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**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 OF
ARTICLE 11 OF ICESCR**

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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 OF ARTICLE 11 OF ICESCR

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The Center for Human Rights and Global Justice was established in 2002 to stimulate cutting edge scholarship and to make original and constructive contributions to on-going policy debates in the field of human rights. By emphasizing interdisciplinary analyses, the Center's programs seek to situate international human rights law in the broader context of the political, jurisprudential, economic, sociological, historical, anthropological and other influences that shape it and determine its impact. The Center's Faculty Director is Philip Alston, its Executive Director is Smita Narula, and its Research Director is Margaret Satterthwaite. CHRJ thanks Stephanie Welch for copyediting and formatting this paper.

Abstract

Every human being has a right to be free from hunger and to have access to safe and nutritious food. As a matter of law, the Right to Food has, at least in formal terms, been accorded universal recognition as a human right. It is articulated in the *Universal Declaration of Human Rights* (hereafter UDHR), the *International Covenant on Economic, Social and Cultural Rights* (hereafter ICESCR), the *Convention on the Rights of the Child* (hereafter CRC), and several other international instruments. The States and governments that are parties to these instruments have obligations and commitments to assure the realisation of the right. Under *the Rome Declaration of World Food Security 1996*, Heads of States reaffirmed 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. However the problems of hunger, malnutrition and starvation deaths are rampant in various parts of the world. Although it is not confined to a few countries, in general terms, the largest food related problems are found in developing countries, namely the countries of Latin America, Africa and Asia. What characterize these continents is not only the shortage of food and lack of infrastructure but primarily maldistribution and inadequate access to food.

This study examines the legal issues relating to the implementation of the Right to Food at the national level. The case study of Indian Right to Food Campaign is used to illustrate whether the Government has been able to operationalize the Right to Food guaranteed under Article 11 of ICESCR and other binding international instruments at the national level. This examination and analysis is undertaken with a multidisciplinary approach by keeping political and economic variables in consideration.

Table of Contents

Introduction	7
Chapter I: The Human Right to Food—normative content and implementation	10
1. The Right to Food—contours and contents	10
1.1 Existing formulations of the Right to Food in international and regional instruments	10
1.2 Definition of the Right to Food—the normative content	12
1.3 Interrelation between the Right to Food and other human rights	14
2. Implementation of the Right to Food	16
2.1 Legal obligations of the State Parties—respect, protect, fulfil (facilitate and provide)	16
2.1.1 <i>Obligation to respect</i>	18
2.1.2 <i>Obligation to protect</i>	19
2.1.3 <i>Obligation to fulfil (facilitate and promote)</i>	19
2.2 Implementation of the State obligations for realization of the Right to Food	20
2.2.1 <i>Implementation at the national level</i>	20
2.2.2 <i>Implementation at the international level</i>	21
2.3 India is legally bound to uphold the Right to Food	22
Chapter II: Case study—the Right to Food campaign in India	22
1. Social, economic and political causes of hunger and starvation deaths	24
2. National food assistance schemes and programs and their role in alleviating hunger & food insecurity	28
2.1 Targeted Public Distribution System (TDPS) & Public Distribution System (PDS)	31
2.2 The Mid-Day Meal Scheme	36
2.3 Food-for-Work and SGRY	41
3. The Supreme Court case and post-litigation impact on the realization of the Right to Food	43
Chapter III: Conclusion and recommendations	48

Abbreviations

ABL	Above Poverty Line
AIR	All India Reporters
BHRC	Butterworths Human Rights Cases
BMI	Body Mass Index
BPL	Below Poverty Line
CESCR	Committee on Economic, Social and Cultural Rights
COI	Constitution of India
CRC	Convention on the Rights of the Child
EGS	Employment Guarantee Scheme
ESC rights	Economic, Social and Cultural Rights
FAO	Food and Agricultural Organisation
FCI	Food Corporation of India
FIAN	FoodFirst Information and Action Network
FIVIMS	Food Insecurity and Vulnerability Information and Mapping System
FPS	Fair Price Shops
GC	General Comment
GOI	Government of India
HRC	Human Rights Committee
ICCPR	Covenant on Civil and Political Rights
ICDS	Integrated Child Development Scheme
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICS	Informal Civil Society
IGWG	Intergovernmental Working Group
IT	Information Technology
MDGs	Millennium Development Goals
MDM Scheme	Mid-Day Meal Scheme
NGOs	Non-Governmental Organizations
NHRC	National Human Rights Commission
NSSO	National Sample Survey Organisation
PDS	Public Distribution System
PRWORA	Personal Responsibility and Work Opportunity Reconciliation Act
PUCL	People's Union for Civil Liberties
SC	Supreme Court of India
SCC	Supreme Court Cases
SGRY	Sampoorn Gramin Rozgar Yojana
SAHRDC	South Asian Human Rights Documentation Centre
TPDS	Targeted Public Distribution Scheme
UDHR	Universal Declaration of Human Rights
UOI	Union of India

UN	United Nations
UNICEF	United Nations International Children's Education Fund
USAID	United States Agency for International Development
WFS	World Food Summit
WFS:fy1	World Food Summit: <i>five years later</i>

*“Starvation is the characteristic of some people not **having** enough to eat. It is not the characteristic of there **being** not enough to eat. While the latter can be cause of the former, it is but of many **possible** causes.”*

*– Amartya Sen, **Poverty and Famines, 1981***

INTRODUCTION*

Food is one of the basic necessities of human life and existence. While at the global level nation States rejoice their success of achieving self sufficiency in food production and the available food stocks, at the national level the state of food security is still dismal. The Special Rapporteur on the Right to Food¹ in his recent report to the Commission of Human Rights expressed his grave concern that the number of undernourished people around the world has increased to 840 million. He further observed, “Over 2 billion people worldwide suffer from ‘hidden hunger,’ or micronutrient deficiencies, that is, for instance, that children fail to grow and develop normally, their bodies are stunted and sometimes deformed, as are their intellectual capacities and immune systems. Every day, every seven seconds, another child under the age of 10 dies from hunger or hunger-related diseases.”² As Prof. George Kent puts it: “This is a silent holocaust, repeated year after year.”³

Action contre la Faim (Action against Hunger, ACF France) writes: “To die of hunger is equivalent to being murdered, while chronic and serious undernourishment and persistent hunger are a violation of the fundamental right to life.”⁴

Every human being has a right to be free from hunger and to have access to safe and nutritious food. As a matter of law, the Right to Food has, at least in formal terms, been accorded universal recognition as a human right. It is articulated in the *Universal Declaration of Human Rights* (hereafter UDHR), the *International Covenant on Economic, Social and Cultural Rights* (hereafter ICESCR), the *Convention on the Rights of the Child* (hereafter CRC), and several other international instruments. States and the governments that are parties to these instruments have obligations and commitments to assure the realization of the right. Under *the Rome Declaration of World Food Security 1996*, the Heads of the States reaffirmed the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food

* The views expressed in this paper are strictly personal and in no way represent the views of the Asia-African Legal Consultative Organization. Author acknowledgment: I wish to express deep gratitude to Prof. Paul Hunt, UN Special Rapporteur on the Right to Health, and to Dr. Usha Ramanathan for their constant guidance and assistance. I sincerely thank Mr. Rajat Khosla for his constant moral support and assistance in the research work and to help me accomplish the paper.

¹ The expressions “Right to Food,” “Right to Adequate Food,” “Human Right to Food” and “Right to Adequate Food and Freedom from Hunger” are used interchangeably in the texts and discussions and are therefore used synonymously in this paper as well.

² *The Right to Food*, Report of the Special Rapporteur, E/CN.4/2003/54, 10 January 2003.

³ Kent G., *The Right to Adequate Food*, (2003), at: www2.hawaii.edu/~kent/HRAF2003/00HRAF2003ENTRYWAY.doc.

⁴ Action against Hunger, Information sheet, Paris, December 1997, at: www.acf-fr.org.

and the fundamental right of everyone to be free from hunger.⁵ However the problems of hunger, malnutrition and starvation deaths⁶ are rampant in various parts of the world. Although it is not confined to a few countries, however, in general terms, the largest food-related problems are found in the developing countries, namely the countries of Latin-America, Africa and Asia. What characterizes these continents is not only the shortage of food and lack of infrastructure but primarily maldistribution and inadequate access to food.

Serious famine or severe food shortages, which are the obvious reasons for hunger and malnutrition, are already prevalent in Malawi, Zambia, Zimbabwe, Lesotho and Angola. People in Argentina, El Salvador, parts of Guatemala and the small States of the Cook Islands and Tonga are also suffering from food shortages. However, in addition to food shortages, in the past six years food insecurity and hunger have increased in many countries like DRC, Bangladesh, India, Iraq, Kenya, Uganda and the United Republic of Tanzania.⁷

India has achieved self sufficiency in food production; however, there are still widespread chronic malnutrition and starvation deaths. The Indian Central and state governments violate the human right to food essentially due to their failure to ensure an equitable distribution system; to effectively utilize funds for social welfare schemes that could, and under the human rights law must, be used to help lift individuals and families out of hunger and poverty; to monitor and administer food security and poverty alleviation schemes; and to ensure means of the purchase of food. While India maintained high annual growth at a rate of 2.27% in the food grain production in the 1990s⁸ and achieved self-sufficiency in course cereals (wheat and rice), which account for 5–10% of total agricultural exports of the country,⁹ famines have disappeared, and per capita food supply has increased from 394.4 in 1951 to 458.0 in 2000,¹⁰ at the all-India level the total calorie intake per head in rural areas has fallen by 70 calories between 1983 and 1999–2000. The level of 2149 calories per head in 1999–2000 is substantially lower than China or Brazil's level of 2757 calories and 2797 calories (respectively) in 1993. It is also lower than Tanzania and

⁵ Food and Agriculture Organisation of United Nations, *The Rome Declaration on World Food Security and World Food Summit (WFS) Plan of Action*, (Rome: FAO 1996) at: www.fao.org/wfs/final/rd-e.htm accessed on 10-08-03.

⁶ The expressions “hunger and undernourishment” and “malnutrition” must be distinguished. “Hunger or undernourishment” refers to an insufficient supply or, at worst, a complete lack of calories. “Malnutrition,” on the other hand, is characterized by the lack or shortage, in food which otherwise provides sufficient calories, of micronutrients—chiefly vitamins (organic molecules) and minerals (inorganic molecules). These micronutrients are vital for the functioning of cells and especially of the nervous system. A child may be receiving sufficient calories but if it lacks micronutrients it will suffer from stunted growth, infections and other disabilities; see *The Right to Food*, Report of the Special Rapporteur, E/CN.4/2001/53, 7 February 2001, para.16, p.7.

⁷ Report of the Special Rapporteur on the Right to Food to the General Assembly, A/RES/57/356, 27 August 2002, paras.5 and 6, p.4.

⁸ *Economic Survey of India—2001-2002*, “Annual Growth in Area, Product and Productivity: 1980s and 1990s,” at: www.indiabudget.nic.in/es2001-02/chapt2002/chap85.pdf accessed on 3-09-03.

⁹ *Economic Survey of India—2001-2002*, “Export and Import of Agri Products,” at: www.indiabudget.nic.in/es2001-02/chapt2002/chap816.pdf accessed 3-09-03.

¹⁰ *Economic Survey of India—2001-2002*, “Net Availability of Cereals and Pulses,” at www.indiabudget.nic.in/es2001-02/chapt2002/tab117.pdf, accessed 3-09-03.

Kenya's level of 1980.¹¹ At the time of its independence, more than fifty years ago, the people of the country were afflicted by endemic hunger, which remains a grim reality even today. Although India is considered to be one of the great success stories in tackling the food problem, it has to be scrutinized in light of the stark reality that adequate food is still beyond the reach of millions of Indians.

The Nobel Laureate in Economics, Prof. Amartya Sen observed that since independence India has accomplished many positive developments. First, pre-independence stagnating agriculture has been firmly replaced by an imposing expansion of the production possibilities in Indian agriculture through innovative departures and expansion of technological limits. However the Indian food consumption is held up today not because of any operational inability to produce more food, but a far-reaching failure to make the poor of the country able to afford enough food. Second, substantial famines that so plagued India until independence has been effectively eliminated: the last sizable famine occurred in 1943—four years before independence. And yet this credible record in famine prevention has not been matched by a similar success in eliminating the pervasive presence of endemic hunger that blights the lives of hundreds of millions of people in this country.¹²

Starvation deaths and widespread malnutrition raise, in addition to social, economic and political, many legal issues like whether there is a human right to food, what are the corresponding obligations and duties imposed upon the States and the international community, whether the right is implementable, what amounts to violation of the Right to Food and who should be held accountable for its violation, and how the right could be enforced? This study, however, endeavors to examine the legal issues relating to the implementation of the Right to Food at the national level. The case study of Indian Right to Food Campaign is used to illustrate whether the Government has been able to operationalize the Right to Food guaranteed under Article 11 of ICESCR and other binding international instruments at the national level. This examination and analysis is undertaken with a multidisciplinary approach by taking political and economic variables into consideration.

This paper is divided into three main chapters: the first chapter outlines the theoretical and conceptual background of the Right to Food and its inter-relation with other rights, the legal obligations of the State Parties and the implementation of the Right to Food at the national and international level.

In order to show the practical implications of the Right to Food, the second chapter discusses, in detail, the Right to Food Campaign in India. This section examines the main social and political

¹¹ "Nutrition Intake in India," National Sample Survey Organisation, in *Consumer Expenditure*, NSS 50th Round (July 1993 - June 1994), Report No. 405; also see, "Reported Adequacy of Food Intake in India," Report No. 415. NSS 50th Round (July 1993 - June 1994).

¹² Sen A., "Hunger in India," Address made at a public hearing on hunger and the right to food, Delhi University, 10 January 2003, at: www.geocities.com/righttofood/data/amartya.pdf, accessed on 2-09-03.

obstacles to realization of the Right to Food in India, the national policies and other measures adopted, or omitted, by the Government to give effect to the Right to Food, the unique role of the Supreme Court of India (hereafter SC) in enforcement of the Right to Food and the post-litigation implementation aspects.

Finally, the third chapter suggests and recommends measures by which the implementation of the Right to Food could be made more meaningful in the years ahead.

CHAPTER I: THE HUMAN RIGHT TO FOOD—NORMATIVE CONTENT AND IMPLEMENTATION

In order to use the Right to Food effectively to fight hunger and malnourishment it is crucial to fully understand what does the right mean and entail and the obligations of the States under the right. This chapter endeavors to set out the contextual framework of the Right to Food. For the purpose of this paper, the historical background of the Right to Food and the debate regarding food as a human right is not repeated because there is a clear endorsement that adequate food and freedom from hunger is a human right. Therefore, the first section of this chapter sets out the existing formulations of the Right to Food in various international and regional instruments, its definition in legal terms and the relationship with other human rights.¹³

The second section of this chapter outlines the legal obligations of the States: *respect, protect and fulfil (facilitate and provide)* and the implementation of the Right to Food at the national and international level.

1. THE RIGHT TO FOOD—CONTOURS AND CONTENTS

1.1 Existing formulations of the Right to Food in international and regional instruments

The Right to Food, despite its neglect in practice, has essentially been recognized in a wide range of human rights instruments; it is embodied mainly in the twin International Covenants and has been refined by the useful and creative work of the Committees set up to monitor the implementation of the Covenants and other international and regional instruments. However in this section I propose to specify only a limited range of relevant provisions.

President Roosevelt's "Four Freedoms" speech in 1941¹⁴ outlined one of the freedoms as "The freedom from want." These freedoms were gradually refined and became the basis of *the United Nations Charter*¹⁵ and more significantly later *the UDHR* encompassed the concern of "freedom from want" through inclusion of economic and social rights, particularly by recognizing the

¹³ In light of the recent significant developments and relevance to this study, particular reference is made only to some of the recognized human rights which are **directly** applicable to the Right to Food, in particular the right to life, the right to livelihood, the right to water and freedom for association (e.g. for rural workers), as opposed to other, indirectly related rights, such as freedom from torture (e.g. through food deprivation) or the right to health care.

¹⁴ The "State of the Union" message, delivered on 26 January 1941, Roosevelt F.D. "War—And Aid to Democracies," in Rosenman S. I., *The Public Papers and Addresses of Franklin Roosevelt*, (New York, MacMillan Company, 1941), p.672.

¹⁵ Article 1(3) of the UN Charter 1945.

Right to Food as a component of an adequate standard of living.¹⁶ ICESCR, an international instrument which has been ratified by 144 States, deals with the Right to Food more comprehensively than any other treaty. In article 11.1, States parties recognize “the right of everyone to an adequate standard of living for himself and his family, including adequate food, ...,” while article 11.2 is concerned with “the fundamental right of everyone to be free from hunger.” Further the General Comment No. 12 (hereafter GC 12) of the Committee on Economic, Social and Cultural Rights (hereafter CESCR) provides that “The human right to adequate food is of crucial importance for the enjoyment of all rights. It applies to everyone; thus, the reference in article 11.1 to ‘himself and his family’ does not imply any limitation upon the applicability of this right to individuals or to female-headed households.”¹⁷

Furthermore common article 1 of the twin Covenants is also relevant in this regard which provides that “All peoples may ... freely dispose of their natural wealth and resources” and, consequently, “In no case may a people be deprived of its own means of subsistence (para. 2).”¹⁸

Furthermore, Article 6 of *the Covenant on Civil and Political Rights* (ICCPR) warrants particular mention in the context of the Right to Food. It provides for the inherent right to life of every human being. The Human Rights Committee (HRC) insists that the right should not be interpreted in a restrictive manner.¹⁹ In its General Comment No. 6, the HRC observes that “... the protection of this right requires that States adopt positive measures ... and it would be desirable that States took all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.”²⁰

There are several other human rights instruments which constitute recognition of, or have some direct bearing on the Right to Food, however it would be of limited value to enunciate the exhaustive list of these provisions here. Nonetheless, it is appropriate to note that these provisions range from Article 2 of the Convention on Prevention and Punishment of the Crime of Genocide, 1948; Articles 20 and 23 of Convention relating to the Status of Refugees, 1951; to Article 12 of Convention on Elimination of All Forms of Discrimination Against Women, 1979; and Articles 24 and 27 of Convention on the Right of Child, 1989.

Also, as India is a FAO member, it is noteworthy that the Constitution of FAO in its Preambular paragraph provides that “the Nations accepting this Constitution, being determined to promote the common welfare by furthering separate and collective action on their part for the purpose of: raising levels of nutrition and standards of living ... and thus ... ensuring humanity’s freedom from hunger....”²¹

Under the *Maastricht Guidelines*, it is stated that States and appropriate international bodies should actively pursue the adoption of new standards on specific economic, social and cultural

¹⁶ Article 25 of the UDHR 1948.

¹⁷ HRI/GEN/1/Rev.4, p. 66, para.1.

¹⁸ *Supra* n.6, para.42, p.14; also see Eide A., *Right to Adequate Food as a Human Right*, Human Rights Study Series No. 1, United Nations publication (Sales No. E.89.XIV.2), (New York, United Nations, 1989).

¹⁹ *Supra* n. 17, p. 114, para.5.

²⁰ *Ibid.*

²¹ The FAO Constitution, at: www.fao.org/DOCREP/003/X8700E/x8700e01.htm#P8_10, accessed on 8-09-03.

rights, in particular the Right to Food.²² Alongside these instruments, numerous conferences and non-binding international declarations and resolutions have shaped the emerging international consensus on norms regarding the Right to Food.²³ In 1963 a Special Assembly on Man's Right to Freedom from Hunger met in Rome and issued an historic *Manifesto* asserting "freedom from hunger is man's first fundamental right."²⁴ In the *Universal Declaration on the Eradication of Hunger and Malnutrition*, 1974 the States recognized that the elimination of hunger and malnutrition and the elimination of the causes that determine this situation are the common objectives of all nations²⁵ and consequently solemnly proclaimed that "Every man, woman and child has the inalienable right to be free from hunger and malnutrition in order to develop fully and maintain their physical and mental faculties."²⁶

This commitment and proclamation of the right has been reiterated in many subsequent declarations and resolutions like *the World Declaration on Nutrition, 1992*; *the Vienna Declaration on Human Rights, 1993*; *the Rome Declaration on World Food Security, 1996*; *the Plan of Action of the World Food Summit, 1996*; *General Assembly Resolution 51/171, 1996* and more recently in the *United Nations Millennium Declaration, 2000* in which the States acknowledged that 'Men and women have the right to live their lives and raise their children in dignity, free from hunger...'.²⁷ Thus, the heads of States and Governments pledged to 'eradicate extreme poverty and hunger' as one of the *Eight Millennium Development Goals* (hereafter MDGs) and resolved to halve, by the year 2015, the proportion of the world's people whose income is less than one dollar a day and the proportion of people who suffer from hunger.²⁸ Also the *Declaration of the World Food Summit: Five Years Later, 2002* reaffirmed the right of everyone to have access to safe and nutritious food.²⁹

Similarly regional initiatives, recognizing legally binding Right to Food include, *inter alia*, Article 12 of *the San Salvador Additional Protocol to the American Convention on Human Rights* 1988, Article 4(1) of *the European Social Charter* and Article 21 of *the African Charter on Human and People's Rights* 1981.

1.2 Definition of the Right to Food—the normative content

²² Guideline 30, *the Maastricht Guidelines* 1997.

²³ Apart from articulation of food as a human right, the international community has spelled out commonly agreed standards relating to the Right to Food in the following documents: Standard Minimum Rules for the Treatment of Prisoners 1977, World Food Conference, 1974; Rio Declaration on Environment and Development, 1992; Habitat II—Istanbul Declaration on Human Settlements, 1996; International Undertaking on World Food Security, 1974; the Declaration on the Right to Development, 1986; ECOSOC Resolution 1987/90. For a complete list of International and Regional instruments, please see *Extracts from International and Regional Instruments and Declarations, and other Authoritative Texts Addressing the Right to Food*, FAO Legislative Study, Legal Office FAO, Rome 1999, at: [www.fao.org/legal/Right to Food/legst68.pdf](http://www.fao.org/legal/Right%20to%20Food/legst68.pdf).

²⁴ *Supra* n.3, Chp.4, p.6.

²⁵ Preambular para. (b).

²⁶ Para. 1.

²⁷ Goal 1 of MDGs, Para.6 of *the UN Millennium Declaration*, A/Res/55/2.

²⁸ Para.19 of *the Millennium Declaration*.

²⁹ World Food Summit, FAO Headquarters, Rome 10-13 June 2002, at www.fao.org/DOCREP/MEETING/004/Y6948E.HTM.

Many definitions of the Right to Food have been proposed over the years and there is no uniformly accepted definition. As Skogly recognizes in her thesis, to make such a definition would prove extremely difficult, as the kind and amount of food eaten is not only decided by the availability, but it is also highly culturally determined.³⁰ Article 11 of the ICESCR envisages two notions of the Right to Food: “adequate food” (para.1) and “freedom from hunger” (para.2). While the former is a broader concept (its contents discussed in detail below), the latter is narrow in scope and could be achieved by adopting policies to provide a minimal daily nutritional intake.³¹ The Special Rapporteur uses the following comprehensive definition in his report which is derived from Article 11 of the ICESCR and GC 12: “the Right to Food is the right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.”³²

Further the Special Rapporteur in his report recognizes food security as a necessary corollary of the Right to Food. Food Security has been defined in the first paragraph of the World Food Summit Plan of Action as: “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.”³³ Important notions linked to the idea of food security are also included in the definition of the Right to Food, including the notions of *sustainability* and *adequacy* (cultural and consumer acceptability) of the *availability* of and *access* to food. However, the Right to Food not only includes all the elements of food security—availability, accessibility and utilization—but also goes further than this, by making food security a human rights obligation, not simply a preference or policy choice, or just an aspirational goal.³⁴

Article 11 of ICESCR perceives adequate food as one of the components of the Right to Food. In its GC 12 the Committee gives the following definition: “The right to adequate food is realised 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.”³⁵ The ultimate objective of the right to adequate food is to achieve nutritional well-being. Nutritional well-being is dependent on parallel measures in the field of education, health and care. In this broader sense, the right to adequate food is to be understood as the right to adequate food and nutrition.³⁶

Article 11 of the ICESCR further includes two notions, namely adequacy and sustainability. “The concept of adequacy ... serves to underline a number of factors which must be taken into account in determining whether particular foods or diets that are accessible can be considered the most appropriate under given circumstances ... The notion of sustainability is intrinsically linked to the notion of adequate food or food security, implying food being accessible for both present

³⁰ Skogly S., *The Right to Food as a Human Right: Its Complexities and Implementation Possibilities*, Essex LLM, 1987, p.40.

³¹ Cooper, A.L., *Social Rights in a new Europe: a comparative study of the right to social security and the right to food*, Essex M.A., 1993.

³² *Supra* n.18, para.14, p.7.

³³ *Ibid*, para.15.

³⁴ *Supra* n.2, para.24, p.8.

³⁵ *Supra* n.17, para.6, p.58.

³⁶ *The Right to Food*, Report of the High Commissioner for Human Rights, para.6, E/CN.4/1999/45.

and future generations. The precise meaning of ‘adequacy’ is to a large extent determined by prevailing social, economic, cultural, climatic, ecological and other conditions, while ‘sustainability’ incorporates the notion of long-term availability and accessibility.”³⁷

Further it includes the key components of availability and accessibility, which are elaborated in GC 12 as³⁸ “the *availability* of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances and acceptable to a given culture; the *accessibility* encompasses both economic³⁹ and physical accessibility.”⁴⁰

Further, the Special Rapporteur in his recent report observes that given its close link with the definition of food security, the Right to Food should not only include availability and accessibility as key components of the definition, but also the utilization of food as a third key element. “Utilization” means the proper biological use of food, which requires a diet adequate in energy and nutrients, as well as safe drinking water and adequate sanitation. This also implies knowledge of basic nutrition and proper child care, as well of safe storage and processing techniques.⁴¹

There is, thus, a clear and direct relationship between the Right to Food and the cluster of other human rights. We shall discuss some of these relationships in detail, for a better understanding of the Right to Food.

1.3 Interrelation between the Right to Food and other human rights

The notion of interdependence and indivisibility of all human rights has been considered a fundamental principle from the beginning of the UN and not only the two sets of rights are interdependent; also rights within each set are interdependent and indivisible.⁴² The *Vienna Declaration and Programme of Action*, adopted during the Second World Conference on Human Rights in 1993, expressly mentions that “all human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.”⁴³ The Right to Food is linked to several—if not all—other human rights, namely right to life, right to health, right to livelihood, freedom of association, expression and information, right to private property, and right to education.⁴⁴ More recent developments establish its links with right to water.⁴⁵

³⁷ *Supra* n.17, para.7.

³⁸ *Ibid*, paras.8-13.

³⁹ *Economic accessibility* implies that personal or household financial costs associated with the acquisition of food for an adequate diet should be at level such that the attainment and satisfaction of other basic needs are not threatened or compromised (para.13).

⁴⁰ *Physical accessibility* implies that adequate food must be accessible to everyone, including physically vulnerable individuals (para.13).

⁴¹ See for example, USAID definition, at www.usaid.gov/pubs/ads/pps/foodsec/fs_foodsec.html. *Supra* n.2, para.34, p.12.

⁴² Scott, C., “The Interdependence and Permeability of Human Right Norms: Towards a Partial Fusion of the International Covenants on Human Rights,” 27(4), *Osgoode Hall Law Journal*, p.769-878.

⁴³ UN Doc. A/CONF.157/23, para.5.

⁴⁴ Alston P. & Tomasevski K. (eds.), *The Right to Food*, (Utrecht, M. Nijhoff; Stichting Studie—en Informatiecentrum Mensenrechten, 1984), p.19.

⁴⁵ *Supra* n.2, paras.34-43, p.12-14.

However for the sake of brevity and relevance to this paper I shall examine its links with the following rights:

Right to life—The Right to Food is intrinsically linked to the right to life. As noted above, the Human Rights Committee has widely interpreted the text of Article 6 of the ICCPR in order to acknowledge its interlinkages with other rights. In particular, the Committee in GC 6 considers that “...it would be desirable that States took all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics.”⁴⁶

Similarly the Hon’ble Indian Supreme Court has, in a series of landmark decisions, observed that the inherent right to life which is already granted by Article 21 of the Constitution of India has been interpreted expansively by this Court to make the right to life meaningful, socially, culturally, economically, even to the deprived segments of the society with dignity of person and in pursuit of happiness.⁴⁷ Right to life enshrined in Article 21 means something more than mere survival or animal existence. It would include the right to live with human dignity.⁴⁸ Acknowledging the interrelations between right to life and other rights, in the first ever case on Right to Food, *Kishen Pattnayak & another v. State of Orissa*,⁴⁹ the SC affirmed the individual’s Right to Food as 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. In a more recent landmark case of *People’s Union for Civil Liberties (hereafter PUCL) v. Union of India* the SC reaffirmed the Right to Food under the right to life.⁵⁰

This indicates that the narrow interpretation of the right to life only as a civil and political right is being reconsidered and interrelationship with other human rights, like the Right to Food, is now being accepted.⁵¹

Right to livelihood/work—A natural extension of the Right to Food is “the right to work” which provides the best protection against hunger and poverty.⁵² The human right to food does not require that everybody shall produce their own food. The Right to Food requires an access to food in a dignified manner.⁵³ Access to gainful employment will generally be a condition precedent to enabling individuals to command access to food they require.⁵⁴ Even if the sufficient amount of food is produced and available in shops however if the population is unemployed and receives no unemployment benefits that enables them to buy the necessary

⁴⁶ *Supra* n.19.

⁴⁷ *Gaurav Jain v. Union of India & Others* (1997) 8 SCC 114.

⁴⁸ *Vide Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (para.3) AIR 1981 SC 746; *Olga Tellis v. Bombay Municipal Corporation.*, AIR 1986 SC 180 and *Delhi Transport Corporation v. D. T. C. Mazdoor Congress*, (paras.223, 234 and 259) AIR 1991 SC 101.

⁴⁹ (1989) AIR 677.

⁵⁰ Writ Petition (Civil) No. 196 of 2001, at: www.geocities.com/righttofood/case/petition.html.

⁵¹ *Supra* n.29, p.43.

⁵² Dreze J., “Right to Food and Right to Work: Insights from India,” initially published in *FIAN magazine*, 2002, at: www.geocities.com/righttofood/data/jean.doc, accessed 11-08-03.

⁵³ Eide A., *The Right to Food*, A study presented to the Sub-Commission on the Prevention of Discrimination and Protection of Minorities, June, 1987, Oslo, p.54.

⁵⁴ *Supra* n.42, p.20.

food, this would result in malnutrition and hunger and thus, violation of the Right to Food.⁵⁵ GC 12 also provides that “the States must pro-actively engage in activities intended to strengthen people’s access to and utilisation of resources and means to ensure their livelihood...”⁵⁶ Consequently the Right to Food is not only a question of production but economic accessibility is also one of its key components.⁵⁷

Rights to freedom of association, expression and information—Prof. Amartya Sen has argued and focused considerable attention on the instrumental role of “liberty.” According to him there is a need to acknowledge the comprehensive inter-connections between the enjoyment of civil and political rights and an appreciation of economic needs. The core of Sen’s argument is that by providing incentives and information, political rights contribute towards the solution of economic deprivation by way of a public action.⁵⁸

As Clearance Dias observed: “the Right to Food seen in conjunction with the right to assemble enables people ‘to participate in shaping policies and obligations designed to protect themselves from the ravages of hunger and starvation ...’”⁵⁹ Also through such public action inappropriate policies and inadequate actions could be challenged and criticized which would consequently ensure more responsive and accountable government.

Right to Water—The Special Rapporteur in his latest report reiterated the crucial interlinks between the Right to Food and the Right to Water in the light of new and significant breakthroughs in the legal protection of the Right to Water, i.e. the adoption of GC 15 on the Right to Water. According to him, “It is impossible to discuss nutrition and food security without including safe drinking water. Safe drinking water is essential to adequate nutrition. Another element of the Right to Food must be water used for irrigation purposes, given that this is essential for food production and for ensuring food availability, particularly in countries where the poor depend primarily on their own production.”⁶⁰ The Committee in GC 15 highlighted that the Right to Water is also inextricably related to the right to adequate food (art. 11, para. 1). It noted the importance of ensuring sustainable access to water resources for agriculture to realize the right to adequate food and providing adequately nutritious food and clean drinking water in order to combat disease and malnutrition.⁶¹

2. IMPLEMENTATION OF THE RIGHT TO FOOD

2.1 *Legal obligations of the State Parties—respect, protect, fulfil (facilitate and provide)*

The Right to Food is, of course, meaningless unless it is upheld. Under the international law governments are the primary body responsible for ensuring people’s human rights are met. The

⁵⁵ *Supra* n.29, p.44.

⁵⁶ *Supra* n.17, para.15.

⁵⁷ *Ibid*, para.13.

⁵⁸ Sen A., “Freedom and Needs: An Argument for the Primacy of Political Rights,” *The New Republic*, Vol.210, Nos.2-3, 1994, pp.31-38.

⁵⁹ Dias C. & Paul J., “Developing the Human Right to Food as a Legal Resource for the Rural Poor: Some strategies for NGOs,” in Alston P. & Tomasevski K., *supra* n.44, p.207.

⁶⁰ *Supra* n.2, para.35, p.12.

⁶¹ E/C.12/2002/11, paras.3, 4 and 7.

State Parties are obliged to take steps to achieve *progressively* the full realization of the Right to Food by all appropriate means, including particularly adoption of legislative measures.⁶² The qualification “within its available resources” refers to those available resources within a State as well as resources available from the international community.⁶³ While acknowledging that the Right to Food should be realized progressively, GC 12 points out that as minimum core obligations, 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.⁶⁴ Thus, a State where a significant number of individuals are deprived of essential foodstuffs is, *prima facie*, violating the Covenant.⁶⁵

The World Food Summit provides that States can fulfil this obligation through developing national laws, strategies, policies and programs. The measures would also, as stated in Commitment 7.4 of *the Plan of Action*, assist in clarifying the content of the right to adequate food and the fundamental right of everyone to be free from hunger.⁶⁶

Article 11.2, which was added to the draft Covenant in 1963 through an initiative by the Director-General of FAO, provides State’s obligations in respect of the Right to Food more vigorously: States shall take the measures which are needed:

- Ø To improve methods of production, conservation and distribution of food;
- Ø To disseminate knowledge of the principles of nutrition;
- Ø To develop or reform agrarian systems.

All these efforts shall be aimed towards more efficient utilization of natural resources. Further, Article 11.2(b) also obliges States to “ensure an equitable distribution of world food supplies in relation to needs.”

⁶² Article 2, ICESCR. However progressive realization is subject to limitations like “minimum core obligations” and “maximum utilisation of available resources” and therefore the State cannot use the “progressive realisation” as a pretext for non-compliance. (Guideline 8, *the Maastricht Guidelines*). Also in the landmark case of *Government of the Republic of South Africa v. Irene Grootboom & others*, The Constitutional Court of South Africa, (2000) 10 BHR 84, the Constitutional Court utilized the criteria of “reasonableness” to review Government action or inaction on progressive realization of the rights within the limits of available resources.

⁶³ GC 3 (1990), para.13 and *the Limburg Principles* (1986), para.26.

⁶⁴ GC 12, para. 14; cf. also GC 3, para.10. It is noted in *the Maastricht Guidelines* that violations of the Covenant occur when a State fails to satisfy what the CESCR has referred to as minimum core obligation to ensure the satisfaction minimum essential levels of each right (Guideline 9). In *Tribunal fédéral suisse*, références: ATF 121 I 367, 371, 373 V. = JT 1996 389, the Swiss Federal Tribunal, which is the highest court in Switzerland, recognized the right to minimum basic conditions, including “the guarantee of all basic human needs, such as food, clothing, and housing” to prevent a situation where people “are reduced to beggars, a condition unworthy of being called human.” This case suggests that in Switzerland the Right to Food is a right recognized as inherent in everyone as a human being.

⁶⁵ *The Right to Food*, Report of the High Commissioner for Human Rights, E/CN.4/1998/21, para.17.

⁶⁶ Item 12 of the *Plan of Action* adopted at the World Food Programme, Rome 13-17 November 1996.

The Right to Food, like any other human right, imposes three (or four) levels of obligation on State Parties:⁶⁷ the obligations to *respect*, to *protect* and to *fulfil* (which incorporates both an obligation to *facilitate* and to *provide*).

2.1.1 *Obligation to respect*

The obligation to respect requires States to ensure that every individual has permanent access at all times to sufficient and adequate food, and not to take any measures that would result in preventing individuals from having access to adequate food.⁶⁸ Eide explains:

States should, at the *primary* level, *respect* the resources owned by the individual and the individual's freedom to find a job of preference, to make optimal use of her or his own knowledge and to take the necessary actions and use the necessary resources—alone or in association with others—to satisfy his or her own needs.⁶⁹

Principle 25 of the *Limburg Principles* reaffirms that “States Parties are obligated, regardless of the level of economic development to ensure respect for minimum subsistence rights for all.” This implies that the State must not do anything that interferes with people’s ability to provide for themselves and their families. They must not be taken off their lands, they must be free to work and earn money, they must not have goods confiscated by the government, they must not be taxed excessively, etc.⁷⁰

In addition to national obligations of the States, the recent report of the Special Rapporteur also spells out the transnational obligations to *respect* of the States. States must not take actions that negatively impact on the Right to Food of people in another country (e.g. refrain from food embargos, or from using food as an instrument of political and economic pressure, or ensuring that their trade relations do not violate the Right to Food of people in other countries).⁷¹

⁶⁷ GC 12, para.15; Guideline 6, part II, *the Maastricht Guidelines*.

⁶⁸ *Supra* n.17, para.15; also see Report by the SR, 2001, *supra* n.6, para.27.

⁶⁹ Eide A., *Human Right to Adequate Food and Freedom from Hunger*, at: www.fao.org/docrep/W9990E/w9990e03.htm.

⁷⁰ *Supra* n.3, Chapter VII, p.7.

⁷¹ *Supra* n.2, para.29, p.10.

2.1.2 *Obligation to protect*

Under this obligation, States must ensure that individuals and companies do not deprive people of permanent access to adequate and sufficient food. According to Eide:

At a *secondary* level, therefore, state obligations include active *protection* against other, more assertive or aggressive subjects, in particular against more powerful economic interests. There is a need for state protection from fraud, unethical behaviour in trade and contractual relations, and the marketing and dumping of hazardous or dangerous products.⁷²

Similar to the protection of one's capacity to provide for oneself and his family against any threat by government action, one of the major duties of the State is to provide its citizens with a measure of security, from those outside the country and also from fellow citizens.

Transnationally, the States have a duty to regulate their companies and corporations that operate in other countries to prevent violations.⁷³

2.1.3 *Obligation to fulfil (facilitate and promote)*

Fulfilling the Right to Food means that government must take positive steps to ensure that everyone is, at a minimum, free from hunger.⁷⁴ This does not imply that government must feed everyone, since most people have the resources to feed themselves. Rather, it requires that government must create the conditions ("enabling environment") where people can feed themselves.⁷⁵

The State's third obligation to "fulfil" the Right to Food is summarized by Eide as:

At the tertiary level, the state has the obligation to facilitate opportunities by which the rights listed can be enjoyed... It takes many forms, some of which are spelt out in the relevant instruments. For example, under ICESCR Article 11(2), the state shall take steps to "improve measures of production, conservation and distribution of food by making full use of technical and scientific knowledge and by developing or reforming agrarian systems."⁷⁶

Furthermore, according to GC 12 the obligation to "provide" involves: "... whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) [the Right to Food] directly."⁷⁷

⁷² *Supra* n.69.

⁷³ *Supra* n.71.

⁷⁴ GC 12, paras.14 and 21.

⁷⁵ GC 12 para.15, Eide, *Supra* n.69.

⁷⁶ *Supra* n.69.

⁷⁷ GC 12, para.15.

When “no other possibility exists,” for the elderly or the disadvantaged, when unemployment sets in, or for those who are marginalized by structural shifts in the economy, for example, government must provide direct subsidies of food or resources to procure food.⁷⁸ In addition, governments are also responsible for ensuring the full realization of the Right to Food including food security—that is, ensuring the ready availability of nutritionally adequate and safe food, using sustainable, socially acceptable and dignified means.⁷⁹ The obligation to fulfil by the government’s directly *providing* what is needed is treated as a kind of residual category, becoming operational when *respect, protect and facilitate* prove inadequate.⁸⁰

Under transnational obligations, the States are required to create social and international order (e.g. by way of international cooperation and assistance) in which the Right to Food could be fully realized.⁸¹

2.2 Implementation of the State obligations for realization of the Right to Food

2.2.1 Implementation at the national level

The global reaffirmation and recognition of the right is by itself not sufficient. The right must be enforced and its corresponding obligations must be implemented. Under international law the primary obligation to realize the Right to Food is incumbent upon national governments. Article 11.2 of the Covenant states that the State Parties will take appropriate steps to ensure realization of this right.

As enunciated in GC 12 the most appropriate ways and means of implementing the Right to Food would inevitably vary from one State to another and thus, every State has a margin of discretion in choosing its own approach. However GC emphasizes the adoption of national strategy to ensure food and nutrition for all and the formulation and implementation of such national strategies requires full compliance with the principles of accountability, transparency, people's participation, decentralization, legislative capacity and the independence of the judiciary. Good governance is essential to the realization of all human rights, including the elimination of poverty and ensuring a satisfactory livelihood for all.⁸²

Legislative measures for the implementation of the Right to Food are part of States’ obligations under Article 2 of the Covenant. GC 12 recommends in particular the adoption of framework law as a major instrument in the implementation of national strategy concerning the Right to Food.⁸³ Such a regulatory framework of law although not mandatory would be very useful for the reasons like, it would allow allocation of clear responsibilities to different governmental agencies, which would result in greater accountability and such legislation could provide room for participation in decision-making by formalizing the role of community, NGOs and civil

⁷⁸ GC 12, paras.13 and 15; also see Eide *supra* n.69.

⁷⁹ GC 12, paras.14 and 21.

⁸⁰ *Supra* n.3, Chapter VII, p.10.

⁸¹ Art.28, UDHR.

⁸² *Supra* n.17, paras.21-28.

⁸³ *Supra* n.17, para.29.

society at large. It would also allow defining which aspect is actionable and the recourse in case of violations (e.g. Ombudspersons, Human Rights Commissions and the Courts).⁸⁴

Further many international efforts have been afoot since the adoption of *Plan of Action of the WFS, 1996* where State Parties pledged to clarify the content of the Right to Food and ways of implementing it.⁸⁵ For instance, three NGOs prepared a draft of a *Code of Conduct on the Human Right to Adequate Food* in 1997 which was adopted by 800 other NGOs. This *International Code, inter alia*, provided for ways and methods of implementation of the Right to Food.⁸⁶ Further, the UN High Commissioner for Human Rights, prompted by the FAO, organized a series of expert consultations in 1997, 1998 and 2001.⁸⁷ The first two (along with the NGO Code of Conduct) inspired the work of the CESCR on drafting of GC 12. Finally, at the World Food Summit: *five years later*, the decision was taken to establish within the FAO an Intergovernmental Working Group (IGWG) to elaborate a set of voluntary guidelines to support the progressive realization of the right to adequate food⁸⁸ and the same was established in November 2002.⁸⁹ In furtherance of this, a Joint North-South Civil Society contributed the *Voluntary Guidelines for Implementation of the Right to Adequate Food*⁹⁰ to the FAO Council which illustrates principles and proposals to facilitate the implementation of the Right to Food.⁹¹

2.2.2. Implementation at the international level

States are obliged to respect the Right to Food also of persons living in other States. They must guarantee that their own policies do not contribute to violations of the right to adequate food but contribute, as far as possible, to the protection and full implementation of the right to adequate food. On the other hand they have the duty to promote and help other States to implement the Right to Food.

GC 12 succinctly spells out that in the spirit of Article 56 of the UN Charter, the specific provisions in Articles 11, 2.1 and 23 of the Covenant and *the Rome Declaration of the WFS*, State 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

⁸⁴ Vidar M., *Implementing the Right to Food: Achievement, Shortcomings and Challenges: Advantages of Framework Law*, Keynote address by FAO Legal Officer, 24-26 February 2003, Indian Social Institute, New Delhi, India organized by FIAN International with support from GDS, p.11, at: [www.fao.org/legal/Right to Food/statemts/india.doc](http://www.fao.org/legal/Right%20to%20Food/statemts/india.doc), accessed on: 16-08-03.

⁸⁵ Commitment 7, Objective 7.4, *the Plan of Action of the WFS, 1996*.

⁸⁶ FIAN, *The Code of Conduct on the Right to Adequate Food*, Hungry for What is Right, No. 19, August 2000.

⁸⁷ *The right to food*, Report of the High Commissioner for Human Rights, UN Document No. E/CN.4/1998/21, 15 January 1998. *The right to food*, Report of the High Commissioner for Human Rights, UN Document No. E/CN.4/1999/45 20 January 1999. *The right to food*, Report on the Third Expert Consultation on the Right to Food, UN Document No. E/CN.4/2001/148, 30 March 2001.

⁸⁸ FAO, *Declaration of the World Food Summit: five years later, International alliance against hunger*, Operative paragraph 10, Report of the World Food Summit: five years later, part one, Appendix, Rome, 2002.

⁸⁹ FAO, *Establishment of the Intergovernmental Working Group requested in Paragraph 10 of the Declaration of the World Food Summit: five years later*, Report of the 123rd Session of the Council, 28 October to 2 November 2002, paragraphs 26-28 and Appendix D.

⁹⁰ Based on the workshop of CSOs/NGOs from the North and the South that met in Mülheim, Germany in November 2002.

⁹¹ At: www.foodgrainsbank.ca/downloads/fjrf_guide.pdf.

Food.⁹² In implementing this commitment, State Parties should take steps to fulfil their international obligations of respect, protect and fulfil as discussed above (*see section 2.1*).

2.3 INDIA IS LEGALLY BOUND TO UPHOLD THE RIGHT TO FOOD

There are various international and domestic precedents that indicate that India is bound to uphold the Right to Food. India signed and ratified the international treaties, namely ICESCR (in 1979) and CRC (in 1992). Being a signatory of these instruments India is bound both by the provisions and the corresponding obligations arising under the Covenants,⁹³ as discussed in the preceding sections of this chapter. At the World Summit 1996, India argued that it is the fundamental duty of free nations to ensure that every citizen is enabled to earn his or her daily bread and lead a productive and healthy life.⁹⁴ Further, various other documents setting out the scope of the Right to Food, may not have the same import in terms of legally-binding obligations, but a formal commitment and the expansive effect to the concept of the Right to Food in these documents have an important hortatory value.

At the domestic level also there are precedents which indicate that the Right to Food has been articulated and recognized as a legal norm to be fulfilled by the Government of India (hereafter GOI). Judicial activism on the Right to Food was witnessed for the first time in India in the case of *Kishen Pattnayak & Another v. State of Orissa*.⁹⁵ In the backdrop of drought and starvation in the *Kishen Pattnayak* case, the SC affirmed the individual's Right to Food. The Right to Food was reaffirmed closer to the present in *PUCL v. Union of India*⁹⁶ where the court held "...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." To this effect, the court recognized the Right to Food as a fundamental right under Article 21 of the Constitution of India (1950). These judicial measures and their impact on the realization of the Right to Food in India shall be discussed in detail below.

In order to show the practical implications of the conceptual framework of the Right to Food expounded above, the following chapter examines the case study of India's on-going Right to Food Campaign.

CHAPTER II: CASE STUDY—THE RIGHT TO FOOD CAMPAIGN IN INDIA

Accounted as a "Saga of Success" of India's Rural and Agricultural Development, the websites of Indian High Commission at London and the Indian Embassy in Washington, D.C, describes:

⁹² *Supra* n.17, para.36; also see *the Voluntary Guidelines on the Implementation of Right to Adequate Food*, paras.17-21; and Eide A., *supra* n.18, Chapter V for detailed discussion on international obligations.

⁹³ Article 26 *Pacta Sunt Servanda* (Every treaty in force is binding upon the parties to it and must be performed in good faith) UN Convention on Law of Treaties, 1969 Vienna.

⁹⁴ *World Food Summit, 1996, Statements by Participants, Eighth Session, INDIA*, at: www.fao.org/wfs/index_en.htm, accessed on 25-08-03.

⁹⁵ *Supra* n.49.

⁹⁶ *Supra* n.50, SC order dated 23/7/2001, at: www.geocities.com/righttofood/case/petition.html.

From a nation dependent on food imports to feed its population, India today is not only self-sufficient in grain production, but also has a substantial reserve. The progress made by agriculture in the last four decades has been one of the biggest success stories of free India. Agriculture and allied activities constitute the single largest contributor to the Gross Domestic Product, almost 33% of it.⁹⁷

The Green Revolution ensured that the increase in food production stayed ahead of the population growth. The food grain production growth rate was 2.53% as against the population growth rate of 1.9% (1996–97).⁹⁸ Food grain production increased from 50.82 million tonnes in 1950 to 152.4 million tonnes in 2003. The national statistics show the level of food grains stock with the Food Corporation of India (hereafter FCI) account for 62 million tonnes against the buffer stock norm of 24 million tonnes.⁹⁹

Despite 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. The statistics (as discussed in the Introduction) show that although the food grain production has gone up in the 1990s, the growth rate in availability of food grains per capita has come down to % (-) 0.28 per annum in the same period. Moreover, the food consumption of the poor in India has gone down in the last ten years (and is 21% below as compared to per capita consumption of the top 10%).¹⁰⁰

India being a signatory to the legally-binding international instruments like ICESCR and CRC, a member of FAO and participant in many international conferences leading to adoption of instruments on the Right to Food affirms the Right to Food internationally. Nonetheless, according to FAO, India alone accounts for over 400 million poor and hungry people. According to the recent *Economic Survey* one half of the children under the age of five years are moderately or severely malnourished, 30 percent of newborn children are significantly under weight and nearly 60 percent of women are anaemic.¹⁰¹ The *Human Development Indicators 2003*¹⁰² indicates that 24 percent of the total population of India is undernourished (1998–2000). The latest Human Development Report places India at the bottom of the international scale in this respect, with only Bangladesh doing worse. In spite of huge buffer stocks, 8 percent of Indians do not get two square meals a day and there are pockets where severe under-nutrition takes its toll even today.¹⁰³ According to the government's own statistics, 230 million people are inflicted with malnutrition¹⁰⁴ and many are hungry. Although the government has the resources and the obligation to free them from this hunger and malnutrition, it fails to do so.

⁹⁷ Please see, www.hcilondon.net/india-overview/agriculture-rural-development.html, accessed on 2-09-03.

⁹⁸ Jha D. and Chand R., "Sustainable food production, income generation and consumption in India," *Agro-Chemical News in Brief Special Issue*, November 1999.

⁹⁹ *Economic Survey of India 2002-2003*.

¹⁰⁰ Saxena N.C., *Synergising Government Efforts for Food Security (2002)*, at: www.geocities.com/righttofood/data/nc-synergising.pdf.

¹⁰¹ *Economic Survey of India 2002-2003*, "Nutrition," at: www.indiabudget.nic.in/es2002-03/chapt2003/chap110.pdf; also see Mishra V.K., Lahiri S., and Luther N.Y., "Child Nutrition in India," National Family Health Survey Subject Reports, Number 14, June 1999, at: www2.ewc.hawaii.edu/pop/misc/subj-14.pdf, accessed on 24-08-03.

¹⁰² At: www.undp.org/hdr2003/indicator/indic_60_1_1.html, accessed on: 24-08-03.

¹⁰³ *Food and Nutrition Security*, 10th Five-Year Plan, Chp.3.3, Planning Commission, Government of India, at: www.planningcommission.nic.in:80/plans/planrel/fiveyr/10th/volume2/v2_ch3_3.pdf, accessed on: 24-08-03.

¹⁰⁴ Reddy C.R., "Crime of food surpluses," *The Hindu*, 1 September 2001.

In order to abdicate responsibility, the rapid increase in hunger and malnourishment is attributed by the government to short-term natural disasters, such as droughts or hurricanes. At many occasions, the government has been completely dismissive about the existence of hunger, starvation deaths and absolute poverty, and rather attributed the deaths to some ailment or epidemic, even though the government's own annual survey on *Accidents and Suicides in India* includes starvation as one of the causes of death by natural causes. The Annual figure as per the 1998 survey of the government stood at 221.¹⁰⁵ Hunger "outbreaks" are described as transitory, episodic events and temporary deviations from the normal, as famine prevention has been asserted as the acclaimed achievement.

However such an upbeat version of the food situation in India neglects the reality of widespread chronic hunger and endemic deprivation. As Prof. Amartya Sen has pointed out, famines are not caused by the actual shortage of food. They are caused by lack of concern. They are caused by government apathy, ignorance, and at times even political design.¹⁰⁶

Therefore, this chapter endeavors to examine how the GOI is trying to fulfil its international obligations with respect the Right to Food and how far Article 11 of the ICESCR has been operationalized at the national level. In order to undertake this examination, the chapter focuses on the following aspects: the social, economic and political causes of hunger and starvation deaths; the national policy, administrative and other measures taken by the government and their effectiveness in combating the prevailing hunger situation; the significant role played by the Supreme Court of India and the post-litigation impact on the realization of the Right to Food.

For the sake of recapitulation, in pursuing the Right to Food, we must emphasize that this right is more than the freedom from hunger. The Right to Food (or food security) implies that food must be available at all times; that all people must have access to it; that it is nutritious, safe, affordable, adequate and culturally acceptable. This right also entails the responsibility to ensure that food supply is economically and environmentally sustainable (for the sake of future generations). Further, the government obligations cover various aspects of the Right to Food: from food distribution and food quality to minimum wages and measures that only government can undertake to ensure the right is adequately fulfilled. This study, however, focuses on what is widely considered the most crucial element of the Right to Food: government's obligation to ensure freedom from hunger and unfettered access to adequate nutritious food.

1. SOCIAL, ECONOMIC AND POLITICAL CAUSES OF HUNGER AND STARVATION DEATHS

Although it is claimed that drought and famines are the main causes of the prevailing hunger and malnutrition deaths, this is an oversimplified approach which neglects the real and complex reasons that cause widespread and chronic hunger and malnutrition problems in India. If the natural disasters are presumed to be the primary reason, it is difficult to accept that hunger and starvation deaths are taking place in the country for the past four decades. Reason being that India claims a creditable record in famine prevention (the last sizeable famine occurred in 1943)

¹⁰⁵ See *Accidents and Suicides in India 1998*, National Crime Records Bureau, Ministry of Home Affairs.

¹⁰⁶ *Supra* n.12.

and the government boasts about a buffer stock of 62 million tonnes—38 million tonnes in excess of the quantities required for the purpose of food security and price stabilization. Unless the real and underlying causes are identified, a suitable national policy to combat this situation is hard to achieve.

There are many reasons which cause hunger and malnutrition like, inequitable distribution of the available food at the national and household level, general government apathy and unwillingness to take measures to combat starvation, general poverty, lack of purchasing power of individuals, distorted food price policies, relief measures taken by government being far from adequate, corruption, faulty Public Distribution System (hereafter PDS), inappropriate lack of access to land and credit and lack of legislative measures. Some of these causes *per se* violate the Right to Food and some of them have an effect which results in violation of the Right to Food as conceptualized under Article 11 of ICESCR. Following are some of the reasons which are considered as primarily responsible for the starvation deaths and endemic malnutrition in the country, despite the burgeoning food grain stocks:

1.1 *Inequitable distribution of food*—Achievement of food adequacy at the national level is a necessary, though not sufficient, precondition to ensure the achievement of household nutrition security. Inequitable physical distribution of available food among different segments of the population and even within the family is one of the major factors responsible for hunger and malnutrition in India.

Owing to the topography of the country, there are certain backward and deficit regions that are not capable of producing sufficient food for consumption (like Rajasthan, Orissa, Uttar Pradesh and Bihar) and on the other hand some states (like Punjab and Haryana) have high yields of food grain. The agricultural policies do not focus on increasing the food production in these neglected regions which will also ensure sustainable increase in consumption and demand of food.¹⁰⁷ Instead, the food grains are distributed through the PDS and the “Department of Food and public Distribution” manages the system. However, the PDS suffers from many problems, like low off-take by the State governments of the allocated stocks from the FCI on the pretext of shortage of funds, further low off-take from the ration or fair price shops due to low demand caused by the lack of economic means to purchase food, bogus ration cards, poor quality grains, short weighing of food and the rates equivalent to market rates in common occurrence or rather exorbitant, food hoarding and black marketing by the fair price shop owners, review of the Below Poverty Line (hereafter BPL) being overdue. This aspect will be dealt with in more detail below.

Under Article 11 of the ICESCR, physical accessibility is one of the main components of “adequacy” of the Right to Food.¹⁰⁸ “Availability” refers to the possibilities either for feeding oneself directly from productive land or other natural resources, or for well functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand.¹⁰⁹ The “obligation to protect” with regard to the viability in procurement requires the States to develop national legislation and administrative

¹⁰⁷ *Supra* n.100, p.10.

¹⁰⁸ GC 12, para.13.

¹⁰⁹ Eide A., *The Right to Adequate Food and to be Free from Hunger*, an updated study on the Right to Food, para.12, E/CN.4/Sub.2/1999/12.

mechanisms and procedure to protect and facilitate viable food procurement for all. Also, “obligation to fulfil” envisage the States to formulate and execute policies, plans and programs to facilitate and assist all groups in the society (with emphasis on the socio-economically vulnerable) in obtaining viable procurement of food, consistent with Basic Human Needs.¹¹⁰

Thus, the States are required to create “enabling environment” in order to facilitate people to have adequate access to food. Although the GOI has developed a PDS system for distribution however the lack of monitoring and administration which results in denial of physical access to food, results in violation of the Right to Food guaranteed under Article 11. Violations of the Right to Food can occur through direct action of States or other entities insufficiently regulated by States.¹¹¹

1.2 *General poverty*—Prof. Sen argues 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.”¹¹² Poverty, food insecurity, malnutrition and hunger are inter-related concepts. Poverty is an extremely complex phenomenon, which manifests itself in a dense range of overlapping and interwoven economic, political and social deprivations. These include, *inter alia*, hunger, assetlessness and low income levels.

Indian poverty is predominantly rural. It is estimated that one-third of the world’s poor reside in India. Although official estimates of the GOI say that only every fourth Indian is poor, according to the estimates of the internationally recognized poverty line of a dollar a day, 44% persons in India are poor, and 86% people earn less than \$2 a day.¹¹³

Hunger can be a cause as well as a result of poverty. It is a cause of poverty for certain groups, whose productivity and learning capacity is impaired by hunger. In these cases hunger must be confronted before poverty reduction strategies can be effective. On the other hand, poverty breeds hunger and malnutrition due to lack of economic means and purchasing power. Poverty denies people access to food, as the latter is a function of purchasing power, sustainable livelihoods and employment opportunities and thus, denies household food security.¹¹⁴ This lack of access or lack of purchasing power has been forcefully brought out by Prof. Sen when he describes it as deprivation due to non-entitlement or “inability of certain people to command food through the legal means available in society, including the use of production possibilities, trade opportunities, entitlements vis-à-vis the State and other methods of acquiring food.”¹¹⁵

Indeed, the Indian government has announced many poverty alleviation programs and food security schemes like *Jawahar Rozgar Yojana*, Employment Assurance Schemes, Mid-Day Meal

¹¹⁰ *The Food Security Matrix*, a.eide/a.oshaug/w.b.eide 1987.

¹¹¹ GC 12, para.19.

¹¹² *Supra* n.12.

¹¹³ Saxena N.C., *Food Assistance Programmes and Their Role in Alleviating Poverty & Hunger in India* (2002), p.3, at: www.geocities.com/righttofood/data/nc-foodhunger.pdf.

¹¹⁴ Nawani N.P., *Indian Experience on Household Food and Nutrition Security*, 1994, Regional Expert Consultation, FAD-UN Bangkok (Thailand), at: www.fao.org/docrep/X0172E/X0172E00.htm. See NNP 1991.

¹¹⁵ Sen A., *Poverty & Famines: An Essay on Entitlement and Deprivation*, (Oxford, Clarendon, 1981); also see, Sen A., “Entitlement and Deprivation,” in Sen A. & Dreze J. (eds.), *The Political Economy of Hunger: Entitlement and well-being*, (Oxford, Clarendon, 1990), p.20.

Scheme, Targeted PDS, *Antyodhaya Anna Yojana*, *Annapurna Scheme* etc. These schemes and their effectiveness will be discussed in detail below. Nevertheless, it is worth mentioning that by introducing such schemes the Indian government has acknowledged and fulfilled its obligation at least in part, yet it failed to ensure accurate and fair implementation of these schemes in the welfare reform environment and to carry out consistent and effective monitoring of administration of these schemes to ensure compliance, thus violating the human right to food.

1.3 *Non-accountable government*—One of the main reasons for the failure of the Indian State to fulfil the Right to Food is the governmental apathy, callousness and unwillingness to act.¹¹⁶ The fact that there is a widespread and persistent presence of non-acute endemic hunger—i.e., during normal (non-famine) years, millions in India suffer from chronic malnutrition while plenty of food grains are available in the granaries—shows that poor governance is at the root of the poor food administration and food security. For instance, in the Kalahandi region in the eastern State of Orissa the local and national press together with opposition parties, over the years, frequently reported on the misery that plagued the region. In 1993, newspaper reports indicated some 11 million people were severely affected when a drought-induced crisis affected 600 villages in Kalahandi and almost 500 people were reported to have starved to death. However it did not make any significant effect on implementation of drought relief as starvation and famine-related deaths continue unabated.¹¹⁷

Guideline 13 of the *Maastricht Guidelines* provides that a distinction must be drawn between the State's "inability" to comply with a legal duty and the "unwillingness" to do so. The burden of proof for demonstrating good faith is upon the State. Further, Guideline 15 states that there are positive obligations incumbent upon the State to pro-actively involve itself in, failing to take these indispensable measures are characterized as the acts of violation of the legal obligations emerging from recognition of the ESC rights. Point (c) equates violation of the ESC rights with the omission by a State to enforce laws or design and implement policies geared towards the enjoyment of the ESC rights.¹¹⁸ The formulation and implementation of national strategies for the Right to Food require full compliance with the principles of accountability, transparency, people's participation, decentralization, legislative capacity and the independence of the judiciary. Good governance is essential to the realization of all human rights.¹¹⁹ Thus, the Indian government's inaction or neglect in securing implementation of the Right to Food amounts to denial of the right enshrined under Article 11.

According to the CESCR, a country in which "a significant number of individuals" are deprived of food is, *prima facie*, violating human rights. India clearly has the resources and knowledge necessary to eliminate persistent hunger; therefore the Indian government must allocate its resources towards that end.

¹¹⁶ Gonsalves C., *The Spectre of Starving India* (2002), at: www.geocities.com/righttofood/data/colin.pdf.

¹¹⁷ Banik D., "India's freedom from famine: the case of Kalahandi," (1998) *Contemporary South Asia* 7(3), 245-281, p.268.

¹¹⁸ Dankwa V., Flinterman C., Leckie S., "Commentary to the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights," *Human Rights Quarterly*, 20 (1998), p.705-730.

¹¹⁹ GC 12, para.23.

2. NATIONAL FOOD ASSISTANCE SCHEMES AND PROGRAMS AND THEIR ROLE IN ALLEVIATING HUNGER & FOOD INSECURITY

Food Schemes: As stated above in a significant interim order dated 28 November 2001, the Supreme Court issued directions pertaining to 8 food-related schemes sponsored by the central government. Briefly, the order directs the Union and State governments to implement these schemes fully as per official guidelines. This, in effect, converts the benefits of these schemes into legal entitlements. Further, the court has given directions pertaining to certain other schemes, notable SGRY.

Note: Though all these are centrally sponsored schemes, they are implemented by the state governments.

Annapoorna Yojana

Targeted group	Those destitute that are above 65 years of age and not covered in state or central social security pension scheme. They are issued special green ration cards.
Identification of beneficiaries	Gram sabhas in rural areas and local bodies in urban areas have carried out the identification of these destitute.
Central issue price	At GOI prescribed rates. Funding is provided by GOI.
Consumer price	Free of cost.
Scale of issue	10 kg food grain per card per month.
Mechanism of distribution	As per TPDS system.
News Flash	It appears that Annapurna has been discontinued in some states. This is a violation of Court orders and the matter has been taken up in the Supreme Court by the Commissioners.

Antyodaya Anna Yojana

Targeted group	Poorest of the poor in rural and urban areas. They are issued special yellow ration cards
Identification of beneficiaries	Gram sabhas in rural areas and local bodies in urban areas carried out identification from amongst the poor families within the state.
Central issue price	Rs. 2/kg for wheat & Rs. 3/kg for rice. State government is providing ancillary charges for transportation and other expenses of agencies.
Consumer price	Rs. 2/kg for wheat & Rs. 3/kg for rice.
Scale of issue	25 kg food grain per family per month.
Distribution	Through the public distribution system.
Primitive Tribal Groups in India	The Supreme Court has directed the Government of India to provide Antyodaya cards to all Primitive Tribal people.

Family Benefit Scheme

Targeted group	BPL Families who have lost their primary breadwinner.
Identification of beneficiaries	Identification done with the assistance of panchayats.
Guideline for selection	The family should be BPL, and should have lost the primary breadwinner (male or female whose earnings contribute substantially to the total household income). The age of the deceased person should have been between 18 and 65, at the time of death.
Entitlement	A lump sum amount of Rs. 10,000.

Integrated Child Development Scheme

Targeted group	Pre-school children, adolescent girls, pregnant and lactating women.
Identification of beneficiaries	This is a universal scheme; any person who is in the target group is eligible to receive the benefit of these services.
Entitlement	Please refer to GoI website.

Maternity Benefit Scheme

Targeted group	BPL women during their first two live births.
Identification of beneficiaries	Selection happens through primary health care center.
Entitlement	Rs. 500, as a one-time entitlement.

Mid-Day Meal Scheme

Targeted group	All children in government and aided primary schools
Identification of beneficiaries	This is an universal scheme, and all children are eligible to receive cooked meals.
Entitlement	A fresh cooked meal on each working day, for at least 200 days an year.

Pension Schemes

Targeted group	Destitute aged, widows, and disabled.
Identification of beneficiaries	Identification is done through panchayati raj bodies.
Entitlement	Amount differs in each state, with the minimum of Rs. 75 each month.

The GOI perceives, in its 10th five-year plan,¹²⁰ the food security to be a situation where everyone has access, at all times, to the food needed for an active and healthy life. Thus, the

¹²⁰ *Supra* n.103.

essential elements of food security are: (a) adequate availability of food, (b) efficient distribution through trade or public distribution system, and (c) availability of adequate purchasing power in the hands of the people. The then Prime Minister, in his Independence Day speech on 15th August, 2001 announced the setting up of a National Nutrition Mission. Under this Mission, subsidized food grains would be made available to adolescent girls and expectant and nursing mothers, belonging to BPL families.¹²¹

The Union Minister of Food and Civil Supplies, the Ministry of Food and Consumer Affairs (responsible for allocation of food to various states and also governs the public distribution system—Department of Food and Public Distribution) and the Food Corporation of India (statutory corporation fully controlled and managed by the GOI) are primarily responsible to administer various aspects of food management and security. India's food policy seeks to achieve the social justice through price, food production and distribution policies; it also seeks to achieve the objective through the mechanism of public distribution system and also through various poverty alleviation programs¹²² and through programs launching direct attack on hunger and malnutrition.¹²³

The 10th Five-Year Plan aims at a paradigm shift in the initiatives of the government with regard to food and nutrition security:

- Ø from household food security and freedom from hunger to nutrition security for the family and the individual;
- Ø untargeted food supplementation to screening of all the persons from vulnerable groups.¹²⁴

The GOI has adopted many food-based schemes and food assistance programs during the last 50 years and the numbers of food-based schemes have increased lately.¹²⁵ Some of these schemes are: the TDPS, Employment Assurance Scheme, Mid-Day Meal Scheme (1995), Integrated Child Development Scheme (1975) (hereafter ICDS), National Benefit Maternity Scheme for BPL pregnant women, National Old Age Pension Scheme for destitute persons of over 65 years, *Annapurna* Scheme (1998), *Antyodhya Anna Yojna* (2000), Food-for-Work (*Sampoorn Gramin Rozgar Yojana, SGRY*) (2001), National Family Benefit Scheme and Public Distribution Scheme (1951) for BPL and Above Poverty Line (hereafter APL) families and *Food for Work* program

¹²¹ *Economic Survey of India, 2002-2003*, "Social Sector," p.233.

¹²² See *Budget 2004-5* at <http://indiabudget.nic.in> for the latest on these schemes.

¹²³ *Supra* n.113.

¹²⁴ *Ibid.*

¹²⁵ Parallel to this, the *Zero Hunger Programme* in Brazil is an ambitious food assistance scheme which amalgamates civil society participation with the governmental efforts to fight hunger. It was launched by the Brazilian President on January 1, 2003 to focus the attention of his administration (2003–06) on fighting poverty and ending hunger in Brazil. The scheme operates at three levels: in accordance with a series of public policies; through the constructive participation of a National Policy for Food and Nutritional Security and through the Programme for Community Action Against Hunger. Many programs under this scheme bear similarities with the Indian schemes, like School meals, food vouchers, food purchasing programs etc. It is proposed that governments of different countries could learn from the comparative experiences of other countries in their efforts to promote and fulfil the Right to Food at the national level. For further information regarding the *Zero Hunger programme* see: www.brazil.org.uk.

(2004). There are also state-run schemes, although the funds involved in such schemes is marginal as compared to the GOI-funded schemes. I shall discuss below the nature and effectiveness of the implementation of the TPDS and Mid-Day Meal and Food-for-Work/SGRY food assistance schemes by the government agencies. However, the impact of the SC's recent intervention on these schemes and governmental action will be assessed in the following section. The problems existing in these schemes, which prevent their effective implementation, are to a large extent symptomatic of the reasons for failure of efficacy of other schemes as well.

2.1 Targeted Public Distribution System (TDPS) & Public Distribution System (PDS)

*The Right to Food means that every man, woman and child alone and in community with others must have physical and economic access at all times to adequate food or by using a resource base appropriate for its procurement in ways consistent with human dignity.*¹²⁶

– *International Code of Conduct on the Human Right to Adequate Food*

In order to improve access to food, the government introduced the PDS¹²⁷ in 1951 which had its origin in the “rationing system”¹²⁸ introduced by the British during World War II. The PDS (re-introduced as *the Targeted Public Distribution System* in 1997) is managed by the Department of Food and Public Distribution. The Department of Public Distribution is charged with the prime responsibility of the management of the food economy of the country. The twin objectives of the Department are:

- i. Remunerative rates for the farmers
- ii. The supply of food grains at reasonable prices through the PDS.

Until 1997, the food distributed through the PDS was available for all citizens irrespective of their economic status. However the GOI changed its policy and decided to make it available only to those who fall below the poverty line. Under this new scheme, *viz.*, the TPDS special cards were issued to the families BPL and food grains were sold to them at the Fair Price Shops at specially subsidized prices.¹²⁹ Under this scheme each poor family is entitled to 10 kgs of food grains per month (20 kgs with effect from April 2000) at specially subsidized rates.¹³⁰ Although the coverage of the scheme was reduced, as many people were excluded from the benefit of the scheme, however this targeting of the welfare action was in consonance of the State's international obligations. However, the new Finance Minister has made a pledge in his Budget

¹²⁶ Part II, Article 4. See also GC 12. paras.4 and 8.

¹²⁷ The PDS system is a social safety system, as opposed to a typical rationing system, which aims to make available food grains at a “fair price” so that access of the households to food grain could be improved and such distribution could keep a check on the speculative tendencies in the market.

¹²⁸ Through the “rationing system,” the scale of a fixed quantity of ration (rice or wheat) was distributed to the entitled families (ration card holders) in specified cities/towns.

¹²⁹ Similar to this, the GOI introduced *Antyodaya Anna Yojna*, to provide food security to poorest of the poor. The selected families are given a special *Antyodaya* Card, with which they can claim grain from the local ration shop. 25 kgs of grains was to be provided each month to the selected families at the price of Rs.2 per kg for wheat and Rs.3 per kg for rice.

¹³⁰ *Supra* n.112, p.7.

Speech delivered on 8th July 2004 to strengthen the Public Distribution system.¹³¹ The PDS system, as it stood earlier, was criticized for its failure to serve the population below the poverty line, its urban bias and negligible coverage in the states with the highest concentration of rural poor. GC 12 provides that the national strategy should be based on a systematic identification of policy measures and activities relevant to the situation and context.¹³² As further elaborated by Eide, the first step in any such strategy should be to map the situation for the different groups and the different regions within the country, taking into account the differences that might exist on the basis of gender, ethnicity or race, and between rural and urban areas. Such mapping is necessary to identify those who are food insecure and to develop appropriate responses to food insecurity.¹³³

Further, with a network of more than 46.2 million Fair Price Shops (hereafter FPS) distributing annually more than Rs. 300,000 million to about 160 million families, the PDS in India is perhaps the largest distribution network of its type in the world. This huge network can play a more meaningful role only if the system translates the macro level self-sufficiency in food grains achieved by the country into micro level, i.e. by ensuring availability of food for the poor households.¹³⁴

Indeed the GOI, by introducing such a system, has partly fulfilled its obligation under Article 11. Formulation of national strategies is essential but not sufficient for full compliance of the Right to Food; the States are also obliged to implement and monitor these strategies in accordance with the provisions of GC 12. The government has not been able to give full effect to the Right to Food as the PDS has not been effective and the problem of starvation has been sharply increasing.

The off-take of the food grains by the states is even lower by the BPL families. The total off-take of food grains through PDS shops which was 26 million tonnes in 1996-97 has plummeted to 11.3 million tonnes in 2001-03,¹³⁵ despite hefty increase in the annual food subsidy from 606.6 millions in 1996-97 to 2400 million in 2002-03.¹³⁶ Prof. Sen argues the reason for this is that the subsidy is mainly geared to keep food prices high for the sellers of food—farmers in general—rather than to make food prices lower for the buyers of food. This high incentive to produce more while giving little help to poorer people to buy food has produced the massive stocks of food grains and results in marginal success of PDS.¹³⁷ Such lopsided food policy violates the government's obligation under human rights law of equitable distribution of food production and to ensure food security to all.¹³⁸

¹³¹ See <http://indiabudget.nic.in>.

¹³² Para.22.

¹³³ *Supra* n.108, para.59. Also see Chapter 8 on the FIVIMS—Food Insecurity and Vulnerability Information and Mapping System—initiated by FAO.

¹³⁴ *Supra* n.112, p.7.

¹³⁵ Raghavan M., "Food Stocks: Managing Excesses," *Economic and Political Weekly*, vol. xxxviii, No.9, March 1-7, 2003, p.873-875; also see Venugopal K.R., *Deliverance from Hunger: the Public Distribution System in India*, (New Delhi, Sage, 1992).

¹³⁶ *Economic Survey of India—2003*.

¹³⁷ *Supra* n.12, p.3.

¹³⁸ GC 12, para.22 which provides the States should ensure that policies and administrative decisions are in compliance with the obligations under Article 11 of the Covenant.

Furthermore, the identification of the BPL families is known to be highly unreliable and unscientific, due to inaccuracies in the baseline surveys¹³⁹ as well as personal and political influences. As a result, many eligible households are actually excluded. Besides a review of the BPL list is long overdue.¹⁴⁰ Eide in his recent updated study argues that “One of the most pressing tasks is to identify hungry and the particular causes of their hunger... Precise identification, using the human rights framework, of the food-insecure or vulnerable groups—who they are, where they are located and the particular causes underlying their vulnerability—will vastly improve the possibility of developing precise and appropriate responses to those particular situations.”¹⁴¹ Therefore, failing its obligation to accurately identify the food-insecure and vulnerable groups, the GOI is violative of its international obligations under the Covenant.

Additionally, the quantity and quality of the food grains distributed through the PDS is low, thereby violating one of the core components of the Right to Food.¹⁴² The food grains have to satisfy dietary needs (energy and nutrients including micronutrients like iron, vitamin and iodine) among other criteria, to qualify as adequate. Thus, nutritional aspects need to be duly taken into consideration in order to satisfy the adequacy aspect in the availability of food against just physical availability.

A World Bank report (June 2000) shows that half of the stock of FCI is at least two years old, 30% between 2 to 4 years old, and some grain as old as 16 years, thus unfit for human consumption.¹⁴³ Article 47 of the Constitution of India explicitly states that “the State shall regard the raising of the level of the nutrition and the standard of living of its people and the improvement of public health among its primary duties...” The problem has arisen partly due to the government’s relaxation of quality standards while procurements are made.¹⁴⁴ The SC in *Tapan Kuman Sudhakaran v. Food Corporation of India and Others*¹⁴⁵ passed a detailed judgment regarding the obligations of the FCI, an agent of the State and an important factor in the food grains trade of the country. It must conform to the letter and spirit of Article 47 of the Constitution. The Court held that:

The substandard rice should not enter the market of human consumption before it has been upgraded and made fit for human consumption because the consumers of such rice are likely to be people who are downtrodden and stricken with poverty. Poverty in country is quite rampant and illiterate, ignorant and poor persons would not hesitate to consume such rice if sold at cheap rates. Such a segment of society needs the State's protection in this behalf. If substandard rice is released and sold in

¹³⁹ The poverty line is defined as the level of per-capita expenditure at which minimum calorie requirement (2,400 calorie per day in rural areas and 2,100 calories in urban areas—as determined by the Indian Council of Medical Research) are met, based on observed consumption patterns.

¹⁴⁰ *The Right to Food in India*, Written Statement submitted by South Asian Human Rights Documentation Centre (SAHRDC), E/CN.4/2003/NGO/158.

¹⁴¹ *Supra* n.108, para.97.

¹⁴² GC 12, para.8, provides that the food shall be available in the quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture.

¹⁴³ “For a World Free of Hunger,” *Frontline*, Volume 18 - Issue 16, Aug. 04 - 17, 2001.

¹⁴⁴ *Supra* n.112, p.8.

¹⁴⁵ (1996) 6 SCC 101-111.

the open market it would be highly injurious to the consumers. Public health would be jeopardised if such rice is consumed by members of the public.¹⁴⁶

The court further held that:

A mere undertaking is no guarantee that the dealer will upgrade the rice before marketing the same. What action could be taken against a defaulting dealer who markets the rice without upgrading the same? At the most, he may be blacklisted but the damage or injury caused to the consumers cannot be remedied. Therefore, in addition to the undertaking, something more by way of a sanction against misuse seems necessary.

The most ideal solution is that FCI should itself upgrade the rice before sale. A corporation dealing with such huge quantities of rice can certainly set up a plant to upgrade the substandard rice before release to the dealer... If, however, the idea of FCI itself setting up a plant to treat the substandard rice is not feasible, the next alternative is that the Ministry concerned in the Government of India should evolve guidelines which would secure a foolproof system which ensures that substandard rice does not enter the market for human consumption before it has been upgraded and made fit for human consumption.¹⁴⁷

The above stated governmental policies and practices are in direct violation of India's international obligations under the Covenant, however it also needs to be mentioned that *the Public Distribution System (Control) Order 2001* has been promulgated which seeks to plug loopholes in the PDS and make it more efficient and effective. Whether such efforts will get translated in practice is yet to be seen.

Also the ceiling of maximum amount of food grains that a family will get has been fixed by the government, which at 20 kgs (equivalent to approximately 400 calories) proves to be extremely low for the family even of the nominal number of persons per family and is much less than the nutritional requirements as recommended by the Indian Council of Medical Research (2,400 calories per day in rural areas and 2,100 calories in urban areas).¹⁴⁸ The Special Rapporteur also in his report acknowledged that both the quality and quantity of the food available are fundamental.¹⁴⁹ Therefore, by not maintaining the standards of both quantity and quality the GOI is in direct violation of Article 11 of the Covenant.

Further, weak monitoring, lack of transparency and inadequate accountability of officials implementing the scheme plague the system. Massive corruption is institutionalized and built into the system. The PDS shopkeepers are manipulators, not entrepreneurs, and certainly not committed to the interests of the poor, or driven by markets. One of the case studies conducted in a remote Allahabad district provides the evidence that large quantity of grain meant for

¹⁴⁶ *Ibid*, paras.21-23.

¹⁴⁷ Paras.24 and 25.

¹⁴⁸ *Supra* n.96. Compared to rise of per head food grains absorption of below 190 kg. in India, Brazil has higher per head absorption of grains today.

¹⁴⁹ *The Right to Food*, Second Report of the Special Rapporteur, E/CN.4/2002/58.

distribution to BPL households in the district was being sold on the black market. The *kotedars* (dealers) themselves are caught in a web of corruption; at every step they have to pay bribes: to get a license, to lift a quota from the FCI, to keep the inspectors at bay, etc. This bribe accounts to be Rs.58 per quintal. As against this, the official commission is only Rs.6 per quintal (dealers buy wheat at Rs.4.59 per kg from the FCI and are supposed to sell at Rs.4.65 per kg). This means a *loss* of Rs.52 per quintal which they recover through black markets.¹⁵⁰ Also, a recent survey carried out in some states like Orissa and Rajasthan showed that the FPS in some villages in Orissa opens only once every two or three months. At other times individuals have to go to a PDS shop 20 to 30 kilometers away. Also it provided that in Rajasthan most PDS shops were open between two to ten days and not for 23 days as per the requirement.¹⁵¹ These hurdles deny meaningful access to the PDS Programmes and thereby deny access to adequate food.

As previously argued, good governance is acknowledged as essential for realization of all human rights,¹⁵² thus the Indian Government does not fulfil its obligation of implementation of the Right to Food at the national level.

Further, the system suffers from problems like the price charged exceeding the official price by 10 to 40% resulting in economic inaccessibility, bad delivery and infrastructure at district and block levels and shortage of funds with state governments resulting in several million tonnes allotted food grains unlifted from FCI, which requires effective governance. State governments claiming resource constraints are under an obligation to demonstrate good faith regarding their “inability” to comply with their legal duty.¹⁵³ Going a step further the SC in *Paschim Banga Khet Mazdoor Samity v. State of Bengal*¹⁵⁴ held that preservation of human life is of paramount importance. States cannot avoid their constitutional obligations in that regard on account of financial constraints.

Thus the PDS, one of the primary mechanisms to fight hunger, is under-funded and underutilized. The benefit levels are far too meagre and abysmally low due to insufficient outreach and exclusion of significant classes of people, with no regard to human need.

2.2 The Mid-Day Meal Scheme (MDM scheme)—In mid-1995, the GOI launched a new “centrally-sponsored scheme.” Under this program, cooked mid-day meals were to be introduced in all government and government-aided schools within two years. In the intervening period, state governments were allowed to distribute “dry rations” to schoolchildren, instead of cooked meals.¹⁵⁵

The MDM scheme was launched as a two-pronged strategy—to lower the widespread incidence of malnutrition primarily among the children of poor families and to increase their access to education. The scheme focuses both on food as well as its nutrition value, thus considers both

¹⁵⁰ For a complete Case Study please see, Saxena N.C., “Corruption in the Public Distribution System: A Case Study,” in Saxena, *supra* n.100, p.4.

¹⁵¹ Chamaraj K., “No Food,” *Humanscape India Magazine*, Vol.X, Issue II, February 2003.

¹⁵² GC 12, para.23.

¹⁵³ Guideline 13, *the Maastricht Guidelines*.

¹⁵⁴ (1996) 4 SCC 37.

¹⁵⁵ Dreze J. & Goyal A., *The future of Mid-Day Meals*, Centre for Development Economics at the Delhi School of Economics, 1 August 2003.

hunger and undernourishment problems which are prevalent amongst children. According to the Mid-term Appraisal of the Ninth Plan, this scheme has with time, fallen prey to the ills of maldistribution, corruption and politicking. Nevertheless, the coverage of MDM programs have steadily expanded during last two years, and cooked meals are rapidly becoming part of the daily school routine across the country.¹⁵⁶

A recent survey conducted provided the following positive findings: only 5 of 81 sample schools reported occasional gaps in the provision of mid-day meals; pupil enrollment in Class-I rose by 15% in the sample villages after MDM were introduced; the surge in Class-I enrollment is almost twice as large for girls (19%) as for boys (10%); MDM fosters social equity and about 90% of parents favor the continuation of MDM, rising to 96% among Schedule Caste/Schedule Tribe parents.¹⁵⁷

However, the survey also highlighted the areas of concern as: MDM are under-funded and the infrastructure is inadequate; one third of the sample teachers felt that MDM “disrupt classroom activity,” due to poor logistics; frugal lunch menus (e.g. *ghoogri* day after day in Rajasthan) have severely diluted the nutrition impact¹⁵⁸ and quality aspects of MDM; also in many villages there is evidence of caste discrimination, for instance *dalits* are not allowed to cook the MDM. There are serious problems relating to the infrastructure and logistics of MDM like makeshift and unhygienic cooking conditions, shortage of cooking utensils, disruption in supply of food grains due to paucity of funds, corruption and theft (one example is the “leakage” of grain between FCI godowns and the schools, or the furtive replacement of high-quality grain with low-quality grain by enterprising intermediaries); loose monitoring and supervision; sharp contrasts in quality of MDM across the country and the allocation of funds for the programs has not been commensurate with the requirement.¹⁵⁹

As argued previously, these problems are a result of poor governance, lack of willingness on the part of government to fulfil its obligations under the Right to Food. States parties are obliged under the international human rights law to develop and maintain mechanisms to monitor progress towards the realization of the right to adequate food for all, to identify factors and difficulties affecting the degree of implementation of their obligations, and to facilitate the adoption of corrective legislation and administrative measures.¹⁶⁰ This failure to adequately monitor and intervene constitutes a human rights violation.¹⁶¹ Governments cannot adequately assess their progress in realizing economic rights, including the Right to Food, unless they are “aware of the extent to which various rights are, or are not, being enjoyed.”¹⁶² The government

¹⁵⁶ Under this program more than 1 million children are being targeted for coverage. The Plan allocation for 2002–03 is Rs.105.7 million as against Rs.93 million in 2001–02. See Indian Budget 2002-03, “Social Sectors,” *Economic Survey 2003-4, 2002-2003*, at: www.indiabudget.nic.in/es2002-03/chapt2003/chap107.pdf.

¹⁵⁷ The survey, conducted in early 2003 under the auspices of the Centre for Equity Studies (New Delhi), covered 81 randomly selected schools of three sample states: Chhattisgarh, Rajasthan and Karnataka.

¹⁵⁸ On the other hand there is evidence that well-devised school meals and related programs in Tamil Nadu have enhanced the nutritional status of young children. See particularly, Rajivan A.K., “Combating Malnutrition: Impact Issues in Tamil Nadu,” (2003), MIMEO, New Delhi.

¹⁵⁹ *Supra* n.154.

¹⁶⁰ GC 12, para.31.

¹⁶¹ Guideline 15(f), *the Maastricht Guidelines*.

¹⁶² GC 1, para.3.

has failed to ensure freedom from hunger as a result of its refusal to adequately fund and administer the MDM program.

STATE/UNION TERRITORY	STATUS OF IMPLEMENTATION	EXTENT OF COVERAGE
Andaman and Nicobar Islands	Full implementation.	100%
Andhra Pradesh	Full coverage, details awaited. Recent reports suggest that mid-day meals are being extended to school holidays.	100%
Arunachal Pradesh	Partial implementation.	Only 34% of the eligible schools and 41% of eligible children are being covered.
Assam	No implementation. “The state government <i>hopes</i> to introduce cooked mid-day meals <i>for a limited number of days in the FY 2004-05.</i> ”	No money was disbursed by the state government in the FY 2003–04 and 2002–03 on account of conversion costs; however construction of kitchen sheds within SGRY funds has been initiated. The scheme was tried on a pilot basis in one block with funds sanctioned under SSA, but only for limited days. Further in two districts the cooked meal program was started by asking for "Public Participation and help from Panchayati Raj Institutions" with no corresponding allocation by the state government.
Bihar	No implementation.	Only proposal for initiating process has been outlined. Coverage is to be limited to cover 2578 schools in 30 blocks across 10 identified districts, and that too not all the eligible schools in these selected blocks. Funds worth 13.5 crores are supposed to be transferred to the districts for this purpose.
Chandigarh	Cooked meals are not being provided, only ready-to-eat food is supplied to all schools.	
Chattisgarh	Full coverage, according to official data. However, field reports suggest that	100%

	implementation is erratic, with no quality safeguards. Financial allocations are abysmally low (Rs 0.50 per child per day), though recent reports suggest that they are being raised to Re 1 per child per day.	
Dadra and Nagar Haveli	Full implementation.	100%
Daman and Diu	Full implementation.	100%
Delhi	Partial implementation. Quality of MDMs is very poor. Frequent reports of food poisoning.	77% of eligible schools are being covered.
Goa	Partial implementation.	6 out of 11 Talukas have been covered and children are provided only ready-to-eat food.
Gujarat	Cooked mid-day meals have been provided in government primary schools for the last ten years or so. In addition, mid-day meals are linked with regular mass deworming of school children, and a micronutrient supplementation program (involving vitamin A, iron and iodine).	100%
Haryana	Partial implementation.	Only 1382 schools across 17 blocks are being covered.
Himachal Pradesh	Partial implementation.	9 (tribal) blocks across 3 districts are being covered. According to the Director, primary Education, HP “the decision to extend this program to other non-tribal areas of the state is likely to be taken by the Government of HP on the availability of funds for the state.”
Jammu and Kashmir	Information not forthcoming.	
Jharhand	Partial implementation.	200 schools per seven districts to be covered. Moreover even in the areas that are deemed covered (e.g. Nini centre in Lohardaga district), cooked

		meals could be served only for seven days. ¹⁶³
Karnataka	Full coverage since July 2003. Field survey conducted in 3 districts of north Karnataka in early 2003 suggests implementation is reasonably good. However, extension to south Karnataka in July 2003 led to serious problems of caste discrimination.	95% of eligible schools are covered while all government <i>aided</i> primary schools remain to be covered.
Kerala	Mid-day meals have been supplied in primary schools for many years. However, some reports suggest that they are restricted to children from poor families.	100%
Lakshadweep	Full implementation.	100%
Madhya Pradesh	Mid-day meals have been supplied in primary schools for many years. However, some reports suggest that they are restricted to children from poor families.	100%
Maharashtra	Partial coverage. Quality of MDMs is very poor. Frequent reports of food poisoning.	80% of eligible schools are covered. State visit (to Purandhar and Pargaon Taluks of Pune district) by the Commissioner Mr. Sankaran had revealed several instances where parents had been asked to contribute (Rs 5–15 per student) towards the conversion costs. It is hoped that after the Court order dated 20 April 2004, the state government will ensure that this does not happen.
Manipur	No information provided to the Commissioners despite several letters sent to the state.	
Meghalaya	Partial implementation.	88% of eligible children are covered under the cooked mid-day meal scheme.
Mizoram	No information provided to the	

¹⁶³ Visit of Dr. Saxena to the state in March 2004.

	Commissioners despite several letters sent to the state.	
Nagaland	No information provided to the Commissioners despite several letters sent to the state.	
Orissa	Partial implementation. Cooked mid-day meals were already provided in tribal areas before the interim order of 28 November 2001.	35% of the enrolled students are being covered under the scheme and 47% of eligible schools are covered.
Pondicherry	Full implementation.	100%
Punjab	Full implementation.	100%
Rajasthan	Full coverage since mid-2002, but on a shoestring budget (Rs 0.50 per child day).	100%
Sikkim	Full implementation.	100%
Tamil Nadu	Full coverage since 1982—twenty years ahead of the Supreme Court order of 28 November 2001.	100%
Tripura	Full implementation.	100%
Uttar Pradesh	No implementation.	Only a proposal for initiating the process has been outlined. It had been decided in April 2003 to initiate the scheme in six districts. However even a year later no start has been made.
Uttaranchal	Full implementation.	100%
West Bengal	Partial implementation. Just before the Supreme Court order of 20 April 2004, the Government of West Bengal had issued instructions to the effect that mid-day meals should be universalized by March 2005. The latest Supreme Court deadline is 1 September 2004.	2%

2.3 *Food-for-Work & SGRY*—Food-for-Work programs have a long history in India. These have been often implemented during periods of drought. In this program people are paid remuneration in terms of food for work done by them instead of payment being made in money. It serves many purposes, like it ensures that there is no starvation, increases the availability of food grains for those in the poor families who are not participating as manual labor in the Food-for-Work Programme, such as children, old people etc., leakages will not be as high as in the case of other

wage employment programs and the poor are able to stock surplus food which comes in handy, even when such works are withdrawn.¹⁶⁴

Under SGRY 5 million tonnes of food grains is to be made available by the GOI to the states annually. Actual off-take during 2001–02 and 2002–03 has been 4.72 and 5.48 million tonnes, which is quite satisfactory.¹⁶⁵ Again some statistics presented in the Parliament show that of the 2.2 million tonnes of cereals that have been allocated free of cost to nine states, only 1.3 million tonnes have been used.¹⁶⁶ Though it is desirable to link supply of food grain as a part of wages through such schemes, like other social and food assistance programmes, Food-for-Work programs also suffer from administrative, bureaucratic and other bottlenecks. For instance due to lack of clarity whether FCI was to release food to the states totally free, or only after being paid by the Ministry of Rural Development, release of food to the states was often delayed; the fudging of muster rolls and measurement books is very common resulting in huge loss of funds which could otherwise have been used for building rural infrastructure; in many states projects were being executed by using trucks, tractors and other machines instead of more labor intensive approaches thereby defeating the whole purpose of the program.¹⁶⁷

Food-for-Work was revived in January 2001 in many parts of the country, especially Rajasthan, Gujarat, Madhya Pradesh and Orissa. The implementation of the program in Rajasthan highlights the disregard of obligations and violation of the Covenant and domestic laws by the government. Despite being required to give work to “every person who comes for work on a relief work,”¹⁶⁸ the Government of Rajasthan has introduced arbitrary “ceilings” on the numbers of persons that are to be given employment through relief works. The ceiling on the numbers of laborers employed was 19.3 million in January and 49.6 million in March. The latter represents only 1.5% of the drought-affected population by the Government’s own statistics. Also a ceiling of 15 days as opposed to 200 days on the number of days of employment per laborer in a particular month has been imposed. Further, employment actually given is well below the “ceiling,” like in January the government employed only 12 million people as against a ceiling of 19.3 million. Also in many states there has been failure to pay the legal minimum wage of Rs.60.¹⁶⁹

Imposition of such arbitrary ceilings is *prima facie* in contravention of the national Famine Code and the international obligations under the Covenant.¹⁷⁰ Such ceilings are a step backwards in the fight against hunger and violate the human right to food. The adoption of legislation or policies which are manifestly incompatible with pre-existing legal obligations relating to these rights amounts to violation of the ESC rights.¹⁷¹

Furthermore, in general the GOI is also in violation of Article 11 of the Covenant due to failure to utilize maximum available resources. The failure to utilize maximum available resources towards the full realization of the ICESCR is a violation of economic, social and cultural

¹⁶⁴ *Supra* n.112, p.10.

¹⁶⁵ *Supra* n.100, p.6.

¹⁶⁶ *Supra* n.104.

¹⁶⁷ *Supra* n.160.

¹⁶⁸ The Famine Code, clause 75.

¹⁶⁹ *Supra* n.96.

¹⁷⁰ GC 12, para.14.

¹⁷¹ Guideline 14(d), *the Maastricht Guidelines*.

rights.¹⁷² The underutilization of available resources is reflected in the fact that 38 million tonnes of the food grains are rotting in the bursting granaries of FCI, whereas 46% of persons are chronically deficient (in 1991) and severe undernourishment was observed among 9%.¹⁷³ In other words half of the population in the country is malnourished. Thus, at the very least, all surplus stock should be used to help low-income families achieve economic and food security. Also, the government's increased budgetary allocation for the department of food and public distribution is directed towards a cost of food subsidy which is mainly geared to keep food prices high for the farmers in general rather than to make food prices low for the poor to buy the food. While there is no conflict between these two interests as they operate in two different spheres and incentive to farmers for higher production cannot be undermined, the government should simultaneously also adopt policies ensuring food security to poor families who cannot afford enough food. Thus, there should be an accommodation of these rights and interests in the policies and practices, that is, accommodating farmers' interests on one hand and poor families' on the other.

Moreover, the government has failed to devote sufficient resources. Violations of the Covenant occur when a State fails to ensure the satisfaction of, at the very least, the minimal essential level required to be free from hunger. Resource constraints do not free the government from responsibility; it still has to show that every effort has been made to use all resources at its disposal in an effort to satisfy, as a matter of priority, those minimum obligations.¹⁷⁴

Under international law, the Indian government must ensure, at a minimum and regardless of resources, freedom from hunger. The Indian government, however, fails in this regard. This failure represents nothing more than a lack of political will. As the nation acclaiming record surplus grain stocks, India can certainly make no excuse based on a plea of inadequate resources.

The statistics of the GOI show that requirement of funds for Supplementary Nutrition ranges from Rs.20502.7 to 12805.5 million, whereas the funds earmarked for allocation are Rs.12036.5 million only.¹⁷⁵ It is, of course, obvious that the government spending on different sectors is a question of definition of priorities. In the era of marketization, public spending on social security sectors such as food and health has given way to spending on areas whose relevance to the immediate or long-term interests of the poor is not obvious: for example, IT education or building of state-of-the-art airports.¹⁷⁶ Thus, the government chooses to use its financial resources elsewhere in what V.R. Krishna Iyer once called "a perverse expenditure logic."

In addition to the above policy measures, more significant and landmark developments have taken place through judicial activism in the Indian judiciary. Although in this time of crisis, state and central governments have failed to meet their responsibilities and obligations towards hunger-stricken citizens, the SC has played a pro-active and significant role to ensure the implementation of the food assistance schemes which, until now, were existing more or less on

¹⁷² Guideline 15(e), *the Maastricht Guidelines*; Article 2.1, the ICESCR; and Article 4, the CRC.

¹⁷³ Based on the Body Mass Index (BMI), an indicator of undernourishment. See, Gonsalves C., *Sabotaging Welfare*, at: www.geocities.com/righttofood/data/colin.pdf.

¹⁷⁴ Eide *Supra* n.108.

¹⁷⁵ *Supra* n.103, p.363.

¹⁷⁶ "Providing Food," *The Hindu*, November 24, 2002.

paper only. The case was tried on the basis of India's Constitution and its federal and state laws, especially its Famine Code. However, this section shows how the case fits into the framework of international human rights law, and specifically the human right to adequate food. The following section thus discusses the significance and impact of the judicial intervention on the implementation of the Right to Food in India.

3. THE SUPREME COURT CASE AND POST-LITIGATION IMPACT ON THE REALIZATION OF THE RIGHT TO FOOD

Prof. Sen's *entitlement* approach recognized that today the hunger originates in "entitlement failures." Access to food is not only a function of food supply, but is influenced by a variety of factors that affect the capacity of particular households and social groups to establish entitlement over food.¹⁷⁷ According to Prof. Sen, lack of access to food is a deprivation due to "the inability of certain people to command food through the legal means available in the society, including the use of production possibilities, trade opportunities, entitlement vis-à-vis the State and other methods of acquiring food."¹⁷⁸ This approach, thereby, makes them a human rights obligation, not simply a preference or policy choice or just an aspirational goal.

The Supreme Court of India bridged this void on 28th November 2001 through a detailed order in which, for the first time, the benefits available under eight nutrition related schemes of the government were recognized as entitlements.¹⁷⁹ The Indian SC's current engagement, in a Public Interest case, with the paradox of food scarcity even while the state's godowns overflow with food grains, has underscored the importance of judicial intervention in the area of ESC rights.

Judicial activism on the Right to Food was witnessed for the first time in India in the case of *Kishen Pattnayak & Another v. State of Orissa*.¹⁸⁰ Two social workers addressed a letter to the SC, bringing to its attention the appalling condition of people living in the district of *Kalahandi* in the State of Orissa where conditions of extreme poverty were leading to starvation deaths. In the backdrop of drought and starvation in the *Kishen Pattnayak* case, the SC affirmed the individual's Right to Food. After a gap of five years, a further affirmation came from the (Indian) *National Human Rights Commission* (hereafter NHRC) in August/September 1993, when 125 children below 10 years of age reportedly died due to repeated attacks of malaria, chicken pox

¹⁷⁷ *Supra* n.114.

¹⁷⁸ *Ibid.*

¹⁷⁹ Writ Petition (Civil) No. 196 of 2001 *supra* n.50, SC Order dated November 28, 2001, at: www.geocities.com/righttofood/orders/nov28.html. Additionally, the Right to Food has also been acknowledged and implemented in the other comparative jurisdictions. For instance, the South African Constitutional Court in the *Grootboom* case, observed "There can be no doubt that human dignity, freedom and equality, the foundational values of our society, are denied to those who have no food,..." (para.23), *supra* n.61. At the regional level, in a recent case, *Poor People's Economic Human Rights Campaign, Ensington Welfare Rights Union, Cheri Honkala, Joy Butts, National Employment Law Project, the Urban Justice Center, and the Center for Constitutional Rights v. The United States of America*, a petition has been filed before the Inter-American Commission of Human Rights where the petitioners claim that, *inter alia*, the Right to Food of U.S. citizens and residents has been violated by recent and current U.S. welfare law and policy. The *Personal Responsibility and Work Opportunity Reconciliation Act* of 1996 (PRWORA) has been challenged and is alleged that it imposes arbitrary cut-offs on the survival benefits and entitlements of food of the poor and thus violates the obligations of the U.S. under international and regional instruments and norms. At: www.kwru.org/updates/IACpetition.pdf.

¹⁸⁰ *Supra* n.49.

and various water borne diseases. The NHRC awarded compensation. In response, the state government amidst other arguments that it tendered in order to express its inability and unwillingness to pay said: “the resource crunch in the state would seriously limit the capacity of the government to pursue regulatory and welfare activities if, ‘every death earns a lucrative compensation.’”¹⁸¹

The government’s callous attitude towards the situation is a clear violation of the human rights obligations. Under the international law, the government which fails to take appropriate steps as required under the Covenant and fails to utilize the maximum of available resources towards the full realization of the Covenant is responsible for violation of the Covenant through the acts of omission.¹⁸² Furthermore, such violations are imputable to the State within whose jurisdiction they occur and as a consequence, the State responsible must establish mechanisms to correct such violations, including remedies for victims.¹⁸³

The Right to Food was reaffirmed closer to the present in *PUCL v. Union of India*.¹⁸⁴ A human rights organization, PUCL, in April 2001 approached the court for relief after several states in the country faced their second or third successive year of drought and, despite having more than 60 million tonnes of stocks,¹⁸⁵ failed to make available the minimum food requirement of the vast drought-stricken population. In a situation of “plenty,”¹⁸⁶ the SC states, a situation of scarcity was inexplicable. According to the court in spite of “plenty” of food being available people were suffering from starvation and malnourishment due to a poor distribution system.¹⁸⁷ Three major issues were raised before the Court:

A. Starvation deaths have become a National Phenomenon while there is a surplus stock of food grains in government godowns. Does the right to life mean that people who are starving and who are too poor to buy food grains ought to be given food grains free of cost by the State from the surplus stock lying with the State, particularly when it is lying unused and rotting?

B. Does not the right to life under Article 21¹⁸⁸ of the Constitution of India include the Right to Food?

¹⁸¹ Usha Ramanathan, *Annual Survey of Indian Law*, (1995) vol. XXX1 p.478.

¹⁸² Guideline 15(a) and (e), *the Maastricht Guidelines*.

¹⁸³ Guideline 16, *the Maastricht Guidelines*; GC 12, para.31.

¹⁸⁴ *Supra* n.50, SC order dated 23/7/2001, at: www.geocities.com/righttofood/orders/jul23.html.

¹⁸⁵ For a reserve requirement of 25 million tonnes, 60 million tonnes was available, Muralidharan S., “Upholding the right to food,” *Frontline*, Vol.18 - Issue 18, Sep. 01 - 14, 2001.

¹⁸⁶ (2001) 5 SCALE 303-304.

¹⁸⁷ *Ibid*.

¹⁸⁸ Article 21: No person shall be deprived of his life or personal liberty except according to procedure established by law. In *Francis Coralie v. Union of India*, (1981) 1 SCC 608, Bhagwati J. expounded the right to life and observed: “We think that the right to life includes right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and ...” This was reiterated in a series of cases, namely *Bandhua Mukti Morcha v. UOI* (1984) 3 SCC 161; *Maneka Gandhi v. UOI* (1978) 1 SCC 248 (para.132); *Sunil Batra v. Delhi Administration and others* 1978 AIR (SC) 167 (para.120); *Shantistar Builders v. Narayan Khimalal Totame and others* (1990) 1 SCC 520 (para.9); *M/s B.P. Jain and Associates v. State of Haryana and Another* (1992) 1 SCC 541 (para.18); *Chameli Singh v. Sate of Uttar Pradesh* (1996) 2 SCC 549 (paras.1,4,5 and 8).

C. Does not the Right to Food, which has been upheld by the Hon'ble Court, imply that the State has a duty to provide food especially in situation of drought, to people who are drought affected and are not in a position to purchase food?¹⁸⁹

To begin with, as an area of immediate concern, the court held, "...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."¹⁹⁰ To this effect, the court recognized the Right to Food as a fundamental right under Article 21 of the Constitution of India (1950). Also, in one of its interim orders relating to the case, the SC affirmed that where people are unable to feed themselves adequately, governments have an obligation to provide for them, ensuring, at the very least, that they are not exposed to malnourishment, starvation and other related problems.¹⁹¹

In September 2001 the court directed the states to ensure all the PDS shops were reopened and made functional. Thereafter the states were asked to identify families below the poverty line in a time-bound schedule and information was sought on the implementation of various government schemes that were meant to help people cope with the crisis.¹⁹² This was followed by an identification by the court of the most vulnerable states where hunger and starvation was widespread. All the state governments were directed to take their "entire allotment of food grains from the Central government under the various Schemes and distribute the same in accordance with the Schemes."¹⁹³

Significantly, in the Order dated November 28, 2001 the SC passed specific orders with respect to eight welfare schemes, laying down guidelines for their effective implementation. The court made a detailed order containing three major components:¹⁹⁴

- Ø The benefits available under eight nutrition-related schemes of the government were recognized as entitlements;
- Ø All state governments were asked to provide cooked mid-day meals for all children in government and government-aided schools;
- Ø Governments were asked to adopt specific measures for ensuring public awareness and transparency of the programs.

Acting on the information provided to it, the SC was able to specify the minimum quantities of food and nutrition that had to be made available: each child up to the age of six years was to get 300 calories and 8–10 grams of protein; each adolescent girl 500 calories and 20–25 grams of

¹⁸⁹ *Supra* n.50.

¹⁹⁰ *Supra* n.182.

¹⁹¹ *Supra* n.178.

¹⁹² (2001) 7 SCALE 484.

¹⁹³ *Supra* n.50, Order dated September 3, 2001.

¹⁹⁴ *Supra* n.175.

protein; each malnourished child 600 calories and 16–20 grams of protein.¹⁹⁵ Following up on this, the court in May 2002 gave further directions empowering village administration bodies (*gram sabhas*) to monitor the implementation of the distribution of food supplies under the schemes and setting up a grievance redressal mechanism. States were ordered not to divert central funds meant for food and employment schemes for other purposes.

In a more recent order, the SC appointed two “Commissioners” for the purpose of monitoring the implementation of all orders relating to the Right to Food.¹⁹⁶ The Commissioners are empowered to enquire about any violations of these orders and to demand redressal, with the full authority of the SC. They are also expected to report to the court from time to time. Four reports have been submitted by the Commissioners so far providing information about the progress (or failures) of implementation of the schemes by state governments in accordance with the SC orders.¹⁹⁷

The court’s intervention in implementation of the pre-existing schemes have been encouraging and positive. Several states have introduced mid-day meals in primary schools, or are in the process of doing so. The interim orders have also constrained some state governments to streamline and improve other food-related schemes.

In an order dated 29.4.2004 the Apex Court directed that the sanctioned AWCS (Aanganwadi Centers) should supply nutritious food/supplement to the children, adolescent girls and to pregnant and lactating women under the scheme for 300 days in a year, thereby safeguarding the special interest of women and children.

The unique facet of the enforcement orders is that the court revisits these orders, thus ensuring their implementation. As identified in the Ford Foundation’s publication *Many Roads to Justice*, one of the key issues is that even good laws and rulings go un-enforced.¹⁹⁸ Unless accompanied by other social strategies (e.g. community services, government policies etc.), even a landmark judgment may not have the required impact. Therefore, unlike the regular run of cases, as evident in the Right to Food case, the PIL cases are not disposed of by a single judgment at one point of time. A series of short orders are passed and their implementation ensured, before the court proceeds to a final judgment.¹⁹⁹ The court has described this device as a “continuing mandamus.”²⁰⁰

The court’s orders thus far have acted as a catalyst in ensuring that the state administrative machinery responds to the people’s needs and seeking accountability of the government for failure to provide the basic minimum requirement of food. While the court has been guided

¹⁹⁵ The website www.geocities.com/righttofood/case/casehistory.html contains the complete text of all orders as well as the petition.

¹⁹⁶ Orders dated 8 May 2002 and 2 May 2003, respectively, the SC appointed Dr. N.C. Saxena and Mr. S.R. Sankaran as “Commissioners.”

¹⁹⁷ Complete texts of the four reports are available on the website: www.geocities.com/righttofood/links/comm.html.

¹⁹⁸ McClymont M. & Golub S. (eds.), *Many Roads to Justice: the law-related work of Ford Foundation grantees around the World*, (United States, The Ford Foundation, 2000).

¹⁹⁹ Muralidhar S., “Implementation of Court Orders in the Area of Economic, Social and Cultural Rights: An Overview of the Experience of the Indian Judiciary,” Paper presented at the *First South Asian Regional Judicial Colloquium on Access to Justice*, New Delhi, 1-3 November 2002.

²⁰⁰ *Vineet Narain v. Union of India* (1998) 1 SCC 226 at 243.

completely by the national law, the developments and the role played by the Indian judiciary is significant in context of the Right to Food as embodied in Article 11 of the Covenant, for India being a signatory of the ICESCR is bound by the international obligations. GC 12 explicitly recognizes that judges and other members of the legal profession should pay greater attention to violations of the Right to Food in the exercise of their functions.²⁰¹ Therefore, the decision of the Indian SC is of particular relevance in fully understanding the operationalization of Article 11 of the ICESCR at the national level.

Further it is important to note that the role of civil society is assuming importance in the on-going Right to Food campaign. The campaign in the last few months was expanded well-beyond the confines of the SC, towards a broad-based popular movement.²⁰² Many initiatives have been taken like on April 9, 2002 a national “day of action on mid-day meals” was called, public hearings on hunger and the Right to Food were organized in many parts of the country, e.g. in January 2003 in Delhi etc. These initiatives are a major step towards breaking the vicious cycle of poverty and disempowerment and achieved success in building political pressures. As previously discussed the Right to Food has important inter-linkages with the right to freedom of assembly, expression and information as it enables people “to participate in shaping policies and obligations designed to protect themselves from the ravages of hunger and starvation.”²⁰³

Prof. Kent argues that the active functioning of informal civil society (ICS) is essential to the realization of human rights as individuals holding these rights are not passive objects benefiting from governmental largesse, but are active subjects, fully participating in formulation of appropriate national policies and public agenda. The *Declaration on the Right to Development, 1986* recognizes the active, free and meaningful participation of all individuals in development and the fair distribution of benefits resulting therefrom.²⁰⁴ Further, Article 8 provides that States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights.

The movement of recognition of the right to adequate food in Brazil exemplifies the importance of civil society participation and social movement. The struggle against hunger, in Brazil, has been closely linked to the popular participation of civil society. The Citizenship Action against Hunger and Poverty, and for Life, launched in 1993, involved directly and indirectly 60 million Brazilians (approximately), more than 50% of the population. It played an important role in increasing popular awareness about ESC rights, with a strong emphasis on popular, local and community initiatives. Citizenship Action has taken many initiatives to promote Human Right to Food through direct popular action and lobbying for the integration of Public Policies into state and National Food and Nutrition Strategies to eradicate hunger, poverty and to promote social inclusion and life quality. Also it has formed a strong partnership with government developments (*inter alia*, Institute of Applied Economic Research; Food and Nutrition Technical Area—Ministry of Health) and International Organizations (UNICEF and FAO).²⁰⁵

²⁰¹ GC 12, Para.34, also see paras.32-35 generally on *Remedies and Accountability*; Guideline 28, *the Maastricht Guidelines*.

²⁰² Dreze J, *Right to Food: From the Courts to the Streets*, at: www.geocities.com.

²⁰³ *Supra* n.59.

²⁰⁴ Preambular para.2, and Article 2.3, A/41/53 (1986).

²⁰⁵ Valente F.L.S., *Recent developments on the operationalisation of the Human Right to Food in Brazil*, Background document, Oslo2/Geneva28, at: www.nutrition.uio.no/iprdf/Encounterdocuments/DocO2-G28.html.

CHAPTER III: CONCLUSION AND RECOMMENDATIONS

*The realisation of the right to adequate food is inseparable from social justice, requiring the adoption of appropriate economic, environmental and social policies, both at a national and international level, oriented to the eradication of poverty and the satisfaction of basic needs.*²⁰⁶

—International Code of Conduct on the Human Right to Adequate Food

It is clear from the above discussion that the Right to Food, as defined under Article 11 of the ICESCR, has not been effectively operationalized in India. As a party to the International Covenant (ICESCR) and the CRC, India has committed itself to honoring the Right to Food. Indeed the Indian government has formulated many schemes and policies to ensure food and nutrition security and has time and again reiterated its commitment to fight hunger. However, still there exists a wide gap between the rhetoric and reality.

At its core, widespread hunger is the result of inequitable distribution, widespread poverty and non-accountability of government. Inequitable distribution has resulted from distorted food policies, lack of infrastructure, corruption and lack of political will. The inverse relationship between food grain procurement and distribution in India is reflected in stocks rising to unmanageable levels. However, given its politically sensitive nature it may be difficult to drastically cut down stockholdings. Thus, centre will have to employ a combination of policy changes and support prices for farmers and poor families in order to promote the interests of both the groups. The *Plan of Action of the World Food Security* adopted by FAO in 1997 spells out a number of ways in which the distribution network can be improved.²⁰⁷ Some suggestions for changes in policies are discussed below.

Furthermore, people are hungry in India because they do not have the resources to purchase an adequate diet. That roughly 230 million people in India are food insecure, and that half of those who are hungry live in households where at least one member works, reveals that India has failed to create the conditions necessary for individuals to adequately feed and care for themselves. Creating the conditions where individuals and families have the resources to feed themselves is the ultimate objective of a social and economic human rights approach. This must be the minimal objective of all their social policies.

One of the positive developments with regard to ensuring economic security to poor families is the extension of the on-going Right to Food campaign to demand the “right to work.” A nation-wide vigorous campaign has been initiated demanding gainful employment. An important step towards the realization of the right to work was made in one of the states, Maharashtra, by way of “Employment Guarantee Scheme” (hereafter EGS) in the early 1970s. Under this scheme every citizen had a right to be gainfully employed on public works at a basic wage, if he or she demands it. In practice, Maharashtra’s EGS falls short of an actual work guarantee, as state authorities often succeeded in evading their responsibilities in this respect.²⁰⁸

²⁰⁶ Part II, Article 4.3. See also, GC 12, para.4.

²⁰⁷ Objective 3.5.

²⁰⁸ Dreze J., “Right to Food and Right to Work: Insights from India,” *FIAN Magazine*, 2003.

Nevertheless, the scheme has considerably strengthened the bargaining power of the rural poor in demanding gainful employment. On an average day, EGS work sites employ about half a million laborers, most of whom belong to the poorest sections of the population.²⁰⁹ Thus, the government should further build on Maharashtra's experience in this respect.

Presently there is no legislative framework to the Right to Food. Under international human rights law, governments are committed to take all appropriate measures, including particularly the adoption of legislative measures, for full realization of the rights guaranteed under the Covenant.²¹⁰ Indeed every State has a margin of discretion in choosing its own approaches to ensure that everyone is free from hunger and as soon as possible can enjoy the right to adequate food.²¹¹ However, the Committee (CESCR) recognizes that in many instances legislation is highly desirable and in some cases may even be indispensable.²¹² There has been an increasing endorsement at the international level for adoption of the framework legislation by the States to facilitate effective realization of the Right to Food.²¹³

The existing policies in India do not provide a specific plan of action on how food security will be progressively realized. The development of a legislative framework will not only assist in defining clearly the different roles that should be played by the different government departments, as the provision of the Right to Food requires the involvement of more than one department. The framework will also assist in defining the obstacles and how they should be addressed in order to ensure better provision of food. Furthermore, it will also enable individuals to hold institutions accountable and claim their rights when they have been infringed upon.²¹⁴

As the government works progressively to realize that goal, it has an obligation to immediately repair the existing food assistance schemes to help end hunger at once. Following are some recommendations that could be considered in addition to, or in complement with, those suggested above.²¹⁵

At the international level:

In the absence of the Committee's (CESCR) power to entertain individual complaints for the violations of ESC rights, the following measures may be considered:

- Ø Under Article 16 of ICESCR, the State Parties are obliged to submit reports to the Committee on the measures they have adopted and the progress made in achieving the

²⁰⁹ *Ibid.*

²¹⁰ Article 2.1, ICESCR.

²¹¹ GC 12, para.21.

²¹² GC 3, para.3.

²¹³ *Supra* n.84. The FAO Legal Officer's article sets out some of the possible content of framework law in India, for instance general principles of the right to food (for instance inspired by the NGO Code of Conduct); obligations to respect, protect and fulfil; identification/establishment of institution and definition of its role, responsibilities and authority; enclmarks to be achieved etc. A complete list of elements are discussed in the document.

²¹⁴ The third expert Consultation, 2001, E/CN.4/2001/148; see also Report by Mary Robinson, *The Right to Food: Achievements and Challenges*, World Food Summit: Five Years Later, Rome, Italy, 8-10 June 2002.

²¹⁵ The recommendations are drawn in light of the Commissioner N.C. Saxena's four reports, *supra* n.100 & 112 and the SC's interim orders.

observance of rights under the Covenant. India has not yet submitted its second State report, which is now long overdue. Thus, the Committee may insist on the elaborate information to be provided regarding the various issues (as highlighted above) related to the Right to Food while considering the State report.

- Ø The Special Rapporteur appointed by the Commission on Human Rights on the Right to Food is empowered to undertake a country or a fact-finding mission, subject to the consent of the government. In light of the widespread and consistent starvation deaths and malnutrition instances, such a mission is recommended to be undertaken by the Special Rapporteur.
- Ø Lastly, this consistent pattern of gross and widespread violation of a human right, that is starvation deaths and malnutrition, may be brought before the Commission on Human Rights by a group or an individual by invoking the 1503 Special Procedure.²¹⁶

At the national level:

- Ø The government should acknowledge the obligation to respect, protect and fulfil the human right to food.
- Ø The government should ensure that bureaucratic errors do not result in benefits being arbitrarily and erroneously cut off.
- Ø The Central government should provide a comprehensive policy and technical support to the state governments and administrative staff to ensure accurate and fair implementation of food assistance policy in the welfare reform environment.
- Ø The judicial intervention by the SC has provided impetus to policy change as well as to ensure effective implementation of the governmental obligations. But it is not normally available to ordinary people on a local basis. Therefore, government should establish effective mechanisms for assuring the realization of the right to adequate food in India.²¹⁷
- Ø Despite a hefty increase in annual food subsidy, TDPS does not seem to have made an impact in the poorest north and north-eastern states, such as Uttar Pradesh, Bihar and Assam. Although the allocation of poorer states was more than doubled, yet there is poor off-take by the states and even poorer actually lifting by the BPL families. There is lack of infrastructure and shortage of funds with the government parastatals in most states except a few in the west and south. Thus, the GOI should ensure that adequate infrastructure capacity is available at the district and block levels.

²¹⁶ Established by Economic and Social Council resolution 1503 (XLVII) of 27 May 1970. The procedure was substantially amended in 2000 to make it more effective and efficient by the Economic and Social Council resolution 2000/3 of 16 June 2000.

²¹⁷ The SC order dated May 8, 2002 empowered village administrative bodies (*gram sabhas*) to oversee the implementation of the distribution of food supplies under the schemes and setting up of a grievance redressal mechanism. The governments should ensure adherence to their recommendations and should also strengthen such decentralized monitoring mechanisms.

- Ø Programs such as the public distribution of food grains can be entrusted to the local level institution, with higher level institutions at the district, state and union levels taking up the balancing role, i.e. bridging the gap between demand and supply of food grains at respective levels.
- Ø Poor governance is at the root of many ills associated with the food administration, as well as other programs for the poor. The reasons for poor governance are both political and administrative. Tackling leakages and corruption requires participative, accountable and transparent governance practices to make efficient use of available resources while avoiding corruption and favoritism. For instance, publication in newspapers or a Press note about the date and amount released to various schemes and to different blocks and offices will improve transparency.
- Ø The quality of the food grains supplied through food security schemes leaves much to be desired. Hence, the lower nutrition levels results in undernourishment and malnutrition. The problem has arisen partly due to the relaxed specification of quality during procurement. Such relaxation should be avoided in the interest of achieving long-term food security for all. Also food assistance schemes should maintain the desired nutrition standards.

To conclude, fulfilling the Right to Food is the fundamental responsibility of governments. As NGOs declared during *the World Food Summit* in 1996, "*Food security is a human right which must take precedence over macroeconomic and trade concerns, militarism and the dictates of the marketplace.*" And that achieving food security for all demands the "*full engagement of all stakeholders*"—civil society, governments, international organizations and multilateral institutions.²¹⁸

²¹⁸ At: www.fao.org/worldfoodsummit/english/index.html.