

ROLE OF LEGAL SERVICES AND SUPREME COURT IN ENABLING ACCESS TO JUSTICE FOR THE POOR IN RESPECT OF FOOD AND HEALTH

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International Law obligates every member country to ensure respect for minimum subsistence rights for all regardless of the level of economic development. (Limburg Principles on the implementation of International Covenant on Economic, Social and Cultural Rights, Principle 25). This remains a pious hope even today. Little evidence is available to gauge the progress towards the realization of this right. The Limburg Convention takes note of this:

“The gap between the rich and the poor has been widening in the last three decades with the poorest fifth of world population receiving 1.4% of the global income and the richest fifth 85%. These disparities render enjoyment of economic and social and cultural rights illusory for a significant portion of humanity (see guideline number 1 of Limburg Principles).”

In April 2001 the UN Special Rapporteur has defined right to food in its report thus: “The Right to have regular, prominent and unobstructed access either directly or by means of financial purchases to qualitatively and quantitatively adequate and sufficient food.” In India the Supreme Court located right to food in Article 21 of the Constitution.¹ In *Kishan Pattanayak v. State of Orissa*, a Public Interest Litigation case, two social workers addressed a letter to Supreme Court bringing to its attention the pitiable existence of people inhabiting the district of Kalahandi in Orissa. The extreme poverty prevailing in this area led to frequent starvation deaths. The Court examined the philosophy of the Constitution. It appreciated the stark reality of poverty prevailing in our country and in order to activate the right to life categorically declared that the Indian Constitution confers right to food on the Indian Citizen. After a gap of 5 years the National Human Rights commission came up with an award of compensation for people affected with Malaria, Chicken Pox and various other diseases. Again, it was as a result of a PIL that the Supreme Court issued directions to make the right to food meaningful to the teeming millions of India. In people’s *Union for Civil Liberties v. Union of India*² the Court asserted:

“With reference to this Court’s direction dated September 03, 2001 requiring 16 states and union territories who, according to the learned AG, had not identified the below poverty line (BPL) under the Antyodaya Anna Yojana, to identify. We are not satisfied that any such exercise in the right earnestness has been undertaken. Some of the states mention that the exercise is underway. Considering the seriousness of the matter further opportunity is granted to these 16 states and union territories to comply with the central government directions within 3 weeks and inform the central government the number of BPL families under Antyodaya Anna Yojana, which they have identified”.

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¹ *Kishan Pattanayak v. State of Orissa*, AIR 1995 SC 677.

² 2001 (7) SCALE 484 SC

This is indicative of the sad commentary of the performance of the state governments in India, which are under the constitutional obligation to make the right to food a reality. The concern of the Court is seen expressed more specifically³ in the subsequent hearing of the case. The callous and careless attitude of the executive in ensuring proper distribution of food grains has often become a subject for discussion. The Court chided both the Central and State Governments for having failed to prevent starvation. It emphasized that food must reach the hungry. The Court categorically declared the Article 21 of the Constitution ensures the right to live with human dignity. And food is so fundamental to achieve this. The Court issued directions requiring the government to reach foodgrains to the needy.⁴ It did not stop at that. It specified the criteria for identification of the poorest of the needy for food support.⁵ The Supreme Court had also occasion to note unsatisfactory state of affairs existing in the states particularly in the States of Jharkhand, UP and Bihar with reference to the implementation of the mid day meal scheme. Perusal of the Court's judgment indicates its interest in prompting and goading the executive to have the mid day meal scheme in schools implemented.

As regards the right to health it may be pertinent to mention that Article 25 of the universal declaration of the Human Rights 1948 guarantee 'every one of the right to a standard of living adequate for the health and well being to himself and his family, including food, cloth, housing and medical care and necessary social services and right to security in the events of non-employment, beyond his control.' Constitution of India does not explicitly provide for right to health. However, Article 47 of the Constitution makes it the primary duty of the state to raise level of nutrition and the standard of living and to improve public health. Using this as a vehicle the Indian Supreme Court has stated that there is constitutional right to health and issued directions with regard to the modality to ensure access to medical treatment. Firstly, it was in *Vincent Panikulangara v. Union of India*,⁶ that the Court invoking its decision in *ABSK Sang v. Union of India*⁷ held that a healthy body is the very foundation of all human activities. In a welfare state it is the obligation of the state to ensure the creation and sustenance of conditions congenial to good health. In specifying fully the Supreme Court took strength from its earlier decisions reading Part III and Part IV of the Constitution in tandem.

Subsequently, in *Parmanand Katara v. Union of India*⁸ the Court ruled that even private doctors could not refuse to treat a person who meets with an accident. The Court in the process of reasoning ruled thus: "Article 21 of the Constitution casts the obligation on the State to protect life. "Doctor at the government hospitals positioned to meet the state obligation is, therefore, duty bound to extend medical assistance for preserving life.

Every doctor whether in government hospital or otherwise, has a professional obligation to extend the service with due expertise for protecting life.⁹ Thus the right, which came to be declared in *Vincent*, come to be reinforced in *Katara*. This came to be further reaffirmed in *Consumer Education and Research Centre v. Union of India*.¹⁰ It was categorically ruled there in that right to health and medical care is a fundamental right under

³ *Impusial v. Union of India* 2003 (9) Scale 835.

⁴ *Id.* at 838.

⁵ *Id.*

⁶ AIR 1987 SC 19.

⁷ AIR 1981 SC 298.

⁸ AIR 1989 SC 2039.

⁹ *Id.* at 2043.

¹⁰ AIR 1995 SC 922.

Article 21 read with Articles 39(c), 41 and 43 of the Constitution. It is interesting to see that the Supreme Court extended its jurisdictions in this area in *Paschim Banga Khet Mazdoor Samati v. State of West Bengal*.¹¹ The Court reiterated its stand in the 3 judgments discussed above thus:

“Article 21 imposes an obligation on the state to safeguard the life of every person...The government hospital run by the state are duty-bound to extend medical assistance for preserving human life. Failure on the part of government hospitals to provide timely medical treatment to a person in need of such treatment result in violation of his right to life guaranteed under Article 21.”

A perusal of the judgments referred to above from the Supreme Court leads one to the irresistible conclusion that the Supreme Court has been trying to hold at bay the demon of starvation and death from swallowing the little Indians. The question whether it has succeeded in its mission may be a matter of debate. But the truth remains that its judgments stand proof to its concern for the teeming millions in India who starve in a situation of ‘plenty’. It remains as the sentinel on the *qui vive* reminding always the executive of its constitutional obligations to the little Indians. It is perhaps this Court alone which made right to food and health meaningful in India.

¹¹ AIR 1996 SC 2426.