



# **Analysis of the Application of the International Human Rights Standards from the Perspective of Human Rights Practitioners:**

## **The Right to Food in India**



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## **THE RIGHT TO FOOD IN INDIA: AN INTRODUCTION**

### Introduction: A National Context

In 1996 at the World Food Summit (WFS), States present aimed to reduce the number of people suffering from hunger in half by 2015. Later in 2000, the primary concern of the Millennium Development Goal was ‘to eradicate extreme poverty and hunger’<sup>1</sup>. Tackling malnutrition and hunger has been on the world’s agenda for some time now, yet 1.02 billion people do not have enough to eat, which is more than the populations of the USA, Canada and the European Union.<sup>2</sup> Here in India, the *National Sample Survey Data*<sup>3</sup> report commissioned in 2004 found that 70 per cent of the Indian population was at or below the poverty line in terms of food consumption. The data revealed that 750 million persons were consuming less than 2,400 calories per person per day, which was the poverty line standard set by the Planning Commission of India in 1979. The 2007 publication of “*The Republic of Hunger*” by Professor Utsa Patnaik of Jawaharlal Nehru University concluded that on an average, a family of 5 consumes 100 kilograms of grain less per year as compared to grain consumption during the Second World War.

Paradoxically, India is a surplus producer of grain, and yet thousands starve. Indian produced grain is often exported or sold in the open market, however the poor cannot afford to buy grain at market rates. With increasing droughts in India and rising prices of grain, levels of hunger in India are set to increase.

Various international guidelines and laws relating to food security, as well as those mentioned in the Indian Constitution have been created to ensure every human’s right to food. Yet hunger and malnutrition persists in India. National schemes aimed at reducing hunger such as the Mid- Day Meal Scheme for children in schools and a free grain supply scheme for destitute persons above 65 years are in place, yet the lack of successful implementation of these schemes leaves thousands hungry.

The Human Rights Law Network (HRLN) is a collective of lawyers and social activists dedicated to the use of legal system to advance human rights. As an organisation, we deal with many social justice issues and endeavour to protect the fundamental human rights of vulnerable people in India including those with disabilities, HIV/ AIDS and children amongst many others.

The present report will outline the Right to Food campaign in India from the practitioner’s perspective of the HRLN. Indian and international laws, guidelines and schemes will be analysed in their effectiveness in reducing hunger and malnutrition in India. Through this analysis it will be apparent that the issue of implementation of the laws, guidelines and government schemes in place relating to the right to food is an issue that is mitigating starvation in India.

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<sup>1</sup> <http://www.un.org/millenniumgoals/>

<sup>2</sup> <http://www.wfp.org/hunger/stats>

<sup>3</sup> [http://www.mospi.gov.in/nssso\\_test1.htm](http://www.mospi.gov.in/nssso_test1.htm)

The Right to Food case will be the main topic of discussion within this report, in which HRLN supported a public interest litigation launched by the People's Union for Civil Liberties (PUCL) against the Indian Government in the Supreme Court. The argument reasoned that the right to food is enshrined in the right to life of all Indian citizens and demanded that the Government take immediate action to prevent further hunger deaths, malnutrition and starvation. Results of the case found the Courts ordering all food related Government schemes to be fully implemented demonstrating how NGO's, social movements, and legal battles are involved in the fight to eradicate hunger in India by ensuring that the Government fulfils its obligation to guarantee food security in India.

## APPROACHES TO WORLD HUNGER

In 1996, at the World Food Summit (WFS), Heads of State and Government gathered to “renew [a] global commitment at the highest political level to eliminate hunger and malnutrition, and to achieve sustainable food security for all people.”<sup>4</sup> In June 2002, the declaration of the World Food Summit: five years later, reaffirmed the commitment to “fulfil an earlier pledge to cut the number of hungry people to about 400 million by 2015”<sup>5</sup>, and developed new approaches to combat world hunger. The roles of trade organisations, the private sector, individual parliaments, government, and Non Government Organisations (NGO) were discussed in reference to the ways in which these establishments can work together to reduce world hunger, with farmer’s rights and sustainable and rural development at the top of the agenda.

### Results of the World Food Summit:

The result of the WFS was the production of two key documents: the Rome Declaration on World Food Security and the World Food Summit Plan of Action.

The Rome Declaration on World Food Security “reaffirm[ed] the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger”<sup>6</sup> by present Heads of State and Governments pledging “political will and our common and national commitment to achieving food security for all and to an ongoing effort to eradicate hunger in all countries.”<sup>7</sup>

In accordance with this pledge, Heads of States and Government committed to the following targets within the World Food Summit Plan of Action<sup>8</sup>:

- we will ensure an enabling political, social, and economic environment designed to create the best conditions for the eradication of poverty and for durable peace, based on full and equal participation of women and men, which is most conducive to achieving sustainable food security for all;
- we will implement policies aimed at eradicating poverty and inequality and improving physical and economic access by all, at all times, to sufficient, nutritionally adequate and safe food and its effective utilization;
- we will pursue participatory and sustainable food, agriculture, fisheries, forestry and rural development policies and practices in high and low potential areas, which are essential to adequate and reliable food supplies at the household, national, regional and global levels, and combat pests, drought and desertification, considering the multifunctional character of agriculture;

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<sup>4</sup> <http://www.fao.org/wsfs/world-summit/en/>

<sup>5</sup> <http://www.fao.org/WorldFoodSummit/english/newsroom/news/8580-en.html>

<sup>6</sup> <http://www.fao.org/docrep/003/w3613e/w3613e00.HTM>

<sup>7</sup> Op. cit

<sup>8</sup> [http://www.fao.org/WFS/index\\_en.htm](http://www.fao.org/WFS/index_en.htm)

- we will strive to ensure that food, agricultural trade and overall trade policies are conducive to fostering food security for all through a fair and market-oriented world trade system;
- we will endeavour to prevent and be prepared for natural disasters and man-made emergencies and to meet transitory and emergency food requirements in ways that encourage recovery, rehabilitation, development and a capacity to satisfy future needs;
- we will promote optimal allocation and use of public and private investments to foster human resources, sustainable food, agriculture, fisheries and forestry systems, and rural development, in high and low potential areas;
- we will implement, monitor, and follow-up this Plan of Action at all levels in cooperation with the international community

The Plan of Action also “invite[d] the UN High Commissioner for Human Rights, in consultation with relevant treaty bodies, and in collaboration with relevant specialised agencies and programmes of the UN system and appropriate intergovernmental mechanisms, to better define the rights related to food in Article 11 of the Covenant and to propose ways to implement and realise these rights as a means of achieving the commitments and objectives of the World Food Summit, taking into account the possibility of formulating voluntary guidelines for food security for all.”<sup>9</sup>

In response to the invitation by the World Food Summit, and following several international consultations, the Committee on Economic, Social and Cultural Rights (CESCR) adopted General Comment 12, stating:

“The implementation of the recommendations contained in this Plan of Action is the sovereign right and responsibility of each State through national laws and the formulation of strategies, policies, programmes, and development priorities, in conformity with all human rights and fundamental freedoms, including the right to development, and the significance of and the full respect for various religious and ethical values, cultural backgrounds and philosophical convictions of individuals and their communities should contribute to the full enjoyment by all of their human rights in order to achieve the objective of food security for all.”<sup>10</sup>

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<sup>9</sup> Op. cit

<sup>10</sup> <http://www.unhchr.ch/tbs/doc.nsf/0/3d02758c707031d58025677f003b73b9>

### Voluntary Guidelines:

In 2002, Heads of State and Government invited the Council of the Food and Agriculture Organisation of the United Nations (FAO) to establish at its 123rd session an Intergovernmental Working Group (IGWG), in the context of the World Food Summit follow-up, “to elaborate, with the participation of stakeholders, in a period of two years, a set of voluntary guidelines to support Member Nations’ efforts to achieve the progressive realisation of the right to adequate food in the context of national food security”.<sup>11</sup> The Voluntary Guidelines represent a set of practical guidelines for the implementation of the right to food in national food security policies. With the goals of the World Food Summit Plan of Action as the basis for the guidelines, they provide states with a human rights based approach when creating policies regarding food security. The guidelines also outline the importance of the FAO in assisting governments to implement the Voluntary Guidelines. The Voluntary Guidelines provide a unique and practical approach to food security and advocate the importance of equality, non-discrimination, accountability in reference to the law and highlight that food is a human right and not merely a tool that can be used for political and economic leverage.

However the Voluntary Guidelines are not legally binding for States and or international establishments. States are encouraged to apply these guidelines within their policies and state schemes, yet their implementation and effect are at the Government and State’s discretion and thus their application within India is not a legal obligation.

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<sup>11</sup> [http://www.fao.org/docrep/meeting/009/y9825e/y9825e00.HTM /](http://www.fao.org/docrep/meeting/009/y9825e/y9825e00.HTM/)

## **UNIVERSAL GUIDELINES TO THE RIGHT TO FOOD**

India is party to the International Covenant on Economic, Social and Cultural Rights, a United Nations treaty covering a variety of human rights including the right to food. India has ratified all international treaties relating to the right to food including the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. Thus the Indian Government holds an obligation to provide food to all Indians without discrimination. Various International Laws outline the right to food that each Indian person holds. These laws explicitly highlight the Indian Government's responsibility to ensure the nation has access to food, enforce food-related laws, facilitate food security, identify those who are in need of food and provide relief.

### Universal Declaration of Human Rights, Article 25:

Within the Universal Declaration of Human Rights (UDHR), the right to food achieved formal recognition in international law by stating that “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.”<sup>12</sup>

### International Covenant on Economic, Social and Cultural Rights

#### Article 11:

1. The States Parties to the International Covenant on Economic, Social and Cultural Rights recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.
2. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:
  - (a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

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<sup>12</sup><http://www.un.org/en/documents/udhr/>

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.<sup>13</sup>

### International Covenant on Economic, Social and Cultural Rights

#### Article 2:

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.
2. 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.<sup>14</sup>

### United Nations Charter, Article 56

#### The Right to Adequate Food and the Achievement of Food Security

15. Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life. The four pillars of food security are availability, stability of supply, access and utilisation.

17. States have obligations under relevant international instruments relevant to the progressive realisation of the right to adequate food. Notably, States Parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) have the obligation to respect, promote and protect and to take appropriate steps to achieve progressively the full realisation of the right to adequate food. States Parties should respect existing access to adequate food by not taking any measures that result in preventing such access, and should protect the right of everyone to adequate food by taking steps so that enterprises and individuals do not deprive individuals of their access to adequate food. States Parties should promote policies intended to contribute to the progressive realisation of people's right to adequate food by proactively engaging in activities intended to strengthen people's access to and utilisation of resources and means to ensure their livelihood, including food security. States Parties should, to the extent that resources permit, establish and maintain safety nets or other assistance to protect those who are unable to provide for themselves.

19. At the national level, a human rights-based approach to food security emphasises universal, interdependent, indivisible and interrelated human rights, the obligations of States and the roles of relevant stakeholders. It emphasises the achievement of food

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<sup>13</sup> UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: <http://www.unhcr.org/refworld/docid/3ae6b36c0.html> [accessed 27 August 2009]

<sup>14</sup> Op. cit

security as an outcome of the realisation of existing rights and includes certain key principles: the need to enable individuals to realise the right to take part in the conduct of public affairs, the right to freedom of expression and the right to seek, receive and impart information, including in relation to decision-making about policies on realising the right to adequate food.<sup>15</sup>

It is clear that if the international laws and guidelines relating to the right to food and food security are successfully implemented within India, levels of hunger, malnutrition and starvation deaths would dramatically decrease. However holding the Indian Government accountable for not fulfilling their obligation to adhere to the international laws relating to food security is extremely difficult. Reasons for the sustained levels of hunger in India are multifaceted and one organisation or person cannot be held responsible.

### International Trade and the Right to Food

New approaches must be initiated in reducing global hunger and guidance on the implementation of these international standards and pledges must be considered in order to reach the goals set by the WFS. All facets relating to food and agriculture must be addressed to support the struggle to eradicate hunger, this includes international and national approaches that must be adapted to each country and state's cultural, geographical, political and social differences. A report by the UN Special Rapporteur on the right to food, Olivier De Schutter 2009 in particular provides an example of how international standards on trade are impacting the right to food in India and around the world.

The report examines the relationship between actions by the World Trade Organisation (WTO) and the right to food guidelines under international law. The Rapporteur argues that the WTO must ensure that their global trading standards support developing countries in agricultural trade. The report outlines that farmers in developing and industrialized countries are incomparable and measures must be taken to support those in developing countries to fulfill their right to food.<sup>16</sup> The report provides an interesting perspective and highlights the importance of the state's role in supporting food security and provides an integrated approach to the problem of hunger emphasising the importance of culture, sustainable development opportunities and environmental considerations when making trade policies surrounding food. The way in which current trading practices supported by WTO agreements actually impede states from supporting the right to food is discussed within the report and highlights the need for a multilateral approach to hunger. Issues such as recent increases in trade between countries as opposed to within a country and the reliance on Multinationals are tackled, highlighting an important point that international standards and laws must be reviewed to ensure they support the fight against hunger and malnutrition.

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<sup>15</sup> <http://www.un.org/en/documents/charter/>

<sup>16</sup> [http://www.carnegieendowment.org/files/Summary\\_of%20report%20of%20the%20Special%20Rapporteur%20on%20the%20right%20to%20food.pdf](http://www.carnegieendowment.org/files/Summary_of%20report%20of%20the%20Special%20Rapporteur%20on%20the%20right%20to%20food.pdf)

The laws and guidelines ratified and accepted by India clearly provide a clear commitment to eradicating hunger with an integrated approach to implementing the right to food that bears no discrimination. Despite India's commitment to eliminate hunger and malnutrition and achieve sustainable food security, nearly 2 million Indian children die every year as a result of serious malnutrition and preventable diseases.<sup>17</sup> In 2005, it was found that nearly half of India's children suffer from moderate or severe malnutrition, 47 per cent of children are underweight and 46 per cent are stunted in their growth<sup>18</sup>. This is one of the highest levels of child malnutrition in the world, and even higher than most countries in Sub-Saharan Africa.<sup>19</sup> Policies and practice in India relating to hunger must endeavour to take into account the needs of the poor and vulnerable people of India as these people are often excluded from the processes that determine policies to promote food security. A human rights-based approach is required in the measures taken in an attempt to abolish hunger as well as in the overall philosophy in attitudes to hunger and malnutrition. The application of human rights based principles is integral to the process and the implementation of the international guidelines to eradicating hunger and is an issue that is permanently blocking India on the road to food security in India.

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<sup>17</sup> Sharma, A., 2000, "Realisation of Rights of the Indian Child: Measures for Implementation of the CRC", PRAYAS Journal, Vol. II, No. 1.

<sup>18</sup> UNDP, Human Development Report 2005

<sup>19</sup> Op.cit

## FOOD RELATED LAWS IN INDIA

Article 21 of the Constitution of India guarantees to every Indian citizen a fundamental right to life and personal liberty and includes the right to food whilst Article 39 (a) obliges the State to direct its policy towards ensuring that the citizens, men and women, equally, have the right to an adequate means of livelihood. Article 47 mandates that the state shall regard the raising of the level of nutrition and the standard of living of its people as among its primary duties.

The right to food is the right of all people at all times to be food secure, with the principal duty bearer for the enforcement of this right being national governments. The contemporary international regime of human rights was established by the Universal Declaration of Human Rights by the UN General Assembly, 1948 which states that the 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'.<sup>20</sup>

The same declaration recognises national governments to be the principal enforcers of these rights. It states that 'if persons have human rights they are entitled to a fundamental claim that others must do, or refrain from doing, something, since States speaking for States are primarily responsible for order and social justice in their jurisdictions, States are the primary targets of these personal and fundamental claims...'<sup>21</sup>

Thus it is the state's duty to ensure the Indian people's right to food. However as it will be demonstrated with The Right to Food Case, the implementation of government and state food related policies and schemes do not mirror government's legal commitment to food security.

### Article 47 and 21

The most explicit reference to the right to food can be found in Article 47 of the Indian constitution:

Article 47 (Duty of the State to raise the level of nutrition and the standard of living and to improve public health) directs 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 and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and of drugs which are injurious to health.'<sup>22</sup>

The limitation of the above Article has been that unlike the Fundamental Rights, which are unambiguously justiciable, the Directive Principles of state policy (of which Article 47 is a part) have only a moral rather than legal binding.

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<sup>20</sup> <http://www.un.org/en/documents/udhr/>

<sup>21</sup> Op. cit

<sup>22</sup> <http://indiacode.nic.in/coiweb/welcome.html>

However Article 21 included in the chapter on Fundamental Rights of the constitution, entitled ‘Protection of life and personal liberty’<sup>23</sup>, states, ‘No person shall be deprived of his life or personal liberty except according to procedure established by law’<sup>24</sup>. Over the years, a series of judicial interventions and interpretations have expanded the frontiers of this right to include several other socio- economic rights, including the right to food, right to free legal aid, right to housing and right to work. The interpretation is that the right to life implies life with dignity, and the complementary rights that are mandatory for the realisation of this right are also by implication fundamental rights. Since life is biologically impossible without regular nutrition, the right to food has been widely recognised by implication as a fundamental right.

### Article 21: The Right to Life includes the Right to Food

On May 2, 2003 in the case of PUCL Vs. UoI and Ors, the Supreme Court made an important order when it found the approach of the government in the case “distressing.” Holding that the right to food would be an integral part of Article 21 of the Constitution – the right to life – the Supreme Court held as follows:

“Article 21 of the Constitution of India protects for every citizen a right to live with human dignity. Would the very existence of life of those families are below poverty line not come under danger for want of appropriate schemes and implementation thereof, to provide requisite 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.”<sup>25</sup>

This order cemented the right to food as a fundamental human right creating a shift in the approach to hunger and food security related litigation in India.

### The Famine Codes

The Famine Codes were a set of prescribed instructions issued prior to Independence by the British government. These codes were designed to set up an “efficient system of intelligence”<sup>26</sup> with respect to famines and scarcities so that the administration would be warned in time of the prospect of a famine and could act accordingly. The Codes were also meant to put in place a programme for relief works to “fortify the people” in times of hardship.<sup>27</sup> These Codes, in turn, relied upon the collection and preparation of statistics as laid down in the land records manuals and the tenancy statutes of the various states throughout India. The *patwari*, a local revenue official, was required to maintain a diary containing therein his reports regarding the general condition of crops and fodder in his

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<sup>23</sup> <http://indiacode.nic.in/coiweb/welcome.html>

<sup>24</sup> Op. cit

<sup>25</sup> <http://www.righttofoodindia.org/orders/may203.html>

<sup>26</sup> Famine Code of the state of Rajasthan, writ petition (civil) 196 of 2001 in the case PUCL and others Vs Union of India and others, page 55

<sup>27</sup> Famine Code of the state of Rajasthan, writ petition (civil) 196 of 2001 in the case PUCL and others Vs Union of India and others, page 55

area, the availability of drinking water, the occurrence of any calamity such as locusts, flood, disease and drought, the rainfall and migration. The Codes laid down the duties of the inspector of land records as requiring the officer “to watch the season, so as to detect early signs of coming distress and to be ready to report.”<sup>28</sup> The *tehsildar*, a more senior official was required to supervise the junior officials and to comment on calamities and mortality among men and cattle. As stated by the Codes, “There is no greater evil than the depression of the people; for moral depression leads directly to physical deterioration.”<sup>29</sup>

With the onset of any calamity and in order to prevent the migration of people and cattle in distress, the authorities were required to immediately start “works of permanent public utility”<sup>30</sup> with special attention given to “desert areas and hilly tracts inhabited by scheduled tribes (STs) and backward classes”.<sup>31</sup> These were classes in the population specifically mentioned in the Constitution of India as suffering a historical social and economic backwardness and deprivation. The public works were meant to provide employment for “six months” for “twenty percent of the population”.<sup>32</sup>

With the onset of the famine, the authorities were to grant loans liberally, suspend the collection of land revenue and give wide publicity to the relief programmes and the construction of roads, tanks, canals were to be immediately started. Tools and shelter were to be provided, persons coming for work were to be admitted and registered and paid suitable wages and the adequate supply of food was to be ensured. It was also stated as the duty of the officer-in-charge that he conduct a “daily hearing” and an “investigation of complaints”<sup>33</sup> with respect to relief work.

The Famine Codes demonstrate how serious the British in India regarded hunger and famine in India. In modern India, the Famine Codes are guidelines of the past. It is clear that hunger and malnutrition is a serious issue in India. The international and Indian based laws and guidelines also clearly outline the government and the state’s obligation to ensure food security for all in India with UN support networks, advice on implementation, Summits and international treaties available to support India fulfil their obligation. Yet with 21 percent of the total Indian population undernourished in 2003-2005,<sup>34</sup> laws and guidelines are not enough to prevent hunger in India. Attempting to increase food security in India must start with questioning where the levels of sustained hunger originate from in terms of attitudes towards food security, world trade approaches, and importantly the implementation of the laws, guidelines and policies related to the right to food.

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<sup>28</sup> Op. cit page 57

<sup>29</sup> Op. cit page 78

<sup>30</sup> Famine Code of the state of Rajasthan, writ petition (civil) 196 of 2001 in the case PUCL and others Vs Union of India and others, page 62

<sup>31</sup> Op. cit page 62

<sup>32</sup> Op. cit page 63

<sup>33</sup> Op. cit page 95

<sup>34</sup>[http://www.fao.org/fileadmin/templates/ess/documents/food\\_security\\_statistics/monitoring\\_progress\\_by\\_country\\_2003-2005/India\\_e.pdf](http://www.fao.org/fileadmin/templates/ess/documents/food_security_statistics/monitoring_progress_by_country_2003-2005/India_e.pdf)

To highlight the way in which NGO's, lawyers and social activists are fighting for the right to food in India, the Indian Right to Food Case will be discussed to demonstrate the ways in which the Indian legal system has been used to call upon the Indian Government to fulfil their obligation for un discriminated food security for all.

## **THE INDIAN RIGHT TO FOOD CASE**

### The Right to Food Case: A Personal Account by Colin Gonsalves

In December 2000, the union minister for consumer affairs and public distribution wrote to all chief ministers admitting that 15 million people were victims of starvation. A few days later, the chief minister of Rajasthan complained to him that he had heard that hundreds of thousands of tonnes of food grains were sitting in the godowns of the corporation and that there was a proposal to dump it in the sea to make storage space for the next crop. When Manoj Parida, senior regional manager of the Food Corporation of India, was interviewed on the Star TV news channel, he said that he could only give the grain to the states if the central government allocated it, and that his dilemma was that he couldn't just throw it away. Thus despite India's obligation to feed its people, government were trying to find ways to dump thousands of tonnes of grain.

In 1988, in the case of Pradeep Kishen, when starvation deaths were brought to the notice of the apex court, the court accepted the assurances of the Government of Orissa that the situation would be looked into, and hoped that starvation deaths would cease. Ten years later, another petition was filed, detailing hundreds of starvation deaths. In 2001, when Kavita Srivastava of the PUCL (Rajasthan) filed a petition, the conditions of the people had not changed.

In response to the mounting starvation deaths across India, a writ petition (civil) 196 of 2001 in the case of Peoples' Union for Civil Liberties (PUCL) versus Union of India and all the states and union territories of India, popularly known as the Right to Food (RTF) case, was launched. I (Colin Gonsalves) was visiting Jaipur in the state of Rajasthan to attend a meeting on police reform and turned up at Kavita Srivastava's home early morning for breakfast. Jean Dreze, the economist, was also there with other friends. He suggested that we visit some of the villages outside Jaipur city to fully understand the situation on hunger in India. On the spur of the moment we got into a jeep and went to these villages. Though I was familiar with the situation in the rural areas, the starkness of hunger and malnutrition in the Rajasthan countryside was really unsettling. Jean then explained the situation of hunger amidst plenty. He told us that there were 60 million tonnes (MTs) of grain lying in the godowns of India and that if one were to put these grains in a straight line they would go to the moon and back. Why then was there so much hunger? Why did the government not distribute grain to the poor? How could politicians and ministers allow their citizens to die of starvation when they had it in their power to release food for the poor? These were the questions that confronted us immediately and for which there were no easy answers. I suggested to my friend that we

ought to try a public interest petition in the Supreme Court of India. They readily agreed. Jean and Kavita put the data together for Rajasthan. The petition originally drafted was restricted to the state of Rajasthan and sought only the implementation of the Famine Codes.

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In December 2000, the union minister for consumer affairs and public distribution wrote to all chief ministers admitting that 15 million people were victims of starvation. A few days later, the chief minister of Rajasthan complained to him that he had heard that hundreds of thousands of tonnes of food grains were sitting in the godowns of the corporation and that there was a proposal to dump it in the sea to make storage space for the next crop. When Manoj Parida, senior regional manager of the Food Corporation of India, was interviewed on the Star TV news channel, he said that he could only give the grain to the states if the central government allocated it, and that his dilemma was that he couldn't just throw it away. Thus despite India's obligation to feed its people, government was trying to find ways to dump thousands of tonnes of grain.

In 1988, in the case of Pradeep Kishen, when starvation deaths were brought to the notice of the apex court, the court accepted the assurances of the Government of Orissa that the situation would be looked into, and hoped that starvation deaths would cease. Ten years later, another petition was filed, detailing hundreds of starvation deaths. In 2001, when Kavita Srivastava of the PUCL (Rajasthan) filed a petition, the conditions of the people had not changed.

In response to the mounting starvation deaths across India, a writ petition (civil) 196 of 2001 in the case of Peoples' Union for Civil Liberties (PUCL) versus Union of India and all the states and union territories of India, popularly known as the Right to Food (RTF) case, was launched. I (Colin Gonsalves) was visiting Jaipur in the state of Rajasthan to attend a meeting on police reform and turned up at Kavita Srivastava's home early morning for breakfast. Jean Dreze, the economist, was also there with other friends. He suggested that we visit some of the villages outside Jaipur city to fully understand the hunger situation in India. On the spur of the moment we got into a jeep and went to these villages. Though I was familiar with the situation in the rural areas, the starkness of hunger and malnutrition in the Rajasthan countryside was really unsettling. Jean then explained the situation of hunger amidst plenty. He told us that there were 60 million tonnes (MTs) of grain lying in the godowns of India and that if one were to put these grains in a straight line they would go to the moon and back. Why then was there so much hunger? Why did the government not distribute grain to the poor? How could politicians and ministers allow their citizens to die of starvation when they had it in their power to release food for the poor? These were the questions that confronted us immediately and for which there were no easy answers. I suggested to my friend that we ought to try a public interest petition in the Supreme Court of India. They readily agreed. Jean and Kavita put the data together for Rajasthan. The petition originally drafted was

restricted to the state of Rajasthan and sought only the implementation of the Famine Codes.

### The Petition

The petition began by referring to the “innumerable cases of starvation deaths reported across the country ... largely due to non-availability of food to people over a long period of time.” There was “no food available in the public distribution system (PDS) and prices at commercial shops are exorbitant, making it impossible for people to purchase food grains”.<sup>35</sup> The petitioner pointed out that the buffer stocks of grains with the central government at that time were approximately 20 MTs. The minister for consumer affairs and public distribution was quoted as saying that there was “surplus food stocks in the country”.<sup>36</sup> Thirty thousand individuals in Rajasthan with a population of 33 million persons were drought affected. At the time of filing of the petition, the people had been through two previous years of drought. “Things were very bad ... matters had reached an alarming state.” The petitioner warned “many people are facing starvation and will die soon if nothing is done immediately ... there is massive unemployment, the people are sinking deeper and deeper into debt, children are dropping out of school, and cattle are either dying or being abandoned in large numbers because their owners cannot provide them with fodder ... the relief measures provided by the state of Rajasthan and the Union of India have thus far proved inadequate, incompetent and unable to stem the misery...”.<sup>37</sup> The petitioner complained that though 50 million tonnes of grains were lying idle in public godowns in Rajasthan and across the country, so much so that government had run out of storage space, yet people were dying. In some cases, the petitioner pointed out, “there is barely a distance of 75 kilometres between these godowns and the places where starvation is rampant”.<sup>38</sup>

Quoting the national family survey (1998-99) the petitioner pointed out that even in years without drought, more than half of all the children in Rajasthan below three years were malnourished and about half of all women suffered from anemia. According to the national sample survey data, in 1993-94, almost half of the rural population in Rajasthan was below the poverty line.<sup>39</sup> Summing up, the petitioner charged the state of Rajasthan and the Union of India as having “failed abjectly in discharging its responsibility ... under Article 21 (The Right to Life) of the Constitution of India”.<sup>40</sup> The petitioner quoted from an article written by Prof. Madhura Swaminathan of the Indian Statistical Institute indicating, “the courses associated with maintaining of buffer stocks in 2000-01 accounts for nearly 45 percent of the so-called food subsidy”.<sup>41</sup> Referring to the reported statements of a parliamentary committee, the petitioner submitted “rotting grains may

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<sup>35</sup> Famine Code of the state of Rajasthan, writ petition (civil) 196 of 2001 in the case PUCL and others Vs Union of India and others, page 4

<sup>36</sup> Op. cit page 8

<sup>37</sup> Op. cit page 9

<sup>38</sup> Op. cit page 10

<sup>39</sup> Op. cit page 9

<sup>40</sup> Op. cit page 19

<sup>41</sup> Op. cit page 26

account for as much as one million tonnes of current stocks. Some of it is not even fit for animal consumption and may end up being dumped in the sea. It seems that the government of India would rather feed the fish in the Arabian Sea than the people of India”.<sup>42</sup>

On the basis of these pleadings, the petitioner sought directions from the Supreme Court to the state of Rajasthan and the Union of India to enforce the Famine Codes, to release food grains lying in the godowns and to frame a methodological and reasonable scheme for the distribution of food grain in the drought affected areas of the state.

The petitioner filed Interlocutory Application (IA) 41 of 2004 after a leading TV channel NDTV aired a clip showing trucks loading grain for the PDS from the Food Corporation of India godowns. The footage showed the trucks picking up the grain, but instead of going to the ration shops the trucks went to certain flourmills and deposited the sacks of grain there. The application relied on the report of Parivartan — a Delhi-based NGO — that had obtained copies of the registers and other records maintained by the owners of certain ration shops. Upon receiving the records, Parivartan conducted a public hearing in Delhi where a panel of experts including police officers and government officials of the department of food and civil supplies and consumer affairs and the Government of NCT of Delhi were present. The documents obtained from the ration shops disagreed with those in the possession of beneficiaries. Though the ration cards did not have any entry showing that grains were given to the beneficiaries, the records of the ration shops showed that grains were distributed. This clearly established that a large quantity of grain was illegally shown as being distributed when in fact this grain was diverted to the black market. However, according to the beneficiaries, the ration shop owners told them that grain was not available. Other records regarding payment by the beneficiaries for the grain allegedly given to them was also demonstrated to be fabricated. Signatures of the beneficiaries were forged on the receipt books available with the ration shop owners. Thus, a fictitious record was created to show that beneficiaries were receiving the grain that was supposed to be distributed, but never was. An elaborate system was in fact created in each ration shop of falsifying records so that the grain could be sold in the open market. In many instances, it was found that the ration shops themselves kept the ration cards, instead of handing them over to the beneficiaries. In many cases, it was found that the ration shop owners had created duplicate ration cards without the beneficiaries realising in order to siphon away grain. The social audits conducted by Parivartan and presented in the public hearing concluded that misappropriation was to the extent of 55 percent in the case of kerosene, 93 percent in the case of wheat and 96 percent in the case of rice. Parivartan also presented evidence before the panel demonstrating that though repeated complaints were made to the officials in the department of food and civil supplies and consumer affairs and the Government of NCT of Delhi regarding corruption, the officials either refused to act on the complaint or, when they did take action it was illusory in the sense that small fines of Rs 500 were imposed on the ration shop owners for acts of major fraud in which they were left unpunished. The pleading showed that there was collusion between the officials of food and civil supplies department of the Government of Delhi and the ration shop owners.

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<sup>42</sup> Op. cit page 26

## Public Interest Litigation

At this stage it will be useful to say a few words about the public interest litigation (PIL) in India. A revolutionary development that took place in Indian jurisprudence in the eighties gave birth to a new branch of public interest law commonly known as PIL which protects the rights of the most vulnerable. In PIL, litigation is introduced in a court of law, not by the aggrieved party but by the court itself or by any other private party and thus the person who is the victim of the violation of his or her right is not required to personally approach the court. Using a PIL allowed the Court to permit a petition to be filed on behalf of over 300 million people without the signature of a single affected person and without reference to a single individualised case of malnutrition or starvation. It also allowed the petitioner to gather extensive documentation required for the case when the PUCL had no funds of its own.

## Expanding the Case

The original petition, it may be remembered had pleadings only with respect to the state of Rajasthan. The relief sought related largely to the Famine Codes. With the expansion of the framework of the case to the national level, it was necessary to think afresh on the scope and ambit of the case. After struggling with various alternatives and after extensive discussions with groups and individuals active on the Right to Food, we (HLRN) decided to proceed on the basis of existing government schemes that provided for nutrition to be given to the poor but in fact were obviously being implemented very poorly. Thus, we filed the case pertaining to existing government programmes that were not legally required and could be discontinued by the State at any time. Nevertheless, they provided a coherent and consistent means of argument as they were well understood and the State was not inclined to disown them during the Court proceedings. The enormous financial and administrative implications for the central and the state governments were not apparent at the time, as the counsels for the various governments did not envision that the case would actually impact policy and practice. The existing government programmes that were addressed by the petition included the National Rural Employment Guarantee Act (NREGA), the Antyodaya Anna Yojana (AAY), Integrated Child Development Services (ICDS), Mid-day Meals (MDM) scheme, and Targeted Public Distribution Scheme (TPDS)

## Results of the Case

Despite cynicism from the government counsels, the case however had a huge impact in the efforts to reduce hunger and starvation deaths in India and put the RTF back on the national agenda.

On July 23, 2001, the Supreme Court directed the petitioner to amend the petition and make all the states and union territories, parties to the petition. The Court also made the following order:

“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 shortage of food, but here the situation is that amongst plenty there is scarcity. Plenty of food is available, but distribution of the same amongst the very poor and the destitute is scarce and non-existent, leading to malnourishment, starvation and other related problems... By way of an interim order, we direct the states to see that all the PDS shops, if closed, are re-opened and start functioning within one week from today and regular supplies made.”<sup>43</sup>

On August 20, 2001, the Supreme Court made the following order:

“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 one of the prime responsibilities of the government – whether central or the 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 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 the rats. Mere schemes without any implementation are of no use. What is important is that the food must reach the hungry.”<sup>44</sup>

By order dated October 29, 2002 the Court specifically held the highest ranking officers of the states and the union territories responsible for failure to implement the orders of the Court thus: “... in case of persistent default in compliance with the orders of this Court concerned chief secretaries/ administrators of the states/ union territories shall be held responsible.”<sup>45</sup> The Court further held that “if the commissioner reports and it is established to the satisfaction of the Court that starvation death has taken place, the Court may be justified in presuming that its orders have not been implemented and the chief secretaries/ administrators of the states/ union territories may be held responsible for the same.”<sup>46</sup>

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<sup>43</sup> <http://www.righttofoodindia.org/orders/interimorders.html>

<sup>44</sup> Op. cit

<sup>45</sup> Op. cit

<sup>46</sup> Op. cit

In the same order, the Court directed each state government and union territory to appoint a set of government officials as assistants to the commissioner to “render such assistance to the commissioners as the commissioners may require and help them in discharging the responsibility which has been cast upon them.”<sup>47</sup> The respondents were also directed to appoint a nodal officer.

### Reinforcing Government Schemes

To implement the orders granting the government’s responsibility to support every Indian’s right to food, the Court directed that all destitute persons be identified in all existing food based schemes and directed for the schemes to be immediately and fully implemented.

#### Mid-Day Meal Scheme:

The Supreme Court directed full compliance with the mid day meal scheme (MDMS) and directed that all the governments would provide every child in every government and government assisted primary schools with a prepared mid day meal, with a minimum content of 300 calories and 12 grams of protein every day for a minimum of 200 days. Prior to this order, the MDMS had almost ground to halt and hot cooked meals were being provided in very few states. In most places, dry rations were given if provided at all. Dealing with allegations that very inferior quality grain was being provided for the MDMS and TPDS, the Court directed that the states should ensure the provision of fair average quality grain. Prior to this order, there were hundreds of instances of inedible, rotten grain being provided to the poor and there were numerous reports of grain being infested with insects.

#### Integrated Child Development Scheme:

In terms of children’s right to food, it was stated that there must be an Anganwadi (Government sponsored child and mother care centre dedicated to combating hunger) in every settlement, with priority to scheduled castes, tribe habitations and urban slums. In addition, all ICDS beneficiaries are entitled to supplementary nutrition for 300 days in a year with each child up to 6 years of age directed to receive 300 calories and 8-10 gms of protein; each adolescent girl, each pregnant woman and each nursing mother to get 500 calories and 20-25 grams of protein; and each malnourished child to get 600 calories and 16-20 grams of protein.

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<sup>47</sup> <http://www.righttofoodindia.org/orders/interimorders.html>

Antyodaya Anna Yojana:

Similarly, the Court directed full compliance with the *Antyodaya Anna Yojana* (AAY), which required government to identify the poorest of the poor, give them a special ration card and to distribute grain to these beneficiaries at 2 rupees a kilogram for wheat and 3 rupees a kilogram for rice. The governments were also required to consider giving free grain to families who were unable to pay even this amount for grains.

On May 2, 2003 the Supreme Court made a landmark order expanding the list of beneficiaries for the AAY scheme, providing highly subsidised grain for the very poor of India. The Court directed government to include six classes of people in the AAY Scheme as follows:

“We direct the Government of India to place on AAY category the following groups of persons: (1) Aged, infirm, disabled, destitute men and women, pregnant and lactating women, destitute women; (2) widows and other single women with no regular support; (3) old persons (aged 60 or above) with no regular support and no assured means of subsistence; (4) households with a disabled adult and assured means of subsistence; and (5) households where due to old age, lack of physical or mental fitness, social customs, need to care for a disabled, or other reasons, no adult member is available to engage in gainful employment outside the house.”<sup>48</sup>

Targeted Public Distribution Scheme:

On November 28, 2001, the Supreme Court made one of its most important orders. The Order directed the Union and the states to fully comply with the targeted public distribution scheme (TPDS) by identifying all Below Poverty Line (BPL) families, issuing cards and commencing the distribution of 25 kgs of grain per family per month. The Delhi government was directed to ensure that the application forms for TPDS were available free as a grievance was made by the petitioner that the officers were charging the public for copies of the application form. Dealing with a residual complaints that the ration shops were not remaining open and that persons would travel long distances only to find the ration shops non-operational, the Supreme Court directed all ration shops to “remain open throughout the month, during fixed hours, the details of which will be displayed on the notice board.”<sup>49</sup>

Others:

Dealing with the grievance of elderly persons who were destitute, the Supreme Court directed full implementation of the National Old Age Pension Scheme (NOAPS) and the Annapoorna Scheme. Persons above the age of 65 and not having a means of subsistence were to be paid a pension. Those who did not receive a pension were to receive 10 kgs of free grains per month under the Annapoorna Scheme. Under the National Maternity Benefit Scheme, it was also ordered that all BPL pregnant women to be entitled to a cash benefit of Rs. 500 irrespective of place of birth, age of mother and number of children. Under the National Family Benefit Scheme, all BPL families are entitled to be paid Rs

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<sup>48</sup> <http://www.righttofoodindia.org/orders/interimorders.html>

<sup>49</sup> Op. cit

10,000 within four weeks through the local sarpanch when the breadwinner dies. To deal with accountability, it was ordered that Gram Sabhas are entitled to conduct a social audit into all food-related schemes and to report all instances of misuse of funds to the respective implementing authorities, who shall on receipt of such complaints, investigate and take appropriate action in accordance with law. In addition, Gram Sabhas were empowered to monitor the implementation of food-related schemes and have access to relevant information, e.g. relating to selection of beneficiaries and the disbursement of benefits. In terms of longevity of the schemes, The Supreme Court directed that no scheme covered by these orders shall be discontinued or restricted in any way without the prior approval of the Court.

### The Right to Food Campaign

It is necessary to make a slight digression at this stage to make a point about the inter relationship between the legal initiative and the social movements to understand the way in which civil society and legal practitioners work together to fill gaps in which the law is not implemented. It is true that the legal initiative of the RTF case started without any general consultation with the right to food and the food sovereignty groups in the country. It would have been much better had such a consultation taken place.

It is also important, at this stage, to acknowledge the role of the media, both print and television, in the success of the right to food case. In the weeks prior to the petition being filed, the newspapers and the television channels were full of reports of deaths by starvation. There were graphic images including tribal families who had died eating mango kernels, grass and other toxic and inedible plants, roots and seeds. There were also interviews conducted with ministers whom when questioned about such deaths remarked that it was customary for the poor in India to eat such substances. There was public indignation in the air when the case was filed and after the case was admitted, the media continued to cover the proceedings on a day-to-day basis. It was this huge generation of positive public opinion that contributed, in the early stages of the case, to its success.

As the first few orders came in on the RTF case, there was a noticeable revival in the right to food campaign. The groups that had put in enormous work over decades immediately became involved in the legal proceedings. Women's organisations, tribal groups, NGOs of all types, child right organisations, health right NGOs, economists, nutritionists, academics, lawyers and journalists got involved. It was magnificent to see the spread and depth of the movement. These organisations and individuals became the backbone of the case. They collected information, conducted surveys, did public hearings and submitted data and information, which was in turn, handed over to the Court. They guided the petitioner and the advocates as to the issues to be taken up and the demands to be made. They decided strategy and tactics. They monitored the court orders and immediately reported instances of non-compliance. They wrote articles in the newspapers and they held numerous meetings where governments came in for trenchant criticism. These collective efforts are responsible for the success of the case.

## Some Failures

Overall, the RFT campaign generated many successes not only in Court orders, but also in reviving the importance of the Right to Food as a national agenda. However the campaign was not able to go beyond the capacity to which the courts allowed and integrate the RFT campaign with other national campaigns that indirectly involve agriculture and food security. As previously mentioned, an integrated lateral approach is needed to truly combat hunger in India for example by addressing trade, farmer's rights and hunger prevention schemes. There are many social justice movements in India and following the success of the RFT Campaign, organisations must unite to fight for food security from all angles. For example, collaborations with the existing tribal movements struggling against displacements and their right to continue to reside in forest areas , which provide sustainable living to them in the form of forest fruits and produce. Other campaigns include the existing farmers' movements fighting land reforms from organisations that deliberately manipulate agricultural trade in which the farmers suffer, suggested reforms that push farmers off the land including those suggested by the World Bank and the farmers' movement against GM foods again influencing trade and sustainability.

Although the legal strategy of the RFT case was fulfilled in terms of the immediate implementation of the amended Government food security related schemes, the intention of the RFT campaign right from the beginning was never to be limited by schemes or by legal strategy. The case was supposed to be only a starting point. Thereafter, the campaign intended to broaden out into all areas of discrimination and injustice regarding food. The campaign ought to have been concerned with various issues including displacement from land and retrogressive amendments in the Land Acquisition Act, so-called land reforms such as contract farming, the use of pesticides and chemicals and its alternative in organic farming amongst other issues. Yet the transition from a legal case based on schemes to a political movement aimed at combating the shift in the balance of power regarding land and resources, between capital and labour never took place.

The social movements in India are probably more extensive than any other country but they suffer from a major defect. These movements are unable to come together despite their overall similarity in perspective and orientation, to form a political opposition to the State. Having said this, there is also a subterranean movement for a new political expression and though this manifests itself in many ways, it is at a very early stage. The RFT campaign could possibly have converted itself into a political movement for food sovereignty, especially since hunger and malnutrition continued to exacerbate during the entire period of the case in the Supreme Court. Sadly, this was not to be. Direct political mobilisation against the authorities did not take off in most areas. The massive spread of the right to food campaign in all the states was not converted into coordinated action.

## Implementation

As stated, one of the main issues in regard to the Right to Food and the application of national and international laws and guidelines lies in effective implementation. In terms of the RTF case, the Courts did take some measures in an attempt to ensure successful implementation of the schemes that had previously failed to be implemented. Firstly the Supreme Court directed the most vulnerable, including the primitive tribes, to be placed in the AAY lists to ensure their access to food at a highly subsidized price. Additionally it was directed that all of the Court orders and the lists of beneficiaries for the revitalized food schemes be made publicly available to ensure officials and the general population are aware of their rights. Lastly, the Supreme Court also directed that Chief Secretaries/Administrations of the states/Union territories should be held responsible in case of starvation or malnutrition deaths or persistent default in compliance with the orders. These measures as along with the appointment of two Commissioners to monitor the implementation of the schemes has increased the effectiveness of implementing the orders directed. .

It has been 7 years since the first Court order of the RTF case were given and thus the success and /or shortcomings of the implementation of the law in India on the right to food can be analysed. Sadly this is what was said by the Supreme Court, “we are told that despite the fact that one-and-half years have passed, some of the states have not even made a beginning” to which the Court issued specific directions for compliance within a short period of time.

Following this, April 20, 2004 saw the Supreme Court once again “anguished” by the lackadaisical approach shown by the respondents despite the Court had on October 29, 2002 made it clear that the involved chief secretaries/ administrators of the states/ union territories would be held responsible for lack of implementation of the orders passed. The Court found that “there are other states and union territories as well in respect whereof the aforesaid reports of the commissioners have commented upon. Some of the states/ union territories have not made even a beginning despite lapse of so many years, some have only made a partial beginning; some have made a token beginning and only few of the states have fully implemented the order in respect of cooked mid-day meals that was passed on November 28, 2001.”

On September 16, 2004 documents were submitted to the Supreme Court setting out the details of hunger related deaths among primitive tribes in Baran district of Rajasthan in which 26 persons had died of hunger, most of them children. The central government directed the state of Rajasthan to explain “the cause of death of so many children within a span of few days in one particular district of the state.”

The Scheme that has received the most attention since 2001 is the Integrated Child Development Scheme in which a complaint was made by the petitioner in 2004 regarding the failure of the implementation of the original order given in 2001. After

hearing the parties and perusing the documents filed by the petitioner including the commissioner's reports on ICDS, the Court responded by stating that:

“It seems that most of those who are covered by the said order are not getting benefits under the said scheme... it seems evident that there is a large number of malnourished children between the age group of 0 – 6 years. These figures are based on the survey conducted under the national family benefit scheme. The position is quite alarming. These young children are the future of the nation. Further, it appears that except Kerala and Tamil Nadu, where the benefit under the scheme is said to be reaching to about 50 percent of the children, in the rest of the country the average seems to be below 25 percent. The position in the states of Bihar, Uttar Pradesh, Jharkhand and Uttaranchal (now Uttarakhand) seems to be quite alarming. According to the survey, for the period 2002-2003, the access to supplementary nutrition for the children in Bihar reaches to about 12.6 percent of those who are otherwise covered by the scheme.”

Following up with its investigation into the functioning of the ICDS, the Supreme Court made an elaborate order on October 7, 2004 which is as follows:

“Efforts shall be made that all SC/ST hamlets/ habitations in the country have *Anganwadi* centres as early as possible... Contractors shall not be used for supply of nutrition in *Anganwadis* and preferably ICDS funds shall be spent by making use of village communities, self help groups and *mahila mandals* for buying of grains and preparation of meals...all governments...shall put on their website full data for the ICDS including where AWCs are operational, the number of beneficiaries category-wise the funds allocated and used ... BPL shall not be used as an eligibility criteria for ICDS ... all sanctioned projects shall be operationalised ...utensils shall be provided...vacancies shall be filled forthwith ... the entire state and central allocations shall be utilised. Under no circumstances (should it) be diverted or returned to the Centre and, if returned, a detailed explanation for non-utilisation shall be filed in this Court ...earnest effort to cover the slums under ICDS shall be made ... all amounts allocated shall be sanctioned in time so that there is no disruption whatsoever in the feeding of children.”

On December 13, 2006 and immediately thereafter, the Supreme Court made a series of orders on the ICDS. Referring to the millennium development goals (MDGs) and specifically to the nutrition MDGs, the Court noticed that the prevalence of the underweight children under five years of age and the proportion of population below a minimum level of dietary energy consumption, was to be halved between 1990 and 2015. The Court then concluded, “it seems unlikely” that these goals would be met. A rapid up-scaling of health, nutrition, education and infrastructure, interventions is needed if the MDGs to be met.” Referring to the sixth commissioners’ report dated November 21, 2005 the Court noted, “as many as 1201 lakhs or 70 percent of the children entitled to the ICDS are currently left out of its net.”

On July 9, 2007, when it was shown to the Court that the progress was very poor, the Court directed that “the backlog have to be cleared immediately.” The Court further

“made clear that if there is any non-observance of the time period fixed, it would be seriously viewed.”

On July 25, 2007, once again a complaint was made that the governments had been most lax. After hearing the parties, the Court said that the pace of implementation was “a sad reflection on the sincerity and seriousness of various state governments ...it is shocking to note that ...the percentage of functional centres is very low.” Then, taking note of lapses, the Supreme Court issued notices of contempt to the chief secretaries of several states directing them to explain on affidavits the reason for non-compliance and to show cause as to why “exemplary action” should not be taken against them. The chief secretaries were to indicate in the affidavits “the names of the other officers who are responsible for not complying with the court’s orders.” Because of this, very stern action taken by the Court, on August 30, 2007 when the case was heard again, many of the states had complied substantially with the orders so that no further action was deemed necessary demonstrating that with persistence, the system can support the RTF.

### **THE RIGHT TO FOOD IN INDIA TODAY**

Despite social movements, court order and numerous campaigns, hunger in India still persists. In 2005, special Rapporteur on the Right to Food, Jean Ziegler visited India with the intent to investigate the mass starvation despite large economic growth and came to know the schemes in place and application of local and international law relating to the right to food. Through field work, discussions with Government officials, NGO’s and research on the current state of hunger in India, the Rapporteur concluded that “In monitoring progress towards the Millennium Development Goals (MDGs), the Planning Commission has noted that India was not currently on track to achieve the goals set in relation to malnutrition and undernourishment.” The report outlined that large numbers of allegations against the right to food had been made since the original 2001 RTF Case orders, starvation deaths were still occurring and that there is still a lack of implementation of the Government food-based schemes in most states. It was suggested by the Rapporteur that all public administration officers be trained in issues surrounding the right to food and that a legal framework within the national strategy in accordance with the Committee on Economic, Social and Cultural rights should be established and bench marks in place to ensure effective implementation. Amongst other suggestions, it was directed that other laws such as the Land Acquisition Act should be amended to consider the RTF, all food-based schemes must be implemented without discrimination and more efforts should be placed into promoting sustainable livelihoods.

This is a key aspect to the RTF in India; constant investigations and evaluations regarding the state of hunger in India and striving to develop new implementation methods and approaches to tackling hunger in India. It is apparent that abiding by the law is not enough to reduce hunger in India and a collaborative and integrated approach is the need of the hour.

## Recent Developments

In recent times, advisors to the Government of India and the World Bank (WB) have suggested a shift from PDS to a system of food stamps or coupons. Such advice ignores not only the experience of other countries but also the inherent difficulties in implementing such a system. Swaminathan, Secretary of Agriculture for the Indian Government outlines out that a food stamp system entails extensive book keeping, revalidating of coupons and the possibility of fraud by the counterfeiting of coupons.

The World Bank has recommended that PDS and subsequent schemes be targeted to the “very poor” and that a distinction be drawn between the “very poor” and the “moderately poor” to improve transfer of food to the “ultra poor”. The very poor are defined as households that have expenditure less than 3/4 the BPL expenditures. The remaining 1/4 are defined as moderately poor. In short, an extremely narrow form of targeting is being propagated to groups within the poor. This, Swaminathan concludes, is most undesirable. Instead, is needed is a system of near universal provision. At most, the top 20% of the population can be excluded.

Currently the Right To Food Campaign, NGO’s including HRLN and various civil society groups are drafting and publicising the need for a Right To Food Act. The RTFC has created a set of ‘essential demands’ in relation to the forthcoming National Food Security Act (NFSA). The ‘demands’ address the nutritional crisis in India and suggest prevention methods for hunger and sustainability as opposed to ad hoc interventions and hunger related schemes. The ‘demands’ encompass a “Food Entitlements Act”, requesting more than the limiting promise in the UPA manifesto of 25 kgs of grain at Rs 3/kg for BPL households. The proposed Act also stresses the importance of accountability and compensation for those whose rights are denied.

The combination of civil society campaigns, legal action, and Supreme Court orders have placed the right to food back on the national agenda. For example, The Congress’ 2009 election manifesto made a promise to develop and enact a law regarding food security for all in particular for those most vulnerable members of society and Sonia Gandhi’s very first letter to the Prime Minister was regarding food security in India increasing the hope of better implementation of food related laws and guidelines. The original RTC began with the hopes of applying the Famine Codes in the state of Rajasthan and the effects of the original petition are still being felt in India today. The RTC suggests that now is the time to develop a comprehensive food security related law that can be used as a tool to shift attitudes towards the RTF and for litigation.

International laws and guidelines must be integrated into the policies, attitudes and implemented schemes related to hunger in India. New approaches and international collaborations and support are needed to decrease starvation in India otherwise hunger will remain institutionalised in India. A revolution is needed to ensure that the half of the population starving in India become food secure and are given their fundamental human right to food. To life.