

RIGHT TO FOOD: INTERNATIONAL AND NATIONAL PERSPECTIVES

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Abstract

The human right to adequate food is of crucial importance for the enjoyment of all other rights. The right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights enshrined in the International Bill of Human Rights. It is also inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty and the fulfilment of all human rights for all. The paper is an attempt to find out how a state like India can ensure effective implementation of this right.

I Introduction

THE RIGHT to live a dignified life can never be attained unless all basic necessities of life, namely, work, food, housing, health care, education and culture are adequately and equitably available to everyone. Based squarely on this fundamental principle of the global human rights system, international human rights law has established individual and group rights relating to the civil, cultural, economic, political and social spheres.¹ The international human rights regime has been designed to protect the full range of human rights required for people to have a full, free, safe, secure and healthy life. More than 842 million people are estimated to have been undernourished (in terms of dietary energy supply) in the period 2011-13, which represents 12.5 percent of the global population, or one in eight people. Out of 842 million population, around 34 million chronically undernourished live in the economically developed countries of the north. Most of the victims live in Asia—515 million or 24 per cent of the total population of the continent. However, the number of victims relative to the size of the population, sub-Saharan Africa is worst affected: there, 186 million women, men and children, or 34 per cent of the region's population, are permanently and seriously undernourished.² On November 13, 1996, the World Food Summit adopted

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1 H. Lauterpacht, *An International Bill of the Rights of Man* (Columbia University Press, 1945); Fact Sheet No.16 (Rev.1), The Committee on Economic, Social and Cultural Rights, *available at*: <http://www.ohchr.ch> (last visited on 11 Oct. 2013); Katharine G. Young, "The Minimum Core of Economic and Social Rights: A Concept in Search of Content" 33 *The Yale Journal of International Law* 113-174 (2008).

2 *Ibid.*

the Rome Declaration on World Food Security,³ in which those attending the summit undertook to implement, monitor and follow up the summit plan of action at all levels, in cooperation with the international community. The total number of undernourished has fallen by 17 percent since 1990-92.

The right to adequate food is a human right of every individual in every country and this right has been duly recognized by the great majority of states. But there is a large difference between a state's formal recognition of food as a human right and ensuring effective implementation of this right by the state.

The UN General Assembly adopted the International Covenant on Economic, Social and Cultural Rights (ICESCR) on December 16, 1966.⁴ The covenant entered into force on January 3, 1976, three months after deposit of the thirty-fifth instrument of ratification as provided for in article 27 of the of ICESCR. The ICESCR contains some of the most significant international legal provisions establishing economic, social and cultural rights, including rights relating to work in just and favourable conditions, to social protection, to an adequate standard of living, to the highest attainable standards of physical and mental health, to education and to enjoyment of the benefits of cultural freedom and scientific progress.⁵ As on February 28, 2014, 161 states had ratified the ICESCR, thereby voluntarily undertaking to implement its norms and provisions.⁶ All human rights are subject to violation, and economic, social and cultural rights are no exception. The Limburg Principles on the Implementation of the ICESCR⁷ list the following circumstances under principle 72 amounting to violations of the ICESCR by a state party principle if: (a) it fails to take a step which the covenant requires it to take; (b) it fails to remove promptly obstacles which it is obligated to remove to permit the immediate fulfilment of a right; (c) it fails to implement without delay a right which the covenant requires it to provide immediately; (d) it willfully fails to meet a generally accepted international minimum standard of achievement, which is within its powers to meet; (e) it applies a limitation to a right recognized in the covenant in a manner not in accordance with the covenant; (f) it

3 Rome Declaration on World Food Security, 13-17 November 1996, Rome, Italy, *available at* / <<http://www.fao.org>>, (last visited on 5 Nov. 2013).

4 The International Covenant on Economic, Social and Cultural Rights adopted under UN General Assembly Resolution 2200A (XXI) on Dec. 16, 1966, entered into force on Jan. 3, 1976. The International Covenant on Civil and Political Rights, also adopted by the UN General Assembly Resolution 2200 A (XXI) on December 16, 1966.

5 M. Craven, *The International Covenant on Economic, Social and Cultural Rights: A Perspective on Development*, (Oxford University Press, 1995).

6 *Available at*: <<http://www.ohchr.ch>> (last visited on Dec. 26, 2013).

7 Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, UN Doc.E/CN.4/1987/17, annex(1987), *available at*: <<http://www.law.uu.nl/english/sim/instr/limburg.asp>> (last visited on Sep. 5, 2013).

deliberately retards or halts the progressive realization of a right, unless it is acting within a limitation permitted by the covenant or it does so because of a lack of available resources; (g) it fails to submit reports as required under the covenant.

The ICESCR covers a wide spectrum of rights,⁸ namely, right to work,⁹ right to just and favourable conditions of work,¹⁰ right to form trade unions,¹¹ right to social security,¹² right to protection and assistance to family,¹³ right to an adequate standard of living,¹⁴ right to health,¹⁵ right of everyone to education,¹⁶ and right of everyone to enjoy cultural life, benefits of scientific progress and protection of scientific, literary or artistic production. States party to the ICESCR have an obligation to ensure the implementation of core rights of the ICESCR. According to article 2(1) of the ICESCR, states parties have an obligation to take progressive measures for the realization of the rights set forth in the ICESCR. The committee has employed a “typology of States Party obligations” to facilitate understanding with regard to the fulfilment of economic social and cultural rights. Under this model, states parties should “respect”, “protect” and “fulfil” the rights embodied in the ICESCR.

II Right to an adequate standard of living

Article 11(1) of the ICESCR “recognizes the right of everyone to an adequate standard of living for himself and his family and it encompasses adequate food, clothing and housing, and to the continuous improvement of living conditions”. The right to an adequate standard of living, including the rights to food, housing, and clothing, is of paramount importance. It is true that the right to an adequate standard of living has been violated more comprehensively and systematically than probably any other right.¹⁷ The right to an adequate standard of living is primarily a combination of other economic, social and cultural rights. In this regard the practice of the committee has been to request states parties to establish benchmarks to define an adequate standard of living, for example poverty line pinpoint and direct action in favour of disadvantaged,

8 M. K. Sinha, *Handbook of Legal Instruments on International Human Rights Law and Refugee Laws* 15-24 (Lexis Nexis, New Delhi, 2014).

9 Art. 6 of the ICESCR.

10 Art. 7 of the ICESCR.

11 Art. 8 of the ICESCR.

12 Art. 9 of the ICESCR.

13 Art. 10 of the ICESCR.

14 Art. 11 of the ICESCR.

15 Art. 12 of the ICESCR.

16 Arts. 13 and 14 of the ICESCR.

17 Craven, *supra* note 15 at 287-88.

ensure that the government should follow the policy of non-discrimination and establish legal remedies where necessary.¹⁸ It is notable that the committee does not stipulate how the standard of living of the population of a state is to be measured, but rather leaves it to the state concerned to adopt its own measures. However, according to the reporting guidelines states are required to indicate the per capita gross national product (GNP) of the poorest 40 percent of the population and their physical quality of life index (PQLI).¹⁹

Right to adequate food

The human right to adequate food is of crucial importance for the enjoyment of all other rights. The right to food is also part of the various human rights instruments.²⁰ The right to adequate food is included under article 25(1) of the Universal Declaration of Human Rights (UDHR), and article 11(2) of the ICESCR deals comprehensively with the human right to food. The committee has noted that while reporting guidelines are available relating to the right to adequate food, only a few states parties have provided information sufficient and precise enough to enable the committee to determine the prevailing situation in the countries concerned with respect to this right and to identify the obstacles to its realization.²¹ The right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfilment of other human rights enshrined in the international bill of human rights. It is also inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, at both the national and international levels, oriented to the eradication of poverty and the fulfilment of all human rights for all. The special rapporteur appointed by the Commission on Human Rights (CHR) has also supported this view.²²

18 *Id.* at 302-03.

19 Guidelines on Treaty-Specific Documents to be Submitted by States Parties under Articles 16 and 17 of The International Covenant On Economic, Social And Cultural Rights, Economic and Social Council, E/C.12/2008/2 of 24 Mar. 2009, *available at* : <http://www.ohchr.org> (last visited on Jan.11, 2014).

20 Art. 25(1) of the UDHR; Art. II (C) of the Genocide Convention; Art. 6 of the ICCPR; Art. 5(e) of the CERD; Arts 11 to 14 of the CEDAW; Art 24(2) (c) of the CRC; Art. 4 (1) of the European Social Charter and Art. 12 of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights.

21 General Comment No. 12, The Right to Adequate Food, E/C.12/1999/5 of 12 May 1999, *available at* : <http://www.ohchr.ch> (last visited on Nov. 12, 2013).

22 Report by the Special Rapporteur on the Right to Food, Olivier De Schutter, submitted in accordance with General Assembly Resolution 64/159, A/65/281 of 11 Aug. 2010, *available at* : <http://www.unhcr.ch> (last visited on Oct. 10, 2013).

Despite the fact that the international community has frequently reaffirmed the importance of full respect for the right to adequate food, a disturbing gap still exists between the standards set in article 11 of the ICESCR and the situation prevailing in many parts of the world.²³

Millions of people are suffering from famine as the result of natural disasters, the increasing incidence of civil strife and wars in some regions and the use of food as a political weapon.²⁴ Fundamentally, the roots of the problem of hunger and malnutrition are not lack of food but lack of *access to* available food.²⁵ The principal obligation is to take steps to achieve *progressively* the full realization of the right to adequate food. This imposes an obligation to move as expeditiously as possible towards that goal. Every state is obliged to ensure for everyone under its jurisdiction access to the minimum essential food which is sufficient, nutritionally adequate and safe, to ensure their freedom from hunger.²⁶

Obligations under articles 2(1) and 2(2)

The fundamental obligation in the ICESCR is for the states parties to ‘take steps’ towards realizing the rights enumerated in the ICESCR. Although this wording falls short of requiring the government to ‘guarantee’ economic, social and cultural rights, it is a positive undertaking that has both an immediate and a continuing effect: the government cannot be inactive, nor just refrain from taking steps that would otherwise result in a violation of the ICESCR. It must act to adopt measures aimed at achieving the ‘full realisation’ of the rights covered. While recognizing that the right to adequate food is crucial for the enjoyment of all rights, the Committee on Economic, Social and Cultural rights considers that the core conduct of this right implies the “availability of food in quantity and quality sufficient to satisfy the dietary needs of individuals free from adverse substance”.

The ICESCR clearly highlights the interdependence of all states in realising economic, social and cultural rights and, in particular, that certain countries will be reliant on others to assist with economic and technical expertise and resources.²⁷ The state has an obligation in implementation of the economic, social and cultural rights to utilize maximum of its available resources. The ICESCR has explained that this involves ‘a minimum core obligation to ensure the satisfaction of, at the very least,

23 *Id.*, para.5.

24 General Comment No.12, *supra* note 21.

25 *Ibid.*

26 *Id.*, para. 14.

27 Art. 2, para 1: the Nature of States parties obligations:14 Dec. 1990. General Comment 3, para 2, 14 Dec. 1990.

minimum essential levels of each of the rights'.²⁸ The minimum core obligation includes the provision of essential food, essential primary health care, basic shelter and housing, and basic forms of education.

Adoption of legislative measures

This obligation allows a great deal of scope for states to determine the measures they adopt in order to implement the ICESCR. Article 2(2) places special importance on legislative measures, but it clearly also envisages other measures which might include judicial, administrative, financial, educational and social implementation. Consequently, a lack of legislative measures does not necessarily entail a failure to implement the obligations imposed by the ICESCR because alternative measures may suffice and, indeed, in some circumstances, may be more appropriate. Nevertheless, some legislative measures will usually be necessary. Furthermore, legislative means may be desirable because their public nature leaves them open to effective scrutiny. This is significant because, as part of the obligation to implement rights through all appropriate means, the ICESCR has identified an obligation to provide 'effective remedies' to those whose ICESCR rights are violated. In particular, the Committee on Economic, Social and Cultural Rights is concerned that states provide sufficient access to judicial remedies.²⁹ While it is important to recognise that administrative and other non-legislative measures can play an important role in implementing the ICESCR, their adequacy in providing effective remedies must be seriously questioned.

Principle of non-discrimination

Article 2(2) requires states to guarantee the non-discriminatory enjoyment of economic, social and cultural rights, which necessitates a range of measures, but, in the wordings of the ICESCR, 'the provision of some form of judicial remedy would seem indispensable'.³⁰ The article proscribes discrimination 'of any kind' and lists, non-exhaustively, various grounds of discrimination.³¹ Therefore, discrimination on a ground not specifically mentioned, for example sexual orientation, old age or disability,

28 *Id.*, para. 10.

29 *Ibid.*

30 The domestic application of the Covenant: 3 Dec. 1998. General Comment 9 E/C.12/1998/24, Dec. 3, 1998, para.9.

31 Art. 2(2) of the covenant states that, "the States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

must also be prevented. The government is required to refrain from exercising its powers in a discriminatory manner and to alter any discriminatory laws and practices. It is also required to take positive measures to prohibit discrimination by private persons and organizations in any field of public life. The ICESCR does allow for affirmative measures to be taken to ensure the equal enjoyment of rights by particular groups or individuals who need special assistance to overcome structural disadvantages in order to enjoy equality. The ICESCR itself recognises that special measures are required to protect the rights of children and young people, and mothers for a reasonable period before and after childbirth.³² Such special measures are to be withdrawn once their objectives are achieved, but they provide an indispensable mechanism for addressing deeply embedded structural inequalities. For a long period of time the committee placed more emphasis on state practice in implementation of human rights because of the absence of an enforceability mechanism under the ICESCR.³³ However, this gap has been filled by adoption of a Protocol to the ICESCR on 10th December 2008 on the occasion of the 60th year of the adoption of the UDHR. This protocol has entered into force and it empowers the committee to entertain individual complaints.³⁴

Justiciability of economic, social and cultural rights

The judiciary is not suited, according to several scholars, to enforce some of the ICESCR rights, where the resources of the nation are involved and a question of priority arises, the remedy cannot be judicial.³⁵ However, the concept here is not “justiciability” at the instance of individuals in courts of law, but the concept is one of “enforceability” which means that the state must “recognize”, and “take steps”, by adopting “legislative” or other measures for the “full realisation” and “to the maximum of the State’s available resources, both individually and through international assistance and co-operation”.³⁶ These are the words actually used by the ICESCR and have been the subject matter of voluminous literature. These rights are described as “entitlements” of the people and give rise to “obligations” on the part of the state parties. The enforcement must first be of the “minimum core obligations” as stated

32 Art. 10 (1) of the ICESCR.

33 Michael J. Dennis and David P. Stewart, “Justiciability of Economic, Social and Cultural Rights: Should there be an International Complaints Mechanism to Adjudicate the Rights to Food, Water, Housing and Health” 98 *American Journal of International Law* 462 (2004).

34 On May 5, 2013 after getting the 10th ratification. Available at: <http://www.ohchr.org> (last visited on Dec. 14, 2013).

35 U. Baxi, “The Little Done, the Vast Undone Some Reflections on Reading Granville Austin’s the Indian Constitution” 9 *Journal of Indian Law Institute* 323-430 (1967).

36 A.R. Blackshield, “Fundamental Rights and the Economic Viability of the Indian Nation” 10 *Journal of Indian Law Institute* 1-56 (1968).

in para 10 of the General Comment No.3 of 1990 of the Committee on Economic, Social and Cultural Rights.³⁷

It is felt that an appropriate mechanism must be devised to oblige the state to take action step by step and progressively for the realization of these rights to the maximum within the resources of the state. However, some of the ICESCR rights, for instance, the right to health, have been interpreted by the Indian Supreme Court to form part of the right to life under article 21 of the Constitution, thus making them directly enforceable and justiciable.³⁸ As a party to the ICESCR, the Indian legislature has enacted laws giving effect to some of its treaty obligations and these laws are in turn enforceable by the courts. Article 37 of the Constitution declares that the directive principles of state policy “shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.” The bar to justiciability of the directive principles of state policy is spelled out in some sense in the Constitution itself. However, the Indian judiciary has overcome this apparent limitation by a creative and interpretative exercise.

III Right to food in India

For almost two decades after getting independence India remained a food deficient country. During this period the country faced the worst famine and cases of starvation death appeared in a large number. However, things have changed drastically after the introduction of the green revolution in the mid 1960s,³⁹ today the country has not only become self-sufficient in food grains but now it has surplus food grains. Despite the fact that India produces enough food to feed its entire population, ironically, there are rapid increases in hunger and malnourishment in some parts of the country.⁴⁰

37 General Comment No.3 on the Domestic Application of the Covenant of 14 Dec. 1990, *available at*: <http://www.ohchr.ch> (last visited on Oct. 29, 2013).

38 *Francis Coralie Mullin v. The Administrator, Union Territory of Delhi* (1981) 1 SCC 608.

39 S. Ganguly, “From Bengal Famine to the Green Revolution” *available at*: <http://www.indiaonestop.com/Greenrevolution.htm> (last visited on Dec. 19, 2013). The world’s worst recorded food disaster took place in 1943 in British ruled India, which is known as the Bengal Famine, more than 4 million people died. Nevertheless, when the Britishers left India in 1947, India continued to be haunted by famine and drought. Thus, it was natural that food security acquired a prominent place in Independent India. This awareness led to the Green Revolution in India. However, the Green Revolution is applied to the period from 1967 to 1978. Between 1947 and 1967, efforts at achieving food self-sufficiency were not entirely successful. The term Green Revolution is a general one that is applied to successful agricultural experiments in many Third World countries.

40 P. Ahluwalia, “The Implementation of the Right to Food at the National Level: a Critical Examination of the Indian Campaign on the Right to Food as an Effective Operationalization

The cause of starvation death and malnutrition is generally attributed to drought and famines by the state. However, this argument has not gone down with scholars and activists working in the field of the right to food; according to them there are many reasons which cause hunger and malnutrition such as inequitable distribution of available food at the national and household level, general government apathy, general poverty, lack of purchasing power of individuals and a faulty public distribution system (PDS).⁴¹ Amartya Sen suggests that “hunger is primarily a problem of general poverty, and thus, overall economic growth and its distribution system cannot but be important in solving the hunger problem”.⁴² Indian poverty is predominantly rural, around 70% of the population lives in villages and their livelihood depends entirely on agriculture. It is estimated that one-third of the world’s poor resides in India. Malnutrition is widespread, with 207 million people unable to access enough food to meet basic nutritional needs, over 50% of children below five years underweight, with girls suffering particularly badly, and anemia prevalent among almost 50% of women between 20 and 49 years.⁴³

Public distribution system in India

India’s PDS was introduced during the Second World War to address food security concerns in the face of scarcity, with the intention of maintaining price stability and checking dishonest practices in private trade.⁴⁴ The scheme was initially heavily dependent on imported food. The green revolution, coupled with favourable weather, led to the growth of comfortable buffer stocks in the 1980s, through the procurement operation of the Food Corporation of India (FCI),⁴⁵ which in turn expanded the volume of food grain provided through the PDS.

of Article 11 of ICESCR” *Center for Human Rights and Global Justice Working Paper* NYU Law School 23 (2004).

41 *Id.* at 25.

42 A. Sen, “Hunger in India” Lecture delivered at a Public Hearing on Hunger and Right to Food, University of Delhi, Jan. 10, 2003, *available at*: <http://www.geocities.com/righttofood/data/amartya.pdf> (last visited on 19 Dec. 2013).

43 J. Farrington & N.C.Saxena, “Food Security in India” *available at*: http://www.odi.org.uk/publications/working_papers/wp231/wp231_references.pdf (last visited on Oct. 19, 2012).

44 D. Chakraborty, “Food Security in India: Policy Challenges and Responses” (Rajiv Gandhi Institute for Contemporary Studies, New Delhi).

45 The Food Corporation of India (FCI) is the main agency responsible for the execution of the food policies of the Central Government. Functions of the FCI primarily relate to the purchase, storage, movement, transportation, distribution and sale of food-grains on behalf of the Central Government. It is also engaged in the handling, storing and distribution of sugar for some States. The Government of India lays down the prices of food-grains which are to be purchased/procured and issued, the incidental charges and the quantum of allotment to the states/UTs, as also other relevant policy matters. There are 5 zonal offices, 23 regional offices, one port office

The central and state governments of India implement a broad package of programmes to improve accessibility and adequacy of food and nutrition for the poor and vulnerable groups. PDS is one of the instruments for improving food security at the household level in India. It is an important constituent of the strategy for poverty eradication and is intended to serve as a safety net for the poor. PDS ensures availability of essential commodities like rice, wheat, edible oils and kerosene to consumers through a network of outlets or fair price shops. They are supplied at below market prices to consumers; the access to the system till 1997 was universal. However, despite its expansion, the PDS has been subject to various systemic problems and has faced increasing criticism since 1991. To tackle these problems, a revamped public distribution system (RPDS) was introduced by the government in 1992 to reach poorer households with more varieties and quantities of foodstuff at cheaper prices. In June 1997, a targeted public distribution system (TPDS) was introduced. Special cards were issued to BPL families who were provided with subsidized foodgrains. Under TPDS, around 60 million target poor families were entitled to 10 kg of foodgrain per month. From April 1, 2000, the allocation to BPL families was increased to 20 kg per month at 50% of cost. However, the off take of the two major food grains, rice and wheat, declined sharply, though it recovered slightly thanks to the *Antyodaya Anna Yojana* (AAY) scheme. PDS with a network of about 4.78 lakh fair price shops (FPS) is perhaps the largest distribution network of its type in the world.⁴⁶ Under the AAY scheme 10 million poorest of the poor households are provided foodgrains at a highly subsidized rate of Rs. 2 per kilogram for wheat and Rs. 3 per kilogram for rice, has been particularly helpful to the needy. The government has allocated a quantity of 492.92 lakh tones of foodgrains under TDPS covering AAY, BPL and APL families during the year 2012-13.⁴⁷ Since 1997 there has been an increase in the off take of relatively poorer states, demonstrating efficient targeting. However, even in states where the poverty ratio has fallen, unemployment has increased, suggesting that a significant proportion of the population is still threatened by a lack of access to a means of livelihood, and is potentially vulnerable to food insecurity. The proportion of the population consuming less than 2,400 calories per day has fallen in just a handful of states.⁴⁸ Most states have witnessed a declining poverty ratio but increased calorie deprivation.

and 171 district offices under the control of the corporation with its headquarters at New Delhi. *Available at:* < <http://www.fcamin.nic.in/> > (last visited on Dec. 19, 2013).

46 Department of Food and Public Distribution, *available at:* < http://www.fcamin.nic.in/civil_ind.htm > (last visited on Dec. 19, 2013).

47 Department of Food and Public Distribution, Annual Report 2012-13, *available at:* < http://www.fcamin.nic.in/civil_ind.htm > (last visited on Feb. 12, 2013).

48 Chakraborty, *supra* note 44.

However, Swaminathan concludes, “in a country like India where the target group is very large, and where it is clearly important to focus on ensuring that the malnourished are reached, a universal scheme is better than a narrowly targeted scheme”.⁴⁹ India has still a low calorie intake compared to other countries. The objective of self-sufficiency for India is therefore worthwhile. The nation can ill-afford to give up its emphasis on continued increase in food production. Ensuring reasonable and stable pan-national prices through minimum support price operation will have to remain an important element of the food security system.

Right to food jurisprudence in India

The Indian Constitution does not expressly recognise the fundamental right to food. However, the cases brought before the Supreme Court alleging violations of this right have been premised on a much broader ground, the ‘right to life and liberty’, enshrined in article 21 of the Constitution. The apex court reiterated in the *Chameli Singh* case⁵⁰ that the right to life guaranteed in article 21 of the Constitution in its true meaning includes the basic right to food, clothing and shelter. In the *Kishen Pattnayak* case⁵¹ the petitioner wrote a letter to the Supreme Court bringing to the courts’ notice the extreme poverty of the people of Kalahandi in Orissa where hundreds of people were dying due to starvation and several people were forced to sell their children. The letter prayed that the state government should be directed to take immediate steps in order to ameliorate this miserable condition of the people of Kalahandi. In this judgment, 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 so as to reduce the drought in the region, measures to ensure fair selling price of paddy and appointing of a natural calamities committee. None of these measures actually directly affected the immediate needs of the petitioner to prevent people from dying of hunger. However, the court reaffirmed its stand that the individual’s right to food is a necessary corollary of the fundamental right to life guaranteed under article 21 and thus, acknowledged the close nexus between the right to life and the right to food. Another interesting case related to the starvation death in Orissa was filed by a writ petition⁵² on December 23, 1996 by the *Indian Council of Legal Aid and Advice* before the Supreme Court of India under article 32 of

49 *Id.* at 4-5.

50 *Chameli Singh v. State of Uttar Pradesh*, AIR 1996 SC 1051.

51 *Kishen Patnaik v. State of Orissa*, AIR 1989 SC 677.

52 Writ petition (civil) No.42\97. Sanjay Parikh, a public-spirited lawyer on behalf of the Indian Council of Legal Aid and Advice and others, filed this petition.

the Constitution. The petition alleged that deaths by starvation continued to occur in certain districts of Orissa.⁵³ The Supreme Court of India on July 26, 1997 pointed out that since the matter had been seized with the National Human Rights Commission (NHRC) and the NHRC was expected to deliver a direction in this case, the petitioner could approach the NHRC. Realising the urgency of the matter the NHRC acted quickly, prepared interim measures for a two-year period, and requested the Orissa State Government to constitute a committee to examine all aspects of the land reform question in the Kalahandi, Bolangir and Koraput (KBK) districts.⁵⁴ The NHRC appointed a special rapporteur to monitor the progress of implementation of its directions. The NHRC observed that starvation deaths reported from some pockets of the country are invariably the consequence of mis-governance resulting from acts of omission and commission on the part of the public servant.⁵⁵ The Commission strongly supported the view that to be free from hunger is a fundamental right of the people of the country. Starvation, hence, constitutes a gross denial and violation of this right.

A landmark case related to the right to food was filed by the *People's Union for Civil Liberties*⁵⁶ (PUCL) in May 2001 in the Supreme Court. The case revealed that over 50 million tonnes of food grains were lying idle in the premises of the FCI, although there was widespread hunger and starvation deaths taking place in the country, especially in the drought-affected areas of Rajasthan and Orissa. Initially, the case was brought against the Government of India, the FCI, and six state governments. Subsequently, the list of respondents was extended to include all states and union territories.

The petition alleged that the state was negligent in providing food security to its people. It was argued that the PDS was restricted to families living below the poverty line (BPL). Yet the monthly quota per family could not meet the nutritional standards set by the Indian Council of Medical Research. Even then, the system was implemented erratically. A survey in Rajasthan indicated that only a third of the sampled villages had regular distribution in the preceding three months, with no distribution at all in a sixth of villages. The identification of BPL households was also highly unreliable. Altogether, the assistance provided to BPL households through the PDS amounted to less than five rupees per person per month.⁵⁷ The petition also alleged that the

53 The author has personally seen the file and appeared before the Commission on a couple of occasions along with Sanjay Parikh.

54 Starvation Death in Orissa, *available at* <http://www.nhrc.nic.in/> (last visited on Apr. 19, 2010).

55 *Ibid.*

56 Y.P. Chhibar, "PUCL petitions Supreme Court on Starvation Deaths" PUCL Bulletin, July 2001, *available at* http://www.pucl.org/reports/Rajasthan/2001/starvation_death.htm (last visited on Dec. 17, 2013).

57 *Id.*, para. 37.

government's relief works were inadequate. Famine codes operational in various states governed the provision of these works, and made them mandatory when drought was declared.⁵⁸ Despite being required to give work to 'every person who comes for work on a relief work', the Rajasthan Government followed a policy of 'labour ceilings'.⁵⁹ By the government's own statistics, this policy restricted employment to less than 5% of the drought-affected population. Actual employment was even lower, and failure to pay the legal minimum wage was reported at many places.

The Supreme Court found as a fact that surplus food stocks were available and, at the same time, that deaths from starvation were also occurring in a number of locations. The apex court, in an unprecedented interim order on November 28, 2001,⁶⁰ directed all the state governments and the Union of India to effectively enforce eight different centrally sponsored food schemes to the poor. These food security schemes were declared as entitlements of the poor, and the apex court also laid down very specific time limits for the implementation of these schemes with the responsibility on the states to submit compliance affidavits to the court. It then issued an interim order directing the states to implement fully eight different centrally-sponsored schemes for food security,⁶¹ and to introduce cooked mid-day meals in all government and government-assisted schools.⁶² Since 2001, the court has issued a number of other interim orders that have prodded the union and the state governments into action. The orders have directed the state governments to complete the identification of the beneficiaries of certain welfare programmes, and to improve the implementation of food schemes and employment programmes. The food scheme provides for 5,000 crores in cash and 5 million tonnes of food grain, and for the appointment of commissioners to monitor progress in executing the court's rulings.⁶³

By these decisions discussed above it is firmly established in the context of India that economic, social and cultural rights are treated on a par with civil and political rights before Indian courts and the NHRC. India is amongst the few countries in the world, which has accorded justiciability of economic, social and cultural rights. The Supreme Court; thus recognised a distinct right to food under the Constitution under article 21 and also sought to broaden the scope of the right to life not only encompass

58 *Id.*, para. 20.

59 *Id.*, para. 30.

60 J. Kothari, "Social Rights and Indian Constitution" LGD 2004 (2) available at: <http://www2.warwick.ac.uk/fac/soc/law/elj/lgd/about/> (last visited on Oct. 17, 2013).

61 These include the employment assurance scheme, the mid day meal scheme, the integrated child development scheme, the antyodaya programme, old age pension scheme, and the public distribution system, among others.

62 *Ibid.*

63 *Ibid.*

the right to be free from starvation, but to also include distribution and access to food and the right to be free from malnutrition, especially of women, children and the older persons.

IV Food security

Food security indicates the availability of food and one's access to it. A household is considered food-secure when its occupants do not live in hunger or fear of starvation. The concept of food security has evolved significantly over time. The most widely used definition is the one adopted at the 1996 World Food Summit in Rome, which has been slightly revised and formally endorsed at the global level and reads as follows:

Food security exists when all people, at all times, have physical, social and economic access to sufficient safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life.

This definition identifies four main dimensions of food security: (i) the physical availability of food; (ii) economic, social and physical access to food; (iii) food utilisation; and (iv) the stability of the other three dimensions over time. The definition is the result of important advances in the meaning and common understanding of food security.

Adoption of the National Food Security Bill, 2013 by the Indian Parliament will ensure that two thirds of the population has access to an adequate quantity of food at affordable prices.⁶⁴ The successful passage of the bill in both the *Lok Sabha* and *Rajya Sabha* demonstrates its political appeal cutting across parties.⁶⁵ The National Food Security Act is the latest inclusion in the series of existing legislations which are aimed to establish right based economic governance in India for achieving inclusive economic growth. The Act establishes legal rights of around 70 percent of the population to an entitlement of a fixed minimum quota of food grains at subsidized rates. The Act provides that two thirds of the Indian population will be entitled to five kilos of subsidized grain per month. Grains will be made available to households at subsidized prices of Rs.3 per kilo of rice, 2 kg for wheat and cereal will be sold for Rs.1 per kilo. Each household is entitled to receive a food security allowance from the government if it has not been supplied subsidized food grains under any circumstances. It is unfortunate that the Act has been discussed these days more for negative impacts rather than focusing on its positive sides. This law could be a game changer for national

64 Amitendu Palit, "India's Food Security Bill: Grave Digger or Game Changer?" ISAS Insights, available at: <http://www.isas.nus.edu.sg> (last visited on Feb. 28, 2014).

65 National Food Security Bill, 2013 was passed by the *Lok Sabha* (Lower House) on Aug. 26, 2013 and by *Rajya Sabha* (Upper House) on Sep. 3, 2013 and finally adopted on Sep. 10, 2013 after it received assent of the President.

food security if the resulting large-scale programme is effectively planned and implemented.

V Conclusion

The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense, which equates it with a minimum package of calories, proteins and other specific nutrients. The right to adequate food will have to be realized progressively. In the Indian scenario after the Food Security Act, it is hoped that those who are entitled under this Act will get food grains at the minimum subsidized rate. However, states have a core obligation to take the necessary action to mitigate and alleviate hunger as provided for in paragraph 2 of article 11, even in times of natural or other disasters. The ICESCR clearly requires that each state party take whatever steps are necessary to ensure that everyone is free from hunger and as soon as possible can enjoy the right to adequate food. This will require the adoption of a national strategy to ensure food and nutrition security for all, based on human rights principles that define the objectives, and the formulation of policies and corresponding benchmarks. It should also identify the resources available to meet the objectives and the most cost-effective way of using them. In the spirit of article 56 of the Charter of the United Nations, the specific provisions contained in articles 11, 2(1), and 23 of the ICESCR and the Rome Declaration of the World Food Summit, States parties should recognize the essential role of international cooperation and comply with their commitment to take joint and separate action to achieve the full realization of the right to adequate food. Realization of human rights depends largely on two important factors: (i) the capacity of people's to claim their rights, and (ii) the states' capacity to comply with their obligations under international human rights law. Promoting human rights above all means strengthening people's capacity to hold state actors accountable, as well as pressuring state actors to assume accountability for their human rights obligations.