legal framework would have to include other interventions such as provisions for aged and disabled and for widow. These vulnerable groups have little recourse to other recourse of cash. Pension schemes for such groups are already in place. Available evidence suggests that these (relatively small) cash transfer serve as a lifetime for many of its beneficiaries, allow them to take care their special needs (e.g., essential, health services). Framework law would also need to include provisions that would come into effect when faced with emergencies and disasters (such as floods, earthquake, riots, etc.). For this community kitchen for immediate relief can be combined with medium term measures.

The current legislative framework for implementations of the human right to food is implicit rather than explicit. There are piecemeal schemes and assistance programmes in Indian implementing this human right. In India, many Acts relating to the food security are the Food Entitlements Act, 2009; the Food Safety and Standard Act, 2006; the Minimum Wages Act, 1948; the Employees Compensation Act, 1923; the Prevention of Food Adulteration Act, 1954; The National Human Right Commission and Human Right Act, 1993; the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989; the Maternity Benefit Act, 1961; the Equal Remuneration Act, 1976; the Control Labour Abolition and Regulation Act 1970; the Bonded Labour System Abolition Act 1976;


i. Role of Central-State Governments in providing Food Security

The researcher would make an earnest efforts to take an integrated and unified view of the food economy of the country. While the food policy is laid down by the Central Government to regulates the entire mechanism of procurement operated through the system of control orders. However, the role of the State Governments to enforce those orders is crucial. The procurement effort of the Food Corporation of India is supplemented largely by the state agencies, including the cooperative institutions. Largely the state agencies produce and hold the food grains on behalf of the Food Corporation of India for which they are paid necessary charges. There is, thus, a very intimate collaboration between the central agencies and the state agencies so far as the procurement and strange of food grain are concerned. They have to plan procurement operation jointly.

As recommended by the Central Government to the Reserve Bank, credit for procurement food grain for the public distribution system is made available at a concessional rate of interest. The element of subsidy from the central exchequer in the implementation of this policy is a vital factor integrating the centre and the state in the management of the economy. Purchase, storage maintenance and movement of stock involve very substantial costs, which the state find difficult to meet from their resources. So far these subsidies are being met, almost totally by the Central Government. Control of the Central
Government in the management of food economy, therefore, is very essential.\textsuperscript{162}

Constitution of India empower the Central Government to control trade and commerce, distribution of foodstuffs and enforcing price control.\textsuperscript{163} An elaborate set of control orders have been promulgated both by the Central & State Government under the provisions of Act,\textsuperscript{164} for the regulation of trade and commerce in and distribution of food grains and for price control. Moreover, on behalf of the mentioned constitutional provisions, the central and State Governments have enacted and enforced different control orders and food laws for better distribution of available food grains.

The main objectives of these control order and food laws have been:

1. To check the undesirable activities of the traders, like hoarding and smuggling of food grains;
2. To check the spiraling of prices of food grains, primarily of rice and wheat; and
3. To assure the supplies of available food grains to the consumers, particularly the low-income vulnerable sections of the community at fair prices.

Some important example of control orders and food law provisions of Central and State Governments are as follows:

1. In 1964, Orissa State Government passed the food grains dealers licensing order. The aim of this order was to impose restrictions on the activities of dealers of food grains in the state;

\textsuperscript{162} Retrieved from http://finmin.nic.in/reports/MYR201213English.pdf>on 20/11/2013
\textsuperscript{163} 33rd & 34th entries of schedule [Concurrent List] of Constitution of India.
\textsuperscript{164} Essential Commodities Act, 1955.
2. In 1965, Orissa State Government passed an order to regulate the activities of the rice and paddy dealers;

3. In 1968, Orissa Government passed an order and the main provisions of this order was that a maximum limit for serving foodstuffs at ordinary parties is fixed at 25 persons including the host;

4. In 1973, Orissa Government passed an order to impose restrictions on the catering establishment, free feeding centers, clubs, canteens, boarding house or any other place of refreshment open to public. In the same year Orissa Government passed one more order related to the better distribution of wheat products at fair prices by Orissa Government in 1973, the main purpose of the order passed his to maintain availability of food grains at fair prices to the consumers.

5. In 1966, the Central Government passed an order, permitted the Food Corporation of India to move food grains to any part of India, in view of their better distribution in country. Again, in 1973, the Central Government passed an order and the important provisions of this order are:

a). No person is allowed to export or import wheat or wheat products expect with the permission of the Central Government from one zone to another. However, this provision is not applicable in some cases.

165 The Orissa Rice and Paddy Control Order, 1965.
168 Ibid.
169 The Orissa Declaration of Stocks and Prices of commodities order 1973.(Exemption to Food Corporation of India) order, 1966.
170 Central Government's The Food Grains Movement Restrictions (Exemption to Food Corporation of India) order, 1966.
171 The Inter-Zonal wheat and wheat products [Movement Control] order 1073.
b). No person is allowed to move the wheat or wheat products to any place in the zonal border area from any place outside that area and from any place of the zonal borderer to any other place in the zone except under and in accordance of a permit issued by the authorities of the Central Government. However, this order has not been affectively enforced during the period of zonal system. As a result, smuggling from the surplus wheat zones to the deficit zones continued and this has been more to in the border area of the wheat zone.

In addition to the state control orders and Food Laws most of the State Governments have also implemented central control orders for equitable distribution of the available supplies of food grains.

However, except few laws, all other control orders remained in force for a short period; they have either been replaced or modified. This created not only confusion in the administrative machinery of the State Government but also generated grave doubts in the ability of the government in running the public distribution.

ii. The Right to Livelihood and the Mahatma Gandhi National Rural Employment Guarantee Act, 2005

As in the case of the right to education, the Supreme Court also elucidated the right to livelihood long before the passage of the historical Mahatma Gandhi National Rural Employment Guarantee Act. The Supreme Court had recognised the right to livelihood as being an indispensable part of the right to life. In 1985, in Olga Tellis v. Bombay Municipal Corporation, 172 for example, the court held that: "The principles contained in Articles 39(a) and 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights. If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer

pedantry to exclude the right to livelihood from the content of the right to life [emphasis added].

Again, researchers find an example wherein the courts animated a traditional civil and political right (the right to life) with the Directive Principles of State Policy from the Constitution. The right to work and the right to livelihood, which had hitherto been a part of the Directive Principles of State Policy in India, were brought within the ambit of Article 21 and the enforceable right to life.

The Mahatma Gandhi National Rural Employment Guarantee Act was enacted in 2005 as a part of the United Progressive Alliance’s Common Minimum Programme. The Act aims to “to provide for the enhancement of livelihood security of the households in rural areas of the country”. As is well known, the Act guarantees every adult member of a household work for 100 days at the statutory minimum wage in rural areas in India. Inclusionary growth is a big driver of the Mahatma Gandhi National Rural Employment Guarantee Act programme. As of 2012, the Government claims that it has provided rural households a total of 3.88 crore days of work. Among the total beneficiaries of the programme, 53.62 per cent are women, 22.67 per cent are members of the Scheduled Castes, and 15.46 per cent are members of the Schedule Tribes. In many ways, the Mahatma Gandhi National Rural Employment Guarantee Act is a stupendous achievement and is a testament to political will. It is also important to note that its implementation is better wherever there is a combination of political will supported with efficient management structures, especially computerisation coupled with the pressures built from below in the form right holders.

However, there are many problems associated with the Mahatma Gandhi National Rural Employment Guarantee Act, some of which have even been identified by the Government in a recent

circular prepared on this subject.\textsuperscript{175} These problems include: the need to record the demand for work (currently the demand for work is assumed to be the same as the amount of work being supplied by the Government through the Mahatma Gandhi National Rural Employment Guarantee Act, as a result of which no individual has yet been paid an unemployment benefit, one of the key promises of this Act); migration because of the lack of availability of work in a particular region; delays in the payment of wages; and the need to revise the schedule of minimum wages in each state. The other problems associated with the Mahatma Gandhi National Rural Employment Guarantee Act (which have also been acknowledged by the Government) are similar to what the Right To Education faces. Grievance redressal mechanisms need to be created because of the lack of accountability and prevalence of corruption. Exclusion also remains a problem: only 19 per cent of the 8,50,000 differently-abled people registered for the scheme have got work under Mahatma Gandhi National Rural Employment Guarantee Act.\textsuperscript{176} Similarly, reports suggest that in many villages, job cards are monopolised by the upper castes.\textsuperscript{177} The assets created by the Mahatma Gandhi National Rural Employment Guarantee Act also need to be more relevant to the lives of the communities where they are being created. Local institutions need to become stakeholders in a participatory planning process for public works.

Thus, Mahatma Gandhi National Rural Employment Guarantee Act fosters condition for inclusive growth ranging from basic wage security and recharging rural economy to a transformative empowerment process of democracy. Mahatma Gandhi National Rural Employment Guarantee Act was launched on February 2, 2006 from Anatpur in Andhra Pradesh and initially covered 200 poorest districts.

\textsuperscript{175} Government of India (Gol). 2011. 'Reforms in MNREGA Implementation', Ministry of Rural Development, Retrieved from http://nrega.nic.in/circular/Reforms_in_MGNREGA01092011.pdf, > on 30/1/2012/7:10 P.M.

\textsuperscript{176} Retrieved from http://www.livemint.com/Politics/GQCI7OUteQkFutGbdTV9M/Plan-panel-highlights-problems-in-MNREGA.html > on 6/6/2012/7:10 P.M.

\textsuperscript{177} Ibid.
of the country. The Act was implemented in phased manner-130 districts were added in 2007-08 with its spread over 625 districts across the country, the flagship programme of the United Progressive Alliance government has the potential to increase the purchasing power of rural poor, reduce distress migration and to create useful assets in rural India. In addition, it can foster social and gender equality as 23 per cent workers under the scheme as Scheduled caste, 17 per cent Scheduled Tribe and 50 per cent women. In 2010-11, 41 million household were employed on Mahatma Gandhi National Rural Employment Guarantee Act wordlist.

The Mahatma Gandhi National Rural Employment Guarantee Act\textsuperscript{178} was notified on September 7, 2005. The objective of the Act is to enhance livelihood security in rural areas by providing at least 100 days of guarantee wage employment in a financial year to every household whose adult members volunteer to do unskilled manual work.

Every person working under the scheme shall be entitled to wages at the minimum wage rate fixed by the State Government (of the competent authority concerned) for agricultural laborers under the Minimum Wages Act, 1948 unless the wage have been notified by the Central Government.\textsuperscript{179} Equal wages shall be paid to both men and women workers, and the provisions of the Equal Remuneration Act, 1976 shall be complied with. The State Government may provide for a portion of the wages to be paid to the laborers on a daily basis during the period of employment.

If a worker who has applied for work under Mahatma Gandhi National Rural Employment Guarantee Act is not provided employment within 15 days from the date on which work is requested,

\textsuperscript{178} Initially it was NREGA but on 2\textsuperscript{nd} October 2009 on the birth anniversary of Mahatma Gandhi NREGA was named after father of the nation Mahatma Gandhi and it became MNREGA in a mover which marks Government's tribute to the father of the nation and also expanded to stall rivals from appropriating its pro-poor flagship scheme.

\textsuperscript{179} Mahatma Gandhi National Rural Employment Guarantee Act 2005, Section 6(1).
as unemployment allowance shall be payable by the State Government at the rate prescribed in the Act.\textsuperscript{180} This entitlement comes into effect as soon as the Act is notified in a particular District or area. The Programme officer shall be responsible for the prompt payment of employment allowances throughout the Block. The Mahatma Gandhi National Rural Employment Guarantee Act has led to the largest employment programme in human history and is unlike any other in its scale, architecture and thrust. It is bottom-up, people centered, and demand-driven, self-selecting, right-based design to new and unprecedented. Mahatma Gandhi National Rural Employment Guarantee Act enjoins the state to provide a guarantee of employment for 100 days every year to each rural household that demands work. It also demands of the people that they participate actively in the design and implementation of the programme.

The works undertaken through Mahatma Gandhi National Rural Employment Guarantee Act give priority to activities related to water harvesting, ground water recharge drought-proofing, as also the problem of floods. Its focus on eco-restoration and sustainable livelihood implies that its success should spur private investment by farmers on their lands. This would lead over time to an increase in land productivity generating a natural demand for labour, which would automatically reduce dependence on Mahatma Gandhi National Rural Employment Guarantee Act as a source of work. If it can strengthen \textit{Panchayati Raj} as it is mean to, Mahatma Gandhi National Rural Employment Guarantee Act has profound significance for deepening democracy and governance reform, especially in the remote hinterlands lands of India, where the democratic fabric has come under strain in recent years.

As per the notification of Ministry of Rural Development dated 23\textsuperscript{rd} March 2012 the Central Government in exercise of the powers

\textsuperscript{180} \textit{Ibid.}, Section 7(1)
specified in the Act\textsuperscript{181} notify a new wage rates payable to unskilled manual workers under Mahatma Gandhi National Rural Employment Guarantee Act. The new wages payable varies from state to state and minimum is in Bihar and Jharkhand (Rs. 122 per day) and maximum in Haryana (Rs. 191 per day).

Mahatma Gandhi National Rural Employment Guarantee Act has guaranteed over 450 crore-person days of employment, a major share going to women and scheduled castes and Scheduled Tribe families. Over Rs 35,000 crore has been paid as wages. The priorities of the work to be undertaken include watershed management and water conservation, drought proofing, flood protection, land development, minor irrigation and rural connectivity. Such work is important to strengthen the ecological foundations of sustainable agriculture. The Mahatma Gandhi National Rural Employment Guarantee Act is probably the world’s largest ecological security programme.\textsuperscript{182}

A major weakness has been the absence of effective technical guidance and support from agriculture and rural universities and institutes. The Union Ministry and Departments has taken steps to achieve convergence of brain and brown, by enlisting the support of Ministries and Departments. Such convergence of expertise for sustainable development will help convergence for expertise for sustainable development will help to enhance form productivity without causing ecological harm.

What is now needed is to convergence for human development at Mahatma Gandhi National Rural Employment Guarantee Act sites. Indian occupies the 132\textsuperscript{nd} position among 179 Countries in the United Nation Development Programme’s 2009 and Human Development Index. This position may worsen. Mahatma Gandhi National Rural

\textsuperscript{181} Supra n. 179.
\textsuperscript{182} State of India’s Livelihoods :The 4 P Report, 28 Hauz Khas Villages, New Delhi 110016Edited by:Dr.SankarDatta,VipinSharma,2008;Retrievedfromhttp://www.accessdev.org/downloads/the_soil_report_2008.pdf>on 22/11/2013
Employment Guarantee Act workers represent some of the most economically and socially underprivileged sections. Mostly, these workers are under-nourished, with poor opportunities for health care. Hence, there is need to bring about a convergence of childcare, nutrition, health (Rural Health Mission) and education programme at Mahatma Gandhi National Rural Employment Guarantee Act sites. Education can be imparted in the evening, using the joyful learning techniques available in computer-aided literacy programmes. Such a convergence is sustainable development along with convergence in human development will be credible.¹⁸³

There is also a need to raise the self-esteem of Mahatma Gandhi National Rural Employment Guarantee Act worker, making them feel proud of the fact that they are engaged in checking eco-destruction. Due recognition could be given to the Mahatma Gandhi National Rural Employment Guarantee Act groups that have done outstanding work in water harvesting, watershed development and soil healthcare with “Environment Saviour Awards.” This will help spread awareness of the critical role Mahatma Gandhi National Rural Employment Guarantee Act workers play. To begin with, there could be 10 awards covering district agro climatic zones, each worth Rs 10 lakh. Since these will be group awards, the money could be divided among the workers, depending on how long they have worked. The Mahatma Gandhi National Rural Employment Guarantee Act will then help to improve both food security and human development index.¹⁸⁴

There are uncommon opportunities to erase India’s image as the land of the poor, hungry and illiterate. To, utilize them; an important requirement is a change in the mindset from patronage to partnership and from undervaluing the human resource to considering our youthful population as or greatest assets.

¹⁸⁴ Ibid.
The Right to Food campaign India was active in the promotion of this Act (Mahatma Gandhi National Rural Employment Guarantee Act), and sees it as one of its major victories.\textsuperscript{185} It was also one of the rare examples of both State and civil society working closely together on pro-poor legislation with intense public involvement at every stage of its development. Implementation of Mahatma Gandhi National Rural Employment Guarantee Act has me with some difficulties, in particular lack of administrative and technical manpower to ensure that its provisions are followed, especially the transparency measures. This has made verification of delivery to right holders difficult. Government audit have also found resources instances of re-routing, misutilization and delays in transfer of funds.\textsuperscript{186}

The enactment of Mahatma Gandhi National Rural Employment Guarantee Act highlight the strong relationship between the right to food and the right to work. It is also ground breaking from a human rights legal perspective, as it brought the safety net measures of public works squarely within the sphere of the rule of law and legal empowerment of the poor. Therefore, Mahatma Gandhi National Rural Employment Guarantee Act is one of India’s achievements and can be considered a milestone in the implementation of the right to food in the country.

iii. Food Entitlements Act, 2009

An Act to ensure dignified economic and social access to adequate food and other requirements of good nutrition for all residents of the country, at all times, in pursuance of their fundamental right to be free from hunger, malnutrition and other deprivations associated with the lack of food. The Right to Food envisages a food security and sovereignty system in accordance with

\textsuperscript{185} Retrieved from \url{http://www.righttofoodindia.org/rtoworklega_intro.html} on 22/11/2012.

the Constitution 187 where the ownership and control of the material resources of the community are so distributed as best to sub serve the common good and everyone has a right to an adequate mean of livelihood. The Constitution of India guarantees a fundamental right to life and personal liberty and includes the right to food188 and whereas, another Article189 of the Constitution of India obliges the State to direct its policy towards ensuring that the citizens, men and women, equally, have the right to an adequate means of livelihood. Recalling that Constitution of India mandates190 that the state shall regard the raising of the level of nutrition and the standard of living of its people as among its primary duties. Universal Declaration of Human Rights (1948)191 recognizes the right of everyone to adequate food. International Covenant on Economic, Social and Cultural Rights (1966)192 and the Committee on Economic, Social and Cultural Rights193 further elaborate the responsibilities of all State Parties to recognize the right of everyone to be free from hunger.

Further responsibilities in this regard, particularly with reference to children and women, derive from the Convention of the Rights of the Child194 and the Convention on the Elimination of All Forms of Discrimination against Women.195 In 1996, at the World Food Summit, Government of India affirmed “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” and government is now of the opinion that it is necessary to consolidate, strengthen and expand the present system of entitlements be it enacted by Parliament.

187 Constitution of India, Article 39.
188 Ibid.; Article 21.
189 Ibid.; Article 39 (a).
190 Ibid.; Article 47.
191 Universal Declaration of Human Rights (1948), Article 25.
193 Committee on Economic, Social and Cultural Rights, General Comment 12.
194 Convention of the Rights of the Child, Articles 27.1 and 27.3.
The Supreme Court of India in *Chameli Singh v. State of UP*\(^{196}\) has held that the fundamental right to life under Article 21 of the Constitution necessarily incorporates the right to food. In *Peoples Union for Civil Liberties v. Union of India and others*\(^ {197}\), the Supreme Court has further held that the state's obligations in this regard include ensuring "that the poor and the destitute and the weaker sections of the society do not suffer from hunger and starvation". It is therefore imperative to create and enforce legal entitlements and obligations to ensure that every person is assured physical, economic and social access to adequate food with dignity as is necessary to lead an active and healthy life. It is also imperative that no man, woman or child sleeps hungry or is malnourished.

All persons have a fundamental right to be free from hunger and to have access to safe and adequate food.\(^ {198}\) It is the duty of the state to encourage food production through sustainable and equitable means and ensure adequate food availability at affordable prices in all locations at all times.\(^ {199}\) It shall also be the duty of the state to support and expand local and indigenous food production in the country and prevent the forcible diversion and acquisition of agricultural lands, water and forests for non-agricultural purposes.\(^ {200}\)

### iv. Food Safety and Standard Act, 2006

The Food Safety and Standard Act, 2006 was passed by both Lok Sabha and Rajya Sabha and received assent of the President on 23\(^{rd}\) August, 2006. The Act is a comprehensive and modern piece of legislation and a step towards consolidation of different food laws. It aims at elimination of multi-level and multi-development control. The Act repeals the Prevention of Food Adulteration Act, 1954 and following Orders:

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\(^{196}\) (1996) 2 SCC 549.

\(^{197}\) *Supra* n. 11.

\(^{198}\) Food Entitlements Act, 2009, Chapter II ; Explanation (i),

\(^{199}\) *Ibid.* ; Explanation (ii).

\(^{200}\) *Ibid.* ; Explanation (iii).
The objective of the Act is to consolidate that laws relating to food and to curve Food Adulteration by prescribing higher penalties for violation of food laws. It will also establish Food Safety Management System for ensuring availability of safe and wholesome food for human consumption. Food Safety and Standard Authority of India will also be established for enforcing the food Safety Standards. Main features are:

1) Emphasis of gradual shift from regulating regime to self-compliance through food safety management system.

2) Enforcement of the Act by the:
   (i) Central Licensing Authority;
   (ii) State Licensing Authority in each state/UT through the State Food Safety Commissioners, Designated Officers & Food Safety Officers for Licensing, inspection & sampling etc;
   (iii) Registering Authority- Panchayati Raj/Municipal Bodies.

3) No license for petty/small food business operators-only registration is mandatory.

4) A single license for one or more article of food and also for different establishment/premises in the same area.
5) Regulation of food imported in the country.

6) Harmonization of domestic standards with intentional food standards.

7) Covering healthy foods, food supplement, nutraceuticals.

8) New justice dispensation system for fast track disposal of cases of contravention and compensation in case of injury of death of consumer.

9) Graded penalty depending upon the gravity of offences for selling food not of the nature/substance or quality, substandard food, misbranded food including misleading advertisement.

10) Liability of food safety officers is provided under section 39 of FSSA. Where vexatiously and without reasonable ground seizure of food or adulterant is found, he (accuse) is liable with penalty up to Rs. One lakh.

11) A single reference point for all matters relating to food safety & standard, by moving from multi-level, multi-departmental control to a single line of command.

The main statute operating in this regard is the Prevention of Food Adulteration Act, 1954. However, it is only a law (law in the concrete sense) and in order to understand “the law” (law in the abstract sense) regarding the prevention of food adulteration in India. The reason for the enactment of the Act is to protect the public health from the evil of adulteration in food stuffs. The object of the Act should, therefore, be to make certain legal provisions which will give some rights to the people to protect themselves against the danger of health deterioration by adulteration in food and which will impose a corresponding duty and obligation on state, manufacturers and the seller not to allow any adulteration in India which was in force prior to the passing of the Prevention of Food Adulteration Act 1954, was statewide. All the states Acts were in force with minor variations, though the objects were the same. These laws lacked uniformity
having been passed at different times without mutual consultation. The deterrent character of its penal statute was also not up to the mark. Therefore, these laws were inadequate to uproot the tendency to resort to adulteration.

The Central Act leaning more towards the deterrent theory of criminal jurisprudence. It aimed at purity of foodstuff through its twenty-five sections but unfortunately, the aim has remained unachieved. The court have stressed on the importance of legislation relating to food adulteration, and the need for ensuring that mere technicalities do not hamper or defeat the cause of justice. The Central Government primarily plays an advisory role in its implementation, besides carrying out various statutory functions/duties assigned to it under the various provision of the Act. The Central Committee for Food Standard constitutes under the Act to advise Central/State Government on all matters arising out of implementation of the Prevention of Food Adulteration Act, 1954 and Prevention of Food Adulteration Act Rules, 1955, including review and formulation of rules, regulations and standards of food articles.

The most important regulation for ensuring food safety and quality in India continues to be out-dated. The objective of this Act is to formulate and monitor the standards of quality and purity. The provision of the Act is mandatory and contravention of the rules can theoretically lead to both fine and imprisonment. However, this happens rarely in practice. The Central Committee of Food Safety and Directorate General of Health Services, Ministry of Health and Family Welfare are the primary policymaking bodies that advise Central and State Governments regarding the administration of the Act and development standards relating to the Act. The State Governments and local bodies in corporation and Municipalities implement the

201 S. Purohit, and Joshi;,” Supreme Court on preservation of food adulteration Law in India (1954 to 1975), Jain brother, Delhi-XV, p. 376 (1973).
202 State vs Ishwer Jahan, AIR 1964 All. 497.
203 The Prevention of Food Adulteration Act, 1954, Section 3.
provisions of the Act. It is the responsibility of the Ministry of Health and Family Welfare to liaise with the National and International food quality control organization, namely the Bureau of Indian Standards which associated with the certification of the processed food articles, the Directorate of Marketing and Inspection, the Ministry of Food Processing Industries as well as the Codex Alimentarius Commission.

The Prevention of Food Adulteration Act lays emphasis on the preventions of adulteration of foods and is not comprehensive enough to deal with the contamination of food through the animal feed and the food chain. The Apex industrial bodies like Confederation of Indian Industries, Federation of Indian Chambers of Commerce and Industry and Central Food Technological Research Institute have very strongly called for a complete overcome of Prevention of Food Adulteration Act in order to harmonize it with the institutional standards set by the Codex Alimentarius Commission. Obviously, this demand from the food industry is to protect the health of the people but at the same time, there is a concern that food safety standards by other countries are being used against India as nontariff barriers to stop/restrict exports from India to the developed countries.204 Main Functions:-

1) To carry out inspection and grant license under Prevention of Food Adulteration Act to food manufacturers/ Dealer /Wholesalers/retailers/hawker and to prosecute unlicensed manufacturer/Seller.

2) To look after sanitation and hygiene of food units and people working in it.

3) To draw as and when required food Samples and to prosecute responsible persons including in selling/manufacturing /adulterated/misbranded foods in the respective courts.

4) To educate people regarding the menace of food poisoning and to enable them to take the precautions to prevent it.

5) To provide information regarding PFA to needed and to help them to understand the act better.

6) To prepare sampling programme and place of action to cover all food articles based on season basis and accordingly samples are collected.

7) To provide food security to the people as per the directions of Government.

v. The Essential Commodities Act, 1955

The Essential Commodities Act of 1955 provides the legal basis for the Public Distribution System, now known as the Targeted Public Distribution System. It provides for the Control and regulation of the production, manufacture and distribution of essential commodities in the country, for the general public good. It gives the State Considerable authority to regulate and control the operation of private actors, so as to control market vagaries.

When there was severe drought in 1980-81, the Essential Commodities (Special Provisions) Act of 1980 was enacted for a temporary period for dealing more effectively with persons indulging in hoarding and black marketing of, and profiteering prices and for matters connected therewith or incidental thereto. This Act can be invoked in times of crises. This was done, for example, when the price of onions became exorbitant. This Essential Commodities (Special Provisions) Act overlaps the Prevention of Black Marketing and Maintenance of Supplies Act of 1980. The Act permits detention in certain cases to prevent black marketing and the maintenance of supplies of essential commodities of the community.

The Public Distribution System (control) order of 2001 covers a range of reality to correct, and the proper distribution and monitoring of Public Distribution System related operations. Breaching of the

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order is punishable under the Essential Commodities (Special Provisions) Act. The Central government issued a Citizen's Charter in 1997\textsuperscript{206} (revised in July 2007) for adoption and implementation by State Government, in relation to increase transparency, accountability and participation in the Public Distribution system. It contains, inter-alia, basic information of interest to consumers and a model procedure and time schedule for the services. The Charter contains also information on the entitlements of Below Poverty Line families, fair Average quality of food grains, information regarding fair price shops, procedures for issuing ration cards, inspection and checking, right to information, vigilance, and public eye to the extent their potential might suggest. Essential Commodities are regulated more strictly that in most modern states, and there are detailed legal provisions governing the Public Distribution System. However, these have not sufficed to obviate the major faults in the system, discussed earlier. Deregulation of the grains market has been suggested by economists since 1991 but has never been politically feasible.

vi. The National Human Right Commission and Human Right Act

The National Human Right Commission was established by the protection of Human Rights Act and was the first institution of its type to be established in India. The mandate and independence of the National Human Right Commission are in compliance with the UN Paris Principles relating to the status and functioning of national institutions for the protection and promotion of Human Rights.\textsuperscript{207} This Act stipulates that membership of National Human Right Commission, with emphasis on drawing on the experience of senior judges, shall consist of five, persons, three from the Judiciary and two with practical experience in human rights. In addition, the Chairperson of the National Commissions of Minorities, Scheduled Castes, Scheduled Tribes and women, are all deemed to be members

\textsuperscript{206} Ibid.
\textsuperscript{207} Adopted by UN General Assembly Resolution 48/134 of 20.
of the National Human Right Commission for discharging functions other than inquires related to human rights violations or neglect by Public Officials. The National Human Right Commission has a very heavy caseload: between 1 April 2004 and 31 March 2005 it received 74,401 complaints and dealt a total of 8566. The National Human Right Commission has been active with regard to the right to food and has investigated complaints about ongoing "starvation in Orissa. The Commission often monitors a particular situation for an extend period of time, requesting quarterly performance appraisals related to the short and long term achievements of physical and financial targets. This was what took place regarding the Districts of Kalahandi, Balangir and Koraput in the State of Orissa. A special rapporteur was appointed for this case, as well as for cases of farmer suicide in Andhra Pradesh, Kerala and Karnataka. A section of the National Human Right Commission annual report is devoted to food security.

The National Human Right Commission constituted a Core Group on the Right to food in January 2006, composed of experts from across the country who have contributed to the right to food debate. The Core Group Provide advice to the National Human Right Commission and has recommended the drawing up of a National Place of Action. The work of the National Human Right Commission is remarkable for its long-term engagement with a state on recurring human rights issues, that is, the right to food, and also for the

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analysis of the Famine Codes, which were found to be inconsistent in some ways with the right to food.

vii. Relief Codes (National Disaster Management Authority)

Disaster relief is the responsibility of Individual States but the National Disaster Management authority is the apex body at the national level, mandated by the Government of India to set out the policies, plans and guidelines on disaster management that will ensure timely and effective response to disasters. The institutional management mechanism for disaster management at the state level is based on Relief Codes (in some States known as scarcity Codes, Famine Codes, Relief Manuals, etc), which focus on the relief aspect of disaster management. These documents are updated from time to time, but their basic framework can be traced back to a 1910 Model Famine Code of the British Colonial administration.

The Relief Codes are invoked mainly in times of scarcity and give detailed descriptions of the circumstances in which a famine could be declared, the measurement of the intensity of the famine and the relief provisions that need to be undertaken in such cases. The relief codes generally provide for specific entitlements of certain amounts of grains and protein per-day. These are provided for food for work for able-bodied adults and 'gratuitous relief' for those unable to work. The Supreme Court has declared the Relief Codes to be binding on the relevant State unless there are better measures available thus creating legally binding entitlements.

There are more controversial provisions concern official accountability and payment of damages in the case of starvation deaths. The narrow definition of starvation and the links to accountability have caused deep denial at state levels, where every

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212 Supra n. 209; Case No. 37/3/97-LD. Extract from the proceeding of the commission held on 17 January 2003 in relation to allegation of Starvation deaths in KBK districts of Orissa, p. 333.
213 Supra n. 11; ( order of 2nd May 2003).
effort is made not to recognize starvation death, although there is no such problem with regard to recognizing under nutrition. In India, relief work is still considered a shortterm, supportive measure. The most critical needs of recovering pre-disaster living standards remain unattended. Rehabilitation does not consider initiatives to assist affected people regain sustainable livelihoods.214

The National Human Rights Commission has discussed the Relief Code of the State of Orissa and concluded that it should be revised so as to accomplish a paradigm shift from the benevolence domain to that of right; to change form assessing harvest for their interventions, to assessing hunger; to shift the timing of support so as to include the hunger season and to devise terms for cognizance of starvation and destitution, other than medical autopsies of starvation deaths.215

The Ministry of Home Affairs has suggested that States amend the existing Relief Codes/Manual into comprehensive Disaster Management Codes or Manuals, incorporating the aspects of preparedness, mitigation and planning measures at all levels.216 It can be assumed therefore, that these Relief Codes will soon be of historical importance only. However, they have played a significant role in India’s debate on food security since 1996.

viii. Forests Rights Act

Property rights have been the most contested of legal provisions in India, where development is talked about. The pendulum of Indian legal environment has been moving in the direction of protecting property owners and ensuring access to land for everyone during the

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214 Oxfam, India disasters report, 2000; Retrieved from http://www.punjabilok.com/india_disaster_rep/india_disasters_index.htm.>on 04/12/2013/3:40 P.M.
past 60 years of the existence of the Indian Republic. The most recent legal initiative in this direction has been the enactment of the Forest Rights Act, 2006, which gives both individuals and the community the right to forests. It is estimated that the Scheduled Tribes population of close to 100 million (comprising one of the poorest sections in India) lives close to forests. This population primarily depends on access to forests and Non-timber Forest Products for their livelihood. Traditionally, the colonial interest in forests was aimed at extraction of forest goods for financial gain. Independent India implemented a National Forest Policy in 1988 with the objective of protecting forest cover. These policies, however, prevented poor people from enjoying access to forests for their livelihood. This lacuna has been corrected in the Forest Rights Act, 2006.217

In order to understand its significance and the reason as to why this signifies a swing in the pendulum of legal environment from 'protecting property' to 'ensuring access', there is need for a brief survey of legal disputations around property rights in India. The very first constitutional amendment was intended to address the problem of distributive justice emerging out of property rights. Feudal property holding, which deprived a majority of the population from access to land, could not co-exist with the democratic ideal of 'one person, one vote' immediately after India adopted its Constitution in 1950. In order to enable poor people to fulfil their aspirations to gain access to land, different state governments in India passed land reform legislations immediately after Independence with the aim of acquiring huge landholdings from zamindars (feudal landlords) for distributing these lands to the landless population.

However, this land reform legislation came into conflict with the fundamental right to property guaranteed by the Indian Constitution

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(Article 19, (1), (f). This led to the first amendment of the Indian Constitution for facilitating land reforms (Articles 31 A and 31 B). A series of tussles between the Parliament and the judiciary that culminated in the removal of Article 19 (1) (f)—the fundamental right to property—during the rule of the Janata Government, through the 44th amendment, is well documented by Allen (2007). In the light of this tussle between Parliament and the judiciary, an important question came up about the basic structure of the Constitution. The Indian Parliament has no authority to change the basic structure of the Constitution, and very often legal cases have come up to define the latter. Two landmark cases which posed this question in the context of property rights are: Golak Nath v. State of Punjab and Kesavananda v. State of Kerala These cases deserve attention since the judges were deeply divided in their opinion about the basic structure of the Constitution that the Parliament could not change.

The case of Kesavananda v. State of Kerala, which particularly raised the question regarding the basic structure of the Constitution, refers to the following two issues: 1) judicial review of parliamentary legislation is the basic structure of the Constitution; 2) the right to property is a fundamental right. The first issue received a positive judgement while the second one received a negative judgement. Apart from this tussle between Parliament and the judiciary, there are many other reasons as to why land reform has not been uniformly successful across the nation. There is sufficient literature to show why land distribution failed in some states and succeeded in others. It is impossible to summarise this literature here. In the context of inadequate land reforms, and the adoption of an exclusionary approach by the forest department to the livelihood aspirations of the STs, it was imperative to implement some measures.

218 Legislations on land ceiling were largely about rural land. However, similar developments also occurred for urban land. In 1976, there was a legislation for setting a limit on the possession of urban lands through the Urban Land Ceiling Act. This was repealed by the Central Government in 1999.
219 AIR 1643, 1967 SCR (2) 762.
220 AIR 1973 SC 1461
The movement by civil society for the Right to Livelihood in 2002 intensified this quest.\textsuperscript{221} Opposition to this move came from organisations meant for protecting wildlife. Different versions of access to forests were proposed by both the Ministry of Forests and Environment as well as the Ministry of Tribal Affairs. Civil society groups were also divided as to whether only community rights to forests should be granted or individual rights too could be granted. It is only after intensive lobbying that the Government granted both individual rights and community rights. The experience with regard to implementation of the Forest Rights Act during the last five years shows that there is a huge demand for granting of individual rights, but very few demands for community rights.

The Act was drafted to fulfill the need for a comprehensive legislation to give due recognition to the forest rights of Tribal communities. These rights were not recorded while consolidating State forests during the colonial period as well as in independent India. Recognizing the close relationship between tribal communities and forests, the National Forest policy in 1988 made provisions to safeguard some customary rights to tribal on forestland. The Ministry of Environment and Forest issued on September 18, 1990 six circular, that pre 1980 occupation of forestland would be eligible for regularization provided the State Government develop eligibility criteria according to local needs and condition. However, the State Governments failed to implement the 1990 Guidelines. Instead, in many states Forest Departments started with eviction of tribal people in large scale. The harassments and human rights violations during such evictions led to massive protests of the civil society and especially of tribal communities.

As a reaction to the ongoing injustice to tribal communities, the Scheduled Tribes (Recognition of Forest Rights) Act was passed in

December 2006. The Act recognition forest rights of Schedule Tribes with respect to forestland and their habitat. According to the Act, forest right in the core areas of National Park and sanctuaries shall be granted only on provisional basis for the period of five years from the date of commencement of this Act. If the holders of such rights are not relocated within five years with due compensation, the rights would become paramount. The right can be inherited but they are not transferable.

The Supreme Court of India in an important case held that the tribals have a definite right over the forests and any sort of forest diversion or eviction should have their informed consent. Following suit, in an affidavit to the Apex Court, in June 2004, the Government of India made a significant admission by holding that “historical injustice” [Expression used in an affidavit submitted to the Supreme Court on behalf of the Ministry of Environment and Forests, Government of India, July 21, 2004. This historical injustice was perpetuated by the Wildlife (Protection) Act 1972 and the Forest Conservation Act 1980, which identified environmental protection and recognition of the rights of tribal communities as mutually irreconcilable objectives. Other legislative and executive measures in the post-independence era continue to perpetuate these differences.] had been done to the tribal forest dwellers of the country, which needed to be immediately addressed by recognizing their traditional rights over forests and forest land.222

What made this admission particularly crucial was its acceptance that colonial perspective on forest management had failed and alienated a large chunk of the forest dwellers, especially tribals from forests and forest-based livelihood options. Besides, it could not have come at a better time—just months after the eviction of about 168,000 families from over 150,000 hectares effected by the May 2002

Government order of eviction of forest encroachers. This led the Government of India to introduce the Scheduled Tribes (Recognition of Forest Rights) Bill, 2005 in Parliament on 13 December 2005. This legislation is now widely accepted and revered as a major step towards achieving social justice and a milestone in the tribal empowerment process.223

The Act224 focuses on the rights of Scheduled Tribes who have been residing in forests for generations but whose rights have not been recorded. The Act provides a framework for recording the forest rights, the nature of evidence required for such recognition in respect of forestland. The Act extended to the whole of India except the State of Jammu and Kashmir. Forest dwelling Scheduled Tribes means the members or community of the scheduled Tribes pastoralist communities and those who depend on the forest on forest land for bona fide livelihood needs.

According to the Act, following rights of Individuals as community are defined as forest right of forest dwelling Scheduled Tribes :-

- Right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or member of a forest dwelling Scheduled Tribe;

- Community rights, by whatever named called, and used in erstwhile princely States, Zamidari or such intermediary regimes;

- Right of ownership access to use or dispose of minor forest produce;

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223 Sanjoy Patnaik, Regional Centre for Development Cooperation, PESA, the Forest Rights Act, and Tribal Rights in India, Proceedings: International Conference on Poverty Reduction and Forests, Bangkok, (September 2007); retrieved from http://www.recoftc.org/site/fileadmin/docs/Events/RRI_Conference/Proceedings/Paper_18_Patnaik.pdf>on 14/2/ 2014/4:41 P.M.

• Other community rights of user or entitlement such as grazing (both settled or transhumant) and traditional services resources access of nomadic or pastoralist communities;
• Rights, including community tenures of habitual and habitation for primitive tribal groups and pre-agricultural communities;
• Rights in or over disputed lands under any nomenclature in any local authority or any State Government of forest land to titles;
• Rights of conversion of forest villages into revenue villages;
• Right to settlement of habitations and un-surveyed villages, whether notifies or not;
• Right to protect, regenerate or conserve or manage and community forest resource which they have been traditionally protecting and conserving for sustainable use;
• Rights which are recognized under any State Law as laws of an Autonomous District Council or Autonomous Regional Council or which are accepted as right of tribal under any traditional or customary law of any State;

These rights are only recognized if the forest tribes or tribal communities had occupied forestland before the 25th day of October 1980 (The Forest (Conservation) Act, 1980 came into force on this date). The Act restricts the area to maximum 2.5 hectares per nuclear family of a forest dwelling Scheduled Tribes and prohibits that members of a forest dwelling Scheduled Tribes shall be evicted or removal from forestland under his occupation till the recognition and verification procedure is completed. The Gram Sabha is the authority to initiate the process for determining the nature and extent of individual or community forest rights.

The Act aims to recognize and enforce the rights of Forest dwelling Scheduled Tribes to forest land and resources. However, the Act will face the challenge of finding a balance between the interest of
recognition forest right of Forest dwelling Scheduled Tribes while protecting forests and wildlife resources. The Act specifies that Forest dwelling Scheduled Tribes would be granted forest rights only in places where they are scheduled. However, such a clause could lead to denial of rights to tribe communities on the ground they do not reside in the area where they are scheduled even though many tribal people have been displaced due to development projects and creation of protected area. The Act recognizes only rights of Scheduled Tribes, but by doing so, it excludes the right of other communities who depend also on the forest for their survival and livelihood. It is feared, that this Act could lead to massive eviction of such people and increase social tension between Scheduled Tribes and other forest communities.

The Act does not place any explicit restriction on the methods that can be used to remove non-legible forest dwellers. This is a concern, given the history of cases where brutal forces have been used to evict tribal families. The Act mention that Forest Dwelling Scheduled Tribes would be relocated from core area of national parks and sanctuaries with due compensation. However, the Act does not clarify exactly that kind of compensation would be offered to the tribal people, and what recourse they would have if such compensation is not satisfactory or is altogether denied.

The Act imposes a fine of Rs. 1000 on Forest Dwelling Scheduled Tribes in case of contravention of provisions of the Act. If the offence is repeated, the person forest rights might be derecognized for such period as decided by the District Local Council on the recommendation of the Gram Sabha. An Act developed to protect their right may turn into an Act leading to massive eviction of Tribal communities.
ix. **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.**

The Constitution of India accords special statue to the most vulnerable groups of India, namely the Schedule Tribes (*Adivasi*) and Schedule Castes. The term Scheduled Tribes refers to indigenous people, a collection term use in India is *Adivasi*. According to the 2001 census, the Scheduled Caste and Scheduled Tribe comprise of 24 per cent of the Indian population and struggling for their survival.

In 1989 the Government of India enacted the Schedule Castes and Tribes (Prevention of Atrocities) Act with the aim of preventing offences of atrocities against Scheduled Caste / Scheduled Tribe and to provide special courts for the Tribal of such offences and for the relief and rehabilitation of the victims. The Act is valid for whole of India except the State of Jammu and Kashmir. Even though the Act focuses on preventing human rights violations it includes also following paragraph, which are relevant for right to food and water of vulnerable groups. However, de facto discrimination remains widespread in India.

According to this Act, it is punishable if whomever, not being a member of a Scheduled Caste or a Scheduled Tribe: 1) Wrongfully occupies or cultivates any land owned by, or allotted to, notifies by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred; II). Wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribes from his land or premises of interfere with the enjoyment of his rights over any land, premises or water.

x. **The Maternity Benefit Act, 1961**

The Act regulates employment of women and payment of maternity benefit in certain establishment. The Act applies, in the first instance to every establishment being a factory, mine or plantation, shops and establishment including any such establishment belonging
to the Government. The State Government may, with approval of the Central Government, extend the provisions\textsuperscript{225} to, (i) any other establishment, or (ii) class of Act as amended by the Maternity Benefit (Amendment) Act, 1988 women workers who have put in not less than 80 days of work can claim the following benefits from the employer:

(i) Maternity benefit at the rate of average daily wage for the period of her actual absence that is it says, the period of immediately preceding the day of her delivery, the actual day of her delivery and any period immediately following that day. The maximum period for which any women shall be entitle to maternity benefit shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery.

(ii) Medical Bonus of Rs. 1,000 if no prenatal confinement and post nature care is provided for by the employer free of charge.

(iii) In case of miscarriage, a woman shall be entitled to leave with wages at the rate of maternity benefit, for a period of six weeks immediately following the date of her miscarriage.

(iv) In case of illness arising out of pregnancy delivery, premature birth of the child as miscarriage, in addition to the period of absence specified in (i) and (ii) above, as the case may be, to leave with wages at the rate of maternity benefit for a maximum period of one month.

(v) In case of where a women, having delivered a child dies during her delivery of or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leave behind in either case a child, the employer shall be liable for the maternity benefit for the entire period but if the child also dies during the said period, then for the days up to and including the date of the death of the child.

\textsuperscript{225} The Maternity Benefit Act, 1961, Section 2.
The previously mentioned benefits are available to women workers irrespective of the number of birth. For nursing mothers the Act provides two nursing breaks for prescribed duration, in addition to the rest interval for nursing the child until he attains the age of fifteen months. In order to safeguard the interest of pregnant workers, the Act provides that a women worker shall not be dismissed, discharged during that a women worker shall not be dismissed, discharged during the period of maternity leave. Apart from the benefits provided under the Maternity Benefit Act some state Acts provide additional benefits such as free medieval Aid, maternity bonus, provisions of crèches, additional rest intervals, etc. However, the Act has an extremely limited application and rarely applied in the agricultural sector.

The Beedi & Workers (Condition of Employment) Act makes provisions of the Maternity Benefit Act, 1961 applicable to the industrial premises covered by this Act where in fifty or more persons are employed on any day of the proceeding twelve months. The Supreme Court in Municipal Corporation of Delhi v. Female Workers (Muster Roll)\textsuperscript{226} held that the denial of Maternity leave merely on the ground that the employee was working on consolidated salary is not proper.

\textbf{xii. The Protection of Plant Varieties and Farmer' Rights Act, 2001}

As a signatory to World Trade Organition, India adopted its own sui generis system in the form of Protection of Plant Varieties and Farmers' Rights Act, 2001 The research makes a modest attempt to analyze the food situation in India through times and also the various provisions of the \textit{sui generis} legislation, Protection of Plant Varieties and Farmer' Rights Act, 2001 and as to how this Act can help maintain an intelligent balance between the rights of the farmers and

the breeders. Ensuring of farmers' rights through this law can guarantee livelihood opportunities to the farmers and in turn help in attaining food security for a country like India, which is dependent on an agrarian economy.

Attempt has been made to study the food situation in India. While reflecting on the past initiatives and incentives provided by the state to usher in Green Revolution in the country, an effort have been made to identify issues and challenges pitted before Indian economy in the context of food security. Achieving sustainable food security in India is a daunting task and there is a long way ahead if India wants to achieve the same. As sustainable food security depends on a productive, competitive and sustainable agricultural sector, appropriate approach and strategies need to be adopted to give impetus to farming sector to enhance productivity and strengthen farmers' rights in India through effective legislative measures.

The Protection of Plant Varieties and Farmer' Rights Act 2001 came into existence to provide for the establishment of an effective system for the protection of plant varieties, the rights of farmers and plant breeders and to encourage the development of new varieties of plants. It has been considered necessary to recognize and protect the right of the farmers in respect of their contribution made at any time in conserving, improving and making available plant genetic resources for the development of new plant varieties. Moreover, to accelerate agricultural development, it was felt necessary to protect plant breeders' rights to stimulate investment for research and development of new plant varieties. Such protection is likely to facilitate the growth of seed industry which will ensure the availability of high quality seeds and planting material to the farmers. The Innovative Indian legislation has opened up interesting possibilities for developing a 'developing country platform' for regulating breeders’ and farmers’ rights so that both are acknowledged and protected simultaneously.
xii. The Minimum Wages Act, 1948

The Government of India has formulated several policies to improve the conditions of the weaker sections of the society but the absence of a uniform and comprehensive wage policy for all the sectors of the economy of India leads to exploitation and difficulties in the unorganised sector. Wages in the organised sector are determined through negotiations between the employer and employees. The minimum wage act 1948 was primarily designed to protect workers in the unorganised sector, where labour is vulnerable to exploitation, due to illiteracy and lack of bargaining power. The National Minimum Wage has been considered at various fora in the past. However, State/UT Governments are not unanimous on the need of a National Minimum Wage as socioeconomic conditions vary from state to state, region to region as also from industry to industry due to different geographical, topographical and agro-climatic factors. 227 States decide the minimum wage in the State. In India, around 60 percent of the national income is contributed by the unorganised sector; 228 and employs around 85 per cent of the working population in India. 229 One parameter of the unorganised sector is that the workers are not able to organise themselves to pursue common objective. In order to improve the condition of the workers in the unorganised sector India is taking steps to introduce social security and other welfare schemes for workers in the unorganised sector.

The Minimum Wages Act, 1948 is one of the most important legislation that has been enacted for the benefit of unorganized labour. It was enacted for fixing, reviewing, and revising the minimum

227 National Minimum Wage Act 1948; retrieved from http://labour.nic.in/wagecell/mwact.pdf>on 2/1/201014/03:11P.M.
229 Kiran Moghe, Understanding the unorganised sector, September 2007, retrieved from http://www.infochangeindia.org/agenda9_02.jsp>on2/1/201014/03:11P.
rates of wages in the scheduled employment where workers are engaged in the unorganized sector. The appropriate Government has been empowered\textsuperscript{230} to fix the minimum rates of wages payable to employees employed in the scheduled employment and in an employment added to either part I of part II of the scheduled by notification\textsuperscript{231}.

The Act is meant to ensure that the market forces, and the laws of demand and supply are not allowed to determine the wages of workers in industries where workers are poor, vulnerable, unorganized and without bargaining power. The minimum rates of wages are fixed keeping in view the minimum requirement of a family, and, wages at these rates are to be paid by all employers irrespective of their capacity to pay.

The appropriate Government is empowered\textsuperscript{232} under the Act to fix the number of hours, payday. Besides, provisions has been made to weekly holidays and a payment of overtime wages etc. in regard to any scheduled employment in respect of which minimum rates of wages have been fixed under this act. The Act helps unorganized workers who are working in the scheduled employment. However, nearly 60 per cent of the workforce in the unorganized sector is self-employed or home-based. Thus, remain outside the purview of the minimum wages Act, 1948, although they constitute the majority in the sector.

\textbf{xiii. The Payment of Gratuity Act, 1972}

The Act applies to every factory, mine, Oilfield, plantations, port, railway companies, shop or establishment, every motor transport undertaking, etc. A shop or establishment once covered shall continue to be covered notwithstanding that the number of persons employed therein at any time falls below 10. A worker employed on wages to do

\begin{footnotesize}
\begin{itemize}
  \item\textsuperscript{230} The Minimum Wages Act, 1948, Section 3.
  \item\textsuperscript{231} \textit{Ibid.}, Section 27.
  \item\textsuperscript{232} \textit{Ibid.}, Section 13.
\end{itemize}
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any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work, where the terms of such employment are expressed or implied, and includes any such person, who is employed in managerial or administrative capacity, but does not include any person who hold a civil post under the Central Government or a State Government, or who is subject to the Air Force Act, 1950, the Army Act, 1950 and the Navy Act, 1957.

Gratuity is payable to an employee on the termination of his employment after he has rendered continues service for not less than 5 years on his superannuation or his retirement or resignation or on his death or disablement due to accident or disease. However, the completion of 5 years of continues service for earning gratuity is not necessary, if the termination of the employment of any employee is due to death or disablement. In case of death of the employee, gratuity is payable to his nominee or to the guardian of such nominee. The amount of gratuity payable to employees is not exceeding rupees ten lakh. The right of employees to receive better terms of gratuity under any award or agreement or contract with the employer is not taken away by this Act.

If the services of an employee have been terminated for any act of willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, his gratuity can be forfeited in the extent of the damage or loss so caused to the employers. The gratuity payable to an employee can be wholly forfeited, if the services of such employee have been terminated for his riotous or disorderly moral turpitude committed by him in the course of his employment.

The Act may grant of exemption from the operation of the Act to any person or class of persons, if they are in receipt of gratuity or pension benefits not less favorable than the benefits conferred under the Act. The employee who has completed one year of service is required to name his/her nominee in the prescribed form. An
employee in his nomination can distribute the amount of gratuity among more than one nominee.

The employee and the employer or any other person raising the dispute regarding the amount of gratuity, may make an application to the controlling authority to decide the dispute. No appeal by a employer shall be admitted, unless the employer produces a certificate of the controlling authority an amount equal to the amount to gratuity required to be deposited or deposits with the appellate authority such amount. The aggrieved employee can file an application to the controlling authority for recovery of the amount of gratuity.\textsuperscript{233} Whoever make any false statement or false representation, is punishable with imprisonment up to 6 months and/or fined up to Rs 1,000.\textsuperscript{234} However, no court shall take cognizance of any offence punishable under this Act unless a complaint is made by or under the authority of the appropriate Government.

V. Sum Up

The researcher has found that the Legal protection is a necessary step for the realization of the food security as a right. It cannot be achieved without the adoption of legal measures. The rule of law continues to be evasive in many countries throughout the world, and legislation frequently gathers dust on shelves while life goes on as before. Therefore, it is not enough to recognize the food security constitutionally and to enact law on it; such Law needs to be owned by those who are most in need of its enforcement. Successful legislation should be employed after a thorough process involving all stakeholders, governments and civil society alike. Legislation also needs constant follow up all sides, in order to effective.

The implementation of the food security issue at national and international levels may be guided by General Comment 12 on the right to adequate food adopted by the Committee on Economic, Social

\textsuperscript{233} The Payment of Gratuity Act, 1972, Section 8.
\textsuperscript{234} \textit{Ibid}; Section 9.
and Cultural Rights on May 12, 1999, which is an authoritative legal interpretation clarifying the normative content of the right and the respective States obligations. Poverty eradication and food security are not separate and interdependent fields of activity, but are interrelated. The debate on poverty reduction should be guided by the strategies for implementation of the right to food and other human rights.

It must be recognized that economic growth in itself does not guarantee adequate food availability and access, unless there is an equitable distribution of the benefits of growth. In order to ensure freedom from hunger and malnutrition, the progressive realization of the right to food and other human rights must guide the development activities of individual states. The problem is generally not the lack of food but the absence of effective entitlements by all to food or productive resources. What we can eat depends on what food we are able to acquire. The mere presence of food in the economy or in the markets does not entitle a person to consume it. Economic and physical access to food is crucial, especially for vulnerable and disadvantaged groups. Special efforts must be made to protect households or groups that are unable to cope on their own, such as elderly people, those were terminally ill, or other disadvantaged groups or individuals.

The food security issue should be seen not only in the context of State obligations but also take into account the responsibility of different actors (Parents, family groups, the local community, private corporations and international actors). The concrete implementation of these different responsibilities should be facilitated and enforced by

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235 The ultimate objective of the right to food was to achieve nutritutional well-being. Nutritutional well-being was dependent on parallel measures in the fields of education health and care. In broader sense, the right to food was to be understood as the right to adequate food and nutritution.
236 ICESER, 1996, Article 27, Para 3.
national Governments.\textsuperscript{238} If the right to food is to be achieved, it needs to be linked with other economic and social rights, such as the right to health. These economic and social rights complement and reinforce each other. Taken in isolation, each of them has its limitations, and many not even are realizable within the present structure of poverty rights. Taken together, however, they hold the promise of radical change in public priorities and democratic politics. This is why it is so important to revive the Directive Principles of the Constitution as well as the visionary conception of democracy that inform them. However, the provisions are not enforceable by any court, but the principles lay down therein and considered as duty of the State to apply these principles in making laws to establish a just society in the country.

India is a country where the food security is far from being realized for all. Despite economic growth and politician aimed to ensure food availability and access by the poor, hunger is still widespread. Some social and ethnic groups are more vulnerable than others, in particular Adivais and Dalits, while women’s social status remains low, despite legal reform. Framework laws on the food security have been adopted in a number of countries, India also opted for detailed legislation on specific social programmes, through Parliament. Thus, School Children’s entitlements with regard to cooked mid-day meals are very precise, as are the entitlement of rural households to guarantee employment is public works for a minimum wage.

India has enacted a series of national legislative acts that enshrine new civil liberties and socio-economic entitlements through legally enforceable rights. The Mahatma Gandhi National Rural Employment Guarantee Act, 2005, grants adult members of every rural household the right to demand 100 days of wage-employment from the state. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, empowers tribal

\textsuperscript{238} General Comment 12, Para 12.
communities with the right to own and use traditionally cultivated land and to protect and conserve forests.

Arguably, the move to entrench socioeconomic rights in contemporary Indian democracy is an innovative state-building project that aims simultaneously to enhance the capacity of the state to “see its citizens” yet curb the danger of authoritarian high modernism by allowing the citizenry to “see the state.” Finally, progressive social movements in India have historically pursued interest based struggles by pressing their claims vis-à-vis the bureaucracy and judiciary.

Through rights-based legislations and related initiatives, researcher have tried to demonstrate that facilitating progressive legislations in India depends on the extent of involvement of the civil society in crafting the law and its efforts in following it up for implementation. This implies that civil society needs to actively try to influence political will from above and to generate political pressure from below, and only when these two pressures are combined can the excluded people of India avail of their legal entitlements. However, when the civil society initiatives are blunted or thwarted by the bureaucracy and Government of the day, then the law would merely remain a paper tiger. The involvement of civil society groups in past judicial endeavours for enforcing socio economic rights could also be responsible for the relative successes of the judicial approach in guaranteeing the protection of the fundamental rights of citizens.

Civil society organizations have successfully used the Freedom of Information Act to identify irregularities in the implementation of the Public Distribution System and force local authorities to open their books for security. In short, the introduction of these rights based national acts and the pressure to extend their purview to other

\[239\] C. James Scott, Seeing like a State: How certain schemes to improve the human condition have failed (New Haven: Yale University Press, 1998).

subjects and domains signify a "new welfare architecture" with a distinct "social contract" in modern Indian democracy.\(^{241}\)

Certain particular features of these national acts warrant scholarly attention. First, the decision to legislate a right to basic socio-economic goods marks a watershed in modern Indian democracy. Since India achieved independence in 1947, Central and State Governments have introduced an extraordinary range of social welfare initiatives. Crucially, the vast majority of such initiatives came under the purview of the Directive Principles of State Policy in Part IV of the Constitution, making them non-justifiable, as opposed to the fundamental rights regarding political liberties and civic freedoms in Part III. The early 1990s witnessed major constitutional reforms to enhance civic participation in poverty-alleviation schemes and to decentralize political authority and economic resources to local village councils, constituting a "new regime of governance and development."\(^{242}\)

What distinguishes the recognition of a right to basic socioeconomic goods, however, is that it undermines in principle the distinction made between civic and political rights versus social and economic entitlements in the Constitution.

Second, many of these rights-based laws seek to secure political goods such as greater transparency, responsiveness, and accountability, either independently or as an integral design feature of new social programs. Indeed, it is striking that many of them explicitly seek to reform how public institutions work. This is the overt purpose of the Right to Information Act, of course. Yet it also explains the novel governance mechanisms in the Mahatma Gandhi National Rural Employment Guarantee Act, for example, which allow its intended poor beneficiaries to participate in social audits of local public officials. These institutional reforms furnish an opportunity to

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challenge the practices of corruption and patronage that have enabled benefits to be targeted towards or captured by particular social groups, undermining the coherence, equity, and implementation of many developmental interventions in the past. The fact that even regions with progressive social regimes, such as Kerala, have recently introduced a Right to Public Service Act underscores the primacy of systematic institutional reform in India’s new rights-based social agenda.