CHAPTER V

JUSTICIABILITY OF RIGHT TO FOOD IN INDIA IN TERMS OF INTERNATIONAL LAW

1. Introduction

The doctrine of *ubi jus ibi remedium* holds that where there is a right, there is a remedy. The great German philosopher Immanuel Kant defined justiciability as the power to award to each person that which is due to him under law.\(^1\) Therefore, if the right to food is legally recognized in the country, according to Kant it is justiciable. Without the means of enforcement there can be no real right. The essence of the right to food is that it creates certain obligation and it allows the holder to demand the redressal of the violation of the right. The right to food is a human right. As a consequence, its full realization can be pursued by everybody whose right has been violated. Justiciability means the capacity to be considered as a subject of dispute before a judicial or a quasi judicial body.

The judiciary is not the only medium to bring enforceability to the right. The administrative and the political authorities also play an important role in making the right enforceable.

According to Amartya Sen in a democratic country, the political freedom to create a Government responsible to the people helps to safeguard the
economic freedom of the people. Therefore freedom from starvation can be redressed through the participatory democratic process.

Jean Dreze argues that in India, most people are unable to participate effectively in the democratic process due to economic insecurity, lack of education, social discrimination and other forms of disempowerment. They are unable to use the political system to redress the violation of their rights. This actually perpetuates their deprivation and they are ignored by the political system. Thus, in India the responsibility of ensuring the justiciability of the right to food is primarily on the judiciary.

2. Meaning of Justiciability of Right to Food

Jean Dreze defines justiciability of the right to food as the possibility that a recognised human right can be invoked before a judicial or quasi judicial body which can determine as to whether the right has been violated and recommend appropriate measures in case of violation.

The justiciability is the ability of the judiciary or the quasi judicial authority to uphold the law through effective judicial pronouncements. The justiciability is possible only when there is a legislation creating a distinct entitlement capable of enforcement.

In India through the process of judicial activism, the judiciary has made a tremendous contribution to the growth of the entitlements on the right to food.
Whenever a right is held as a justiciable right, an adequate remedy may be provided in case of violation. The remedy can be in the form of restitution, financial compensation, non repetition or just a declaration of violation.

3. Importance of Justiciability

The justiciability of the right to food has certain advantages. Firstly, the Constitution of India makes the judiciary the guardian of the rights of the people. Therefore, the judges are entrusted by the Constitution to define the rights of the people. The rights enumerated by the judiciary becomes binding before all authorities be it the administration or any other power. Similar power is not available with any other authority. Therefore, the enforcement through the judiciary is more appropriate. Secondly, advantage of enforcement of the right to food through the judiciary is that the judges apply the international standards of human rights to the national laws. Thus, through the decisions of the court a more appropriate relief can be given in case of violation of the right to food of the people. Thirdly, only the judgments of the court on the right to food can create a sense of obligation in the mindset of the administration. Usually the Government looks upon the entitlements on the right to food as a kind gesture on their part, rather then redressal of the rights of the people. Fourthly, when a law is ambiguous on a point, the judiciary is the appropriate forum to clarify the position. Fifthly, the political system is unstable. Therefore, the right to food cannot be enforced through the political system. Sixthly, the doctrine of precedent is applicable to the judicial decisions. Therefore the decision of the judiciary is established as the law of the land. This shall lead to
a great expansion of the right to food. In India most of the entitlements for realization of the right to food have been implemented by the orders of the judiciary.⁶

4. Constraints of Justiciability

The enforcement of the right to food through the judiciary also suffers from certain limitations. Firstly, the judiciary is often inaccessible to the victims of the right to food violation. The victims of the right to food violation belong to poorest of the poor category of people and due to poverty and ignorance they are unable to take up their disputes before the judiciary. The victims and the lawyers have a very limited knowledge on the right to food.⁷ The entitlements for realization of the right to food are scattered in the various schemes, legislations and judicial pronouncements. India does not have legislation encompassing the different aspects of the right to food. Therefore, the lawyers as well as the victims are not totally aware of the protections on the right to food. This affects the enforceability of the right to food.

In the legal system of India, right to food to a great extent remains as a derivative right established through the doctrine of precedent, its justiciability therefore suffers from the drawbacks of the doctrine of precedent.⁸ The non-derivative provisions of the right to food find a place in the directive principles.
5. Justiciability of Right to Food and Separation of Powers

In the developing jurisprudence, the judiciary issues orders on any legislation or policy extending the benefits for realization of the right. The courts also scrutinize the measures taken by the Government for realization of the right to food in determining whether they are in compliance with the international and national obligations. Upon finding a violation, the judiciary provides relief to the victim or instructs the Government to find appropriate redressal of the violation. It is sometimes argued that the right to food involves the allocation of resource and rightly belongs to the legislative and the executive sphere and the right to food is not a justiciable right. However, the right to food like any other human right is a justiciable right under the concept of rule of law. Moreover the realization of the human right cannot be left exclusively to politically elected authorities. The political actors enjoy a large discretionary power in adopting legislations and schemes for realization of the right to food, but in case of disputes the judiciary scrutinizes the adequacy of the measures.\textsuperscript{9} The judiciary and the executive should in harmony progress towards realization of the right to food. Legal philosopher Friedmann opines that the relation between the executive and the judiciary is of cooperation rather then separation.\textsuperscript{10}

In India the judiciary is sometimes called the court of the poor and hungry. It has undertaken a very proactive role in realization of right to food of the people. In the process, at one point of time a conflict arose between the judiciary and the executive. The judiciary had passed an order for free
distribution of the foodgrains that were rotting in the rains and being eaten by the rats, to be distributed amongst the malnourished and hungry people in India. This had set off a political debate on the transgression of the separation of powers by the judiciary. After facing a strong criticism from the media the executive adopted a softer stand.\textsuperscript{11}

6. Resource implication vis-a-vis Justiciability of Right to Food

The strongest objection to the justiciability of the right to food is that the right to food is an economic and social right therefore it involves a resource implication and is a non justiciable right. The poor countries cannot recognize the right to food as a justiciable right. The lack of resource is a valid defence however the courts can examine the measures taken for realization of the right in context to the available resource.\textsuperscript{12}

As starvation in India is not due to lack of resource of the country therefore the justiciability of the right to food cannot be denied in India on the ground of lack of resource.\textsuperscript{13} In *Kapila Hingorani–versus–State of Bihar*\textsuperscript{14} the Supreme Court held that economic rights of the people are often denied on the ground of financial stringency and the Nation State takes up this plea of helplessness to redress the grievance of the people. Thus, the court categorically stated that economic incapacity cannot be a ground for justifying the violation of the fundamental right to food.
1. Concept of Justiciability of Right to Food

Justiciability of the right to food may be at the national level or at the international level. The Justiciability of the right to food within the national, regional and international arenas is supported by a number of national and international laws.

7(i) International Laws Supporting Justiciability of Right to Food

A number of international customary and treaty laws establish the right to food as a justiciable right at the national as well as at the international level.

7 (i) (a) Justiciability of Right to Food under Universal Declaration of Human Rights

The Nation State is required under this international law to create a competent national tribunal to redress the acts of violation of fundamental rights and other statutory rights on the right to food. Therefore, in every Nation State right to food should be enjoyed by the people as justiciable right.

7 (i) (b) Justiciability of Economic Social and Cultural Rights

The United Nations Committee of Economic Social and Cultural Rights have advised the Nation States to provide to the people an effective and appropriate judicial remedy so that the relief can be granted to the victims of the violation of the right to food. It further advised the Nation States to provide appropriate remedy to an aggrieved individual or a group of individuals under the domestic legal system. The Nation States that have
ratified the International Convention on Economic Social and Cultural rights have an international obligation to establish the right to food as a justiciable right. The Indian jurisprudence has established the right to food as an enforceable right.\textsuperscript{18}

7 (i) (c) Justiciability under Voluntary Guidelines of FAO

The voluntary guidelines on the right to food seek the Nation State to create an effective domestic human rights institution or ombudsman to address the violation of the right.\textsuperscript{19} Such institution often plays a proactive role in focusing the cases of the violation of the right to food. Therefore attention of the judiciary is drawn towards the cases of the violation of the right to food. As the judiciary in India have the power to suo-moto take up any case of violation of the rights of the people such opinion of the Human Rights Commissions can be of great importance. The courts take up cases recommended by the Human Rights Commission more seriously in comparison to the complaints made by the victims and the activists.\textsuperscript{20}

The Human Rights Commission in India makes a significant contribution to bring the instances of violation of the right to food before the judiciary by intervening any proceeding involving any allegation of violation of human rights pending before a court.\textsuperscript{21} In case of violation of human rights the Human Rights Commission can approach the Supreme Court or the High Court concerned for such directions, orders or writs as the court may deemed necessary.\textsuperscript{22}
8. Institutions Responsible for Justiciability of Right to Food

The justiciability of the right to food can be under the international agency or under the national judicial or the quasi judicial bodies. The enforcement of the right to food by the international agency is carried out by the treaty bodies and the International Court of Justice. These bodies show strong respect for the sovereignty of the Nation States. Therefore they adopt a softer approach of constructive dialogue to make a Nation State take steps towards realization of the right to food.

8 (i) Justiciability of the Right to Food at International Level

At the international level justiciability of the right to food can be brought about by the judicial and the quasi judicial bodies like the treaty bodies and the Human Rights Commissions. The judicial body created under the United Nation Charter for enforcement of the international law is the International Court of Justice. There are various treaty bodies created for implementing and monitoring the human rights obligations set forth in the treaties. There are seven main treaty bodies as a mechanism for enforcing the human rights treaties which contain provisions for the realization for the right to food.

8 (i) (a) International Court of Justice

The International Court of Justice is the principal judicial organ of the United Nation. The statute of the International Court of Justice is an integral part of the Charter of the United Nations. Therefore the members of the United Nations are ipso facto parties to the statute. The International Court of Justice
exercises jurisdiction over Nation States that are parties to the statute. The International Court of Justice also entertains disputes when the state parties through a declaration submit to the jurisdiction of the court. It is the most authoritative enforcing mechanism under the international law. A number of important decisions of the International Court of Justice upheld the right to food of the people.

The International Court of Justice as an enforcing mechanism suffers from certain limitations. Firstly, the International Court of Justice takes up disputes referred only by Nation States. The court does not entertain complaints by individuals against a Nation State. Therefore the International Court of Justice cannot enforce the violation of the rights of an individual by the Nation State.

Secondly, the jurisdiction of the International Court of Justice depends upon the consent of the Nation State involved. This makes the enforceability of the right through the International Court of Justice a limited protection. Thirdly, when the International Court of Justice has rendered a judgment on the violation of the right, there is no international enforcing agency to enforce the judgment. The implementation of the judgment depends to a large extent upon the voluntary compliance by the Nation State. The Security Council of the United Nations can however take collective action against the Nation State.
8 (i) (b) Quasi Judicial Organs

There are various organs of the United Nations for enforcing the violation of the rights guaranteed under the international law. There cannot be an international protection of human rights unless there is a strong and effective mechanism for enforcement. Many of the international Conventions have therefore created an enforcement mechanism. The treaty bodies are represented by a number of committees set as a mechanism for monitoring and implementing the violation of human rights.

8 (i) (b) (i) Human Rights Committee.

The Human rights Committee was established to implement the provisions of the International Covenant on Civil and Political Rights, 1966. The Human Rights Committee is competent under the Optional Protocol of the International Covenant on Civil and Political Rights, provided certain requirements have been met to receive communications from individuals claiming to be the victims of the violation of the right. Though the Human Rights Committee is a mechanism to redress the violation of the provisions of the International Covenant on the Civil and Political Rights while the right to food basically is an economic and social right, the Human Rights Committee could consider the right to food through the broad interpretation of the right to life.
8 (i) (b) (ii) Committee on Elimination of Discrimination Against Women

The Committee on the Elimination of Discrimination against Women is established under the international Convention. Under the Protocol of the Convention, the committee can consider complaints from affected woman or from groups of women relating to the violation of the rights guaranteed under the Convention.

8 (i) (b) (iii) United Nations Human Rights Council

The United Nations Human Rights Council has the responsibility to protect all human rights and fundamental freedoms. The council is a subsidiary organ of the General Assembly. The council entertains all complaints of systematic violation of the human rights.

9. Justiciability of Right to Food at National Level

At the national level the right to can be made justiciable by adopting an adequate legislation. Another important requirement of justiciability is an independent judiciary. Quasi judicial authorities like Ombudsmen or the Human Rights Commission, also operates as a mechanism to bring about justiciability to the right to food.

India provides a unique example in the world in which the judiciary through a continuous and dedicated works of over sixty (60) years has established the right to food as a legally enforceable right.
9 (a) Judicial Review under the Constitution of India

The Constitution of India recognizes the doctrine of judicial review. The judiciary is the guardian of the Constitution. Therefore the judiciary can scrutinize the constitutional validity of all acts of the Government. The judicial review is the basic structure of the Constitution.

The Public Interest Litigation expands the justiciability of the right to food. It is a vital power of the judiciary to do social justice. The Public Interest Litigation is a challenge and can be utilised to make basic human rights meaningful to the deprived and vulnerable section of the community and assure them social and economic justice which is the signature tune of our society.

9 (b) Independent Judiciary

In order to establish the right to food as a truly justiciable right the judiciary should exercise the power of judicial review without any interference from any other organ of the Government. The Constitution of India has adequate safeguards to establish an independent judiciary. The independence of judiciary is essential for justiciability of rights. Only through an independent judiciary the right to food can be established as a justiciable right because the redressal is usually sought from the structural denial of the rights.

9 (c) Evolution of the Right to Food through Judiciary

The right to food in India evolved through the process of precedent. Therefore, the right to food in India established itself as a justiciable right from
the inception as because the law laid down through the Doctrine of Stare Decisis has a binding character.  

9 (c) (i) Freedom from Starvation Wage

The first step taken by the judiciary to protect the hungry population of India was to ensure that the poor can afford to feed themselves and their families with their wages. Realizing that most of the poverty stricken people in India are landless labourers who undertake whatever work comes their way due to their poor bargaining position, the judiciary ensured that they are not exploited.

The justiciability of the right to food was established as back as 1954 when the Supreme Court of India through a number of case laws established that the wage paid to a labourer should enable him to feed himself and his family. Terming the low wage paid to a labourer with which he is unable to feed himself and his family as starvation wage, the court prohibited the payment of starvation wage and held that a minimum wage enabling the labourer to maintain themselves and their families should be paid.

In *Crown Allouminium Work–versus–Their Workmen*[^33], the Supreme Court held that due to poverty, the unorganized labourer may at times be available at starvation wage. But a Welfare State cannot exploit the labourers. The Nation State is required to pay a fair and living wage to its labourers so that they are able to afford a minimum comfort and decency level in their lives.
This was the first step towards establishing the principle that wages should ensure minimum comfort in life of the poverty stricken starving labourers. As food is the basic requirement to lead a comfortable life the judiciary through this judgment ensured adequate food to the labourers. The progressive judicial minds living up to their constitutional duty ensured through this judgment that the starving and marginalized labourers in India are entitled to earn a wage which enables him to a healthy meal for himself and his family after a day of hard work.

The Supreme Court recognized the lack of bargaining power of the poor and prohibited the Nation State to take advantage of their helpless situation. The poor do not enjoy a good bargaining position in employment and undertake any work that they find for whatever is paid in return, however in-adequate it may be. In the *Express Newspaper Private Ltd.–versus–Union of India* the court reminded the Government of the necessity to pay a minimum wage to its labourers which ensures their survival. Thus, the judiciary ensured that the wages of the labourers should be adequate to satisfy the basic requirements of the labourers and their families.

Despite the judicial pronouncements the Nation State did not take any concrete step to end the employment of labourers at starvation wage. Many instances were brought before the judiciary where there was a payment of starvation wage in exchange of a hard days labour. Though during the early stage the judiciary observed a self imposed judicial restraint, however it was very compassionate towards starvation suffered by the poor and time and
again reminded the Government of its duty towards this deprived section of the population. In *U. Unichoyi and others–versus–State of Kerala* the court held that in underdeveloped countries like India, poverty may drive people to work on starvation wage. The Welfare State should ensure a minimum wage which covers the bare necessities of life like education, medical etc. Thus guidelines were laid down for fixation of a fair minimum wage. It ensured a wage from which a labourer can enjoy certain amount of comfort in their life. The Supreme Court again reiterated the need to pay the minimum wages in *Hydro (Engineers) Pvt. Ltd.-versus-Workman*.36

Another important step towards realization of the right to food of the poverty stricken Indian was taken in *Jaydip Paper Industries–versus–Workmen*. In this case the Supreme Court held that the Nation State should provide protections against starvation and pay a minimum wage to its labourers.

In a number of similar cases like *Gujarat Agricultural University-versus-Rathod Labhu Bechar* the Supreme Court prohibited the employment of labourers on starvation wage and directed for the payment of minimum wages.

**9 (c) (ii) Starvation Wage as Forced Labour**

The judiciary went a step further in *Peoples Union for Democratic Rights–versus–Union of India* when it held that the payment of starvation wage was a forced labour. Hunger, poverty, want and destitution are the factors which have compelled the labourers to work on starvation wage. Thus the judiciary
extended the protections against the starvation wage from the organized sectors to the unorganized sectors as well. The court held that forced labour is the violation of the fundamental right\textsuperscript{40} and is justiciable. In a similar case \textit{Sanjit Roy–versus–State of Rajasthan}\textsuperscript{41} the Apex Court observed that hunger and starvation are the main reasons behind the continuance of forced labour and called upon the Nation State to ensure that a minimum wage is paid even in drought relief schemes. Thus every opportunity was availed by the judiciary to ensure certain degree of comfort in the lives of starving and marginal labourers.

\textbf{9 (c) (iii) Rehabilitation of Bonded Labourers}

Another milestone was achieved in the war against hunger when the Apex Court in \textit{Bandhua Mukti Morcha–versus–Union of India}\textsuperscript{42} held that the duty of the Nation State does not end with just the release of the labourers from the bondage. The Nation State has a duty to rehabilitate the released labourers. This would ensure that the released labourers do not enter another cycle of starvation after they lose their job or enter into bondage again just to feed himself and his family.

A similar view was held by the Supreme Court in \textit{Neeraja Choudhury–versus–State of Madhya Pradesh}.\textsuperscript{43} In this case the court called upon the Government to draw up a plan to rehabilitate the released bonded labourers so that they do not come out from the bondage of labour to the bondage of hunger and struggle.
Thus the Apex Court brought to the attention of the Government the fact that the Government is duty bound to end hunger and starvation.

9 (c) (iv) Foodgrain Production and Hunger

The justiciability of the right to food was not confined to the starving labourers alone but the judiciary also paid equal importance to the need to enhance the food production of the country to combat war against hunger and starvation. Realizing the importance of cattle in agriculture the Supreme Court in *Ramanlal Gulabhand Shah–versus–State of Gujarat*\(^ {44} \) enlarged the definition of crop to include fodder. The court in its attempt to increase the food grain production, in *Dasaudha Singh and others – Versus – State of Haryana*\(^ {45} \) upheld a Government policy compelling the zaminders to cultivate all the agricultural lands. Thus the judiciary upheld legislation which contributed towards the increase in food grain production of the country and transformed India from a food importing Nation State to a food exporting Nation State. The increase in food production is a vital prerequisite to establish right to food in India.

9 (c) (v) Upholding Legislation with the Objective to Prevent Hunger

In order to combat hunger and starvation the Apex Court upheld legislation which helped the people to have at least two square meals a day. In *Smt. Savitri– versus–Gobind Singh Rawat*\(^ {46} \) the court held that Section 125 of The Code of Criminal Procedure, 1973 plays an important role in prevention of starvation amongst the women, children and aged parents.
9 (c) (vi) Fundamental Right to Immunity from Starvation

In a landmark judgment the Supreme Court elevated the freedom from hunger to the status of fundamental right. In *Keshavananda Bharati–versus–State of Kerala* interpreting the Constitution in the light of the municipal law and the Charter of the United Nations the court held that the object of the Constitution is to promote social and economic justice. The task of protecting the people from starvation is on all the wings of the Government, the executive, judiciary and the legislature. It further held that protection from starvation is a fundamental right of a citizen. The court also laid down the role required to be played by the different organs of the Government in eliminating hunger. It thereby created new jurisprudence in the right to food in Indian legal system.

It is pertinent to mention here that the international law supporting the right to food of the people was not fully established at that point of time. India was yet to ratify the Conventions promoting the right to food. Conventions were ratified after this dynamic approach of the Indian judiciary. During that period the international obligation for providing these basic rights were not very rigid. Under such circumstances it was the far sightedness and compassionate heart of the judiciary which felt for the hungry and starving population of India. However the judgment failed to specify the Article of the Constitution which could be invoked in case of violation of fundamental right to freedom from hunger or starvation. Thus this judgment falls short in bringing about enforceability to safeguard violation. The significance of the *Keshavananda Bharati*’s case on the process of development of legal entitlements for the hungry population was tremendous. It created a platform for the launch of the
new jurisprudence of direct intervention and access to livelihood to protect the hungry population who, despite their best efforts, are unable to feed themselves.

9 (c) (vii) Right to Food as Integral Component of Right to Life

Another landmark development took place when the Supreme Court in the *State of Maharashtra–versus–Chandrabhan* held that the right to food is a component of the right to life guaranteed under Article 21 of the Constitution of India. In this case the Supreme Court struck down the second provision to Rule 151 (i) (ii) (6) of Bombay Civil Service Rule, 1959. The Rule provided for payment of Rupees one (Rs.1) as subsistence allowance during the period of suspension of a person. Though the petitioner was acquitted by the High Court and reinstated back to service, the Supreme Court, to protect the people from the monster legislation creating starvation and hunger decided the case on merit. The court declared the provision as unconstitutional. The judgment made a huge impact on the development of the right to food. This judgment brought about a positive change in the lives of the hungry. It not only established the right to food as a fundamental right but also introduced enforceability to the fundamental right to food when it held that the right to food is a component of the right to life. It established the right to food as the basic structure of the country.

Though it is most unlikely that a hungry person who is unable to manage two square meals a day shall have the economic capacity or the time to approach the High Court or the Supreme Court for enforcement of his rights however
this entitlement is not only for academic discussion. The voice of the poor and hungry can reach the judiciary through the public spirited persons, thereby bringing relief to the lives of the most deprived section of the society.

After establishing the right to food as the basic component of the right to life the judiciary used it as a tool to aid the starving and hungry population. The judiciary through a series of case laws established the right to food as a component of right to life guaranteed under the Constitution of India. The justiciability of the right to food was upheld by the Supreme Court in *State of Uttar Pradesh–versus–Uptron Employees Union CMD.* The court observed that the Nation State can not escape the liability when a human rights problem involving the starvation deaths and suicides by the employees has taken place as a result of non payment of salaries of the employees of a public sector undertaking for a long period.

The sensitivity of the judiciary towards the sufferings of the hungry and starving India is again reflected in the judgment of *Indian Council of Legal Aid and Advice & others–versus–State of Orissa.* The court in this case requested the Human Rights Commission to look in to the implementation of various scheme undertaken by the Government for realization of the right to food of the people and prevent starvation death.

The justicaibility of the right can be again delineated from the judgment in *Kisshan Pattnayak and Another-versus–State of Orissa.* In this case the court converted a letter addressed to the Chief Justice of India as a public
interest litigation. Attention of the court was drawn towards the drought affected Kalahandi area. A number of people were starving to death. The court only on being assured by the Government, that the Government along with non-governmental organization have adopted various schemes for the benefit of the drought affected people, directed them to continue with their project.

With increase in production, the Government was in quite a comfortable position to ensure that its population does not sleep hungry. However amidst all growths, hunger and starvation played havoc in the lives of a little less than half of the population of the country. The emergency buffer stocks had crossed the buffer norms. The Government had no space to stock the new harvest. The Government was considering a proposal to dump the foodgrains in the sea in order to create the required spaces. Some of the foodgrains in the FCI godowns were rotting and were a feast for the rats.53 Around this period India suffered drought for a continuous period of three years. As a result there was a mass spectrum of hunger and starvation death. As the Government continued denial of reports of starvation resulting from droughts as false and politically motivated,54 hunger and starvation dominated the lives of the poor and marginalized population. The Nation State lacked the political will to change the lives of the suffering and hungry population. The Government thought it wise to spend its funds on other options like defence or the luxurious foreign tours of its high officials at the cost of the lives of the hungry and starving.55 The Government was a mere spectator to the starvation. Against this backdrop the door of the judiciary was knocked by a
group of public spirited persons to bring food in the empty plates of the
drought affected people. The judiciary availed this opportunity to bring about a
drastic change in the entitlement approach to the right to food of the hungry
Indians.

The Apex Court in *Peoples Union of Civil Liberties—versus—Union of India*<sup>56</sup>,
made the most significant contribution for the protection of the rights of the
hungry and starving Indians. The court reiterated that the right to food is
guaranteed under the right to life. In order to realize the right to life the court
held that it is essential to protect the food vulnerable group from starvation.
The court directed for implementation of various schemes namely—

(a) Targeted Public Distribution Scheme.
(b) Antyodaya Anna Yojana.
(c) Mid-Day Meal Scheme.
(d) National Old Age Pension scheme.
(e) Annapurna Scheme.
(f) Integrated Child Development Scheme.
(g) National Maternity Benefit Scheme.
(h) National Family Benefit Scheme.

The object of all these schemes is to intervene hunger and malnutrition and to
promote their nutritional health. The court through a process of continuous
mandamus has been monitoring the effect of implementation of the above
schemes. Numerous orders have been passed in this decade in a desperate
attempt of the judiciary to bring about a change in the lives of the hungry
population. The court appointed Commissioners to access hunger amongst the population and the effect of intervention programmes on their lives and report the same to the court. The court has cautioned the Government from altering the provisions or discontinuing with any of the schemes. Thus the schemes have been made enforceable rights. This case takes judicial activism on the right to food to new heights. In this case various orders has been passed by the court over the years to address the problems of malnutrition amongst the different categories of malnourished people like the aged, sick, lactating mothers, street children etc. The court held that the Government is bound to protect the people below the poverty line.

In another important case, Shantistar Builders–versus–Narayan Khamalal Totame, the Supreme Court held that the basic need of a man is food, clothing and shelter. The right to food falls within the ambit of the right to life. It includes all aspects of physical, mental and intellectual growth. The judiciary observed that most of the countries belonging to the civilized society recognize the right to food as a part of the right to life in their legal system as a justiciable right. Thus, through this case law the judiciary makes a clear indication to establish the right to food as a justiciable right in India.

Keeping up the same spirit, the Supreme Court in C.E.S.C. Limited, etc–versus –Subhas Chandra Bose and other expanded the ambit of the right to life. It held that the aim of the fundamental right is to ensure liberty to all. It further held that socio-economic rights are very relevant in bringing about a meaningful change in the lives of the poor. The Apex Court harmoniously
construed the right to life with the Universal Declaration of Human Right, 1948, and the International Covenant on Economic Social and Cultural Rights, 1966 to expand the meaning of the right to life to include the right to food. The court stated that social and economic justice is a fundamental right.

The judiciary in another epoch making judgment addressed the sufferings of the hungry. In Kapila Hingorani–versus–State of Bihar the Supreme Court allowed a public spirited person to take up the cause of about two hundred and fifty (250) employees suffering hunger and starvation due to non-payment of their salaries for a long period. Unable to suffer hunger many employees had committed suicide. The court held that the state is duty bound to uphold the constitutional mandate. It called upon the state to discharge its international obligation. The court held that the term life guaranteed as a fundamental right under the Constitution has a far reaching connotation and includes food. The court further clarified that whenever the rights guaranteed under the right to life are violated the writ jurisdiction of the High Court and the Supreme Court can be invoked to get relief.

In P.G. Gupta–versus–State of Gujrat the Supreme Court again held that food, shelter and clothing make life meaningful. It makes life worth living and is guaranteed as a fundamental right.

In Chameli Singh and another–versus-State of Uttar Pradesh and another the judiciary crossed another milestone for the hungry and starving population. The court held that the Universal Declaration of Human Rights,
1948, the International Covenant on Economic, Social and Cultural Right, 1966 along with the Preamble of the Constitution of India assures social and economic justice. It provides food, shelter and clothing as the minimum human rights. The court further held that in an organised society, the right to life as a human right does not only mean animal existence but ensures all facilities to develop and grow. It includes food, water, decent environment, education, medical care and shelter. The judgment had an important effect in the campaign against hunger and starvation.

In its spirit to combat hunger the Apex Court in *J.P.Ravidas and others-versus–Navyuvak Harijan Utthapan MultiUnit Industrial Co-operative Society Ltd. and others* held that under the international obligations in the form of Universal Declaration of Human Right, 1948, and International Covenant on Economic Social and Cultural Rights, 1966, the Nation State is required to provide adequate means of livelihood to all its citizens. It also called for the distribution of natural resources of the country amongst its people.

The judiciary in *Ahmedabad Municipal Corporation-versus–Nawab Khan Gulab Khan* reminded the Government of its duty towards the hungry and starving Indians. The Supreme Court held that the socio-economic justice is the goal of the Preamble. The court further held that Nation State should promote socio-economic justice and fulfill the basic human and Constitutional rights of the people so as to make their life more meaningful.

9 (c) (viii) Right to Food Includes Right to Livelihood
The right to livelihood was established as a component of the right to food in *Air India Statutory Corporation–versus–United Labour Union and others* the Supreme Court enlarged the scope of the right to food. The court held that the Preamble of the Constitution is designed to realize the socio economic justice amongst the poor and the common men. In order to achieve this goal it is required to blend the fundamental rights with the directive principles. The Supreme Court further held that the poor and the common man can secure economic and social freedom only when they enjoy a right to work, an adequate means of livelihood, just and human condition of work, a living wage, a decent standard of living, education and leisure. The court held that the right to food is a basic Human Right.

This judgment has not only established the right to food as a justiciable right but also enlarged the scope of the right to food. The right to food now includes the right to livelihood.

Similarly, to reduce hunger amongst the people, the Apex Court in *Olga Tellis and others–versus–Bombay Municipal Corporation and others* held that the right to life includes the right to livelihood. To deprive a person of his livelihood will lead to hunger and starvation. People shall be able to eat only when they have a means to earn livelihood.

Again another epoch making judgment is the *Board of Trustee of the Port of Bombay–versus–Dilip Kumar Raghavendranath Nadkarni*. The Supreme Court held that people cannot be allowed to lead a life of continued drudgery
and they have a right to livelihood which makes life worth living. Thus, the court expands the horizon of the right to livelihood which is the basic component of the right to food. A person should have an access to earn an adequate livelihood to enable him and his family to basic comforts of life.

The court in *Francis Coralie Mullin–versus–Administration of Union Territory of Delhi*70 explaining the different component of the right to life laid down that right to life includes the bare necessities through which life is enjoyed like nutrition, clothing, shelter etc.

### 9 (c) (ix) Justiciability of Right to Food in India vis-a-vis Quasi Judicial Authorities

In India quasi judicial authorities created by the legislature is competent to entertain the cases of violation of the right to food of the people.71 Therefore the quasi judicial authority plays a significant role in bringing about justiciability of the right to food.

The quasi judicial mechanism created to enforce the violation of the human rights is the National Human Rights Commission72 at the center and a State Human Rights Commission73 at the state level. The Protection of Human Rights Act, 1993, enables the creation of the creation of a Human Rights Court at the district level for speedy trial of offences arising out of violation of human rights.74
The state of Assam has not created a Human Rights Court at the district level. Therefore such a mechanism for enforcing the right to food in case of violation is not available to the people of Assam.

The Human Rights Commission has played a significant role in addressing the violation of the right to food of the people. In a number of decisions the Human Rights Commission has upheld the right to food of the people.

*In Indian Council of Legal Aid and Advice and Others-versus-State of Orissa and Others*, the National Human Rights Commission held that out of the alleged twenty one (21) starvation deaths, seventeen (17) were attributed to factors connected to starvation. The commission recommended the State Government to set up institutional mechanism at the grass root level to monitor the relief programme and bring transparency. The commission also held that there was inadequacy of drinking water. The commission stressed the need of periodic review of the implementation of the schemes. The findings of the Human Rights Commissions are recommendatory in nature and therefore it cannot directly address the violation of the right to food. The commission can file a petition before the judiciary if the Government does not act according to the advice of the Human rights Commissions.

10. Conclusion

The judiciary through various case laws and tools of interpretation established the fundamental right to food as a justiciable right in India. Corresponding
development in the field of legislation, creating statutory provisions, is however lacking. There is no doubt of the impact of the judicial contribution on the lives of the poor however the statistics on malnutrition showing hunger and starvation reminds that something more is needed.

Though the right to food can be best protected by creating constitutional and statutory protection, keeping in mind the urgency of the matter and the magnitude of the violation the judiciary can frame guidelines for protection of the right to food.\textsuperscript{76}

The National Family Health Survey 2005-2006 indicates that forty eight percent (48\%) of the children are stunted, that is, they are shorter than their age. Around forty three percent (43\%) of the children are under-weight and a twenty four percent (24\%) of the children suffer from severe undernourishment. The survey indicates that twenty percent (20\%) of the children of the age of five years have developed wasted bodies. Anaemia amongst children of 6 – 59 months is as high as seventy percent (70\%). In India anaemia usually results from poor nutrition. The statistics of the malnutrition of Indian women is as high as fifty percent (50\%) while forty four percent (44\%) of the Indian men suffer malnourishment.\textsuperscript{77} Thus it is required to introspect into the structural restraints for which the right to food of such a huge number of people remains un-enforced.

The Supreme Court and the High Court are invested with the power to bring about justiciability to the right to food. The Supreme Court of India is situated
in Delhi.\textsuperscript{78} The High Court of Assam is situated in Guwahati. The High Courts of all states are situated in big cities. No state has a bench of a High Court at any rural area where poverty is concentrated. The Supreme Court and the High Court are the judicial organs to enforce the right to food. They are situated beyond the means and reach of the food vulnerable section of the society who are suffering from hunger and starvation. Under such circumstance General Comment 12 paragraph 32 and 34 are violated. The justiciability of the right to food of the hungry and starving population depends to a large extent in the incidents of public interested litigation. The hungry population who are unable to manage two square meals a day cannot afford the time and money required to enforce their rights. The statistics of hunger clearly indicate towards this fact. Therefore, there is a structural denial in the justiciability of right to food. The Constitution has ample provisions to take justice to the door step of the poor.\textsuperscript{79} Therefore, the parliament should adopt adequate legislation to enlarge the jurisdiction of the Civil Court and the Nyaya Panchayat by empowering them to enforce the right to food in case of violation. Such a measure shall enable the poor to knock the doors of the judiciary in case of violation of their right to food.

The establishment of the Human Rights Court in all districts of Assam as provided under the Protection of Human Rights Act, 1993 shall enable the food vulnerable section to enforce their rights easily. Therefore, the State government should take immediate steps to establish this court in the state of Assam.
End Note

1 Kant I., *op. cit.*, p. 78.


4 *Id.*


7 *Id.*

8 *Supra Chapter III, Heading 4, Precedent as a Source of Law.*


11 The Supreme Court on 27 July 2010 directed for the free distribution of the food grains rotting in the Government godowns, the Prime Minister expressed that the court should not enter the realm of policy formulation, Varadarajan S., ‘Free grains for poor cannot be implemented, says Manmohan’, *The Hindu*, 7 September 2010, p. 1.

12 Under the ICESR the right to food is subject to progressive realization therefore the steps taken by different Nation State shall differ as per its economic capacity.

13 *Supra Chapter 1.*


15 Article 8 of *Universal Declaration of Human Rights*, 1948.


18 *Peoples Union of Civil Liberaties –versus-Union of India and others* Writ Petition (Civil) 196 of 2001.


22 Section 18(2) of the Protection of Human Rights Act, 1993.
Article 92 of the Charter of the United Nation.

Article 94 of the Statute of the International Court of Justice states that “Each member of the United Nation undertakes to comply with the decisions of the International Court of Justice”.

Article 34 paragraph 1 of the Statute of the International Court of Justice lays down that “only State may be parties in cases before the Court”.

Article 36 paragraph 2 of the Statute of the International Court of Justice.


The power of judicial review flows from the Constitution of India. Article 13(2) envisages that “the state shall not make any law which takes away or abridges the rights conferred by this part or any law made in contravention of this clause shall, to the extent of contravention be void”. This provision enables the judiciary to enforce the fundamental rights. Article 32(1) state that “the right to move to the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed”. Therefore, the judiciary can issue writs for violation of fundamental rights. Article 226(1) envisages the power of the High Court to issue orders or writs for enforcement of any of the rights conferred by Part III and other legal rights. Article 132-136 deals with the appellate jurisdiction of the Supreme Court.

Article 227 gives the High Court the power of superintendence over all courts under its jurisdiction. Article 141 states that the law declared by the Supreme Court is binding on all courts in India. This provision has a significant contribution towards bringing justiciability to the right to food. As most of the rights conferring the right to food are derivative rights, the law establishes the authority of the derivative rights. Moreover the Supreme Court in Kihoto Hollohen-versus-Zachilhu AIR 1993 SC 412 held that judicial review under Articles 32 and 226 is a basic structure of the Constitution beyond the pale of amendability. The court in Manish Goal-versus-Rohini Goal AIR 2010 SC 1099 has held that under Article 141 the court can grant equitable relief to eradicate injustice. All the above discussed provisions support the doctrine of judicial review in India.


Article 124(2) envisages that the judges of the Supreme Court can be appointed by the President after consultation with the judges of the Supreme Court and the judges of the High Courts of the states. For the appointment of the Chief Justice of India, the Supreme Court has held in Supreme Court Advocates on Record Association-versus-Union of India AIR 1994 SC 268; (1993) SCC 441, that the senior most judge of the Supreme Court fit to hold the office shall be appointed. To appoint the other judges of the Supreme Court, the Supreme Court has held in Special Reference No. 1 of 1998, RE (1998) 7 SCC 739 that the President is required to consult the Chief Justice of India who shall form his opinion after consultation with four senior most judges of the Supreme Court and a senior judge of the Supreme Court who belongs to the same High Court.

Article 141 of the Constitution of India.

AIR 1958 SC 30.

AIR 1958 SC 578.

AIR 1962 SC 12.

AIR 1969 SC182.
Article 23(1) of the Constitution of India states that “Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.”

The right to life is guaranteed under Article 21 of the Constitution of India.

Article 21 of the Constitution of India.

Article 32 and Article 226 of the Constitution of India.
Section 2(d) of the Protection of the Human Rights Act, 1993, defines the human right to mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution. As the right to food flows from the right to life which is guaranteed by the Constitution it is covered under the protections guaranteed under the Act.

Section 3 of the Protection of Human Rights Act, 1993.


Section 30 of the Protection of Human Rights Act, 1993 envisages that for speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court by notification specify for each district a court of sessions to be a Human Rights Court to try such offences.

Case No. 37/3/97-LD. Complainant Shri Chaturanan Mishra.

The Supreme Court has spelled out the competency of the judiciary to fill in the legislative vacuum in a number of decisions. In *Dayaram-versus-Sudhir Batham & others* 2011 SCW 6781 the court held that the judiciary has the power to interpret the Constitution as a living document and enforce the fundamental rights in an area where the legislature has not exercised its power. In *Kumari Madhuri Patil-versus-Additional Commissioner Tribal Development* (1994) 6 SCC 94 the Supreme Court held that where there is a legislative vacuum in implementing the socio economic right, the court can invariably evolve a new mechanism to protect such rights of the people. In *S.P. Gupta-versus-Union of India* (1981) Supp SCC 87; AIR 1982 SC 149, the Supreme Court held that the judiciary has a creative function to become the arm of socio-economic revolution. It is expected to play an active and calculated role to bring social justice within the reach of the common people. In discharging such role, the judges cannot restrict its role to neutral umpire. The judges are expected to be sensitive to socio-economic realities of the lives of half hungry millions of Indians and use law as a means to achieve the constitutional objective. In *Bandhua Mukti Morcha-versus-Union of India* (1984) 3 SCC 802 Supreme Court held that in instance of violation of fundamental rights the judiciary has the power to issue any direction or order in the widest possible term to enforce the fundamental right. In *Vishaka-versus-State of Rajasthan* (1997) 6 SCC 226; AIR 1997 SC 3011, Apex Court recognized the obligation under Article 32 to provide effective enforcement of the human right in case of legislative vacuum. In *Vineet Narain-versus-Union of India* 1998 (1) SCC 889, the Apex Court held that the power of the judiciary to issue guidelines in case of legislative vacuum is well settled practice which has become a part of the constitutional jurisprudence.


*Article 130 of the Constitution of India envisages that “The Supreme Court shall sit in Delhi or in such places as the Chief Justice of India may, with the approval of the President, from time to time, appoint”.*

*Article 32(3) of the Constitution of India states that “Without prejudice to the powers conferred upon the Supreme Court by clause (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)². Therefore, the Parliament can by adopting appropriate legislation bring justiciability of the right to food at the village level by empowering the Munsif Courts or the Nyaya Panchayats.