CHAPTER-6
ROLE OF JUDICIARY TO ENSURE
FOOD SECURITY IN INDIA

I. Prelude

The right to food is inherent in several provisions of the Indian Constitution, including the commitments in the preamble to secure 'social and economic justice' and 'equality of opportunity' supported by the commitment to promote the 'dignity of the individual.' A few number of articles\(^1\) of the Constitution, when read together, highlight the State's obligation to ensure food security as an entitlement.

In India, there is a deeply rooted tradition of reflecting of the fundamental right to food of human beings and on the consequences of violating the food Security provisions. The Indian Concept of Dharma, which has been highlighted in Vedas and Upnishadas, stresses the importance of growing and sharing food. A very fascinating development in Indian Constitution jurisprudence is the extended dimension given to Article 21 by the Supreme Court. In several of its decisions that the right to life guaranteed in the Article 21 of the Constitution in its true meaning includes the basic right to food, clothing and shelter. It is indeed surprising that the justifiability of the specific right to food as an integral right under Article 21 had never been articulated or enforced until 2001.

One of the foremost cases, which specially took up the issue of the starvation and lack of food, was **Kishen Pattnayak v. State of Orissa.**\(^2\) However, the directions given by the Hon'ble court did not really helped to prevent people from dying. More importantly, the Supreme Court did not recognize the specific right to food within this concept of starvation.

---

1. Article 21, 39(a) and 47.
India can be quoted as one of the best examples in the world in terms of the justifiability of economic, social and cultural rights, including the right to food. Under the Constitution of India, Public Interest Litigation is permitted to protect the basic human rights of the most vulnerable (civil and political rights recognized in Part III of the Constitution). Although the right to food is not directly justifiable, its inclusion in the Directive Principles of the State Policy is important because it serves to guide interpretation of fundamental rights, including the right of life protected by Article 21. For the Supreme Court of India, "(the) right to life guaranteed in any civilized society implies the right to food, water, decent environment, education, medical care and shelter" and the right to life protected by Article 21 includes "the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head." This progressive interpretation of the right to life by the Supreme Court means that in India the government has a constitutional obligation to take steps to ensure to all individuals a dignified life, with adequate food.

II. Role of Judiciary in Addressing the Food Security Issue

Frankly speaking, the Constitution of India does not expressly recognize the fundamental right to food. However, cases brought before the apex Court alleging violations of this right have been premised on a much borderer 'right to life' enshrined in Article 21. This right is inherent to a life with dignity and should be read with Article 39 (a) and 47 to understand the nature of the obligations of the State in order to ensure effective realization of this right. In order to address the right to food, following question are of vital importance:

3 "No person shall be deprived of his life or personal liberty except according to procedure established by the law."
4 People's Union for Civil Liberties v. Union of India. Writ petition [civil] No.196 of 2001
What are the factors that affect the success of attempts to address food grievances through the judiciary? Why have past attempts at adjudicating Right to Food been less successful than the current Right to Food cases before the Indian Supreme Court? In attempting to answer these questions, researcher will briefly explore a previous right to food case together with several factors that researcher view as influencing the success of social and economic rights litigation attempts. Many factors influence litigation. For instance, the quality of lawyers, judges, plaintiffs and defendant are all variables that help determine the outcome of any case, in addition to more structural variables such as the Constitution or current political structure. Researcher focuses here on legal opportunity structure and public right rhetoric, two variables that affect the reality of broad public and judicial support of the right to food. Researcher hypothesis that an insufficient legal opportunity structure and a lack of public right rhetoric aimed at “right to food” existed at the time of the previous cases, *Kishen Patnayak v. State of Orissa*, and thus did not allow for the creation of broad support for Right to Food in the public or in the court.

In many cases, the poor view the law as an obstacle rather than an aid. Onerous and lengthy procedures, financial costs, and living in isolated, rural settings, all disable the poor from petitioning their grievances before the courts. Judicial procedures are viewed as possessing a “tendency to exclude and alienate” rather than welcome disadvantaged and marginalized citizens. In addition, point out to the alienation of the poor from the legal system as being greater in developing countries. Legal frameworks in developing countries have

---

6 *Supra* n. 2
7 Banik, Dan *Starvation and India’s Democracy* New York: Routledge, 16 (2007).
9 *Supra* n. 7 at 23.
seldom enabled “and in some cases even hindered, the poor to seek ways of escaping poverty”.11

Thus, in order for the poor to be able and willing to frame their grievances as legal infringements and bring them before the courts, an increased access to justice and a receptive judicial system are necessary. In fact, judicial reforms and increased judicial accessibility have been understood as directly correlated with the promotion of economic and social development in developing nations.12 Increased “access to justice”, “legal empowerment”, or “legal opportunity” may include both formal and informal mechanisms that allow the poor greater access to the courts. Examples of increased legal opportunity may be the institution of legal aid services or public interest law organizations. There are also obstacles other than obstructive legal structures that inhibit the poor from accessing the courts. For instance, the marginalization of groups in society due to ethnicity, caste, race or religion presents blockages to the justice systems that may not always be reconciled.13 However, the law can be utilized and leveraged to not only rescind previous obstacles but also more progressively to reverse marginalization or other social issues.14

Indeed, the Indian Judiciary reformed the judicial system in the early 1980s to allow for Public Interest Litigation, the purpose of which was to increase access to justice for those citizens whom, for whatever reason (i.e., illiteracy, poverty), are unable to reach and petition the courts. The system is designed to enable access to justice to the “poorest of the poor, the deprived, the illiterate, the urban and rural unorganized labour sector, the women, the children,” and other marginalized groups.15 In reality, this has meant that a social activist group or Non Government Organisation (like Peoples Union for Civil

---

11 Supra n. 7 at 16.
12 Id. at 12.
13 Supra n. 7 at 16.
14 Ibid.
Liberties for Right to Food Case) can bring a case on behalf of the socially and economically disadvantaged. Furthermore, since the institution of public interest litigation, judges have been very accepting of Public Interest Litigation cases. Several postcards with complaints sent to the court have even been converted into public interest litigation writ petition by judges.\textsuperscript{16} Public Interest Litigation has been labeled the “single most important instrument for people to access justice through the higher courts. It has allowed the poor in India an arena for participation and a means to redress their grievances.\textsuperscript{17}

While other countries, notably the United States, have histories of social action litigation, India has been noted as “far surpassing the United States in its acceptance of Public Interest Litigation.\textsuperscript{18} Of course, there are possible downsides of Public Interest Litigation. The number of Public Interest Litigation cases that Supreme Court addresses has risen exponentially, and that the cost of litigation can be socially and economically wasteful.” While this may be true, the public interest litigation system in India is widely understood as “absolutely essential” for the meaningful advancement of the poor’s rights.\textsuperscript{19}

Hence, when it comes to the right to food in India public interest litigation is undoubtedly a unique factor that affects any attempt at addressing food grievances through the judiciary. However, mere existence of public interest litigation is not the sole determiner of an accessible legal structure. The legal system may be more receptive to litigating certain rights at some times and other rights at others. For instance in 1988 when Indian Supreme Court issued a

\textsuperscript{17} Supra n. 15 at 5.
\textsuperscript{18} Ibid.
notification regarding what issues be classified as Public Interest Litigation, it included a catalogue of matters such as petition regarding the treatment of the prisoners, environmental issues, neglected children or treatment of castes but did not discuss the topic of grievances related to topics such as food, water, or education. Thus in examining Kishen Pattnayak v. State of Orissa,\textsuperscript{20} determining the conduciveness of a legal structure when it comes to food right should not be limited to evaluating whether public interest litigation was in place at the given moment.

Judicial activism on the right to food was witnessed for the first time in India in the case of Kishen Pattnayak v. State of Orissa\textsuperscript{21}. In 1989, two social workers addressed a letter to the Supreme Court concerning extreme poverty and hunger in Kalahandi in the State of Orissa. They spoke of disease, famine, and starvation deaths, and identify situations in which the people of Kalahandi were even forced to sell their children. The letter demanded that the State of Orissa take immediate action to mitigate the suffering in Kalahandi. When the court received the letter, it chooses to treat it as writ petition, and launched an investigation into the letter's claims. The District Judge charged with undertaking the investigation found, however, that the State of Orissa had implemented sufficient social welfare measures and there was hardly any case of starvation death. In turn, the initial petitioners submitted another petition, and suggested that a group of social organizations be formed to supervise further relief work. The Court then claimed that these forms of supervision already existed, as did sufficient policies, pointing to feeding programs, irrigation projects and minimum purchase prices. In its final judgment the Court ruled, “it is not disputed that the people of Kalahandi and Koraput are very poor and most of them have been living below the poverty line”. In spite of this, the Court stood by its initial claim that existing legislation made ample provision for taking steps in case of starvation

\textsuperscript{20} Supra n. 2.
\textsuperscript{21} Ibid.
deaths. In doing so, the Supreme Court acknowledged the suffering of Indian citizens, but labeled this suffering as legislature’s responsibility. Further, it claimed the “situation was being tackled effectively” despite alarming evidence to the contrary.

The response of the court in the instant case was dramatically different than the response of the Court in 2001, despite similar claims of hunger, famine, and starvation death. In 1989, the Supreme Court took a cautious and conventional role, pointing to legislative and macro level policy solution that were already in place rather than “litigating policy”. The Court saw a right to food as beyond its judicial reach, indicated by its difference to the legislature's policies. In addition, it took no action to prevent death from hunger in the short-term, and made no mention of citizens' entitlement to a right to food. Why did the court respond so differently in 2001 to the Right to Food case if public interest litigation, a progressive judiciary, and high levels of hunger and starvation were already present in 1989? What was different between the two cases, and how did this affect the outcome of litigation?

The researcher has observed the apparent absence of nearly any scholarly discourse or media attention paid to the case. This suggests that the case was relatively unrecognized by the public. This may not be surprising. Whereas citizens with organizational backing and/or popular support often bring the most successful public interest litigation cases to the Court, the 1989 case was brought to the court by two social workers with hardly any organizational and/or popular support. In addition, in 1989, a "right to food" or a "right not to be hunger" was not at the height of public discourse, much less spoken of at all as a valid human right.23

23 Id. at 9.
Second, it was not until the 1990s that Supreme Court began to litigate a string of causes related to social and economic rights. By contrast, in 1989 precedents in this arena were virtually nonexistent.

Third, considering the importance of public rights discourse, it would seem that the court did not feel a large amount of pressure by citizens to adjudicate on the situation in Orissa. Already, one may cautiously point to the importance of public pressure placed on the judiciary to more favorably adjudicate social and economic rights, and more favorable adjudication reinforces the importance of and even incites future public discourse. The existence of this cycle is supposition, and will be explored methodically below.

How does this public pressure suddenly arise, especially when experiences with courts have been unsuccessful? Due to the failure of past attempts, why would the Right to Food Campaign, once again choose the judiciary as the arena through which to secure food rights in 2001? How shifts in legal opportunity allowed for an opening through which a social movement arose, which in turn increased rights discourse and public action, thereby allowing a right to food to emerge through the Right to Food case. Researcher postulates that this Right to Food Campaign, a broad-based social movement, was to be the most significant difference between the failure of the 1989 right to food case described earlier and the success of 2001 Right to Food case.

The rise of Public Interest Litigation in the 1980s greatly increased the access of Indian citizens to the courts. This change in legal opportunity structure made it relatively easy to file cases on behalf of others and for marginalized groups and individuals to reach the courts. This, combined with the lack of legislative political opportunity of the poor... in Dreze's words," the (Indian) poor do not count for much in public policy"...helps explain why movements in India have often turned to the judicial system to advance their policy agendas.
Shortly after India's internal emergency between 1975 and 1977, the judiciary's place in politics transitioned to its current role as "the protector" of the public's rights. Prior to this movement, the extent of the court's activism had been limited to several cases related to property in the 1950s and 1960s. Sathe describes the transformation of the court's role in India politics as historically "synchronized" with political change and with the most relevant political issues in India over the last half century. Thus, the anti-emergency discourse of the early 1980s did not coincidentally parallel the initiation of Public Interest Litigation by Supreme Courts justices; both focused on potential infringements of individual liberties and recognized that the courts played a special role in defining and enforcing rights with respect to the government.

In accordance with this synchronization, the history of Public Interest Litigation can be divided into "phases" which pair relevant political issues with the most current issues being adjudicated. For instance, in 1980s, following the violation of civil and political rights during the emergency, the courts adjudicated topics such as the rights of prisoners, death sentencing, the right to privacy, the right to speedy trial, the right to honest governance, and the right to an independent judiciary. The second phase, however, focused on governance issues, including cases that set guidelines for blood transfusion and instituted mandates to protect the Taj Mahal from erosion. Finally beginning in the 1990s, case law shifted to a focus on the environmental justice and protection. The court began to adopt more affirmative measures that it actively oversaw.

This third phase constituted an increased active judicial involvement in and supervision of complex policy determinations, thereby signaling a potentially increased judicial respectively and legal

24 Id. at 52.
25 Id. at 6.
26 Maneka Gandhi v. Union of India 1978 AIR 597, 1978 SCR (2) 621
27 Supra n. 23 at 18.
opportunity to actors (such as the Right to Food Campaign) concerned with social and economic rights. Significantly, while the realization of Right to Food and other social and economic rights in India is inextricably linked to Public Interest Litigation, these rights were not immediately affected by Public Interest Litigation at its outset. In 1990s, however, the court began to consistently adjudicate directive principles (the aforementioned "inspirational" constitutional goals) as legal entitlements guaranteed by Article 21, the fundamental rights to life. When viewing cases broadly from the early 1990s to the later 1990s there is a visible shift in the social and economic rights litigation brought before the court and adjudicated. While shelter and housing rights cases had come before the courts by the mid 1980s, by the 1990s the court was stretching its judicial rulings even further into those arenas typically considered policy arenas, something it had hesitated to do in the 1989 right to food case.

In a famous shelter and housing case, the Court first referred to the right to life as including the "means of livelihood". This ruling, despite its seemingly narrow focus, greatly influenced the legal opportunity structure and the types of grievances with which citizens were petitioning the court regarding other "means of livelihood," such as right to adequate water. In Gautam Uzir & Another v. Gauhati Municipal Corporation, the court ruled that water is essential for life and thus a right. This came despite the protests by the Municipal Corporation regarding financial constraints. Setting a considerable precedent, the court even scolded the municipal corporation for its "all or nothing" approach to water provision issues: "Before making huge

---

30 Ibid.
31 1999 (3) GLT 110
projects of hundreds crores of rupees....some genuine efforts should have been made by the corporation itself and the state government to mitigate the melody."\textsuperscript{33}

It has been generally accepted that there was a significant shift in the willingness of the judiciary to incorporate social and economic rights into Indian Constitution as enforceable rights. The case law, which is admitted much more expansive than shown here, illustrates that social and economic rights were not the main focus of the court and of the public grievances until the mid-1990s. In addition, according to Sathe, the 1990s, is when Public Interest Litigation first become utilized as a distinct social movement strategy. Actors began to turn to litigation when other mobilizing tactics such a lobbying were not providing desired result.\textsuperscript{34} Thus, the cases of 1990s exhibit an incremental yet perceptible change in the judiciary's respectively to citizens' positive rights, especially those for the poor. In addition, these cases allowed the judicial system to be perceived as an alternative venue around which actors could mobilize and redress their grievances.

That social and economic rights were not widely accepted in the courts previously, and that social movements had not previously aspect of a structural legal opportunity structure had existed in the 1980s (Public Interest Litigation), the legal opportunity structure at that time was not perceived as an opening for advocates of food rights until long after its institution. This allows one to understand more clearly, why there was neither broad public support nor judicial support surrounding legal claims of food rights in 1989. However, legislation adopted in the late 1980s created even more legal opportunity that eventually, and leading up to 2001, fostered a greater legal consciousness of Public Interest Litigation among the poor.

\textsuperscript{33} Supra n. 15 at 122.
\textsuperscript{34} Supra n. 23 at 19.
The demands of citizens influence the court's activism and the court in turn triggers new demands from citizens. The idea of dynamism between citizen and the courts is by no means revolutionary. Thus as the India courts responded positively to social and economic rights, and citizens began to confront the courts with more social and economic rights claims, judicial activism-evolved and citizens felt that approaching the courts with a right to food claim was viable and potentially advantageous.

In *Shanti Star Builders v. Naryan Khima Lal Totame*\(^{35}\) Supreme Court held that the basic needs of man have traditionally been accepted to be three-food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal it is the bare protection of the body; for a human being it has to be a suitable accommodation that would allow him to grow in every aspect- physical, mental and intellectual. The Constitution aims at ensuring full development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well-built comfortable house but a reasonable home particularly for people in Indian can even be mud-build thatched house or a mud-built fireproof accommodation.

In *Peerless General Finance and Investment Co. Ltd. v. Reserve Bank of India*,\(^{36}\)Supreme Court quoted Article 25 of Universal Declaration of Human Rights and held that Right to life include the right to live with basic human dignity with the necessities of life such as nutrition, clothing, food, shelter over the head, facilities for cultural and socio-economic well being of every individual. Article 21 protects the right to life. It guarantees and derives the minimum needs for existence, including a better tomorrow.

\(^{35}\) AIR 1990 SC 630.
\(^{36}\) AIR 1992 SC 1033.
Whether employees appointed by contractors whose wages were being paid through such contractors would fall within the section of the Industrial Dispute Act, 1948. In that context, Court observed that the right to livelihood springs from the right to life guaranteed under Article 21. The Court referred to the Universal Declaration of Human Rights, the International Convention on Economic, Social, and Cultural Rights which recognize certain needs, which include the right to food, clothing, housing, education, the right to work, leisure, fair wages, decent working conditions, social security, the right to physical or mental health, protection of their families, as an integral part of the right to life. The Court also held that the Preamble and Part IV of the Constitution reinforce them compendiously as socio-economic justice, bedrock to an egalitarian social order. The right to social and economic justice is thus is a fundamental right.

Again Supreme Court adverted to Article 11(1) of the International Covenant on Economic, Social and Cultural Rights, which laid down that the State parties to the Covenant recognize the right of everyone to an adequate standard of living for himself and for his family, including food, clothing and housing, and to the continuous improvement of living conditions and held that to the poor, settlement with a fixed abode and right to residence guaranteed by Article 19(1)(e) remain more a teasing illusion unless the States provides them the means to have food, clothing and shelter so as to make their life meaningful and worth living with dignity. It is also observed that food, shelter and clothing are minimal human rights. An affirmation came from the National Human Rights Commission of India in August/September 1993, when 125 children below 10 years of age reportedly died due to repeated attack of malaria, chickenpox and various water borne diseases. The National Human Rights Commission awarded compensation. In response, the state government amidst other arguments that it tendered in order to

---

express its inability and unwillingness to pay said:"
the resources crunch in the state would seriously limit the capacity of the government to pursue regulatory and welfare activates if, every death earns a lucrative compensation."39

The government's callous attitude towards the situation is clear violation the human rights obligations. Under the international law, the government, which fails to take appropriate steps as required under the Covenant and fails to utilize the maximum of available resources towards the full realization of the Covenant, is responsible for violation of the Covenant through the acts of omission.40 Furthermore, such violations are imputable to the State within whose jurisdiction they occur and therefore, the State responsible, must establish mechanisms to correct such violation, including remedies for victims.41

While dealing with the challenges to acquisition proceedings, where in one of the contention was that an account of acquisition, the owner would be deprived of his land, which is his only source of livelihood, as per Article 21 of the Constitution. Supreme Court held that protection of life guaranteed by Article 21 encompasses within its ambit the right to shelter in order to enjoy the meaningful right to life. The Court further observed that in any organized society, the right to life as a human being is not ensured by meeting only the animal needs of man.42 It is secured only when he assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this object. The right to live guaranteed in any civilized society implies the right to food, water, a decent environment, education, medical care and shelter. These are basic human rights enshrined in the Universal Declaration

40 Guideline 15(a) and (e), the Maastricht Guidelines. General Comment 12, Para. 29.
41 Guideline 16(a); the Maastricht Guidelines; General Comment 12, Para. 31.
of Human Rights and the Convention or under the Constitution of India cannot be exercised without these basic human rights.

Another important judgment was laid down in the case regarding the Landless Adivasis struggle for access to land in Rahata Taluka, Maharashtra, wherein the State of Maharashtra is duty-bound under international law to respect and protect the people's rights to adequate food. By forcibly evicting the Adivasis from their homes and destroying their crops repeatedly, the State has violated the Adivasis' right to feed them and expose them to the threat of hunger and malnutrition. By directly being involved in the forcible eviction and by improper implementation of law, the State violates the right to food of the Adivasis peoples. As the police was involved in demolition of Adivasis property, the State was involved in the illegal practice, and therefore it can be stated that the Government failed to respect the right to food of people.

Going to a step ahead the Supreme Court in Paschim Banga Khet Mazoor Samity v. State of Bengal held that preservation of human life is of paramount importance. State cannot avoid their constitutional obligation in that regard because of financial constraints. Similarly, the Supreme Court has, in a series of landmark decisions, observed that the inherent right to life which is already granted by Article 21 of the Constitution of India has been interpreted expansively by this Court to make the right to life meaningful, socially, culturally, economically, even to the deprived segments of the society with dignity of person and in pursuit of happiness. Right to life enshrined in Article 21 means something more than mere survival or animal existence. It would include the right to live with human dignity.

---

43 Retrieved from http://theothermedia.in/downloadables/SAIP_Reports/SAIP_Land_Series_3_Maharashtra.pdf on 5/20/2012/9:00PM.
44 (1996) 4 SCC 37
46 Francis Corolie Mullin v. Administrator, Union Territory of Delhi, AIR 1981 SC 747; Delhi Transport Corporation v. DTC Mazoor Congress, AIR 1991 SC 101
right case, the court first referred to the right to life as including the “means of livelihood”.

In another case, hundreds of employees of State-owned corporations, public undertakings or other statutory bodies in the State of Bihar died due to starvation or committed suicide owing to acute financial crises resulting from non-payment of remuneration for a long time. When this fact was brought to the notice of the Supreme Court, it held that the State could not escape liability when human rights problems of such a magnitude involve starvation deaths. While deciding the case, the Supreme Court referred to Article 11 of the International Covenant on Economic, Social and Cultural Rights 1966 and approved that human beings have a right to food and that hunger is violation of Human Right to Food and issued various directives to ensure that no starvation deaths occur. The government companies/public sector undertakings, being part of the “State”, would be constitutionally liable to respect the life and liberty of all persons in terms of Article 21 of the Constitution of India. The State Government of Bihar, thus, had a constitutional obligation to protect the life and liberty of the employees of the governments-owned companies/corporations who are the citizens of India.

Further, the Court held that right to life guaranteed in any civilized society employees the right to food, water, descent environment, education, medical care and shelter. These are the basic human rights enshrined in the Universal Declaration of Human Rights and Conventions or under the Constitution of India cannot be exercise without these basic human rights. Supreme Court also passed a detailed judgment regarding the obligations of the Food Corporation of India, as an agent of the State and an important factor in the food grains trade of the country. The court held that it must conform to the letter and spirit of Article 47 to the Constitution.

47 Supra n. 29.
48 Kapila Hingorani v. State of Bihar, AIR 2003 SCC 1548
49 M.K.Balakrishnan v. Union of India and others, AIR 2009 SC 863
Supreme Court appointed two “Commissioners” for the purpose of monitoring the implementation of all orders relating to the right to food and food security.\(^{50}\) The Commissioners are empowered to enquire about any violations of these orders and to demand redress, with the full authority of the Supreme Court. They are also expected to report to the Court from time to time. Four reports have been submitted by the Commissioners so far providing information about the progress (or failures) of implementation of the schemes by state governments in accordance with the Supreme Court orders.\(^{51}\)

The Court’s interventions in implementation of the pre-existing schemes have been encouraging and positive. Several States have introduced mid-day meals scheme in primary schools or are in the process of doing so. The orders have also constrained some State governments to streamline and improve other food related schemes. In an order, the apex Court directed that the sanctioned *Anganwadi* Centres should supply nutritious food/supplement to the children, adolescent girls and to pregnant and lactating women under the scheme for 300 days in a year, thereby safeguarding the special interest of women and children. \(^{52}\)

The unique facet of the enforcement order is that the court revisits these orders, thus ensuring their implementations. As identified in a publication “Many Roads to Justice”, one of the key issues is that even Law and rulings go unenforced.\(^{53}\) Unless accompanied by other social strategies (e.g., community services, government policies etc.), even a landmark judgment may not have the required impact. Therefore, unlike the regular run of cases, as evident in the Right to Food case, the Public Interest Litigation cases

---

\(^{50}\) *Supra* n 04; (Order dated 8\(^{th}\) May, 2002 and 2\(^{nd}\) May, 2003); Supreme Court appointed Dr. N.C.Sexena and Mr. S.R.Shankaran as “commissioners”.

\(^{51}\) Retrieved from http://website:www.geocitics.com/righttofood/links/comm.html.> on 23/12/2013/9:00PM (Complete texts of the four reports are available on this website)

\(^{52}\) *Supra* n 04; (Order dated 29\(^{th}\) April, 2004 )

are not disposed of by a single judgment at one point of time. A series of short orders are passed and their implementation ensured, before the court proceeds to a final judgment.\textsuperscript{54} The court has described this device as a "continuing mandamus".\textsuperscript{55}

III. Development of Food Security Case and its Enumerated Entitlements

Peoples Union for Civil Liberties was made possible by the introduction of Public Interest Litigation, and a constitutional precedent defining the right to life as "the right to live with human dignity and all that goes with it, namely, the bare necessaries of life such as adequate nutrition."\textsuperscript{56} The petitioners in Peoples Union for Civil Liberties 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 government failure to provide subsidized food grains to eligible beneficiaries.\textsuperscript{57} Originally brought against the Government of India, the Food Corporation of India, and six state governments on the claim that these bodies had ineffectively managed the public distribution of food grains,\textsuperscript{58} the litigation was expanded to apply to all state governments and to address larger, more complex issues of hunger, unemployment, and food security.\textsuperscript{59}

Peoples Union for Civil Liberties, directed to date by a series of interim orders, has yet to be awarded a final, closing judgment and the case\textsuperscript{60} remains open until today. The interim orders issued by the

\textsuperscript{55} Vineet Narain v. Union of India (1998) 1 SCC 226 at 243.
\textsuperscript{56} Supra n. 46 at 516,517.
\textsuperscript{57} Supra n. 04.
\textsuperscript{58} Id.; This Petitioners named the State of Orissa, State of Rajasthan, State of Chhattisgarh, State of Gujarat, State of Himachal Pradesh, and State of Maharashtra as Respondents.
\textsuperscript{59} For a complete set of Supreme Court interim orders from 2001 to 2010; Legal Action: Interim Orders in the 'Right to Food' Case; Retrieved from http://www.righttofoodindia.org/orders/interimorders.html on 31/5/ 2012/5:56PM.
\textsuperscript{60} S.P. Gupta v. Union of India, A.I.R. 1982 SC 149.
Supreme Court, orders that have directed both the litigation and the legal entitlements they have protected since July 2001, will remain applicable as law for the duration of the case. The final status of the food schemes protected by Peoples Union for Civil Liberties as legal entitlements ultimately depends on their incorporation into the Supreme Court’s closing orders or, alternatively, their codification into law by legislative bodies. On June 4, 2009, the President of India publicly declared her support for such legislation, announcing in her address to the national parliament that her government “proposes to enact a new law the National Food Security Act—that will provide a statutory basis for a framework which assures food security for all.”

An Empowered Group of Ministers at the federal prepared the draft on a food security bill and placed that formally for debate in Parliament.

Analyzing the economic context in which Peoples Union for Civil Liberties was filed provides valuable insight into the petition’s requests and questions of law. At the time of filing, the state of Rajasthan suffered from severe drought, the consequences of which were exacerbated by government failure to provide the required employment and food relief as mandated by its Famine Code of 1962. In a memorandum on scarcity published by the state of Rajasthan in 1999, it was estimated that 73.6 per cent of villages in state were affected by drought and in need of relief. At the same time, the state had insufficient food aid to meet the demands of its population.


62 Devi Singh Patil, Shrimati Pratibha, President of India, Address to Parliament (June 4, 2009), Retrieved from http://presidentofindia.nic.in/sp040609.html > on31/5/2012/7:44PM.


64 Supra n. 04 at 30; The Writ Petition identified three requirements imposed by the Famine Code of 1962: Accordingly, in times of drought, the Code requires the Relief Commissioner to: a. arrange for provision of funds to undertake relief measures; b. to formulate proposals to set-up an organization to deal with the scarcity or famine conditions; and c. to co-ordinate activities of different departments and local bodies to provide effective relief;

65 Ibid.; Relief Department, Government of Rajasthan, Memorandum on Scarcity, Samvat, 2056 (1999).Annexure P-12 at 221,
time, national health surveys reported malnutrition rates of nearly 50 per cent of all children in Rajasthan and estimated that almost half of the state’s rural population lived below the poverty line. By the third year of drought, 2000–2001, reports of acute hunger and starvation deaths were being covered across the state. Despite policy mandating otherwise, employment relief had not been issued, nor had subsidized food been provided to all eligible beneficiaries.

Government failure to adequately address hunger was particularly egregious in light of the surplus amount of food grains being stored in Food Corporation of India silos, or “godowns,” in the state of Rajasthan. Close to 50 million tons of grain lay unused in Food Corporation of India storage, an excess of grain substantially higher than the federally required buffer stock. Studies undertaken by the petitioners demonstrated inadequate procurement and provision of grain on both national and state levels. Not only had surplus Food Corporation of India stocks not been released to states requesting them for relief purposes, but state governments had not, in the first instance prior to the drought emergencies, purchased the minimum necessary amount of grain allotted to them under the Public Distribution System quota on grounds of financial deficits. Peoples Union for Civil Liberties was subsequently filed as a response to this state and central government failure to address acute hunger and starvation deaths in a time of surplus. The writ petition sought a Supreme Court direction to state and central governments to abide by their common duty to enforce the right to life of all persons by providing effective drought relief and distribution of food grains.

---

66 Supra n. 61 at 10.
67 Id. at 5.
68 Id. at 14, 15; As per the guidelines of the Targeted Public Distribution System, only those families designated as Below Poverty Line (BPL) are eligible to purchase food at subsidized rates.
69 This research adopts the People’s Union for Civil Liberties terminology of “godowns” when referencing Food Corporation of India storage units.
70 Supra n. 04 at 5, 11, 12, 18, 45.
71 Id. at 5, 11, 12, 14, 18, 45
72 Id. at 26.
The writ petition raised questions of law pertaining to whether the right to life under Article 21 of the Constitution of India includes the right to food and whether this right to food, as upheld by the Supreme Court in *Francis Coralie Mullin v. The Administrator*, implies that the State has a duty to provide food to people who are affected by drought and are not in a position to purchase food. The Petitioners argued that the State did have such a duty, that the right to life did include a right to food, and that the state and central governments were therefore duty-bound to start relief works and distribute grain. As a result, the Petitioners requested that the court issue a writ of mandamus or any other appropriate order to: (1) direct the Central and State Governments to enforce the Famine Code; (2) direct the Government of India and the Food Corporation of India to release surplus food grains lying in storage for relief to drought affected areas; and, (3) direct all Respondents to revisit the Public Distribution System and “frame a fresh scheme of public distribution for scientific and reasonable distribution of grains.”

The petitioners issued their requests on the grounds that the respondent governments had already established standards for themselves in the Famine Code, Article 21 of the Constitution, and the Supreme Court precedent explicating a right to life inclusive of the right to food. With the Supreme Court’s response, issued on July 23, 2001, Peoples Union for Civil Liberties was officially opened as a Public Interest Litigation case. Considering the petition not as adversarial litigation between two parties but as government injury to the public interest and therefore a concern for all—as per the nature

---

73 *Supra* n. 46.; *The right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life, such as adequate nutrition...*.

74 *Supra* n. 04 at 50.

75 Ibid.

76 Ibid.

77 *Supra* n at 17,50; *Supra* n. 42 at 50.1051, 105: “[The] right to live as a human being... is secured only when [a man] is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth.”; *Supra* n. 46 at 518.
of Public Interest Litigation the first Supreme Court interim order
directed respondent governments to submit reply affidavits and, in the
meantime, to see that all Public Distribution System shops, if closed,
were re-opened and functioning.78

Since 2001, subsequent interim orders for Peoples Union for
Civil Liberties have served to define gradually, and with increasing
detail, India’s constitutional right to food. While early interim
orders mainly addressed the public distribution of food grains to
families and persons falling below the poverty line,79 the Supreme
Court order of November 28, 2001 critically and expansively
transformed Peoples Union for Civil Liberties. In this defining order,
the Supreme Court essentially redefined government schemes as
constitutionally protected legal entitlements. The Court not only
identified which food schemes constituted legal entitlements under
the constitutional right to food, but also outlined in detail how
those government schemes were to be implemented.80 This order
directed the government to implement, in specific manners, the
following food-related schemes: (1) the Targeted Public Distribution
Scheme; (2) *Antyodaya Anna Yojana*; (3) the Mid-Day Meal Scheme;
(4) the National Old Age Pension Scheme; (5) the Annapurna
Scheme; (6) the Integrated Child Development Scheme; (7) the
National Maternity Benefit Scheme; and (8) the National Family
Benefit Scheme.81 Finally, the order not only established which
policies governments were obligated to implement, but also

78 *Supra* n. 04; “The Supreme Court clearly expressed the importance of the PDS to
provide foodgrains for those without sufficient access to food:
“In our opinion, what is of utmost importance is to see that food is provided to the
aged, infirm, disabled, destitute women, destitute men who are in danger of
starvation, pregnant and lactating women and destitute children, especially in
cases where they or members of their family do not have sufficient funds to
provide food for them.”

79 *Supra* n. 04; (Sept. 19, 2001 interim order).
80 *Ibid.*; (Nov. 28, 2001 interim order).
identified whom it would hold accountable in the event of noncompliance.\footnote{Ibid.; (Oct. 29, 2002 interim order): "Most of the interim orders are comprised of directions to the state and central governments. In the case of the state governments, the Chief Secretary is answerable to the Court on behalf of the government. In regards to the Central Government, the person whom the Court will hold responsible depends on the department or ministry to which it addressed its directions. If an order is addressed to a department or ministry, then the secretary of that relevant department or ministry is responsible for implementation. Should the order be addressed to the Central Government, however, the Attorney General will serve as representative for the Government of India; Supra n. 04, (Apr. 27, 2004 interim order); Supra n. 04 (May 2, 2003 interim order); Supra n. 04, (Apr. 20, 2004 interim order).}

By engaging in something strikingly close to lawmaking, the Supreme Court has, through its series of interim orders, gradually defined the right to food in terms of what policies are required of the state and central governments in order for them to adequately fulfill their constitutional obligation under Article 21. Notable modifications to government schemes (and therefore the right to food) have evolved in subsequent orders, reflecting an interesting display of judicial activism regarding food policy. Notable developments in recent years have included the universalization of the Integrated Child Development Scheme,\footnote{Supra n. 04; (Apr. 29, 2004 interim order).} mandated continuance of the Mid-Day Meal Scheme in schools in drought affected areas over summer vacations,\footnote{Ibid. (Apr. 20, 2004 interim order)\footnote{Ibid. (Apr. 20, 2004 interim order and Apr. 20, 2004 interim order).}} court directives to neither modify nor discontinue any scheme covered in previous\footnote{Ibid.; (Jan. 27, 2010 interim order).} orders without the prior permission of the Supreme Court, and annual doubled allocation of both cash and food grains for the Sampoorna Gramin Rozgar Yojana "food for work" employment program during the months of May, June, and July.\footnote{Ibid.; (Jan. 27, 2010 interim order). An interim order was issued in January 27, 2010;\footnote{Ibid. (Jan. 27, 2010 interim order).} as the case remains open to date, additional petitions may still be brought and the content of the case may still be expanded.

The case as it stands today entitles all persons to those benefits and government schemes articulated in the order of November 28,
2001, with substantial expansions for some schemes, such as the Integrated Child Development Scheme and the Mid-Day Meal Scheme, over the last nine years. While the concrete ramifications of Peoples Union for Civil Liberties are perhaps somewhat narrow in that the case directs the government to implement schemes it had already enacted for itself, the Supreme Court has, in many ways, been quite radical both in its objective to make justifiable an affirmative right to food and in its means and methods of enforcing that right.

These achievements, however, substantially depended on a particularly ripe legal and political environment and on the contributions of the Peoples Union for Civil Liberties Commission for the Supreme Court, a federal oversight body appointed by the Court to monitor and enforce the interim orders, and the Right Food Campaign, a network of civil society organizations. We turn now to a discussion of the integral factors, both formal and informal, that contributed to the explication and implementation of the right to food in India.

The impact and critical contributions of the Campaign and Commission are evidenced most clearly in both the interlocutory applications filed by or on the behalf of the PUCL petitioners and the Supreme Court’s interim order responses. As an advisor to the right to food litigation, the Campaign continues to influence the case’s direction through both the Supreme Court and state high courts and plays a role in advancing and expanding food related schemes. Moreover, by acting as petitioners in the litigation and filing interlocutory applications asking for specific modifications, expansions, or ordered implementation of identified provisions, the Campaign continues to directly impact the concrete revision of policy

---

89 The Right to Food Campaign both advises the direction of the litigation and sometimes its component organizations, such as the Human Rights Law Network, serve themselves as petitioners in the case by bringing claims in the Supreme Court and in state high courts.
as directed by the Supreme Court. The Campaign has continuously sought to modify government schemes to meet the needs of the people through its interlocutory applications, demonstrating a coordinated effort by civil society to create, modify, and improve policy through the courts.

The specificity of the interlocutory applications demonstrates the Campaign's acute understanding of how the poor concretely experience government implementation of court-protected food schemes, as well as its commitment to adjusting food entitlements to directly meet the needs of the poor. While the original writ petition requested a more general order for enforcement of Rajasthan's Famine Code, the interlocutory applications that followed the first interim order of July 23, 2001 are far more detailed in their requests to the Supreme Court and in their demands of the state and central governments. Interlocutory Application No. 8 of 2001, filed in August 2001, identifies specific social security schemes funded by the central government and requests that the Supreme Court direct the respondent governments to fully implement those schemes. Interlocutory Application No. 8 of 2001 notably contains requests for specific implementation of policies outlined in such detail as to include, for example, provisions for precise caloric amounts and food grain allocations. Beginning with the numerous applications filed during the course of the Peoples Union for Civil Liberties litigation,

---

90 To date, the petitioners in the People's Union for Civil Liberties litigation have filed over ninety interlocutory applications.
91 Supra n. 04.
92 Ibid.; (July 23, 2001 interim order).
93 Supra n. 04. at 17; "The Petition requests, for example, that respondent governments implement the Mid-day Meal Scheme by providing every child in every government assisted school with a prepared mid-day meal with a minimum content of 300 calories and 8-12 grams of protein each day of school for a minimum of 200 days."
94 Supra n. 04.; "As of January 2008, petitioners, persons, or organizations acting on behalf of the petitioners, and state and central governments have filed over eighty interlocutory applications."
the trend of issuing detailed, concrete, and quantifiable requests to
the Supreme Court concerning the right to food continues to date.\textsuperscript{95}

Campaign commitment to attend to immediate needs and
prevent government abuse by recommending policy adjustments to
the Supreme Court is perhaps most clearly evidenced in interlocutory
applications addressing employment and food for work schemes,\textsuperscript{96} child nutrition programs,\textsuperscript{97} and the food grain Public Distribution
System.\textsuperscript{98} In response to Campaign-initiated fact-finding reports on
government implementation, the petitioners have regularly filed
applications requesting court orders relevant to specific issues
identified by civil society. In regards to the protection and expansion
of child nutrition programs, for example, the Campaign has taken
legal action to hold officials responsible in court for failed or
inadequate implementation of the Mid-Day Meal Scheme,\textsuperscript{99} to stop the
use of contractors for supplying supplementary nutrition to
Integrated Child Development Scheme feeding centers,\textsuperscript{100} and to
prevent government modification or discontinuance of benefit schemes
without the prior permission of the Supreme Court.\textsuperscript{101}

In regards to defining the right to food, the involvement of the
Campaign in the development of the petition and interlocutory
applications has been central to defining a specific and enforceable
right. Providing the data necessary to both determine basic nutritional
necessities and expose deprivations of those minimum requisites of
life, the Campaign has been critical to setting a legal floor for nutrition
and food-related entitlements.\textsuperscript{102} The credibility of the Campaign has
been validated by Peoples Union for Civil Liberties's interim orders.
Orders pertaining to child nutrition, for example, reflect the caloric

\textsuperscript{95} Retrieved from http://www.righttofoodindia.org/case/case.html on 21/4/2012/
8:50AM.
\textsuperscript{96} Supra n. 04.; Interlocutory Application Nos. 2, 3, 8, 14, 24, 26, 30, 34, 35, 57,
\textsuperscript{97} Ibid.; Interlocutory Application Nos. 7, 8, 24, 28, 29, 30, 34, 35, 49, 54, .
\textsuperscript{98} Ibid.; Interlocutory Application Nos. 1, 24, 25, 29, 30, 41, 45, 51, 53, 55, 58,.
\textsuperscript{99} Ibid.; Interlocutory Application Nos. 7, 8, 24, 28, 29, 30, 34, 35, 49, 54,
\textsuperscript{100} Ibid.; Oct. 7, 2004 interim order); Ibid.; Interlocutory Application No. 60.
\textsuperscript{101} Ibid.; Interlocutory Application Nos. 7, 8, 24, 28, 29, 30, 34, 35, 49, 54,\textsuperscript{102} Ibid.; Interlocutory Application Nos. 2, 3, 8, 14, 24, 26, 30, 34, 35, 57,
and protein allotment and quality recommendations put forth by the petitioners, and directions for employment and food for work schemes, especially during the months of May, June, and July, have responded closely to specific requests made in interlocutory applications.

The Campaign has also played an important role in ensuring that disadvantaged groups, such as children, women, the elderly, and the disabled, are granted due attention in the interim orders. The Campaign has, for example, made certain that nutrition and right to food for children, an issue often absent from the political scene, has been identified and protected as a priority initiative. Finally, in addition to affecting the case through directly filing its own interlocutory applications, the Campaign also indirectly influences development by providing information, accumulated data, and field reports to the Office of the Commissioners and to state advisors.

In its May 2, 2003 interim order, the Court asserted:

The conversion costs for a cooked meal, under no circumstances, shall be recovered from the children or their parents. In appointment of cooks and helpers, preference shall be given to Dalits, Scheduled Castes and Scheduled Tribes. The Central Government shall make provisions for construction of kitchen sheds and shall also allocate funds to meet with the conversion costs of food-grains into cooked mid-day meals . . . . In drought affected areas, mid-day meal shall be supplied even during summer vacations. The Court also directed state governments and Union Territories to implement the ICDS framework, requiring: Those Governments providing dry rations instead of cooked meals must within three months start providing cooked meals in all Government and Government aided Primary Schools in half the Districts of the State (in order of poverty) and must within a further period of three months extend the provisions of cooked meals to the remaining parts of the State; Nov. 28, 2001 interim order.

Retrieved from http://www.righttofoodindia.org/campaign/camp_primers.html> on 21/4/2012/8:45AM; For campaign materials on Right to Food Campaign,
These documents are incorporated into the reports submitted to the Supreme Court by the Commission; reports that often considerably shape Supreme Court orders.

Equally, integral to the development and implementation of Peoples Union for Civil Liberties is the Commission, created by the Supreme Court in its interim order for the purpose of monitoring the implementation of orders related to the right to food. Under Article 32 of the Constitution and in response to the Peoples Union for Civil Liberties petitioner's appeal for a monitoring body, Supreme Court appoint Dr. N.C. Saxena and Mr. S.R. Shankar to function as Commissioners of the Court for the purpose of looking into grievances regarding food entitlement schemes. The orders directed the newly appointed Commissioners to take assistance from reliable persons and organizations to facilitate monitoring, reporting, and working towards effective implementation. In line with court directions, the Commissioners have appointed advisors for each Indian state to
facilitate the deliverance of state grievances and appeals to the Office of the Commission.\textsuperscript{112} State advisors essentially function as a bridge between the Commissioners, state governments, and civil society. They are responsible for sending the Commissioners regular updates about the situation of the state, conveying to the Commissioner state appeals for intervention, and working towards more effective implementation of schemes and rectification of grievances.\textsuperscript{113} Following further court direction in October 2002, assistants to the Commissioners have been appointed to provide support to the Commission's efforts to bring about effective monitoring and implementation of court orders.\textsuperscript{114}

To achieve its primary objective of ensuring the implementation of the Supreme Court's interim orders, the Commission collects, collates, and analyzes state and central government data regarding food and employment schemes.\textsuperscript{115} The Commissioners then communicate with the governments to address poor or problematic implementation. The Commission also seeks to inform public opinion, often through the Right to Food Campaign and other civil society groups, on issues pertaining to the Peoples Union for Civil Liberties's litigation and the work of the Commissioners. In addition to monitoring implementation and reporting state compliance to the

\textsuperscript{112} Ibid.; The Office of the Commission as it operates today is comprised of court nominated Commissioners, state advisors, and assistants to the commissioners. Also affiliated with the Commissioners are state government appointed nodal officers who act to ensure due implementation of food schemes by providing Commissioners full access to relevant government records. See Right to Food Campaign, Summary Note: Right to Food: Building Accountability, http://www.righttofoodindia.org/comrs/comrs_accountability.html on 31/5/2013. State Government/Union Territory administrations are required by the Supreme Court to act upon Commission requests or recommendations for compliance, as well as to cooperate with all persons and organizations identified as assistants to the Commission.; Interlocutory Application No. 8.

\textsuperscript{113} Main functions of the advisors include analysis of state performance using macro data; rigorous participatory research; ensuring the functioning of an effective micro-level grievance redressal system; articulating alternative demands regarding state policy, especially on hunger; preparing periodic state reports; establishing a permanent monitoring mechanism for hunger-related issues; and ensuring accountability for failures of state governments.

\textsuperscript{114} Supra n. 04; (Oct. 29, 2002 interim order).

\textsuperscript{115} Office of the Commissioners of the Supreme Court, Field Reports, http://www.sccommissioners.org/reports/field_reports >on 31/5/2013.
Supreme Court, the Commission also autonomously mediates and negotiates changes in laws, policies, and programs directly with the state and central governments to achieve improved implementation and to address any elements of state action that exclude marginalized groups.

Working under the auspices of the Supreme Court, the Commissioners have contributed to the explication of the right to food through their dual roles of monitoring/reporting and acting as advisors to the Supreme Court. The Commission collects and compiles data on implementation of food and work schemes from both state governments and the federal government and then publishes a comprehensive national report that is submitted to the Supreme Court and circulated to civil society. These reports are based on government data; interviews with key officials of the relevant departments at the state, district, and block levels; and observations or information from the field submitted by civil society organizations. For each food scheme covered, the Commission report provides an overview of the scheme and notes, at both national and state levels, coverage, quality of coverage, financial allocations, and key issues. In addition to its summary of compliance, the report offers the Supreme Court recommendations for scheme-specific actions.

The significance of these recommendations and the impact of these reports are evident in explicit recognition of the Commission's work in the interim orders. For example, the order of December 13, 2006, which universalized Integrated Child Development Scheme to cover all children under six regardless of family poverty status,
directly referenced the Commission report dated July 19, 2006. The Court quoted the Commissioners verbatim and structured its directions around the report's recommendations concerning the Integrated Child Development Scheme scheme.\textsuperscript{119} The interim order of October 7, 2004, in which the court references the implementation recommendations put forth by the 5th (August 2004) Report of the Commissioners, stands as another example of Supreme Court reliance on Commission data.\textsuperscript{120}

Finally, the Commission's influence in shaping court decisions has also been manifested in communications concerning preservation of schemes in their present form. According to Campaign activists, protection of the National Maternity Benefit Scheme, for example, was largely attributable to the Commission's bringing to the attention of the Court state attempts to discontinue, modify, or supplant the scheme.\textsuperscript{121}

In terms of defining, unpacking, and explicating the right to food, the Campaign and Commission have been key contributors to the development of the Peoples Union for Civil Liberties's litigation. Gains made in the struggle to define the right to food are attributable to the constant involvement of civil society and to the agency awarded to directly affected persons and groups. Incorporating the people whose rights have been denied has allowed for proper identification of immediate needs and systemic deprivations and has resulted in the construction and authorization of appropriate and effective schemes. Most importantly, perhaps, Campaign and Commission involvement has integrated the public into the knowledge base supporting the right to food, empowering individuals to both identify their rights and to determine how those rights should be realized.

\textsuperscript{119} Supra n. 04; (Dec. 13, 2006 interim order).
\textsuperscript{120} Ibid.; (Oct. 7, 2004 interim order).
\textsuperscript{121} Ibid.; (Apr. 27, 2004 m interim order).
While the Campaign often plays a more traditionally activist role in its drive to facilitate collective action to ensure government accountability and actualization of court-ordered rights, the Commission’s effectiveness in achieving implementation often stems from its diplomatic relations with state governments. The Commission seeks open lines of communication to encourage state implementation and to propose modification of food and work policies. The work of the Commission is largely focused on building relationships with state officials and using those successfully forged partnerships to resolve grievances and foster political will for implementation of court orders. Thus, while government noncompliance with Commission requests is grounds for intervention by the Supreme Court, court orders are not always the most effective method for engendering government interest in quality deliverance of benefits.\(^{122}\) Given the Commission’s desire to preserve the strength of its political relationships with state government officials and to encourage open communication between the Commission and state and central governments, the Commissioners have found that autonomous resolution of problematic implementation policies without court involvement best serves implementation objectives.

The strength of Commission interventions at the state government level largely rely on the work of ground level advisors and support from civil society.\(^{123}\) Due to financial constraints, the Office of the Commission must prioritize monitoring the success of large policy issues, such as restructuring the targeted Public

\(^{122}\) *Ibid.;* (“The Chief Secretaries of the State of Bihar, Jharkhand, Madhya Pradesh, Manipur, Punjab, West Bengal, Assam, Haryana and Uttar Pradesh shall appear personally to explain why the orders of this Court requiring the full implementation of the ICDS scheme were not obeyed.”).

\(^{123}\) Priority schemes include ICDS, MDMS, PDS, and NREGA/SGRY. *See supra* text accompanying note 38–41; INTERNAL AGENDA FOR ACTION, supra note 174. The majority of the Commission’s attention is paid to states with histories of poor compliance or where there is high demand for intervention by civil society.
Distribution System. Unable to deal with ground level grievance redressal, the Commission relies on state-level officials to establish functional mechanisms to address grievances that arise at the local and individual levels. The response of the Commission to demands made by civil society, as well as the Commission’s reliance on civil society for the data collected for reports submitted to the Supreme Court, reflects the manner in which the Campaign and Commission draw on each other to enhance their respective contributions to the realization of the right to food in India.

In the event the Supreme Court renders a final judgment for Peoples Union for Civil Liberties, the role and authority of the Commission will require reassessment. Appointed by the Court for the purposes of monitoring the implementation of orders in the writ petition, the Commission could cease to function once the Court issues its closing order. However, the Commission could remain important in a similar or a modified form. Both the Commissioners and Right to Food Campaign members have begun to consider options for the future, but no official steps have been taken. There appears to be consensus between Campaign activists and the Commissioners that a permanent redressal system must be established, possibly

---

124 Priority states identified by the Commissioners include: (1) the states of Bihar, Madhya Pradesh, Rajasthan, Orissa, Uttar Pradesh, Chhattisgarh, Jharkhand, and Uttaranchal (states in the northern parts of India that remain in abject poverty as compared to southern states, which have experienced more dynamic financial growth, and are therefore the focus of numerous other government efforts, such as those implemented by the Empowered Action Group of the Ministry of Health and Family Welfare); (2) states where there are active advisors and interventions, such as Maharashtra, West Bengal, Assam, Meghalaya, and Andhra Pradesh; (3) any state where intervention is actively sought by civil society; and, (4) any state with pressing issues of starvation or any other violation of interim orders on food and employment schemes.

125 Supra n. 04; (May 8, 2002 interim order) (appointing the Commissioners to act mainly in response to appeals received from different states through the advisor). According to the Supreme Court, the intervention of the Commissioner is to be sought only after exhausting other redressal mechanisms. The Commissioner, however, is empowered to act on its own initiative. Ensuring state government implementation is, in the first instance, the responsibility of the advisor. The main functions of the advisors include not only analysis of state performance and submission of periodic report to the Office of the Commissioners, but also establishing a functioning, effective grievance redressal and ensuring accountability of state officials.
through the courts. The Campaign and Commission have both identified a need for a monitoring mechanism endowed with the authority to hold scheme functionaries and government officials accountable and to issue defined sanctions for violations and/or noncompliance. Such a mechanism could be established from the district level continuing up to the State and Supreme Courts, allowing for greater accessibility for the people most likely to be affected by food entitlements.

Regardless of what final form the Commission takes, it is clear that the realization of a legal right to food in India was made possible by the reinforcing triangular relationship between the Campaign and the case, the case and the Commission, and the Commission and the Campaign. The Campaign and Commission complement each other and in so doing support the legitimacy and impact of the case. In turn, the case and interim orders handed down by the Supreme Court provide guidance and direction for the Campaign, channeling Campaign mobilization around specific issues and opening space for pursuit of new modifications to policy. Likewise, the case, through its continuation, not only keeps the Commission in place, but determines the course of Commission interventions, as well. Overall, the realization of the right to food in India sets forth a model that includes the identification of a right, concrete explication of what that right means in terms of policy, and subsequent court-monitored implementation and monitoring of those policies. While Peoples Union for Civil Liberties defines the right to food, the Campaign and Commission embody the requisite efforts at explication (through influencing interlocutory applications and Supreme Court orders) and implementation (through collective mobilization and diplomatic relations with state and central governments).

Having discussed the origins, development, and progressive implementation of the right to food in India, we look now at the impact of the Peoples Union for Civil Liberties’s litigation in the context of
India's current agricultural and economic policies, including international trade and international financial obligations. Ultimately, this Article concludes with an inquiry into what the increasing liberalization of Indian food and agriculture might mean for the guarantees afforded and protected by the Peoples Union for Civil Liberties litigation and its court orders.

Where India's trade and finance obligations are in tension with its right to food commitments, the Supreme Court has often stepped in to protect both food entitlements and farmer livelihoods when the Government of India has failed to do so. In 1997, in response to the structural adjustment programs imposed beginning in 1991,\textsuperscript{126} India reduced its universal Public Distribution System for delivering food to a targeted Public Distribution System that excludes large sectors of the population and forces them to buy food at market rather than subsidized prices.\textsuperscript{127} This development also changed the supply and demand incentives within India by raising prices, decreasing demand, and causing many food distribution shops to close, further restricting the poor's access to food.\textsuperscript{128} The Supreme Court responded to this chain of events, not by addressing the cause or referencing the World Trade Organisation, but by ordering the re-opening of all shops\textsuperscript{129} and by simultaneously freezing any further reductions by the Government of India to the poverty rates used to calculate policy and determine adjustments to the number of people addressed by buffer stock subsidies.\textsuperscript{130} The Court has also addressed itself to the effects of trade

\textsuperscript{128} Ibid.
\textsuperscript{129} Supra n. 04.; \textit{The Supreme Court Order of July 23, 2001 cared little for market forces and reduction of government expenditures or involvement in the economy: "By way of an interim order, we direct the States to see that all the PDS shops, if closed, are re-opened and start functioning within one week from today and regular supplies made" ;(July 23, 2001 interim order).
\textsuperscript{130} Supra n. 04.; (Feb. 14, 2006 interim order).
on rural employment by ordering government specific expenditures on rural employment, especially agricultural employment.\[131\]

Peoples Union for Civil Liberties also pushes back against policy adjustments that remove such regulations as licensing restrictions for food suppliers. In recent years, the Government of India has adjusted the Essential Commodities Act in the name of "furthering economic growth and liberalization" in ways that undercut existing food security schemes. For example, in order to "facilitate free trade and movement of foodgrains," the Government of India removed licensing requirements for buying, stocking, selling, distributing, and disposing of "wheat, paddy/rice, coarse grains, sugar, edible oilseeds and edible oils."\[132\] The Supreme Court responded with orders that regulate licenses with an aim to distribute necessary amounts of food and to prevent hunger.\[133\] The Court has also banned the use of contractors for certain food schemes, thereby obstructing government plans for privatization.\[134\] Further court maneuvers that block the Government of India's deregulation and privatization efforts include court-imposed investigations into the appointment of and commission rates paid to food dealers\[135\] and an order to open government food distribution shops,\[136\] thus curtailing the Government of India's efforts to reduce the breadth of the Food Corporation of India and decentralize and privatize this market. Thus, through Peoples Union for Civil Liberties, the Supreme Court has invalidated government efforts at privatization and deregulation that interfere with food distribution.

Enshrining the right to food in national legislation is necessary in order to give the persons most affected by economic policies a democratic voice and the chance to shape such policies in their interest. The economic decisions made by India's Finance, Commerce,

\[131\] Supra n. 04.; (May 8, 2002 interim order).
\[132\] Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, Annual Report, 2002-03, ch. 4.4. p. 5
\[133\] Supra n. 04; (May 2, 2003 interim order).
\[135\] Ibid; (July 12, 2006 interim order).
\[136\] Ibid; (July 9, 2007 interim order).
Agriculture, and other Ministries have concrete and often detrimental outcomes for the lives of the most impoverished and their ability to feed themselves. Such decisions are made behind closed doors, at high-level meetings in Delhi, Geneva, and other locations inaccessible to the starving and poor. While the poor cannot access these meetings, they can use democratic channels to shape and constrain relevant economic policies via legislation. From the village level to the national parliament, the poor can use party platforms during election years, community campaigns, lobbying and other forms of political dialogue and pressure to help craft legislation that prioritizes the right to food and, more specifically, organizes the economy in a manner designed to ensure adequate livelihoods and, through this, adequate calories for all, particularly for those living on the margins. For example, right to food legislation could mandate that all trade agreements are submitted to an impact assessment prior to their completion to ensure that they will not undermine the right to food.\textsuperscript{137} By enshrining such tenants in legislation, ordinary citizens are better able to ensure accountability and transparency regarding how economic policies relate to the right to food. The flexibility of the legislative process allows for an adequately evolving parliamentary response to various sectors of government and can empower administrative, legal, and community action for the right to food. Notably, a crucial political opportunity to enact such legislation has recently emerged.


313
contributed significantly to the development of this food security act by participating in stakeholder roundtables, publishing its own model of a right to food bill, and publicly commenting on developmental versions of the bill. Likewise, the Commission has, as liaison between the Supreme Court and political officials, provided advice to government officials as to the content of the act. If devised to include People Union for Civil Liberties entitlements and food schemes as they currently operate under Court order, a food security act has the potential to bring harmony to the conflict between India’s economic policies and Supreme Court’s effort to protect and promote the food security for the poor.

Segments of the Indian national government have publicly declared their support for the right to food act. On June 4, 2009, the President of India, in her address to the national parliament, announced that her government “proposes to enact a new law—the National Food Security Act, which will provide a statutory basis for a framework which assures food security for all.” On the same day, the Ministry of Consumer Affairs, Food and Public Distribution circulated a concept note laying out a basic framework for this act. On June 14, 2009, the Union Minister of State for Food and Civil Supplies stated, “that a Food Security Act would be put into place within 100 days.” Political parties have also manifested strong interest in the right to food legislation. Adopting a food security act as part of its platform, the Congress party promised enactment of a food security act if the United Progressive Alliance, the party credited with passing other

138 The Right to Food Campaign Secretariat has held several public consultations regarding the legislation and established a steering committee to produce a draft act. In September 2009, the Right to Food Campaign made its first draft act public and submitted the draft to relevant parliamentarians. See generally Right to Food Campaign, Draft Right to Food Act (Sept. 12, 2009), http://www.righttofoodindia.org/data/rtf_act_draft_charter_sept09.pdf.


social welfare legislation such as the Mahatma Gandhi National Rural Employment Guarantee Act, was elected.\textsuperscript{141}

After detailed discussions with all the stake holders like civil society and right to food campaign, on 10th September, 2013 Parliament of India pass National Food Security Act, 2013 and President gave his assent on this Act in pursuance of the constitutional obligations and obligations under the international conventions, providing food security has been focus of the Government’s planning and policy. National Food Security Act, 2013 passed by Parliament to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and for matters connected therewith or incidental thereto.

By regularly issuing interim orders, in People’s Union for Civil Liberties v. Union of India & Others has gradually explicated and implemented the right to food. In addition to defining government schemes as legal entitlements, these interim orders have directed the government to fulfill previously enacted food entitlements, restated aspirational objectives as entitlements, directed modification and expansion of schemes in response to recommendations by the Commissioners and civil society, and strengthened the quality of the services and entitlements delivered to eligible beneficiaries. However, while People Union for Civil Liberties has established the right to food as a constitutionally protected entitlement requiring affirmative government action to ensure its fulfillment, protection, and promotion, it remains an open case and its entitlements have not yet been secured in a final judgment. The scope of the case has expanded significantly over the last few years in terms of both content and the demands placed on government, but the form that the case and the Commission will take once a final judgment is rendered is unclear.

The longevity of the entitlements identified and explicated in interim orders thus rests in either their inclusion in the final judgment for the People Union for Civil Liberties's litigation or their codification into law.

IV. Sum up

The court's Orders thus far have acted as a catalyst in ensuring that the State administrative machinery responds to the people has needs and seeking accountability of the government for failure to provide the basic minimum requirement of food. While the court has been guided completely by the national law, the developments and the role played by the Indian Judiciary is significant in the context of the Right to Food as embodied in Article 11 of the Covenant; for India being a signatory of the International Covenant on Economic, Social and Cultural Rights is bound by the international obligations. General Comment 12 explicitly recognizes that the judges and the other members of the legal profession should pay greater attention to violation of the Right to Food in the exercise of their functions. Therefore, the decision of the Indian Supreme Court is of particular relevance in fully understanding the operationalization of Article 11 of International Covenant on Economic, Social and Cultural Rights at the national level.

Further, it is important to note that the role of civil society is assuming importance in the ongoing Right to Food Campaign. The campaign in the last few years was expanded well beyond the confines of the Supreme Court, towards a broad-based popular movement. Many initiatives have been taken like on April 9, 2002 a national "day of action on mid-day meals" was called, public hearings on hunger and the Right to Food were organized in many parts of the country, (e.g., in January 2003 in Delhi etc.). These initiatives are a major step towards breaking the vicious cycle of poverty and disempowerment.

\[142\] GC 12, Paras.32 – 35 generally on Remedies and accountability; Guideline 28, the Maastricht guidelines.

and achieved success in building political pressures. The Right to freedom of assembly, expression and information as it enables people “to participate in shaping policies and obligations designed to protect themselves from the ravages of hunger and starvation.”

The international obligations of the government are particularly relevant for the promotion of the justifiability of the right to food in India, because the Supreme Court stated that all national Court must apply them when they decide on human rights violations. According to the Supreme Court, national court must interpret domestic laws in accordance with the international obligations of the government, and they must base their decisions directly on international human rights laws when it provides a better protection for victims. In People Union of Civil Liberties v. Union of India, Supreme Court stated that: “The provisions of the covenant (on Economic, Social and Cultural Rights), which elucidate and go to effectuate the fundamental rights guaranteed by our constitution, can certainly be relied upon by courts as facets of those fundamental rights and hence, enforceable as such......”

This means that in India all Courts have to ensure that the Government respects its international obligation to respect, protect and fulfill the right to food, without any discrimination. When they are faced with a complaint from victims of violations of the right to food, nation courts must interpret domestic law in accordance with these obligations, and they should apply these obligations directly when they have to decide if the rights to food is violated, and which remedies/ relief are the most appropriate one for the victims.

146 Sheela Barse v. Secretary, Children’s Aid Society, 1987 SC
147 Supra n. 04. Integrated Child Development Scheme
These decisions by the Supreme Court always on the right to life-mean that in India, theoretically, when the Government is not complying with its obligations to respect, protect or fulfil the right to food, at the maximum of its available resources and without any discrimination, all victims should have access to effective remedies including access to justice-at the state and national level (including the Supreme Court) – to claim their rights.

The real situation is of course very different from that ideal. Despite great advances in the justifiability of the right to food in India, there remain difficulties in enforcing existing legislation, in ensuring the implementation of court decisions and ensuring access to justice for the poor. The decisions of the Supreme Court in the Aquaculture case and Samatha case have for examples never been fully implemented. Article 39(a) of the constitution requires the State to provide free legal aid to ensure that the most vulnerable will have access to justice, but lack of implementation, high cost, long delays in Court proceedings, and the lack of full independence of the judiciary at the local level have made the judicial system virtually inaccessible for many.

A key recommendation of United Nations Special Rapporteur on the right to food in his country mission report on India is that one way to improve this situation is for all States to set up the human rights Courts and a special court as required under the protection of Human rights Act 1993, and Scheduled Castes and Scheduled Tribes Act, 1989. This will be a step to ensure the right of people in India.

---