

CHAPTER 4

JUSTICIABILITY OF THE RIGHT TO FOOD IN INDIA: ANALYZING THE ROLE OF JUDICIARY IN SAFEGUARDING CONSTITUTIONAL RIGHT TO FOOD

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SYNOPSIS

➤ Prelude	48
➤ Justiciability of Right to Food: Meaning and Importance	49
➤ Justiciability of the Right to Food in India: Role of Courts	51
➤ Conclusion	81

"In a world of plenty, no one, not a single person, should go hungry. But almost one billion still do not have enough to eat. I want to see an end to hunger everywhere within my lifetime."

*-Ban Ki Moon¹
(UN Secretary General)*

I. PRELUDE

The right to food aims to bring about a change in the lives of millions of persons suffering from hunger. Since the right to food is one of the economic, social, and cultural rights, violations of these rights are defined in Maastricht guidelines. The guidelines make it obligatory for the States to respect, protect and refrain from interfering

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1. Rio+20: The United Nations Conference on Sustainable Development, June 2012.

with the enjoyment of economic, social, and cultural rights.² Violation of any right can be remedied only when such right is made justifiable. The doctrine of *ubi jus ibi remedium* holds that where there is a right, there is a remedy. Thus, every right is redressable. In the case of the right to food also, to ensure a world free from hunger this right needs to be justiciable. The great German philosopher Immanuel Kant defined justiciability as the power to award to each person that which is due to him under law.³ 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. Access to justice makes the right to food more effective and tangible by calling the responsible parties to account and enabling victims to claim their rights in case of violations. All such legal systems that ensure access to justice in cases of violations of the right to food either enshrine the right to food in their Constitutions explicitly or implicitly, provide legal remedies or their judicial and quasi-judicial bodies recognize its justiciability. In India, the responsibility of ensuring the justiciability of the right to food is primarily on the judiciary. This is also true for most third-world countries where the vulnerable population is unable to redress their rights through the democratic process. For such countries, the mechanism to redress their rights is through the judiciary.

II. JUSTICIABILITY OF RIGHT TO FOOD: MEANING AND IMPORTANCE

Jean Dreze defines justiciability of the right to food as the possibility that a recognized 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.⁴ Justiciability is the ability of the judiciary or the quasi-judicial authority to uphold the law through effective judicial pronouncements.⁵ Whenever a right is held as a justiciable right, an adequate remedy maybe provided in case of violation. Since the right

2. Maastricht Guidelines, para 5.

3. Immanuel Kant, *The Metaphysical Element of Justice* 78 (Manchester University Press, United Kingdom, 1953).

4. *Ibid.*

5. Office of the High Commissioner for Human Rights, *Human Rights and Poverty Reduction: A Conceptual Framework*, New York, 2004, United Nation, as seen in A Primer on The Right to Food, *loc. cit.*

to food is recognized as a human right that creates a certain obligation on the State for its full realization and allows the holder of the right to demand its redressal in case of its violation in the court of law. The remedy can be in the form of restitution, financial compensation, non-repetition, or just a declaration of violation. Thus, a right is justifiable when it is recognized as a legal entitlement.

Till date, many nations continue to doubt the justiciability of the right to food, or how it might be enforced and realized at a national level. In most of the countries of the world, the 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. In a large number of countries, non-derivative provisions of the right to food find a place as constitutional goals. The constitutional goals being usually non-justiciable cannot be enforced through the judicial or quasi-judicial bodies. India, however, has taken a different approach, opting not to allow the violation of what it recognizes as the human right to occur without remedy. Rather, India has found the right to food to be both legally justiciable and deserving of national legislation. Moreover 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. In the Indian scenario the justiciability of the right to food has the following importance:⁶

- i. 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 become binding on 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.
- ii. Secondly, the 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.

6. A.M.S. Franco, *How to Promote the Justiciability of the Human Right to Food* 8 (FIAN International, 2008).

- iii. 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 than redressal of the rights of the people.
- iv. Lastly, the doctrine of precedent applies to 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 the realization of the right to food have been implemented by the orders of the judiciary.

The justiciability of the right to food can be under the international, regional agencies or the national judicial, or quasi-judicial bodies. Economic, social, and cultural rights are being successfully adjudicated in national courts all over the world as well as in regional and international human rights systems. 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 a 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 the realization of the right to food. Although there is fewer right to food cases compared with case law on other economical, social and cultural rights, such as the right to health and the right to housing, there is a wealth of international, regional, and national experience to draw on when considering different strategies to further the right to food.

III. JUSTICIABILITY OF THE RIGHT TO FOOD IN INDIA: ROLE OF COURTS

At the national level, the right to food can be made justiciable either by adopting adequate legislation or by the judicial creativity shown by the independent judiciary. Moreover, the quasi-judicial authorities like the Ombudsmen or the Human Rights Commission also operate as a mechanism to bring about justiciability to the right to food. On the other hand, Public Interest Litigation too plays an important role in the liberation of the impoverished and the oppressed in society.⁷ The

7. Parmanand Singh, "Human Rights Protection through Public Interest Litigation in India," *XLV Indian Journal of Public Administration* 734 (1999).

Public Interest Litigation expands the justiciability of the right to food. It is a vital power of the judiciary to do social justice.⁸ The right to food in India evolved through the process of precedent. The binding character of the doctrine of *Stare Decisis* has facilitated establishing the right to food as a justiciable right in India.⁹

i. Labourers' Right to Food

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. Initially, in India, the judiciary has not specifically said about the right to food. But indirectly it has emphasized that workers must get minimum wages which could ensure their bare necessities of life. It has further held that the right to life guaranteed under Article 21 of the Constitution of India does not mean just animal existence. It means living with human dignity and the necessities of life. Hence the minimum amount of wages are necessary to purchase food i.e., the economic access to food. Even though initially the judiciary observed a self-imposed judicial restraint towards such issues, but later on it became very compassionate towards the issues about starvation suffered by the poor which led the judiciary to remind the Government of its duty towards this deprived section of the population time and again by issuing directions in this regard. Through several case laws, the Supreme Court of India has 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 labourers to maintain themselves and their families should be paid.

Justice P.B. Gajendragadkar on behalf of the three judges bench of the Supreme Court comprising of P.B. Gajendragadkar (J.), Natwarlal H. Bhagwati (J.), S.K. Das (J.) in *Crown Aluminum Works v. Their*

8. Rajeev Dhavan, "Law as Struggle: Public Interest Law in India," 36 *JILI* 308 (1994).

9. The Constitution of India, Article 141

Workmen,¹⁰ 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 can 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 the 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 that enables them to a healthy meal for themselves and their families 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 inadequate it may be.

In *Express Newspaper Private Ltd. v. Union of India*¹¹ Justice A.P. Sen on behalf of three judges bench of Supreme Court comprising of A.P. Sen (J.), E. S. Venkataramiah (J.), R.B. Misra (J.), 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 government 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 for a hard day's labour. In *U. Unichoyi and others v. the State of Kerala*¹² the court held that in underdeveloped countries like India, poverty may drive people to work on starvation wages. The Welfare State should ensure a minimum wage that 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

10. AIR 1958 SC 30.

11. AIR 1958 SC 578.

12. AIR 1962 SC 12

enjoy a certain amount of comfort in their life. The Supreme Court again reiterated the need to pay the minimum wages in *Hydro (Engineers) Pvt. Ltd. v. Workman*.¹³ Another important step towards the realization of the right to food of the poverty-stricken Indians was taken in *Jaydip Paper Industries v. Workmen*,¹⁴ wherein Justice Kuttily Kurien Mathew, on behalf of two judges bench of Justice Kuttily Kurien Mathew (J.) and C.A. Vaidyalingam (J.), held that the Nation should provide protections against starvation and pay a minimum wage to its labourers so that they can at least they can provide a minimum two square meals a day to their dependant family members.

The judiciary went a step further in *Peoples Union for Democratic Rights v. Union of India*¹⁵ when it held that the payment of starvation wage was forced labour. Hunger, poverty, want and destitution is the factors that have compelled the labourers to work on starvation wage. Thus the judiciary extended the protection against the starvation wage from the organized sectors to the unorganized sectors as well. The court held that forced labour is a violation of the fundamental right to life and is justiciable. In *Sanjit Roy v. State of Rajasthan*¹⁶ Justice P.N. Bhagwati on behalf of the double Judges bench comprising of Bhagwati. P.N. (J.), and R.S. Pathak held that hunger and starvation are the main reasons behind the continuance of forced labour and called upon the Nation to ensure that a minimum wage is paid even in drought relief schemes. Thus every opportunity was availed by the judiciary to protect labourers from starvation. Again another epoch-making judgment is the *Board of Trustee of the Port of Bombay v. Dilip Kumar Raghavendranath Nadkarni*,¹⁷ the Supreme Court held that people cannot be allowed to lead a life of continued drudgery and they have a right to livelihood so as have adequate food to sustain their lives and make 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

13. AIR 1969 SC182

14. AIR 1972 SCC 605. See *Gujarat Agricultural University v. Rathod Labhu Bechar*, AIR 2001 (SCW) 351 the Supreme Court prohibited the employment of labourers on starvation wage and directed for the payment of minimum wages.

15. (1982) 3 SCC 235.

16. (1983) 1 SCC 525

17. (1983) 1 SCC 124

enable him and his family to basic comforts of life *viz.*, food, shelter, and clothes.

ii. Right to Life includes the right to food

Another landmark development took place when the division bench of the Supreme Court comprising of Reddy, O. Chinnappa (J.) and Varadarajan, A. (J.) in the *State of Maharashtra v. Chandrabhan*,¹⁸ 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 proviso to Rule 151 (i) (ii) (6) of Bombay Civil Service Rules, 1959. The Rule provided for payment of Rupee one (Re.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 the right to life guaranteed under the Constitution of India.

18. (1983) 3 SCC 387

Another milestone was achieved in the war against hunger when the Apex Court in *Bandhua Mukti Morcha v. Union of India*,¹⁹ wherein a three judges bench comprising Bhagwati, P.N. (J.), Pathak, R.S. (J.), and Sen, A.N.(J.) held that the duty of the Nation does not end with just the release of the labourers from the bondage. Justice P.N. Bhagwati on the behalf of others opined that the Nation must 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 themselves and their families. A similar view was held by the Supreme Court in *Neeraja Choudhury v. State of Madhya Pradesh*,²⁰ 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 into the bondage of hunger and struggle. Accordingly, the Apex Court brought to the attention of the Government the fact that the Government is duty-bound to end hunger and starvation.

The first significant initiative to get food need to be recognized as a fundamental right came up in *Kishen Pattnayak v. the State of Orissa*,²¹ wherein the petitioner, the legendary social activist Kishen Pattnayak wrote a letter to the Supreme Court, bringing to the Court's notice the extreme poverty of the people of Kalahandi in Orissa where hundreds were dying due to starvation and where several people were forced to sell their children. The letter prayed that the State Government should be directed to take immediate steps to ameliorate this miserable condition of the people of Kalahandi. The Supreme Court took a very pro-government approach and gave directions to take macro-level measures to address the starvation problem such as implementing irrigation projects in the state to reduce the drought in the region, measures to ensure fair selling price of paddy, and appointing a Natural Calamities Committee. None of these measures directly affected the immediate needs of the petitioner, i.e. to prevent people from dying of hunger. More importantly, the Supreme Court did not recognize the specific Right to Food within this context of starvation.²² The Supreme Court double bench comprising of

19. (1984) 3 SCC 115.

20. (1984) 3 SCC 243.

21. AIR 1989 SC 677.

22. B.B. Pande, "The Constitutionality of Basic Human Needs- An Ignored Area of Legal Discourse," *Supreme Court Cases Journal*, Vol. 4, p. 1, (1989).

Dutt, M.M. (J.) and Saikia, K.N. (J.) dismissed the petition with the following words:

In this letter, they have brought to the notice of this Court the miserable condition of the inhabitants of the district of Kalahandi in the State of Orissa on account of extreme poverty. It is alleged that the people of Kalahandi, to save themselves from starvation deaths, are compelled to subject themselves to distress sale of labour on a large scale resulting in exploitation of landless labourers by the well-to-do landlords. It is alleged that because of labour and paddy, the small peasants are deprived of the legitimate price of paddy and they somehow eke out their daily existence. Further, their case is that being victims of 'chill penury', the people of Kalahandi are sometimes forced to sell their children... Another writ petition being writ petition (civil) number 1081 of 1987 has been filed by the Indian People's Front. This writ petition not only relates to the misery of the people of Kalahandi but also of the people of another district, namely, the district of Koraput. In this writ petition, it has been alleged that the starvation deaths of the inhabitants of the districts of Koraput and Kalahandi are due to utter negligence and callousness of the administration and the Government of Orissa. It is alleged that starvation deaths, drought, diseases, and famine have been the continuing phenomena in the said two districts since 1985. The government of Orissa has been accused of utter failure to protect the lives of the people of the two districts... The measures which have been taken and are being taken, as stated in the written note submitted by the learned advocate-general, have been briefly mentioned. There is no reason not to accept the statements made on behalf of the State of Orissa that the measures, stated above, are being taken to mitigate hunger, poverty, starvation deaths, etc., of the people of Kalahandi. If such measures are taken, there can be no doubt that it will alleviate to a great extent, the miseries of the people of Kalahandi. Such measures are also being taken in respect of the district of Koraput. We hope and trust that because of the prompt action that has been taken by the government, soon the miseries of these two districts will be over."²³

23. *Supra* note 84 at 681.

In another important case *Shantistar Builders v. Narayan Khamalal Totame*,²⁴ three judges bench of the Supreme Court comprising of Misra, R. (J.), Sawant, P. (J.), and Ramaswamy, K. (J.) 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 civilized society recognize the right to food as a part of the right to live in their legal system as a justiciable right. Justice R. Mishra while delivering the judgment held that:

"The right to life would take within its sweep the right to food, the right to clothing, the right to decent environment and reasonable accommodation to live in. More than any other right, the right to food is the first bare necessity that is essential for sustaining life."²⁵

Thereafter, in *Dena Nath v. National Fertilizers Ltd.*,²⁶ the Court observed that the enforcement of the provisions to establish a canteen in every establishment under Section 16 of the Contract Labour (Regulation and Abolition) Act, 1970 is to supply food to workmen at the subsidized rates as the right to food is a basic human right. Similarly, in *Peerless General Finance and Investment Co. Ltd. v. Reserve Bank of India*,²⁷ the Court quoted Article 25 of the Universal Declaration of Human Rights and held that the Right to life includes the right to live with basic human dignity with the necessities of life such as nutrition, clothing, food, shelter over the head, facilities for cultural and socio-economic well being of every individual. Article 21 protects the right to life. It guarantees and derives therefrom the minimum needs for existence, including a better tomorrow. Keeping up the same spirit, the three judges bench of the Supreme Court consisting of Misra, Rangnath (C.J.), Punchhi, M.M. (J.), Ramaswamy, K.(J.) in *C.E.S.C. Limited, etc v. Subhas Chandra Bose and other*²⁸ expanded the ambit of the right to life and held that the fundamental right aims to ensure liberty to all. It further held that socio-economic rights are very

24. (1990) 1 SCC 520.

25. *Id.* at 527

26. (1992) 1 SCC 695.

27. (1992) 2 SCC 388.

28. (1992) 1 SCC 441.

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 Rights, 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.

Yet again in *P.G. Gupta v. State of Gujarat*,²⁹ three judges bench of Supreme Court consisting of Ramaswamy, K. (J.), Mohan, S. (J), and Venkatachala, N. (J) held that food, shelter, and clothing make life meaningful. It makes life worth living and is guaranteed as a fundamental right. While delivering the judgment Justice K. Ramaswamy observed that:

"The protection of life assured under Article 21 has given an expanded meaning of the right to life. It is settled law that all the related provisions under the Constitution must be read together and given the meaning of widest amplitude to cover the variety of rights which go to constitute the meaningful right to life. Moreover, Article 11(1) of the International Covenant on Economic, Social and Cultural Rights also lays down that the States parties to the Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including food, clothing, and housing, and to the continuous improvement of living conditions. And held that to the poor, settlement with a fixed abode and right to residence guaranteed by Article 19(1)(e) remain more a teasing illusion unless the State provides them the means to have food, clothing, and shelter to make their life meaningful and worth living with dignity. It is also observed that food, shelter, and clothing are minimal human rights."³⁰

The judiciary crossed another milestone for the hungry and starving population in *Chameli Singh and another v. State of Uttar Pradesh and another*,³¹ wherein three judges bench consisting of Ramaswamy, K. (J.), Faizanuddin (J.) and Kirpal, B.N. (J.) held that the Universal Declaration of Human Rights, 1948, the International Covenant on Economic, Social

29. (1995) Suppl. 2 SCC 182.

30. *Id.* at 184.

31. (1996) 2 SCC 549.

and Cultural Right, 1966 along with the Preamble of the Constitution of India assure social and economic justice. It provides food, shelter, and clothing as the minimum human rights. Justice K. Ramaswamy while emphasizing the right to live in a civilized society held:

"In any organized society, the right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions that 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 known to any civilized society. All civil, political, social and cultural rights enshrined in the Universal Declaration of Human Rights and Convention or under the Constitution of India cannot be exercised without these basic human rights."³²

In its spirit to combat hunger, the Apex Court in *J.P.Ravidas and others v. Navvywak Harijan Utthapan Multi-Unit Industrial Co-operative Society Ltd. and others*³³ 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, so that they can have basic components *viz.*, food, shelter, water, and housing necessary for sustaining life. It also called for the distribution of natural resources of the country amongst its people. The judiciary in *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*³⁴ reminded the Government of its duty towards the hungry and starving Indians. The Supreme Court held that socio-economic justice is the goal of the Preamble. The court further held that right to have adequate food and the right to livelihood are the important components of socio-economic justice to make their life more meaningful.

Once again the right to livelihood was established as an integral component of the right to food in *Air India Statutory Corporation v.*

32. *Id.* at 555.

33. (1996) 9 SCC 300

34. (1997) 11 SCC 121.

*United Labour Union and others*³⁵ wherein three judges bench of Supreme Court comprising of Ramaswamy, K. (J.), Hansaria, B.L. (J.) and Majmudar, S.B. (J.) 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. To achieve this goal it is required to blend the Fundamental Rights with the Directive Principles. While delivering judgment Justice K. Ramaswamy on behalf of the bench held that the right to food is a basic Human Right and this right to food can be achieved only when the poor and the common man can secure economic and social freedom *i.e.*, when they enjoy a right to work, an adequate means of livelihood, just and humane condition of work, a living wage, a decent standard of living, education, and leisure. This judgment has not only established the right to food as a justifiable right but also enlarged the scope of the right to food. The right to food now includes the right to livelihood.

Another case that explains the constitutional interpretation evinced in *People's Union for Civil Liberties v. India*,³⁶ where double bench of Supreme Court comprising of Singh, Kuldip (J.) and Ahmad, S. Saghir (J.) interrelated Articles 21 (right to life) and Article 47 (right to nutrition and public health) to establish a government obligation to ensure adequate nutrition and public health. The petitioner, in this case, sued the national government on behalf of rural, impoverished, coastal communities seeking a court order requiring the government to adhere to its coastal and environmental laws and protect the ecologically fragile coastal areas essential to these communities. The court examined national environmental laws and ruled that the government must require those industries violating coastal regulations and polluting fishing communities to pay for environmental cleanup and compensate those harmed.³⁷ While supporting their ruling Justice Kuldip Singh held:

that such "polluter pays principle" falls within the government's constitutional duties to ensure the "right to life" and "raise the level of nutrition and the standard of living to improve public

35. (1997) 9 SCC 377.

36. (1997) 2 S.C.C. 145.

37. *Id.* at 147

health." Read together, Article 21 and Article 47 provide legal redress for communities facing nutritional insecurity due to the government's failure to protect the environment.³⁸

Thus, through this case law, the judiciary makes a clear indication to establish the right to food as a justiciable right in India.

It was only in *People Union for Civil Liberties v. Union of India & Others*³⁹ popularly known as the right to food case, the Supreme Court through a series of interim orders directly addressed food security in the Indian context by explicitly establishing a constitutional right to food in India. The Court not only held that specific governmental food-related schemes constituted legal entitlements under the constitutional right to food, setting out in detail minimum allocation levels of food grains and supplement nutrients for Indian poor, but also outlined how those governmental schemes have to be implemented. At the time of filing the writ petition, the State of Rajasthan was severely affected by the third successive year of drought and the incidents of acute hunger and starvation deaths were reported from many places. At the same time, it was estimated that almost half of the State's rural population lived below the poverty line and policy mandated employment relief and subsidized food was not provided to the poor. The government's failure to adequately address hunger and malnutrition was particularly egregious in the light of surplus food in the warehouses of the State. The petitioner on behalf of the hapless victims of the drought filed a public interest petition before the court. This petition was filed at a time when the country's food stocks reached unprecedented levels while hunger in drought-affected areas intensified. Initially, the case was brought against the Government of India, the Food Corporation of India (FCI), and six State Governments, in the context of inadequate drought relief. Subsequently, the case was extended to the larger issues of chronic hunger and undernutrition, and all the State Governments were added to the list of "respondents". The basic argument of the petition was that, since food is essential for survival, the right to food is an implication of the fundamental right to life enshrined in Article 21 of the Indian Constitution. The petition argued that Central and State governments have violated the right to

38. *Ibid.*

39. Writ Petition (Civil) 196 of 2001; 2003(9) SCALE 835.

food by failing to respond to the drought situation, and in particular by continuing to accumulate gigantic food stocks even as people went hungry. The petition went on to highlight two specific aspects of State negligence viz., the breakdown of the Public Distribution System (PDS) and the inadequacy of drought relief works. In its final plea the petition requested the Supreme Court to issue orders directing:

- i. the State and Central governments to enforce Famine Codes
- ii. the government of India and Food Corporation of India to release surplus food grains lying in storage for relief to drought-affected areas; and
- iii. all respondents to revisit the Public Distribution System and frame a fresh scheme of public distribution for scientific and reasonable distribution of grains.

While dealing with the right to food, it has been observed by the Supreme Court that:

The need for food is the basic human need. A civilized society does not countenance starvation. In a cultured society cry for food is not thought of. Throughout the globe nutrition, health and education have been recognized as the basic needs of a member of the society; a man cannot be allowed to have animal existence. When the food is not available to meet the cry of hunger, the authors have gone to the extent of saying that it tantamounts to the nullification of life. Biological growth is dependent on food. Not for nothing it had been said in the days of yore that a hungry man can commit any sin and a man in demand of food cannot conceive any kind of poetry or look at the moonlit sky. In India, Article 21 of the Constitution protects for every citizen a right to live with human dignity. Would the very existence of life of those families which are below the poverty line not come under danger for want of appropriate schemes and implementation thereof, to provide adequate aid to such families? Reference can also be made to Article 47 which inter alia provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.⁴⁰

Over time, the scope of this PIL has considerably expanded. Today it covers a wide range of issues related to the right to food, including

40. *Id.* at 836.

the implementation of food-related schemes, urban destitution, the right to work, starvation deaths, maternity entitlements, and even broader issues of transparency and accountability. The "right to food case" is massive litigation, and its complexity grows every year. Already, nearly 500 "affidavits" have been submitted by the petitioner (PUCL) and respondents, close to a hundred "interim applications" have been filed, and more than 49 "interim orders" have been issued. These documents run into thousands of pages and it is very difficult for anyone to keep track of all material. Thus we confine our attention to the "interim orders" – the most important documents from the point of view of the action. "Interim orders" refer to orders that remain applicable for the duration of the case. If and when the Supreme Court issues a final judgment and disposes of the case, some of these orders are likely to be incorporated in the judgment.

In this case, the Supreme Court recognized the right to food under the right to life stipulated in Article 21 of the Indian Constitution, and Article 47, a Directive Principle of State Policy which puts a duty on the State on raising the level of nutrition. The Court noted the paradox of food being available in granaries, though the poor were starving. The petition filed by NGO assumes special significance not only because it brought up the issue of starvation deaths before the Supreme Court for the third time in two decades, but also because it brought to the fore starvation on the face of surplus food grains in the Government stocks. In this ongoing petition before the Supreme Court till April 2004 eleven Orders had been passed. In Order I dated July 23, 2001, the Court mentioned that:

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. In case of famine, there may be a shortage of food, but here the situation is that amongst plenty there is scarcity. Plenty of food is available, but the distribution of the same amongst the destitute is scarce and non-existent leading to malnourished, starvation, and other related problems.⁴¹

41. Human Rights Law Network, *Right to Food 36* (HRLN, India, 2009). Order I dated July 23, 2001.

In Order II dated August 20, 2001, the Court set the stage for taking on the problem of hunger and starvation thus:

"The anxiety of the Court is to see that the poor and the destitute and the weaker sections of the society do not suffer from hunger and starvation. The prevention of the same is the prime responsibility of the government whether Central or State. How this is to be ensured would be a matter of policy which is best left to the Government. All that the Court has to be satisfied with and which it may have to ensure is that the food grains which are overflowing in the storage receptacles, especially of FCI godowns, and which are in abundance, should not be wasted by dumping into the sea or eaten by rats. Mere schemes without any implementation are of no use. What is important is that the food must reach the hungry."⁴²

While early interim orders mainly addressed the public distribution of food grains to families and persons falling below the poverty line, the Order IV of November 28, 2001, critically and expansively transformed the petitioner's case. In this defining Order, the court essentially redefined governmental 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 schemes were to be implemented. This Order directed the government to implement, in a specific manner, the following food-related schemes:

- 1) Targeted Public Distribution System (TPDS),
- 2) Antyodaya Anna Yojana,
- 3) Mid Day meal Scheme (MDMS),
- 4) National Old Age Pension Scheme (NOAPS),
- 5) Annapurna Scheme,
- 6) Integrated Child Development Services (ICDS) Scheme,
- 7) National Maternity Benefit Scheme, and
- 8) National Family Benefit Scheme.

In Order IV the Court gave elaborate directions in respect of the right schemes for the amelioration of the conditions of the weaker sections, identification of the various beneficiaries, and strengthening

42. *Id.* at 37. Order II dated August 20, 2001.

the implementation machinery. The Court backed these significant directions by supporting directions to media (Doordarshan and All India Radio) to give wide publicity to the schemes and the directions and also directed the Chief Secretaries of each State to report compliance to the Order within eight weeks. The Order not only established which policies governments were obliged to implement but also identified whom it would hold accountable in the event of non-compliance. Essentially, the interim Order of November 28, 2001, converted the benefits of these eight "schemes" into legal entitlements.⁴³ This means, for instance, that if someone has an Antyodaya card but she is not getting her full quota of 35 kg of grain per month at the official prices (Rs 3/kg for rice and Rs 2/kg for wheat), she can claim her due as a matter of right, by going to Court if necessary. The law applies to everyone and therefore every citizen must comply with the Supreme Court Orders. However, some people and institutions have special responsibilities for the implementation of the Orders. In an Order dated May 8, 2002, and a follow-up Order on October 29, 2002, the Supreme Court explicitly defined some of these responsibilities:

"Most of the interim Orders are directions to the governments—the central government and the state governments as it is made clear from the very beginning, that the prevention of hunger and starvation is one of the prime responsibilities of government, whether it is Central or State. Moreover, in the case of State governments, the Chief Secretary is answerable to the Court on behalf of the government, and in some instances such as starvation deaths the Chief Secretary himself or herself would be held responsible for violation of the orders."⁴⁴

In Order IX Court appears to have realized how difficult it is to ensure the implementation of basic need claims of the poorer sections, in these words:

"It is a matter of anguish that despite lapse of nearly three and a half years the Order dated 28th November 2001 has not been fully implemented by all the States and Union Territories. As already stated earlier many States have given only half-baked

43. *Id.* at 42. Order IV dated November 28, 2001.

44. Human Rights Law Network, *Food Security and Judicial Activism in India* 9 (HRLN, Delhi, 2007).

information and figures. Further, we wish to make it clear that some of the States were permitted to at least make a start in some of the districts in terms of the Order dated May 2, 2003, does not mean that this Court has modified or carried the earlier Order dated November 28, 2001. It is a constitutional duty of every State and Union Territory to implement in letter and spirit the directions contained in the order dated November 28, 2001."⁴⁵

However, despite large-scale non-compliance with its earlier Order, the Court issued seventeen fresh directions in respect of mid-day meals, employment guarantees, and free and economic food entitlement schemes. Interestingly, the Court considered employment and minimum wage guarantee as an effective way for fighting hunger and starvation. 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 programs on their lives and report the same to the Court. The Court has cautioned the Government from altering the provisions or discontinuing any of the schemes. This case takes judicial activism on the right to food to new heights. Many of the subsequent hearings were concerned with the implementation of the November 28, 2001 Order, leading to further orders around the schemes. While most of the Interim Orders concern specific schemes (e.g. Integrated Child Development Services or Public Distribution System), some of them apply "across the board" to all the relevant schemes.

The Supreme Court Orders on the right to food can be seen as a powerful tool for action. These orders gave people a whole range of legal rights: the right to nutritious Mid-Day Meals at school, to a functioning public distribution system, to an Anganwadi in the neighborhood, to prompt payment of minimum wages on public works, and so on. The Orders also put in place various appeal and redressal procedures that people could use to claim these entitlements. Ultimately, the realization of the right to food required much more than these "interim orders". Nevertheless, these Orders provided legal safeguards for some important aspects of the right to food.

45. *Id.* at 50. Order IX dated 19 August, 2004.

The two major contributions of the right to food case were: *Firstly*, the emergence of the right to food campaign⁴⁶ for advocating a right to food before the Court and for ensuring implementation of the right to food through social activism. *Secondly*, the creation of food Commissioners by the Supreme Court to advise it to explicate the right to food and to protect, monitor, and implement its Orders relating to the right to food. However, while the right to food case 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 interim orders of the case, the work of the Commission, and the work of the right to food campaign have borne fruit in the development of National Food Security legislation that has codified the entitlements outlined in the right to food case.

The judiciary in another epoch-making judgment addressed the sufferings of the hungry. In *Kapila Hingoraniv. State of Bihar*,⁴⁷ a newspaper report as regard non-payment of salary for a long time resulting in starvation highlighted the case of one Chandan Bhattacharya, son of an employee of the Bihar State Agro-Industries Development Corporation who tried to immolate himself. The incident was widely reported, inter alia, in 'The Hindustan Times, Delhi Edition, on 19.9.2002 under the caption "Empty coffers drive staff to self-immolation bids". The said Chandan Bhattacharya, later on, succumbed to the burn injuries suffered by him. In this writ petition, the writ petitioner, a public-spirited citizen, and a Supreme Court lawyer, alleged that apart from the plight of the employees of the public sector undertakings or the statutory authorities, even the teaching and non-teaching staff of Aided and Unaided Schools, Madrassas and Colleges have been facing a similar fate. We, however, as at present advised do not intend to deal with the same. According to the petitioner, from a newspaper report, it would appear that about 250 employees died due to starvation or committed suicide owing to the acute financial crisis resulting from non-payment of remunerations to them for a long time. The report

46. The right to food campaign is an informal network of organisations and individuals committed to achieving the right to food in India, which has its origin in the right to food case.

47. (2003) 6 SCC 1.

further goes on to say that the leader of the opposition in the Bihar Assembly had alleged that over 1000 employees died "due to lack of salary for a period ranging from four months to 94 months". The double bench consisting of Khare, V.N. (C.J.) and Sinha, S.B.(J.) held that the state is duty-bound to uphold the constitutional mandate as well as discharge it is an international obligation. The court further held that the term life guaranteed as a fundamental right under the Constitution has a far-reaching connotation and includes food. Moreover as and when 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.

The justiciability of the right to food was upheld by the Supreme Court in *State of Uttar Pradesh v. Upton Employees Union CMD*,⁴⁸ wherein double bench of Singh, B.P. (J.) and Kabir, Altamas (J.) observed that the State cannot 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 was again reflected in the judgment given by three judges bench consisting of Balakrishnan, K. G.(J.), Raveendran, R. V.(J.) & Panchal, J. M.(J.) in *Indian Council of Legal Aid and Advice & others v. the State of Orissa*,⁴⁹ wherein the Court requested the Human Rights Commission to look into the implementation of various schemes undertaken by the Government for the realization of the right to food of the people and prevent starvation deaths. With an 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 food grains in the sea to create the required spaces. Some of the food grains in the FCI godowns were rotting and were a feast for the rats. Around this period India suffered drought for a continuous

48. (2006) 5 SCC 319.

49. (2008) (1) SCC Supreme 421, Writ Petition (Civil) 43 of 1997.

period of three years. As a result, there was a mass spectrum of hunger and starvation deaths. As the Government continued denial of reports of starvation resulting from droughts as false and politically motivated, hunger and starvation dominated the lives of the poor and marginalized population. The Nation 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. 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 to 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.

In *Harit Recyclers Association v. Union of India*⁵⁰ In this public interest litigation preferred under Article 226 of the Constitution of India, the petitioner, a non-governmental organization, has prayed for many a relief but basically for the issue of a writ of mandamus commanding the respondents No.1 and 2, namely, Union of India and its Ministry of Women and Child Development and Chief Secretary of Government of NCT of Delhi to investigate into the health hazard that was suffered by the children of the *Sarvodaya Kanya Vidyalaya* in Block 20 of Trilokpuri in East Delhi, who were forced to eat contaminated food under the Mid-Day Meal Scheme on 25th of November, 2009 and prosecute the persons who have failed in their duty and, further, to award compensation to the children who were affected after consuming such food. The facts which are essential to be adumbrated are that there is a set of guidelines, namely, National Programme of Nutritional Support to Primary Education, 2006 (Mid-Day Meal Scheme) Guidelines under which the mid-day meal is served to the young children as an encouragement to attend the school. For the supply of mid-day meals at *Sarvodaya Kanya Vidyalaya*, a non-governmental organization (NGO), namely, Rao Raghuvir Seva Samiti was awarded the contract.

It was pleaded, that apart from the award of contract for the aforesaid school, the said organization was also awarded the contract

50. WP(C) No.2714/2010 (2010) 170 DLT 476(DB).

for several schools in Delhi. On the 25th of November, 2009, the children of the said school consumed the food supplied by the NGO. After they consumed the food, the children developed serious health problems and no medical help was rendered immediately. However, they were rushed to a public hospital, and eventually, a first information report was lodged at Police Station against the 4th respondent, Rao Raghuvir Seva Samiti. The children who had suffered critical health problems belonged to the poor strata of society. Some of them were treated in Lal Bahadur Shastri Hospital at Trilokpuri by the school authority and some by their parents. Information submitted by Lal Bahadur Shastri Hospital regarding the treatment and prescription of all 126 children was brought on record. It was contended that the children could not deny eating the food and they had no inkling that the food would be contaminated. It was averred that no one had checked the food before it was served to the students. It was alleged that the food was served in non-conducive and unhygienic surroundings. Because of the aforesaid incident, the Mid Day Meal scheme remained suspended for two months at Sarvodaya Kanya Vidyalaya. Reference has been made to the orders passed by the Apex Court in *PUCI v. Union of India*⁵¹ about the various directions issued by the Apex Court on implementation of various guarantees including the supply of Mid-Day Meal by the government. Reference was also made to the Convention on the Rights of the Child and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) to indicate how physical and mental health does matter and it is put forth that India has accepted the said Covenant. Reliance has also been placed on Article 25 of the Universal Declaration of Human Rights, 1948. It was further contended that because of the supply of contaminated food, the right to life of children was seriously jeopardized. Moreover, it also affected the enrolment and attendance of the children which in turn dented the right to education granted under Article 21A of the Constitution. And further, the stoppage of the Mid-Day Meal for two months tantamounts to deprivation and denial of food which fossilizes the right to food, a basic human right. That apart, it was contended that the 4th respondent, who was responsible for supplying this food, cannot be allowed to supply food in any

51. *Supra* note 102.

school as that will give a premium to an organization that had caused a health hazard.⁵²

It is perceptible that the children suffered because of the consumption of contaminated food. It was held by the Court that:

“The Mid Day Meal Scheme has its public character. Hence, there can be no trace or shadow of a doubt that it is the State government that has to pay the compensation as the lacunae come within the State action and the grievance agitated falls within the public law domain. The State shall deposit the amount in the concerned school and the competent authority of the school administration, in presence of an authority deputed by the State government, shall disburse the amount of compensation to the students on proper identification. The amount so awarded shall be kept in a cumulative fixed deposit till he/she becomes a major.⁵³

iii. Food Security and reformation in Public Distribution System

In *People's Union for Civil Liberties v. Union of India and Others*,⁵⁴ After hearing both the petitioner and respondent, the Supreme Court in its Order held that the general complaint was that people Below Poverty Line were not able to get the full benefit of Public Distribution System due to the reason that people Above Poverty Line were also entitled to get the benefit of PDS in most of the places. People who were Above Poverty Line should not get the benefit of PDS and the entire benefit be extended to the Below Poverty Line including expanding of the Below Poverty Line. The government can fix the income and other norms immediately so that the benefit is extended to all those who genuinely deserve it more than the other category. Secondly, Supreme Court in the Order also highlighted that Justice Wadhwa has submitted a report about 11 States and part report regarding Tamil Nadu. One common thread which runs through all the reports was that there was huge corruption and pilferage in PDS all over the country. Accordingly, total computerization of PDS would be an important step in arresting the problem of corruption and pilferage.⁵⁵ The Supreme Court in its

52. *Id.* at 477.

53. *Id.* at 479.

54. (2010) 11 SCC 719

55. *Id.* at 720.

Order asked the Food and Public Distribution Secretary, Union of India to respond within two weeks on the following points:⁵⁶

- a) Why the facilities of the Public Distribution System be not discontinued for people who are above the poverty line?
- b) To avoid pilferage and corruption, there must be total computerization of Public Distribution System on top priority basis,
- c) The Union of India must prepare software and the same software should be used by all the states.
- d) The Union of India may consider computerization in consultation with specialized agencies like the Unique Identification Authority of India or any other Agencies.
- e) The Government may consider that instead of giving fair price shops to private individuals, let all the fair price shops be operated by the State Public Warehousing Corporation/State Government Corporation.
- f) The Government may also consider providing ration and other items according to the members of the family, instead of on a card basis. If there is one member in the family, he must be given a ration accordingly and if there are five members, then they must get five times more ration. The State government can fix the maximum limit.
- g) In a country where admittedly people are starving, it was a crime to waste even a single grain. In the official statement made by the government, there was wastage of food at many places. The government may consider constructing adequate warehouses or food storage facilities on a long-term basis. On a short-term basis, they can also consider hiring warehouses or putting in waterproof tents to save the grains. But all efforts must be made to ensure that not a single grain be wasted.
- h) According to reports of Justice Wadhwa, there is pilferage at every stage. To avoid too many stages, the Union of India may consider that the ration is sent to the Fair Price Shops directly from the godowns of Food Corporation of India.
- i) There must be total accountability of all those people who are responsible and in charge of PDS and the government may consider taking appropriate steps, including prosecution against those people who are found responsible for misusing

the system or officials getting involved in corrupt and unfair practices.

- j) The Government must take into consideration the recommendation of the National Advisory Council.

Again in *People's Union for Civil Liberties (PDS Matters) v. Union of India and Others*,⁵⁷ The Supreme Court in its Order mentioned that the High Powered Committee headed by Justice D.P Wadhwa has submitted a preliminary report on the computerization of the Public Distribution System. The main highlights of the Committee's Report on Computerisation include: that computerization of PDS consists of primarily three components i.e., creating and updating the beneficiary database, stock management from FCI till FPS, and sale of commodities at fair price shops. To make PDS effective the delivery and management system must be transparent. Citizen participation in social audits can play a crucial role in ensuring the effectiveness of the system. The actions suggested by the High powered Committee included an end to end computerization of PDS in two parts, the department of food and public distribution was directed to immediately issue guidelines to all the States for an end to end computerization of TPDS and a time-bound action plan for completing the process of computerization was to be ensured by all the State governments.⁵⁸

Moreover, the Order also directed the States/UTs to take up end-to-end computerization of TPDS as a top priority and should appoint a dedicated nodal officer to monitor the projects related to TPDS computerization. Furthermore, it was required that the time-bound digitization of beneficiary data and a centralized database with a clear process of data updation be put in place by the States. The Order further mentioned that to enable social auditing, the dissemination of information about the availability of food grains through SMS to the pre-identified individuals in the local community. The system could also provide stock position at a specific location on demand. The information related to stock availability using the latest technological interface should be made available in the public domain. As the process of end-to-end computerization is expected to be a sizable

56. *Id.* at 721.

57. (2011) 14 SCC 331

58. *Id.* at 332.

exercise, to complete it in a mission mode, a separate and dedicated institutional mechanism is to be incorporated to look after the progress of the computerization of PDS. This institution must have the active participation of all stakeholders including the State governments. An effective grievance redressal mechanism should be strictly enforced based on SMS/email and other suitable technology. The Government of India should ensure that this mechanism is put in place in all the States. A four-digit toll-free number may be established in all the States for grievances registration and redressal thereof. The Government of India will ensure that the computerization operation is provided the necessary infrastructure and financial support. It was also suggested in the report that while the complete process of computerization was expected to take some time, till then the following actions may immediately be taken namely

- a) the state governments will ensure doorstep delivery of food grain for the ration shops in a time-bound manner and shall ensure that information related to movement and availability of food grain is available in the public domain;
- b) A PDS public information portal may be made which will have information related to the complete public distribution system;
- c) the state should make necessary amendments to make the fair price shop financially viable;
- d) a drive can be started to eliminate the fake and ghost ration cards. A comparison with data available with other departments like election, census, etc. gives quick estimates about the bogus cards.⁵⁹

After discussing the recommendations of the High Powered Committee on computerization mentioned above, in the end, the Supreme Court directed the Chief Secretaries of various States to indicate, within two weeks, as to how much additional food grains are required for the poorest districts in their States and allocation of food grains would be made within two weeks thereafter. The Supreme Court further directed the Chief Secretaries to ensure that whatever food grains were allocated, the same was to be lifted by them within two weeks thereafter. The allocation of food grains to be made out of five million tonnes additionally allocated. It was requested by the

59. *Id.* at 333

Supreme Court to High Powered Committee to hear all the parties and decide whether the food grains are required to be distributed at AAY rates or BPL rates and the decision of the High Powered Committee would be binding on all concerned and would be implemented forthwith. The Court requested the Committee to decide the issue as expeditiously as possible and directed the parties to appear before the Committee on 29.9.2011 and in case the Chief Secretaries of the various States do not respond within two weeks, it would be presumed that the particular State does not require additional food grains at AAY or BPL rates.⁶⁰

In *People's Union for Civil Liberties (PDS Matters) v. Union of India and Others*,⁶¹ Mr. Justice D.P. Wadhwa submitted a report based on the visit of the Committee to District Satara, Maharashtra on 23-1-2012 where a presentation was made by the Deputy Secretary, Department of Food, Civil Supplies and Consumer Protection and District Supply Officer, Satara. According to the observation of Justice Wadhwa, it was found that the progress of computerization was extremely slow and almost non-existent. No substantial work has been done except just initiating the digitization process which was at the initial stage and facing a lot of problems. The Committee also visited the Data Centre where digitization of data was being carried out. It was clear at the Data Centre that the Data Entry Operators had been engaged a day earlier. They were uploading data from forms that had not been verified by an authority but bore the seal of the verifying authority. Analyzing the situation, the Supreme Court in the Order said that this long-standing problem can be sorted out if the Secretary (Consumer Affairs, Food, and Public Distribution) is made incharge of a computerization program in the Public Distribution System. Hence the Secretary concerned was nominated as Chief Coordinator of computerization program and was directed to coordinate with all State Government and Union Territories and ensure that the entire computerization programs should be carried on the top priority basis. He was also directed to coordinate the program with all the Chief Secretaries or the Administrators of the Union Territories. All the Chief Secretaries and the Administrators were directed to fully cooperate

60. *Id.* at 334

61. (2012) 12 SCC357

with the Chief Coordinator and meticulously comply with his directions. They were also directed to submit the progress of the computerization program in all the States and the Union Territories on or before 12.3.2012.⁶²

Again in *People's Union for Civil Liberties (PDS Matters) v. Union of India and others*,⁶³ the petitioner sought several reliefs primarily aimed at the reforms in the Public Distribution System prevailing in the country. The writ petition made several assertions based on the reports and data available from the official and unofficial sources and studies that despite the availability of large stock food grains in the country over the years and despite huge subsidies which the Central Government provides on food grains meant for distribution among the poorer sections of the society, there is large scale diversion, misappropriation, wastage and misutilisation of such grains mainly on account of rampant corruption that afflicts the system. In the course of the hearing, it was contended that several orders had been passed by the Supreme Court since the year 2001 which dealt with several facets of the problems highlighted in the writ petition. Most significant was that the Court not only appointed Commissioners to monitor the implementation of the welfare schemes framed by the Government of India for the benefit of the poorer section of the society but also appointed a High Powered Committee headed by Justice D.P. Wadhwa, the Central Vigilance Committee (CVC). The Committee since the year 2006 when it was first appointed, submit as many as 22 reports covering an equal number of states in the country in which reports it has extensively dealt with the ills that are prevailing in the system and reforms that would possibly improve the same for the benefit of the common man.⁶⁴

The attention was also drawn towards a letter received from the Chairman of the Committee asking for further extension of time to complete the ongoing process which remains incomplete concerning as many as six States. On a closer examination of the reports and questions that fall for determination, the Court was of the view that while CVC has done a commendable job in visiting the States and

62. *Id.* at 359

63. (2013) 2SCC 682

64. *Ibid.*

reviewing the local conditions regarding PDS prevailing therein, the recommendations made are general and not necessarily applicable to every State on a uniform basis. The Court assumed that CVC would after completing its study concerning the remaining States, sum up its final recommendations. These recommendations could be on matters that can be dealt with at the national level to apply to all the States in the Country. They could also be specific to any region or State if CVC finds that ground realities and conditions prevailing in any region or State do not admit of a uniform system for PDS for the whole country. Since an abrupt change in the System is likely to disrupt supplies to the beneficiaries, CVC could also in its wisdom make recommendations to be implemented in a phased manner to avoid any such disruption. It should entirely be left on CVC to formulate and concretize its final recommendations and suggest how the same need to be implemented. All that is expected is that the recommendations whether for systematic change or administrative reforms aimed at enhancing transparency and accountability among those charged with the working of the system need to be specific to enable to examine and issue suitable directions. The recommendations needless to say could be on short-term/immediate measures to be taken by the Central and/or State governments as also long-term objectives to be pursued by them over the years. Hence accordingly the Supreme Court extended the time given to the CVC by six months to enable it to complete its exercise and submit its final recommendations on the subject.⁶⁵

In *Ami Prabal v. Union of India and Others*,⁶⁶ the Madhya Pradesh High Court held that if there is an obligation upon State for allotment of food grains, State should follow that Order to secure food to citizens. As per the Order of Supreme Court, families holding BPL & APL cards were entitled to receive food grains of 35 kg per month. However, BPL & APL cardholders of State were getting only 20 kg per month as the number of cardholders under Union of India was different from that of State of Madhya Pradesh which implied that real BPL families were not getting benefit as ordered by Supreme Court. Therefore, the shortage of food was not to be blamed for the hunger-

65. *Id.* at 683.

66. 2013(1) J.L.J. 97.

stricken strata but the lax attitude of the administration adopted for the identification of BPL & APL families. Moreover, food grains could also be saved from wastage due to inadequate storage capacity. Given that right to food is a basic human right and is also a sub-set of right to life, the Court issued direction to the respondents for removal of the anomaly of several BPL & APL cardholders in State while disposing of the petition. This case forms one of the major instances which led the government to enact legislation to cater to the right to food.

In *Swaraj Abhiyan (II) v. Union of India & Ors*,⁶⁷ the Supreme Court dealt in detail with the prayer made by the petitioner Swaraj Abhiyan relating to the implementation of the National Food Security Act, 2013. The Court held that:

“The Union of India usually brings into force a statute without putting in place the implementation machinery. This was demonstrated by the fact that the mechanism for enforcing several provisions of the NFS Act has not been established or constituted. This was completely inexplicable. Furthermore, the Court fails to understand how a statute enacted by Parliament can be given effect without appropriate rules and regulations being framed for putting in place the nuts and bolts needed to give teeth to the law or setting up mechanisms following the provisions of the statute. It is perhaps this tardiness in execution that enables some State Governments to take it easy and implement the law whenever it is convenient to do so.”⁶⁸

Based on the discussions and the conclusions the double bench of the Supreme Court consisting of Madan B. Lokur (J.) and N.V. Ramana (J.) issued the following directions:

1. Each of the States before us shall establish an internal grievance mechanism and appoint or designate for each district a District Grievance Redressal Officer as postulated by Section 14 and Section 15 respectively of the NFS Act within one month from today unless these provisions have already been complied with. The said Officer would also be entitled to address grievances relating to non-supply of food grains due to the absence of a ration card.

67. W.P. (C) No. 857 of 2015.

68. *Ibid.*

2. Each of the States before us shall constitute a State Food Commission for monitoring and reviewing the implementation of the NFS Act as postulated by Section 16 thereof within two months from today unless a State Food Commission has already been constituted.
3. In the States in which drought has been declared or might be declared in the future, all households should be provided with their monthly entitlement of food grains in terms of the NFS Act regardless of whether they fall in the category of priority household or not. The provision made under the NFS Act shall be in addition to and not in derogation of any other entitlement under any other government scheme.
4. No household in a drought-affected area shall be denied food grains as required under the NFS Act only because the household does not have a ration card. The requirement of a household having a ration card is directed to be substituted by appropriate identification or proof of residence that is acceptable to the State Government.
5. It is made clear that each of the States before us is fully entitled to provide any food grains or other items over and above and in addition to the entitlement of a household under the NFS Act. There is no restriction in this regard.
6. The States of Bihar, Haryana, and Uttar Pradesh must within a month from today make adequate provision for the supply of eggs or milk or any other nutritional substitute for children under the Mid-Day Meal Scheme. Eggs, milk, or another nutritional substitute should be made available preferably five days a week or at least three days a week. The other States before us must make a similar provision for the supply of eggs or milk or any other nutritional substitute preferably five days in a week or at least three days in a week. Keeping in mind the children of this country, financial constraints shall not be an excuse for not complying with this direction. It is a sad commentary that we should have to say this but we need to in the interest of the children of our country.
7. The States before us are directed to extend the Mid-Day Meal Scheme for the benefit of children during the summer vacation period in schools, if the extension has not yet been made, within a week from today. The Union of India shall immediately

approve any such a proposal in consultation with these State Governments. This direction is being passed in the interest of children in drought-affected areas.

As far as position in the State of Jammu and Kashmir is concerned in *Tariq Ali Najar v State*,⁶⁹ wherein a division bench of Chief Justice N. Paul Vasanthakumar and Justice Ali Mohammad Magrey passed the Order and closed the PIL filed in the year 2014 by the petitioner Tariq Ali Najar about the implementation of National Food Security Act, 2013 and allocation of ration to the beneficiaries according to the census reports of the year 2011 in the State of Jammu and Kashmir. According to the petitioner, the decreased allocation of food grains to the Jammu and Kashmir was the subject matter of the PIL, and that the food grains were distributed based on census 2001 when the number of families was 18.2 lakhs as against 22.73 lakh as per the 2011 census. The state government used to have 63067 metric tons per month as per the 2001 census even the contemporary requirement was 79560 metric tons, the petitioner said, adding that 4.71 lakh families were without any provision of food grains required to be distributed by the CA&PD. The petitioner further stated that the population of the state has increased to 125.489 lakhs from 99.45 lakhs in 2001, so accordingly the ration should be distributed by the State CAPD authorities according to the 2011 census. It was contended on the behalf of the State by the senior Additional Advocate General N. A. Beigh and Assistant Solicitor General S.A. Makroo that the State government has already implemented the provisions of the National Food Security Act 2013, wherein the ration is being distributed according to 2011 census, while S.A. Makroo stated that there was no problem for the Union government to make the supplies of food grains to the J&K as per the census of 2011. In its decision, the Court said that having regard to the statements tendered by the counsel for the respondents, the issue involved in the PIL was settled and accordingly closed.

IV. CONCLUSION

The two primary arguments traditionally invoked against the justiciability of the right to food are no longer applicable. First, the right to food and the correlative obligations of States are clearly defined under international law. Second, there is nothing inherent to

69. 2016 KLR 29.

the right to food that precludes its justiciability. There is substantial jurisprudence demonstrating that judicial or quasi-judicial bodies are capable of identifying violations of the totality of State obligations – the obligation to ensure the right to food is exercised without discrimination, the obligation to respect, protect, and fulfill this right – and the measures which must be implemented to remedy these violations, without infringing on the principle of separation of powers. It has been seen that the millions of victims of violations of the right to food have been granted access to justice throughout the world, principally in South Africa, India, as well as before the ACHPR Com, IAHR Com, IAHR Court, Human Rights Committee, and International Court of Justice. Therefore, it is no longer acceptable to affirm that access to justice is not possible in cases of violations of the right to food.

Ironically, the right to food has been recognized in various instruments of international law and several national constitutions, many countries still lack a judicial culture of recognition in practice and/or the legal frameworks regarding the justiciability of the rights enshrined in the Covenant on Economic Social and Cultural Rights. There is also often a lack of a high level of enforcement. As far as the right to food in India is concerned several judgments of the Supreme Court too have tacitly recognized the right to food as an enforceable right, based on Article 21 *viz.*, *KishenPattnayak*, *Shantistar Builders*, *Chameli Singh*, and more recently, the steps taken by the Supreme Court in *PUCL*. The golden thread running through all these cases is an assumption that the right to food exists, that there is a corresponding duty on the State to fulfill this right, and that the State could be directed to find varied remedies to the problems at several levels. No doubt, The National Food Security Act, 2013 has recognized the right to food as an enforceable legal right and implicitly right to food is also considered as the part of the fundamental right to life and as such recognized as part and parcel of Art 21 of Constitution of India, but still there is need to explicitly recognize the right to food as a separate fundamental right in the Constitution of India.
