

## **Realizing social citizenship rights: Analysis of the development of right to food in India**

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### **INTRODUCTION**

T.H. Marshall in his seminal essay *Citizenship and social Class*<sup>1</sup>, traces the development of citizenship, through the history of Britain, from 17<sup>th</sup> century to the 20<sup>th</sup> century. He seeks to understand the effects of citizenship on social inequality, largely stemming from the class system. Marshall's endeavour in this essay was to see whether there can be an achievement of equality of status, which puts the value of an individual by virtue of being a citizen higher than his economic worth. Marshall's greatest contribution lies in his exposition of social citizenship and social rights which has left a deep influence on the later understandings and development of welfare, identity rights, and cultural rights. Social rights pertain to a person's enjoyment of economic well being from a decent minimum to full extent of the societal riches.

Marshall proposed to analyse historical development of citizenship through British history till later part of twentieth century. He divided citizenship into three elements as civil, political and social. "Civil element is composed of the rights necessary for individual freedom - liberty of the person, freedom of speech, thought and faith, the right to own property and to conclude valid contracts, and the right to justice."<sup>2</sup> The institutions corresponding to the civil element are the courts of justice.

The political element meant "the right to participate in the exercise of political power, as a member of a body invested with political authority or as an elector of the members of such a body."<sup>3</sup> The institutions corresponding to the political element are the parliament and the councils of local government.

The social element meant "*the whole range from the right to a modicum of economic*

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1. Marshall, T.H., *Citizenship and Social Class*, London: Pluto Press, 1992.
  2. Ibid., p. 8.
  3. Ibid.

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*welfare and security to the right to share to the full in the social heritage and to live the life of a civilised being according to standards prevailing in the society.”<sup>4</sup>*

Civil rights grew gradually with the addition of new rights to the status that already existed, women were excluded from this status, and the character of this status arose naturally from the fact that it was a status of freedom - democratic and universal. This status was characterised by ‘one law for all men’ and when freedom became universal, citizenship grew from being a local to a national institution.

Social rights originated out of local community memberships and functional associations. Poor Law and system of wage regulation, supplemented and replaced this original source and, were nationally conceived and locally administered.

This framework of rights and their development has come to take a significant influence in shaping the development of the rights discourse and welfare paradigm and has as well led to development of the newer rights such as cultural rights and group rights.

#### **International provisions Governing right to food:**

Food security has been defined by FAO as follows:., “*food security exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life*”.<sup>5</sup> Food security is a situation wherein everyone has complete access to a wholesome food. The state has a role to play in according everyone food security. Access to healthy and nutritious food is a major component of nutrition status but care facilities and health facilities are also major complements to overall development. Access to healthy and nutritious food complemented with good care facilities and health facilities available at all times throughout the lifetime of people is now increasingly considered as integral component in achieving an overall development of one’s life. People are deemed to have a right to such basic facilities and welfare provisions and state is seen as the actor that has an increasing role to play in the provision of these facilities. The State may make these provisions on their own or in partnership with the market. But the market has to be allowed to function in such a manner that the people are not deprived of these facilities merely because they cannot afford the high costs involved. State thus has to play the role of stabilising market forces. Market forces cannot be allowed to run free on their own just for profit maximization to the detriment of the people, especially the poor. It is the poor who have to bear the major brunt of the increase in prices of these basic facilities, as the expenditure on food and health covers a substantial chunk of their daily or monthly earnings.

The government has a role to play in according and securing to its people food and nutritional security. Governmental action can vary and there are various ways and means to achieve this. But there are always some groups who need assistance and help and state has a greater responsibility to provide for them. Governmental actions that can be taken to strengthen food and nutrition security can be broadly divided into four categories: respect,

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4. Ibid.

5. FIVIMS, 2004, Food Insecurity and Vulnerability Information and Mapping Systems, ‘Definition of food security’, in *FIVIMS glossary*; at <http://www.fivims.net/static.jsp?lang=eng&page=overview>.

protect, facilitate and provide.<sup>6</sup>

### **Social rights and the Indian constitution :**

The Indian Constitution in its preamble declares India to be a 'Sovereign Socialist Secular Democratic Republic' and aims to secure to all the citizens 'Justice - social, economic and political'. The words 'socialist' and 'secular' though were inserted into the constitution via 42<sup>nd</sup> amendment in 1976 but the intent of the framers of the constitution was to provide for a constitution which aims to provide a democratic welfare state that fosters egalitarianism.

As stated in the preamble, social justice was sought to rid the society from the ills of deeply hierarchical and stratified social structures entrenched in Indian society, not only on caste lines; economic justice sought to provide for dignified life by economic redistribution fostering economic well-being and; political justice sought to provide the people with political freedoms as they had seen the colonial rulers ruthlessly stymie the political liberties of the people. The framers had intended to provide for these goals in the forms of rights as well as Directive Principles of State Policy as guiding principles for state actions. These goals were largely formulated by the political elites of the society, who played active role in the independence movement, and were based in the liberal and socialist traditions which informed the ideological leanings of these elites.

Indian constitution has put the social rights under the Directive Principles of State Policy (DPSP), which though are fundamental to the governance of the country but are non-justiciable<sup>7</sup>. State has to keep in mind these directive principles while formulating laws for the governance of the country. This scheme of constitution has given rise to a situation whereby the fundamental rights are accorded a superior position vis-a-vis directive principles<sup>8</sup>. This has led to the gross and blatant neglect of social and economic rights of citizens by the state as their violation and deprivation cannot be challenged in a court of law. Other argument for the non-implementation of social and economic rights is that the costs attached to realisation of such rights are very high and the developing societies do not have the resources for their realisation. This claim has been found wanting, as costs attached to securing civil and political rights are equally high and involves a host of state institutions to be newly created or for implementing these rights via already existing institutions (Holmes and Sunstein, 1999). Social rights are non-justiciable rights contrary to civil and political rights under the Indian Constitution.

The Constitutional design of civil, political and social rights has led to the neglect of social rights by the state and an unregulated market has been at best sporadic and exorbitantly costly for the poor in provision of goods and services forming social rights in India. Social rights have now been rendered rhetorical and populist, and are reduced to mere declaratory schemes and policies by successive governments at both the centre and the state levels.

6. Supra note 1; p. 24.

7. See Article 37 of the Constitution of India

8. *State of Madras vs. Champakam Dorairajan* (1951) SCR 525. Though this position has changed and judiciary has read DPSPs to be equally fundamental and complementary to fundamental rights in subsequent cases such as in *Keshavananda Bharti vs. State of Kerala* (1973) 4 SCC 225 and *State of Kerala vs. N.M. Thomas* (1976) 2 SCC 310. But still the situation remains that DPSPs are non-justiciable in nature and this aspect engenders a situation of lawlessness on the social rights issues.

There are many policies and laws on certain aspects both by the states as well as by the centre in the form of Centrally Sponsored Schemes (CSS) leading to neglect of CSS programmes by the States and at the same time there is want of policies and laws for a number of crucial and essential aspects of political, social and economic life. This has also engendered a situation of lawlessness<sup>9</sup> as social rights being under the umbrella of directive principles are non-justiciable and thus any claim made to secure certain social rights has no corresponding constitutional or legal right or provision to entrench it.

### **Determination of vulnerable groups for targeting:**

Income poverty is the most commonly used indicator for measuring the scale of poverty and commonly used measures of income poverty are the number and proportion of households that are below the official poverty line. "The poverty line is a measure of income or expenditure required to purchase a food basket that generates a minimum number of calories".<sup>10</sup> The Planning Commission had estimated that the required per capita daily intake of calories is around 2,400K cal in rural areas and 2,100K cal in urban areas; this calorie level was accepted as an adequate minimum by the N C Saxena Committee, though since the Suresh Tendulkar Committee Report of the Planning Commission the revised calorie level is 1800K cal for all the persons.

The Tendulkar Committee arrived at the poverty lines at Rs 22.42 for rural and Rs 28.35 for urban areas for daily expenditure. According to the National Sample Survey Organisation's 61<sup>st</sup> round of survey, for the period 2004-05, 28.3 per cent in rural and 25.7 per cent of people in urban areas live below poverty line. Even with this meagre poverty line there are 3017.20 lakh people in India who live below this poverty line.<sup>11</sup> In terms of per capita calorie consumption, average calorie consumption in India the figures are, 2047 Kcal in rural and 2020 Kcal in urban areas.<sup>12</sup> In 2004-5, the fraction of the population living in

9. To borrow Prof. Baxi's use of 'governmental lawlessness', in: Baxi, U. 1988. Taking Suffering Seriously: Social Action Litigation before the Supreme Court of India. In: Baxi, U. (ed.) *Law and poverty: Critical essays*. Bombay: N. M. Tripathi. The term here means a state where there is no law legislated by the government on that particular subject and particularly in the case of health rights the same holds true as there are no law to guarantee right to health and judicially has creatively read this right under the ambit of Article 21 by giving the term life an expansive meaning.

10. Supra note 10, p. 15.

11. See Government of India. Press Information Bureau. Poverty Estimates for 2004-05, available at [https://docs.google.com/viewer?a=v&q=cache:mLZ7lJway04J:planningcommission.nic.in/news/prmar07.pdf+http://planningcommission.gov.in/news/prmar07.pdf&hl=en&gl=in&pid=bl&srcid=ADGEESiNCWqobo0F0QHMEU6nAXaV4tdAWefJom97uS9Hd8g4YJFdlb0vHnT3Zko\\_s5dTgAfRYiZMSiW9mxVNPeFhDPyKguxHvefJfRfNIZ7G8VwITUlxIravZUqNTYv75Vk6URRVm9&sig=AHIEtbSdbO4dCeA\\_bvHvs7NGOorJeowxAA](https://docs.google.com/viewer?a=v&q=cache:mLZ7lJway04J:planningcommission.nic.in/news/prmar07.pdf+http://planningcommission.gov.in/news/prmar07.pdf&hl=en&gl=in&pid=bl&srcid=ADGEESiNCWqobo0F0QHMEU6nAXaV4tdAWefJom97uS9Hd8g4YJFdlb0vHnT3Zko_s5dTgAfRYiZMSiW9mxVNPeFhDPyKguxHvefJfRfNIZ7G8VwITUlxIravZUqNTYv75Vk6URRVm9&sig=AHIEtbSdbO4dCeA_bvHvs7NGOorJeowxAA)

12. NSS 61st Round, July 2004- June 2005, NSS Report No. 512, National Sample Survey Organisation, Ministry of Statistics and Programme Implementation, Government of India, New Delhi (NSSO, 61st Round Report); in Report of the Expert Group to Advise the Ministry of Rural Development on the methodology for conducting the Below Poverty Line (BPL) Census for 11th Five Year Plan (N C Saxena Committee Report), Government of India, Ministry of Rural Development, Krishi Bhavan, New Delhi.

households with per capita calorie consumption below 2,100 Kcal in urban and 2,400 Kcal in rural areas was 63.9 per cent and 79.8 per cent, respectively. In aggregate 75.8 per cent of population was living below this calorie consumption in India.<sup>13</sup> So there is a glaring gap between the number of people whose consumption of calories is less than norm, and the number of people officially declared poor.

In terms of cereal consumption, the bottom 10 per cent of the rural population consumes 10 kg per month, whereas the top 30 per cent consume more than 12 kg per month.<sup>14</sup> There has been a decline in cereal consumption of the population as a whole since 1993-94, but the level of cereal consumption of the poorest 10 per cent of rural population has been continuously 20 per cent less than that of the top decile of the population, despite the top decile having access to a diversified food basket.<sup>15</sup> This is attributable to the low purchasing power of the poor though over the years their income has also marginally increased, but so have the expenses on non-food items for the poor. The expenditure on clothing, medical care and education has also become an integral part of the monthly expenses of the poor households, resulting in a distress situation, where they have to cut down on expenses on food and shift it to essential non-food items.

The data clearly points to the fact that the official poverty line does not portray a comprehensive picture of the real poverty in the nation and there are many poor people who are left out of the official poverty line but have to face deprivations in terms of food and nutrition. This results in the failure of the policies and schemes of the government to address the deprivations prevailing and face by the citizens. Subsidised food thus should be made available to a larger proportion of population, specifically those poor who face undernutrition as well as those who stand a chance of deprivation and undernourishment in future.

The Planning Commission appointed an Expert Group under the chairmanship of Prof. Suresh D. Tendulkar<sup>16</sup> to review the methodology for estimation of poverty, which submitted its report in November 2009. The expert group proposed some changes in the methodology for estimation of poverty from the earlier methods. It proposed to move away from the practice of basing poverty lines on the calorie intake norm as it found that there was no correlation between the nutritional outcomes and calorie consumption calculated by converting the consumed quantities in the last thirty days as collected by NSS, as had been proved by many specialised surveys over time or across space.

It proposed to adopt the Mixed Reference period (MRP), that is, consumption survey carried out by NSSO for the 365-days for low frequency items (clothing, footwear, durables, educational and institutional health expenditure), which provides a better and satisfactory picture of the consumption expenditure of poor households than the earlier used 30-days recall period under the Uniform Reference Period (UPR).

The final poverty head count ratio after using the new method of the expert group for

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13. Angus Deaton, and Jean Dreze, 2008, *Nutrition in India: facts and interpretations*, Princeton University; in N C Saxena Committee Report, 2009.

14. NSSO 2007, 61st Round Report.

15. Ibid.

16. Government of India, *Report of the Expert Group to Review the Methodology for Estimation of Poverty*, Planning Commission, November, 2009, pp. 1-3.

rural areas is 41.8 per cent and for urban areas is 25.7 per cent and for whole India it is 37.2 per cent.

### **Development of right to food in India :**

To assess the state of food security in a country, a few questions need to be asked, which can be instrumental to ascertain the nutritional achievement of that particular state. These questions, according to Jean Dreze and Amartya Sen are: “(1) Is the country is *self-sufficient* in food? (2) Does the country have adequate *food availability*? (3) Do the people in the country have sufficient *food entitlement*? (3) Do the people have adequate *nutritional capability*?”<sup>17</sup> Self-sufficiency in food implies that a country is able to produce enough food products that it does not have to depend on external imports of food. But the issue of self-sufficiency does not automatically translate into adequate consumption or nutritional levels. Food self-sufficiency is distinct from adequate food supply and this has to be kept in mind.

In India, the government intervenes in the food grain market in four ways. Firstly, the state procures food grains through a system of public procurement. Secondly, the state manages food stocks through storage and buffer stock operations. Thirdly, the state distributes the subsidized food grains through a public distribution system (PDS). Fourthly, the government controls the availability and prices of food grains through many measures such as intervention in trade, controlling hoarding through legal measures and other internal aspects of trade and by putting restrictions on external trade or importing food grains.<sup>18</sup> A governmental agency, the Food Corporation of India (FCI), undertakes the activities of direct intervention in procurement and distribution of food grains.

The Public Distribution System (PDS) was started in 1939 by British colonial rulers as a war-time rationing measure in the metropolitan city of Bombay and later extended to six other cities and a few regions. PDS was made a universal system in 1970's as the need of strengthening this system was felt in the wake of droughts and food shortages that occurred in the mid-sixties.

From its inception, the objectives of PDS have been (1) rationing during periods of scarcity, (2) maintaining price stability, (3) keeping a check on private trade, and (4) raising the welfare of the poor (by providing basic foods to the vulnerable population at reasonable prices).<sup>19</sup>

Swaminathan<sup>20</sup> traces the growth of PDS in four broad phases. In the first phase (1939-60), PDS had a restricted coverage around the big cities. Rationing was abolished in 1947 and reintroduced in 1950, with the onset of planning, as a welfare measure. This phase was also marked by the import of grain and its distribution through PDS. Second phase (1960-78), was marked by crop failures and droughts and thus PDS was made permanent

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17. Jean, Dreze and Amartya Sen, 1998, *Hunger and Public Action*, Delhi: Oxford University Press, p. 165.

18. Madhura Swaminathan, 2000, *Weakening Welfare: The Public Distribution of Food in India*, New Delhi: Left World Books, p. 6.

19. Ibid.

20. Supra note 10.

and a universal programme. The Food Corporation of India and the Agricultural Prices Commission (later renamed the Commission on Agricultural Costs and Prices) were also established during this phase in 1965. The third phase (1978-91) was marked by an expansion of the system coupled with the growth of buffer stocks and the introduction of schemes such as food for work programmes. This period saw the emergence of PDS as a tool to alleviate poverty. This period was also significant as it saw the highest amount of food grain distribution, which was 20.8 million tonnes, through the PDS in 1991. The fourth phase (1991-present) saw a decline of food grain distributed through PDS. This is attributed to various causes such as excessive holding of stocks by FCI, narrowing of price differential between PDS and market prices, and narrowing of the scheme from a universal system of distribution to a targeted system introduced in 1997. This period is also a period of structural adjustment characterised by liberalised trade, fiscal restructuring, increasing public sector 'efficiency', financial sector reform and specific programmes in the agriculture, industry, transport and energy sectors.<sup>21</sup>

The present day free trade has been characterised as hampering agriculture in the developing nations and leading to lower per capita food output and falling nutrition levels. Agriculture was brought into the fold of WTO in the Uruguay Round of negotiations for the first time leading to the signing of GATT 1994. The causes of inclusion of agriculture have been mainly due to two reasons. Firstly, after the economic collapse of Russia and Ukraine as well as Eastern Europe, the advanced countries of North America and Western Europe needed markets for the export of their food and feed grains. Secondly, the rapidly growing trans-national agro-business corporations needed access to these markets and thus pressurised their governments to push for the same.<sup>22</sup>

The structural adjustment policies and the free trade regime has led to the opening up of the market of the third world countries for export of food grains produced in the advanced countries of Western Europe and North America. The farmers of these advanced countries produce food grains at highly subsidised rates and even after the export the cost of these food grains remains so low in the markets of developing countries that the farmers producing the food grains in developing countries cannot compete with these prices as the costs for them are too high and the returns too low.<sup>23</sup>

PDS functions all over India but its performance varies across the states and this has changed markedly after the introduction of targeting post 1996. The food grains distributed through PDS is dependent on the quantity allocated and the quantity of offtake by the various states. Every state is allocated certain quantity of food grain from the central pool and state purchases either the full allocated amount or less than the allocated amount to be distributed in the state through the fair price shops. In the period intervening between 1991 and 1995,

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21. Ibid., pp. 9-13.

22. Utsa, Patnaik, 2007, *The Republic of Hunger and other essays*, New Delhi: Three Essays Collective, p. 32-3.

23. Ibid., pp. 41-5. See also, table 4, p. 37, depicting the drop in the level of nutrition in the six most populous countries in Sub-Saharan Africa and table 5, p. 43, which shows the percentage of producer subsidy equivalent to agricultural production in selected economically advanced countries of North America, Western Europe, Australia and Japan.

with the post-structural adjustment and targeting, there has been a “*widespread decline in per capita offtake*.”<sup>24</sup> This suggests that, with the curtailment of the coverage of PDS from universal to targeted programme to the officially declared poor, the people who were unable to achieve normal nutritional requirements increased and their situation has worsened. The official poverty line is not the real signifier of real nutritional deprivation across the population and it leaves out many needy and poor people who need subsidised food to maintain their nutritional requirements with their low and meagre incomes.

The quantity of food grain offtake by states has no positive relation with the incidence of poverty, and thus the poor states did not show higher per capita offtake of food grains. This divergence across the states with respect to the effectiveness and scale of PDS is dependent on the political commitment to food security and does not bear any relation to the incidence of poverty. But PDS has shown to play a crucial role in safeguarding from the worsening of the inequalities of consumption across the states.<sup>25</sup> It has been noticed that in the state where the PDS was widespread with effective distribution networks, high coverage and proper functioning, the poor used the PDS more than the rich, whereas in states where PDS was functioning poorly, neither rich nor poor stood to gain from it and did not participate in PDS.<sup>26</sup> FCI has seen a rise in the total costs of its functioning mainly owing to the increase in the costs of carrying buffer stocks. Also in terms of the costs relating to the PDS, there has been a rise in the procurement costs rather than the distributional costs. Thus, maintenance of buffer stocks and procurement costs has been the major cost components in the increased costs of the functioning of FCI.<sup>27</sup>

In the post-1991 period, the Government has followed a policy of structural adjustment resorting to many policies and cut backs in subsidies, including a reduction in food subsidies. This in turn is justified as a means to cut down the public expenditure. So many changes in policies and implementation have been brought about by the government to reduce the public expenditure. This reduction in food subsidies is argued would also help in bringing down the inflation.<sup>28</sup> The two most common strategies employed in adjustment are, firstly, a reduction in the total level of subsidy and secondly, to target the reduced subsidy to a limited group among the poor section of the population. These have been an integral part of the policy of the government of India post 1991.

The trend of annual growth food subsidies when analysed since 2001-02, shows that it has steadily decreased and reached the lowest in 2005-06. After that it has shown growth but so has the total GDP and the subsidy has not crossed the growth percentage of 2001-02. We have to be careful to note that the share of food subsidies to the GDP has stayed almost constant and has not grown contrary to the claims that the food subsidy is large and putting excess pressure on the exchequer. Thus, the claim that the subsidies have grown over time and are rising and they are a fiscal profligacy does not stand its ground. Secondly, the food

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24. Supra note 8. P. 39 (emphasis in original).

25. Ibid. p. 40.

26. Ibid. p. 46.

27. Ibid. p. 53.

28. Government of India, 1993-4, *Economic Survey*, Ministry of Finance; quoted in supra note 8, p. 79.



subsidy bill in India is not as high when compared to the food subsidy bill of the other developing nations.<sup>29</sup> In India, over the 31 year period, 1966-1997, food subsidy averaged 0.31 per cent of GDP and 2.35 per cent of central government expenditure.<sup>30</sup> This clearly shows that even elimination of food subsidies totally will not solve the fiscal problems of the government.

The incidence of decline in food grain offtake and distribution can be attributed to the change in the PDS from a universal to a targeted programme. Under the targeted system the major changes which were brought about were related to the reduction in the number of beneficiaries and, change in the system of distributing food on per head basis to household basis. PDS was changed post 1990's and called Revamped PDS (RPDS) and then in 1997 changed to Targeted PDS (TPDS). The National Food Security Act, 2013 (NFSA) proposes to further divide the beneficiaries into three groups *viz.* the priority households, general households and the excluded households. Priority group shall be given subsidised food from the PDS, general households will have to pay more than the priority households and the excluded group is the population left out of the TPDS under the NFSA, which shall have no stake in PDS and would not get any food grain from the PDS. This approach is consistent with the policy of structural adjustment which focuses on reducing and narrowing the beneficiaries of public support in the name of reducing fiscal deficit.

Under the programme of structural adjustment, thus, specific changes were brought about in the PDS in the 1990's to bring in the principles of targeting. The Revamped PDS involved targeting of specific areas, with special attention to be given to "the population living in the most difficult areas of the country, such as drought-prone areas, desert areas, tribal areas, certain designated hilly areas and urban slum areas."<sup>31</sup> In 1997, the government of India introduced Targeted PDS to target households on the basis of an income criterion, that is, used the income poverty line to differentiate between the 'poor' and 'non-poor' households. The stated objective of the government in introducing targeting was "to streamline the PDS by issuing special cards to families below the poverty line and selling essential articles under the PDS to them at specifically subsidized prices, with better monitoring of the delivery system."<sup>32</sup>

### **Role of Supreme Court in institutionalizing food security to citizens:**

The Supreme Court of India has played an active role in the affirmation of right to food as a fundamental right of the individual under the Constitution and has read it to be falling within the purview of Article 21, that is, right to life and liberty. Right to life has been interpreted as a right to "live a life with dignity", which includes right to food and other basic necessities.<sup>33</sup> Article 39(a) of the Constitution requires the state to direct its policy towards securing that

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29. Ibid.

30. Ibid. pp. 81-3.

31. Government of India, 1992, *Economic Survey*, Ministry of Finance; quoted in Ibid, p. 90.

32. Government of India, 1997, *Focus on the Poor*, Ministry of Civil Supplies, Consumer Affairs and Public Distribution, p. 1; quoted in supra note 8, p. 90.

33. See Francis Coralie v. Administrator, Union Territory of Delhi and Ors. (1981) 1 SCC 608; Shantistar Builders v. Narayan Khimalal Totame (1990) 1 SCC 520.

the citizens, men and women equally, have the right to an adequate means of livelihood. Article 47 casts a duty upon the state to raise the level of nutrition and standard of living of its people as a primary responsibility. Article 21 thus has to be read in conjunction with Articles 39 (a) and 47 in order to understand the duty cast upon the state to realise this right.

The Supreme Court established the inter-linkage of right to life and other rights, in the first ever case on right to food in *Kishen Pattanayak and another v. State of Orissa*,<sup>34</sup> affirmed the close nexus between right to life and the right to food. In April 2001, Peoples Union for Civil Liberties filed a writ petition<sup>35</sup> on right to food in Supreme Court. Initially the case was brought against the Government of India (GoI), the Food Corporation of India (FCI), and six other states for inadequate draught relief. Later, the scope of this public interest litigation was enlarged to address issues of chronic hunger and undernutrition, and all states were made respondents.

The case has overtime become voluminous as a number of affidavits have been filed by the petitioners, the respondents have filed a number of interim applications and the SC has issued a number of interim orders. The whole case document now runs into thousands of pages and interim orders passed by the court form the most important document from the point of view of action. As the interim orders constitute directions issued by the Court to, the government both central and state, to take certain actions. This is crucial because prevention of hunger and starvation is “one of the prime responsibilities of the government-whether central or state.”<sup>36</sup>

The first major interim order of the Supreme Court in this PIL was issued on 28<sup>th</sup> November 2001. This order focuses on eight food-related schemes: (1) Public Distribution System (PDS); (2) Antyodaya Anna Yojana (AAY); (3) National Programme of Nutritional Support to Primary Education, also known as Mid-Day Meals scheme; (4) Integrated Child Development Services (ICDS); (5) Annapurna; (6) National Old Age Pension Scheme (NOAPS); (7) National Maternity Benefit Scheme (NMBS); and (8) National Family Benefit Scheme (NFBS). Essentially, the interim order of 28<sup>th</sup> November 2001 converted the benefits of these eight schemes into legal entitlements. Thus any person eligible for benefits under these schemes can claim them as a matter of right and can approach the courts in case of violation thereof. The essence of this order was to make the government liable for those schemes which it claimed to be implementing in pursuance of its political goals or under obligation of its international treaty commitments.

Thus it can be seen that the Court played an active role in overseeing and making the government take steps to implement the food related government schemes and making them functional. Many of these Court orders were flouted and not acted upon by the governments and the court took note of this and appointed the commissioners, empowering them to look into such specific instances. The case is yet to be decided but the interim orders have made an important and timely impact in making the government wake up from its slumber. Still

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34. See (1989) AIR 677.

35. PUCL vs. Union of India and Others, Writ Petition (Civil) 196 of 2001.

36. S C Order dated 20th August, 2001, at <http://scccommissioners.org/CourtOrders/datewisecourtorders.html>. See also, Chameli Singh and Others vs State of UP (1996) 2 SCC 549 and Kishan Pattanayak and Another vs State of Orissa AIR 1989 SC 677.

these programmes are marred by rampant corruption, political apathy, politicisation of starvation and political parties do not miss a chance to cash in on these opportunities for electoral gains. “Indeed, there are apparently strong incentives for some politicians to ensure that the poor remain poor. The presence of a large class of impoverished people facing starvation and destitution in a particular area or region vulnerable to natural hazards (as in Kalahandi) creates clientelistic opportunities for political leaders to project them-selves as saviors.”<sup>37</sup>

### Conclusion:

NFSA 2013 has been expanded in five states Andhra Pradesh, Chhattisgarh, Odisha, Tamil Nadu and West Bengal by enlarging the beneficiary group and reducing the prices of food grains supplied by the fair price shops. The expansion of beneficiaries near universal coverage and reducing the prices to make it cheaper for the beneficiaries to save more for other expenses has been found to have had significant positive impacts on the health and nutritional outcomes of the citizens. Earlier studies by Kochar (2005) and Kaushal and Muchomba (2013) found that the impact was limited or negative of providing subsidised food grains but the later studies by Kaul (2014), Krishnamurty *et al.* (2014) and Kishore and Chakrabarty (2015) found that the expansion of coverage and reduction in prices definitely had significant positive outcomes with respect to increase in the number of households purchasing food from ration shops, targeted households bought more food grains from fair price shops in these states than in the other states where the TDPS had kept the target population unexpanded as under the NFSA 2013. It was also found that the households used the money saved in diversifying their dietary basket by spending that saved money for buying pulsed, edible oil, vegetables and sugar thus leading to better dietary quality. These findings support the contention that a more universal and subsidized food provision has significant impact in making the lives of the citizens’ better and provides them with better health and nutritional outcomes.

The development of social rights in India has been uneven and not yet full but is still under the process of growth and realisation. The Constitutional and legal provisions are not sufficient in themselves in actual realisation of these rights. Litigation has brought health rights in the discursive space and civil society has been engaged in many cases especially those of social action litigation. Litigation has definitely not brought out structural changes in health-care system. It has also been unable to remedy the systemic inequities persisting in the Indian health-care system (Parmar and Wahi, 2011). Whether this ‘judicial democracy’ (Baxi, 1988), to redress governmental lawlessness via social action litigation, by giving extraordinary remedies in individual cases is sustainable? The malaise of Indian democracy, as correctly identified, is the lack of institutionalisation of economic and social democracy with the institutionalisation of political democracy (Chandhoke, 2005).

The recent trend in social rights activism in India has witnessed a surge in promulgation of many a laws masquerading to promote welfare such as the Mahatma Gandhi National Rural Employment Guarantee Act and National Food Security Act. These populist measures have an inherent inadequacies attendant in their hollow “rights-talk masking strategies of

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37. Dan Banik, ‘Growth and Hunger in India’, *Journal of Democracy*, vol.22, no. 3, July 2011, p.103.

what T.H. Marshall called class abatement” (Jayal, 2013) and thus pose danger to the serious promotion of welfare as Marshall had cautioned that “class abatement does not attack class system but tries to check the nuisance of poverty” (Marshall, 1950 and 1992). It remains to be seen how the political will shapes up to gear for social welfare and the civil society formulates and provides claims to the state for the provision of social rights and how they translate into.

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