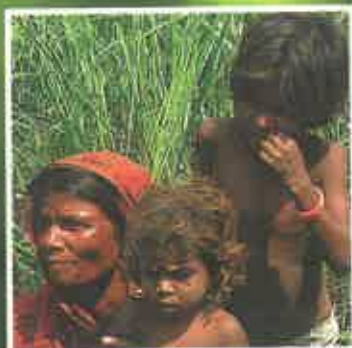


FOOD SECURITY & JUDICIAL ACTIVISM IN INDIA



Among the themes and issues explored in the National Judicial Colloquium held in New Delhi on August 27 & 28, 2005 and contained within this book are:

- Food security and poverty in India
- Public Distribution System
- The Mid-Day Meal Scheme
- Integrated Rural Development Scheme
- Employment Guarantee Act
- Other legislation
- The agrarian divide in India
- World Trade Organisation, agriculture and hunger
- Social exclusion, destitution and food security
- International perspectives on the Right to Food
- Judicial activism on the Right to Food



Human Rights Law Network

HRLN

• • • • •

Food Security & Judicial Activism in India

Among the themes and issues explored in the National Judicial Colloquium held in New Delhi on August 27 & 28, 2005 and contained within this book are:

- Food security and poverty In India
- Public Distribution System
- Mid- Day Meals Scheme
- Integrated Child Development Services
- Employment Guarantee Act
- Child malnutrition
- Agrarian crisis in India
- World Trade Organisation, agriculture and hunger
- Social exclusion, destitution and food security
- International perspectives on the Right to Food
- Judicial activism on the Right to Food

HRLN

Human Rights Law Network

HUMAN RIGHTS LAW NETWORK
New Delhi, India

HUMAN RIGHTS LAW NETWORK: OUR VISION

- Protect fundamental human rights, increase access to basic resources for marginalised communities, and eliminate discrimination
- Create a justice delivery system that is accessible, accountable, transparent, efficient and affordable, and works for the underprivileged
- Raise the level of pro bono legal expertise for the poor to make the work uniformly competent as well as compassionate
- Professionally train a new generation of public interest lawyers and para-legals who are comfortable both in the world of law as well as in social movements, and who learn from the social movements to refine legal concepts and strategies
- Work towards an increased awareness of rights as universal and indivisible, and their realisation as an immediate goal

Food Security & Judicial Activism in India

Text editors

Michael Higgins

Suresh Nautiyal

Anup Kumar Srivastava

Abid Shah

© Socio-Legal Information Centre
March 2007

ISBN 81-89479-23-7

Style Ideation

Suresh Nautiyal

Cover

Pavitra D Tuladhar

Layout & printed at

Shivam Sundaram, New Delhi - 110016
email: spalliwat@rediffmail.com

Published by:

Human Rights Law Network
(A division of Socio-Legal Information Centre)
576, Masjid Road, Jangpura, New Delhi-110014
India
Ph: +91-11-24379855
Email: publications@hrln.org
Website: www.hrln.org

Acknowledgements

It would never have been possible to produce a work like this by ourselves. A number of people provided us with invaluable assistance. The first person who comes to mind is Ms Kavita Srivastava, general secretary of the PUCL, Rajasthan unit. If it were not for the courage the PUCL showed in filing a writ before the Supreme Court, there would never have been a Judges' Colloquium on the Right to Food.

We wish to express our heartfelt thanks to Prof Jean Dreze, Delhi School of Economics; Prof Utsa Patnaik, JNU Delhi; Dr Vandana Prasad, secretary, JSA Delhi; Mr Chaman Lal, special rapporteur, NHRC, Delhi and Mr Arvind Kejriwal, Parivartan Delhi, who generously gave of their time and considerable expertise.

Of course, a Judges' Colloquium could never have been successful without the willing participation of the Judges and so we wish to pay tribute to the many members of the Indian judiciary who gave of their time to either attend or speak at the colloquium.

It goes without saying that we are deeply grateful also to Dr NC Saxena, commissioner of the Supreme Court on PUCL vs Union of India 196/2001 case, Mr Harsh Mander, principal advisor for the commissioner to the Supreme Court in the Right to Food case, and Mr Biraj Patnaik, adviser to the commissioner for not only providing us with a wealth of valuable information, but also for shaping it into such a presentable form.

We would also like to thank eminent journalist Mr P Sainath for his stirring contribution to the colloquium. We would like to convey our special appreciation for Mr Jean Ziegler, UN rapporteur on the Right to Food, not only for delivering such a fine speech, but also for lending international attention and recognition to the proceedings. We also appreciate social activist Ms Usha Saxena for her valuable contribution.

We express our sincere thanks to Mr Anup Kumar Srivastava for his painstaking efforts without which this book would not have been possible.

Finally, it only remains for us to thank those colleagues without whose commitment, energy and drive, the Colloquium would never have happened and this book would never have seen light of the day.

HRLN Team

List of acronyms and special terms

AAY	- Antyodaya Anna Yojana	NASP	- National Assistance Social Programme
ACA	- Additional Central Assistance	NCMP	- National Common Minimum Programme
ANM	- Auxillary Nurse Midwife	NFBS	- National Family Benefit Scheme
APL	- Above Poverty Line	NMBS	- National Maternity Benefit Scheme
AWC	- Anganwadi Centre	NOAPS	- National Old Age Pension Scheme
BPL	- Below Poverty Line	NREGA	- National Rural Employment Guarantee Act
CDPO	- Child Development Project Officer	NSAP	- National Social Assistance Programme
CEDAW	- Convention on the Elimination of All Forms of Discrimination Against Women	NSDP	- National Slum Development Programme
EGA	- Employment Guarantee Act	ORS	- Oral Rehydration Solution
EGP	- Employment Guarantee Programme	PDS	- Public Distribution System
FCI	- Food Corporation of India	PIL	- Public Interest Litigation
FPS	- Fair Price Shop	PMGY	- Pradhan Mantri Gramodaya Yojana
GDP	- Gross Domestic Product	PPP	- Public Private Partnership
GER	- Gross Enrolment Ratio	PRI	- Panchayati Raj Institution
GNP	- Gross National Product	PUCL	- People's Union for Civil Liberties
GO	- Government Order	RTF	- Right to Food
HDI	- Human Development Index	RTI	- Right to Information
ICDS	- Integrated Child Development Services	SEGA	- State Employment Guarantee Act
IMR	- Infant Mortality Rate	SGRY	- Sampoorna Gramin Rozgar Yojana
JSY	- Janani Suraksha Yojana	SHG	- Self Help Group
MEGA	- Maharashtra Employment Guarantee Act	THR	- Take Home Ration
MM	- Mahila Mandal	TPDS	- Targeted Public Distribution System
MMP	- Mandatory Minimum Provision	WTO	- World Trade Organisation
MMS	- Mid-day Meals Scheme		
MSP	- Minimum Support Price		
MWA	- Minimum Wages Act		
NAC	- National Advisory Council		

Contents

Acknowledgments	iii
List of acronyms and special terms	iv
Jean Ziegler's personal message	vii
Background to the Right to Food case	viii
 PART ONE: Right to Food	 1
Right to Food : An innate human right	3
<i>Justice BN Srikrishna</i>	
Food security and poverty in India	9
<i>Dr NC Saxena</i>	
Supreme Court orders and various schemes	23
 PART TWO: How the schemes are being implemented	 39
TPDS: Food not reaching those really in need	41
<i>Justice DVS Kumar</i>	
The poorest in the poorest states suffer the most	45
<i>Biraj Patnaik</i>	
Who is responsible for the failing of PDS?	52
<i>Arvind Kejriwal</i>	
Food and welfare schemes: Delivery and accountability issues	55
<i>Dr NC Saxena</i>	
Malnutrition: From mother to child	63
<i>Dr Vandana Prasad</i>	
Growing up with hunger	66
<i>Justice Mohit S Shah</i>	
Mid-day Meals Scheme	70
<i>Harsh Mander</i>	
ICDS: A distant dream	75
<i>Dr NC Saxena</i>	
The Employment Guarantee Act and the Right to Food	81
<i>Prof Jean Dreze</i>	
 PART THREE: Food security in India	 87
The Agrarian crisis	89
<i>P Sainath</i>	
Why hunger is on increase?	101
<i>Utsa Patnaik</i>	
NHRC and Right to Food	109
<i>Chaman Lal</i>	

Social ostracism and food security <i>Harsh Mander</i>	113
PART FOUR: The international perspective	123
The Right to Food: An international perspective <i>Jean Ziegler</i>	125
WTO, agriculture and hunger <i>Dr Devinder Sharma</i>	133
PART FIVE: Judicial activism on the Right to Food	141
Problems for judiciary vis-a-vis the Right to Food <i>Justice Ajoy Nath Roy</i>	143
The Right to Food <i>Justice Mridula Mishra</i>	146
Implementation of Supreme Court Orders on PILs <i>Justice Sunil Ambwani</i>	150
Can we afford to be mere onlookers? <i>Justice AK Banerjee</i>	153
Food security, poverty and the law <i>Justice Kamal M Mehta</i>	156
The Right to Food and Article 21 <i>Justice Rajesh Tandon</i>	158
The Unnikrishnan case <i>Justice FI Rebello</i>	160
Hindu law and poverty amongst women <i>Justice KT Sankaran</i>	161
Right to Food and poverty alleviation schemes <i>Justice Gyan Sudha Mishra</i>	165
Why should we be poor? <i>Justice Markandey Katju</i>	168
Judiciary, executive and legislature <i>Justice Cyriac Joseph</i>	171
Global scenario and judicial activism <i>Justice Dilip R Deshmukh</i>	174

Jean Ziegler's message



Dear friends,

I am deeply impressed by the courageous, visionary work of the "National Campaign for the Right to Food". I am also impressed by the pioneering role played by the Indian Judiciary in enforcing this new and essential human right.

India is an example to rest of the world. I hope that this example will enlighten all the other country members of the United Nations and help to ensure the justiciability of the Right to Food for hundreds of millions of men, children and women suffering from hunger and starvation throughout the world.

With my deep admiration, gratitude and respectful friendship,

Yours,

Jean Ziegler

United Nations Special Rapporteur on the Right to Food

Background to the 'Right to Food' case

Legal action is one of the means that can be used, in a democratic political system, to hold the State accountable to its responsibilities. The 'Right to Food' case came about precisely from a wish to use legal action to ensure that the State face up to its responsibilities in relation to the right to food.

In April 2001, People's Union for Civil Liberties (PUCI) filed a writ petition on the Right To Food in the Supreme Court. This petition was filed at a time when the country's food stocks reached unprecedented levels while hunger in drought-affected areas intensified. Initially the case was brought against the Government of India, the Food Corporation of India (FCI), and six state governments, in the context of inadequate drought relief. Subsequently, the case was extended to address the larger issues of chronic hunger and malnutrition, and the list of "respondents" came to include all the state governments. This Public Interest Litigation (PIL) is known as PUCI vs Union of India and Others, Writ Petition (Civil) 196 of 2001, or more commonly, as the "Right To Food Case."

The basic argument of the petition is that, since food is essential for survival, the Right to Food is an implication of the fundamental Right to Life enshrined in Article 21 of the Indian Constitution. The petition argues that central and state governments have violated the Right to Food by failing to respond to the drought situation, and in particular by continuing to accumulate gigantic food stocks even as people went hungry. The petition goes on to highlight two specific aspects of state negligence: the breakdown of the Public Distribution System (PDS), and the inadequacy of drought relief works. In its final "plea", the petition requests the Supreme Court to issue orders directing the government: (a) to provide immediate open-ended employment in drought-affected villages; (b) to provide "gratuitous relief" to persons unable to work; (c) to raise food entitlements under the PDS; and (d) to provide subsidized foodgrains to all families and to ensure that the foodgrains necessary for these programmes be provided for free by the central government.

The PIL on the Right to Food has been fought in the Supreme Court for several years. Over time, the scope of the PIL has considerably expanded. Today it covers a wide range of issues related to the Right to Food, including the implementation of food-related schemes, urban destitution, the right to work, starvation deaths, and even general issues of transparency and accountability.

In the course of the PIL, the Supreme Court has issued 'interim orders' from time to time that remain applicable for the duration of the case. When the Supreme Court issues a final judgment and disposes of the cases, some of these orders are likely to be incorporated into the judgment. For instance, one interim order directs the government to provide cooked mid-day meals in primary schools. Hopefully, this order will be reiterated in the final judgment, when the case is concluded. At least 44 such 'interim orders' have been passed to date.

Experience shows that these interim orders can be a useful tool for action. First and foremost, they provide an opportunity to hold the State accountable. For instance, if starvation deaths are reported in a particular area, or if there is no food in the ration shops, or if the state government fails to provide cooked mid-day meals in primary schools, the Supreme Court orders can be used to demand prompt action from the concerned authorities.

The Supreme Court orders can also help people to understand that they are "entitled" to certain forms of public support as a matter of right. For instance, all school-going children are entitled to a nutritious, cooked mid-day meal. Similarly, every village is supposed to have an active anganwadi for children under the age of six. If people perceive access to these facilities to be a matter of right, they are more likely to demand their provision and to insist that such programmes be carried out to an adequate standard.

The "Right to Food case" is far from over. Indeed it may be years before the Supreme Court pronounces its final judgement, but the interim orders still constitute a concrete step towards the realisation of the Right to Food. That is – as long as they are implemented in the spirit in which they were passed.

Who is accountable?

The law applies to everyone, and therefore every citizen has a duty to comply with the Supreme Court orders. However, some people and institutions have special responsibilities for the implementation of the orders. In an order dated May 8, 2002 and a follow-up order on October 29, 2002 the Supreme Court explicitly defined some of these responsibilities.

Most of the interim orders consist of directions to the governments: the central government and the state governments. This is because, as the Court made clear from the very beginning, the prevention of hunger and starvation is one of the prime responsibilities of government, whether central or state. In the case of state governments, the chief secretary is answerable to the Court on behalf of the government and the Court has stated that in some instances (such as starvation deaths) the chief secretary himself or herself would be held "responsible" for violations of the orders.

As far as the central government is concerned, some orders are addressed to specific departments or ministries, such as the food ministry, the ministry of rural development, and the department of women and child development. The secretaries of the relevant departments or ministries have been held to be responsible for the implementation of Supreme Court orders relevant to them. Some orders are addressed to the central government, which is represented in Court by the attorney general.

The order of the May 8, 2002 is significant in that it lays out a series of directions to ensure accountability. It is worth noting, in particular, that the order: (1) empowers Gram Sabha to conduct "social audits" of all food-related schemes; (2) holds the CEO/Collector responsible for ensuring compliance with the Court orders within the District; (3) makes the chief

secretary accountable for the Implementation of Court orders in the state; (4) gives the commissioners extensive powers to monitor the implementation of Court orders throughout the country; and (5) directs all concerned officials to "fully cooperate" not only with the commissioners but also with individuals or organisations who have been nominated by the commissioners to assist them.

On the May 8, 2002 the Supreme Court also appointed two "commissioners" for the purpose of monitoring the implementation of the Interim orders. Initially, the two commissioners were Dr NC Saxena (former secretary, Planning Commission) and Mr SR Sankaran (former secretary, ministry of rural development). Following the resignation of Mr Sankaran in November 2004, for personal reasons, Dr Saxena has continued his work, with the help of Mr Harsh Mander.

The follow-up order of October 29, 2002 mainly focuses on the mandate and powers of the commissioners. The order grants the commissioners quite wide-ranging powers. The commissioners are empowered to enquire into any violations of the Interim orders and to demand redressal, with the full authority of the Supreme Court. The order clarified that the mandate of the commissioners included "monitoring and reporting to the Court on the implementation by the respondents of the various welfare measures and schemes. This means that the commissioners may scrutinise any aspect of food-related "measures and schemes", even if they are not the object of any specific order.

The comprehensive reports the commissioners have delivered to the Court constitute a rich source of information on the food situation in India, the implementation status of Interim orders and the functioning of various schemes. The reports also include detailed recommendations to the Court.

On the October 29, 2002 the Supreme Court also directed the state governments to appoint "assistants to the commissioners". In addition, with the full backing of the Court, based on the order of the May 8, 2002, the commissioners have also nominated their own "Advisor" in each state. These advisors essentially serve as a bridge between the commissioners, the state government, and various citizens' groups. Their brief includes working towards a more effective monitoring system and liaising with the state governments on behalf of the commissioners. Each state government is further required to appoint a "nodal officer" for the purpose of "ensuring the due implementation" of food-related schemes. The nodal officers are expected to provide to the commissioners full access to relevant records and provide relevant information.

It is now four years since the commissioners began their work and the results so far have been mixed. Less encouraging is the fact that the Interim orders are far from being fully implemented and that the commissioners often lack specific means of holding the government accountable. Moreover, some state governments do not even bother to reply to the commissioners' letters, in spite of a Supreme Court order explicitly directing them to

respond promptly to the correspondences addressed to them by the commissioners and to provide full information as required.

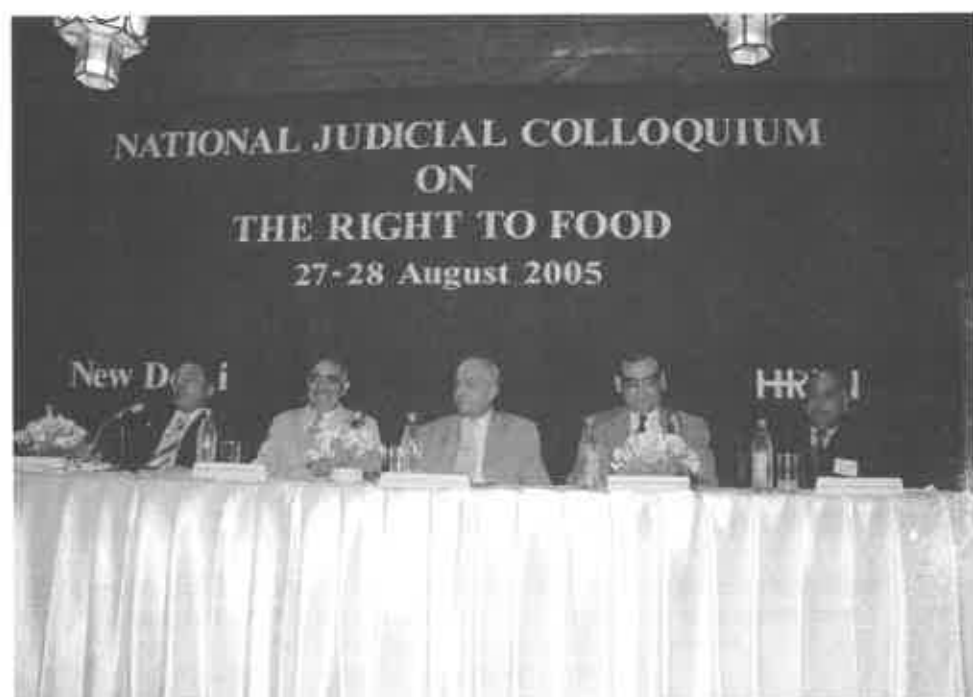
On a positive note, the commissioners have played a key role in ensuring that the interim orders are taken seriously and have helped to keep the central and state governments on their toes. They have also intervened in a number of instances where they found violations of the orders, and their reports have been of great assistance in lending a sense of direction to what is a most complex PIL.

The Right to Food case is probably the largest and most expansive PIL ever taken up by the Supreme Court, positively impacting millions of destitute people in India. Its effect has been felt far beyond the shores of India and is widely discussed in academic and activist circles throughout the world. It is hoped that this compilation will provide the necessary information and impetus for further discussion and development of the law on the Right to Food.



Senior photojournalist Rajanish Kakade's picture of a 3-year-old boy eating from a takeaway box picked up from a garbage bin in East Bhandup, Mumbai, tells the story of malnutrition in India.

Courtesy: Hindustan Times



PART ONE
right to food



Right to Food: An innate human right

Justice BN Srikrishna

The subject of the Right to Food is as important as it is controversial. The basic wants of a human being arise from hunger and forces of nature. Food assuages hunger. Shelter and clothing shield the human being from the forces of nature. But food occupies a particularly important place in the life of a human being.

The Taitreyi Upanishad declares that food is so intricately connected with the nature of man that it determines his body, mind, and life to such an extent that food itself is revered as Brahman or Godhead.

Food is but one of those needs necessary for human survival. Leading a decent human life also requires the fulfilment of other needs but they are outside the ambit of this debate. Since food is the one basic human necessity without which life itself would be extinguished, it must inevitably follow that for any society to be considered civilised it must adequately satisfy this need.

There is a collective obligation on human beings to ensure that no individual member of society is deprived of this basic necessity of life. This gives rise to a corresponding right on the part of the individual to call upon society to fulfil this basic need for existence. This is an innate human right. In that sense it is a fundamental right.

But is it a fundamental right guaranteed by law? Any right that is guaranteed must necessarily be justiciable. To qualify as a guaranteed fundamental right under our Constitution, the right must flow from one of the Articles in Part III of the Constitution. The only conceivable repository of this kind of right is Article 21, which guarantees the Right to Life. Since the need to satisfy hunger is inextricably connected with life itself, it is permissible to derive such a right from Article 21.

In fact, several rights, such as the right to a clean environment, the right to the minimum wages, the right to education, and so on, have been derived from the Indian Supreme Court's use of Article 21.

Justice BN Srikrishna was born in May 1941. He graduated in science and obtained LL.B, LL.M degrees from the



Government Law College and the University of Mumbai respectively. He enrolled as an advocate of the Bombay High Court in December 1962. A specialist in the fields of labour and industrial laws, he was designated as a Senior Advocate of the Bombay High Court in June 1987. While practicing at the Bar, he was also a member of several professional associations, including the Industrial Relations Research Association, USA and the International Bar Association, London. He was appointed as an Additional Judge of the Bombay High Court in July 1990 and was sworn in as a permanent Judge in October 1991. In January 1993, he was appointed as a one-man Commission to inquire into the riots and incidents in Mumbai during December 1992-January 1993. In September 2001, he was appointed as Chief Justice of the High Court of Kerala. In October 2002 Justice Srikrishna was elevated to the Supreme Court.

Without fear of contradiction, one may postulate that any right inextricably connected with life, without which life itself becomes impossible, or at any rate meaningless, is a right which flows from Article 21.

Prof Amartya Sen, the noted Noble laureate and economist (In his Arturo Tanko Memorial lecture delivered on August 2, 1990 on public action to remedy hunger) reiterated his famous thesis that famines occur not merely because of endemic deprivation of food, but on account of the breakdown of the facilities for the distribution of food. As to the causes of famine, he refutes the arguments that famines are invariably associated with a large and sudden drop of food production and availability and points out that huge famines have occurred without such a situation existing in Asia and Africa. He points out that famines have, in fact, coincided with peak food availability, as in Bangladesh in 1974, for example.

"Since food and other commodities are not distributed freely, people's consumption depends on their entitlements i.e. on the bundles of goods over which they can establish ownership through production and trade using their own means. Some people own the food they themselves grow while others buy them in the markets on the basis of their incomes earned through employment, trade or business. Famines are initiated by a severe loss of entitlement of one or more occupation groups, depriving them of the opportunity to command and consume food", according to Prof Sen. He theorises that famines happen not because of the non-availability of food stocks, but because people do not have the purchasing power to buy food following the loss of employment.

The second sense of Prof Sen's theory is that famines should not be expected to happen in a democratic country like India where there is a strong civil society network and a free and fair press. He argues that the greater the freedom in society, the more that public action by democratic means will be taken to pressurise the State to take suitable remedial measures.

Though the learned Prof Sen's theory is not so much concerned with the jurisprudential aspects of the Right to Food, it gives a practical insight into the nature and content of the right and highlights the fact that the Right to Food is intertwined with the right to empowerment. Hence, in his thesis, justiciability would take the form of requiring State action in the form of employment guarantee schemes, famine relief measures and other similar relief measures.

The International instrument articulates the International viewpoints on the Right to Food. The Universal Declaration of the Right to Food, 1948, Article 25 declares, "everyone has a right to a standard of living adequate for health for himself and his family including food..." The International Covenant on Economic, Civil and Cultural Rights, 1966, states in Part II Article 2 that "each State Party to the present covenant undertakes to take steps individually and International assistance cooperation especially economical and technical to the maximum of its available resources, with a view to achieving progressively, full realisation of the rights recognised in the present covenant by all appropriate means including particularly the adoption of legislative measures".

right to food

Article 11.1 says the State Parties to the present covenant recognise, "the right of everyone to an adequate standard of living for himself and his family including adequate food. The State Parties will take appropriate steps to ensure the realisation of this right recognising to this effect the essential importance of international cooperation based on free consent." Article 11.2 says that the State Parties to the present covenant recognise the need of the fundamental right of everyone to be free from hunger. They shall take - individually and through international cooperation - those measures (including special programmes) which are needed to improve the methods of production, conservation and distribution of food, by: making full use of technical and scientific knowledge; disseminating knowledge of the principles of nutrition, and developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilisation of natural resources, taking into account the problems of both the food importing and exporting countries, to ensure an equitable distribution of world food supplies in relation to need".

The Right to Food is also closely associated with the issue of gender equality and is thus incorporated into the Convention against all forms of discrimination against women, popularly known as CEDAW, 1979. In Part III, Article 12 says the "State Parties shall ensure to women adequate nutrition during pregnancy and lactation".

A number of judgments of the Supreme Court of India too have tacitly recognised the Right to Food as an enforceable right, on the basis of Article 21. In *Kishen Pattnayak case* (also known as *Kalahandi Starvation case*), the famine situation and the number of starvation deaths in certain districts of the state of Orissa were brought to the attention of the Supreme Court. The Supreme Court noted that the Orissa famine code had adequate provisions for dealing with the situation and that the state government was taking adequate relief measures. It, therefore, merely directed the state government to involve social workers in its relief committees without any further discussions on the Right to Food.

Similarly, in the *Shanti Star Builders case* there was a passing observation made that the Right to Life was guaranteed in any civilised society and that it would encompass the Right to Food, the right to clothing, and the right to a decent environment and to live in reasonable accommodation.

In *CESE vs Subhash Chandra Bose case*, the Supreme Court noted that both the Universal Declaration of Human Rights and the International Convention on Economic, Social and Cultural Rights recognised the needs of human beings including the Right to Food, housing, clothing and so on. These were said to be an integral part of the right to life. The Supreme Court further declared that the right to social and economic justice is thus a fundamental right.

In *Chameli Singh's case*, it was held by the Supreme Court that the Right to Life guaranteed in a civilised society implies the Right to Food, water, a decent environment, medical care and shelter, and the Supreme Court further said that these are viewed as basic human rights in any civilised society.

More recently, the steps taken by the Supreme Court in the PUCL case seem to provide ample support for Prof Sen's theory concerning the important role that civil society groups and an independent judiciary play in averting famines. The petition in the case focused upon the inadequate nature of the State's provision of food security, a consequence of the breakdown of its Public Distribution System (PDS).

The petition highlighted:

- ✧ The failure of the PDS at various levels and the inadequacies inherent in it, as a result of which the benefits did not filter down to the people who were badly in need of food security
- ✧ The fact that though there was a famine code on paper in various states, which required work to be given to every person who deserved to be employed, its provisions were either not being implemented at all or were being implemented in an ineffective manner. Certain states had ceilings on employment restricted to less than 5 percent of the drought affected population
- ✧ The failure to pay wages and the stockpiling of gigantic food stocks, which were not being released to the state governments by the central government

Taking all these factors into considerations, the Court made a number of interim orders to set right the faults it had noticed in the PDS. It also directed:

- a) All children be covered by the Integrated Child Development Scheme (ICDS) under which the Anganwadis or child crèches would have to be increased from six lakh to 14 lakh
- b) Increasing the norms for supplementary nutrition
- c) Abolishing the use of contractors in the provision of food
- d) The provision of detailed provision-lists of ICDS on the websites
- e) Ensuring the full utilisation of available finances
- f) The compulsory provision of mid-day meals to school children upto class 10 in the drought affected areas
- g) The allocation of funds for SGRY so that the employment potential per persons affected in the concerned areas could be increased
- h) The allotment of food in Antyodaya Anna Yojana, National Maternity Benefit Scheme and similar relief scheme

The golden thread running through all these orders is an assumption that the Right to Food exists, that there is a corresponding duty on the State to fulfil this right and that the State could be directed to find varied remedies to the problems at several levels.

right to food

While authorities, both at national and international levels suggest that the Right to Food exists; a few questions continue to linger in regard to the scope of this right. First and foremost, whether a derivative right flowing from the Article 21 can be raised to the status of a guaranteed fundamental right?

The answer to this question is far from certain. Doubt arises not so much in relation to the recognition of the character of the right but on account of the problems engendered by its enforceability. In strict jurisprudential theory, there cannot be a right without a corresponding duty located in someone else.

While corresponding to the citizen's Right to Food one may conceive of and postulate a duty by the State to fulfil that right, the extent to which such a right is enforceable remains problematic. This linkage with enforceability may cause the contours of the right itself to become blurred and thus it is deserving of closer examination.

Indeed, this problem has even surfaced in International legal instruments. For instance, Article 27 of CEDAW states that "State Parties in accordance with the national conditions and within their means shall in case of need provide material assistance and support programmes particularly with regard to nutrition".

The Right to Food is one right in particular where the full extent of its enforceability must of necessity depend upon the resources of the State. Consequently the relief to be sought in the exercise of this right will vary depending upon the realities on the ground. The duty of the State to its citizens to satisfy their basic need for food can become justiciable to the extent of directing the State to take all feasible steps, compatible with the extent of its resources, to fulfil this need. This is most especially the case with respect to that section of its citizens, which, on account of the disadvantaged circumstances in which they find themselves, cannot find the means to obtain such a basic necessity of life.

Constraints of resources can be contended to be justification against an absolute Right to Food. However, it can be argued that if the State can find resources for the enforcement of other Fundamental Rights, then there is no justification for failing to fulfil this Fundamental Right by putting forward the excuse of resource crunch. A lack of resources is only a narrow exception in the case of the Right to Food.

In my view, the time has now come for clearly spelling out the basic necessities of life as enforceable fundamental rights, either by way of statutes or by way of amendments to the Constitution, instead of repeatedly falling back on Article 21. A ready example is the right to education. It was judicially recognised as a fundamental right in the famous Unnikrishnan's case, but has now become a guaranteed fundamental right under Article 21A.

The Employment Guarantee Bill passed by the Parliament could go a long way towards fulfilling this need. However, it has to take care to deal with situations of negligence by civil servants which result in a failure to honour the Right to Food. It must also contain provisions sufficiently detailed to facilitate the creation of adequate schemes, so that the Right to Food can be translated into concrete terms and thus benefit citizens in need. In this way the

institutional limitations that the court faces in examining the problems of food distribution would be avoided and the minute details of the Employment Guarantee Schemes could be worked out on the basis of social and economic factors and the realities faced on the ground, including those factors relating to nutrition.

In conclusion, I hope that the uncompromising recognition of the Right to Food as a guaranteed Fundamental Right will work to the greater alleviation of human misery. It will also lead to the satisfactory implementation of the goal of socio-economic justice articulated in the Indian Constitution, which has repeatedly remained the signature tune of our Constitution.

Food security and poverty in India

Dr NC Saxena

We see massive levels of malnutrition and hunger in our country and it is all due to the failures at policy and delivery levels. Our policies have failed both in terms of our approach to food and our approach to agriculture. If a person has no source of income at all, what does it matter to him that food in the shops is cheap. It is necessary to step back and have an overall view of policy before you attempt to implement changes on specific matters.

India has experienced rapid economic growth in the last 20-25 years. This is clearly visible on a graph which charts economic growth since 1978-79. Let us hope that economic growth crosses 6-8 percent.

India's annual growth rate		
Year	GDP	Per capita income
1951-79	3.6	1.3
1980-91	5.6	3.5
1992-04	6.2	4.3

However, the growth of the economy is completely at odds with the growth of the social sector.

- Agricultural production has not increased since 1996-97
- Food availability is decreasing rapidly
- Unemployment has increased
- Poverty continues to be concentrated in the poorer states
- There are failures in relation to sanitation and power
- More than 50 percent women are anemic

It is often said that the children of India are its future, yet we find that every second child in India is malnourished and three out of four children are anemic. In the last two weeks, 70 percent of children in rural areas have suffered either from fever, diarrhea, or cough. The

Dr NC Saxena has worked as secretary to the Government of India. After retirement, he has advised



several international donors on poverty alleviation, food security, natural resource management, community forestry and good governance. On behalf of the Supreme Court of India, Dr Saxena monitors food-based programmes in India. He has lectured, both in India and abroad, on issues of governance, food security, joint forest management, natural resource management and community forestry. He has published a number of books including *India's Eucalyptus Craze: the God that Failed*, *The Saga of Participatory Forest Management in India* and *Trends and Prospects for Poverty Reduction in Rural India*. Dr Saxena has also been a champion of the Right to Food movement.

infant mortality rate is no longer going down but is remaining stagnant. Immunisation, a fundamental right of children, has fallen from 60 percent to 40 percent in the last five years.

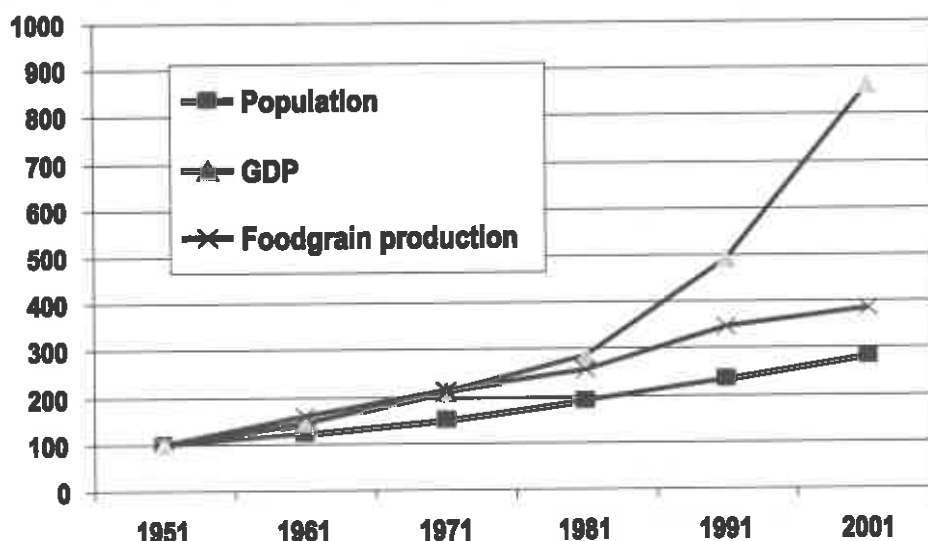
Over the last nine years agricultural production has not risen at all. In the Eighties, agricultural production was rising at a rate of 4.2 percent per annum. In the first five years of the 1990s it also increased, by about 2.4 percent per annum, but since 1996-97 there has been no growth at all and the index has remained constant. In fact, per capita agricultural production is declining at a rate of about two percent per annum.

The macro picture would seem to indicate that there should not be any food insecurity in our

Index number of agricultural production		
annual rate of growth		
1981-82	100	4.4 percent
1990-91	148	2.8 percent
1996-97	177	0.0 percent
2003-04	179	

country, because over the last 50 years both the GDP and agriculture production have increased at a rate faster than the growth in population. Nevertheless, a large number of people go hungry especially during the rains. A recent survey of Jharkhand revealed that up to 14 percent of people go without meals for many days at a stretch.

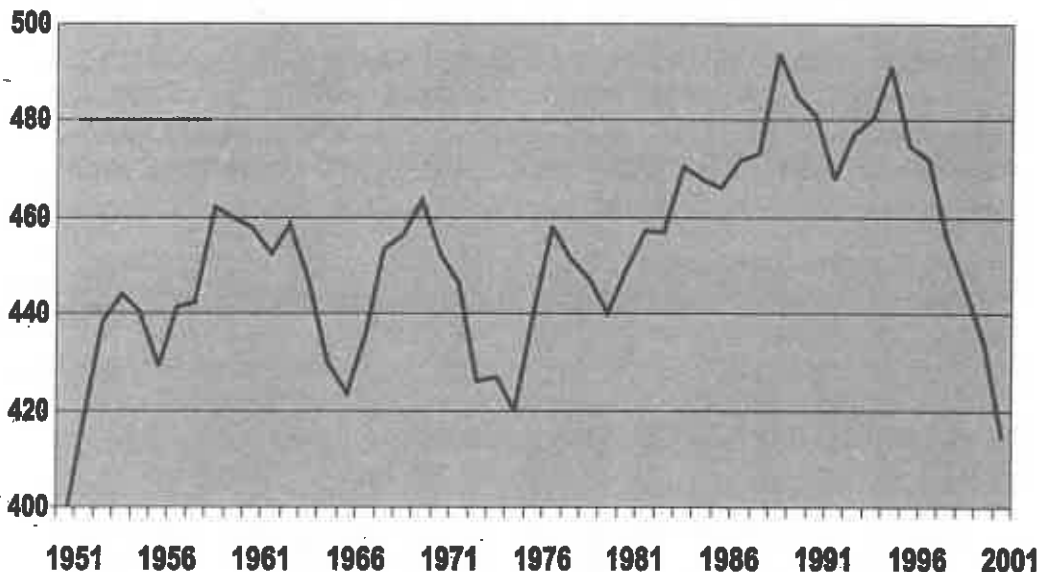
Decennial growth of population, GDP and foodgrain production



right to food

If we were doing so well on the economic front, we should have considered importing foodgrains to feed the people, rather than exporting foodgrains abroad. In the last four years we have exported 28 million tonnes foodgrains, mostly as cattle feed and mostly at a very subsidised rate. So rather than feeding the people of our own country, we are feeding the cattle of other countries. When you export food, its availability will naturally decrease and people will not have enough to eat. Food production since 1987-88 has remained stagnant but food availability during the same period has continued to fall. Between 1976 and 1990 the availability of food increased, but in the period between 1990 and the present there has been a steep fall in the availability of foodgrains. We are now back to the availability levels we had in the late Fifties or early Sixties. This decline in the availability of grain is due in no small part to the government's policy of buying and keeping grains in godowns and exporting grain. In fact, in the last three years, the total amount of grains exported exceeded 28 million tonnes.

Net availability of foodgrains per capita per day in gms



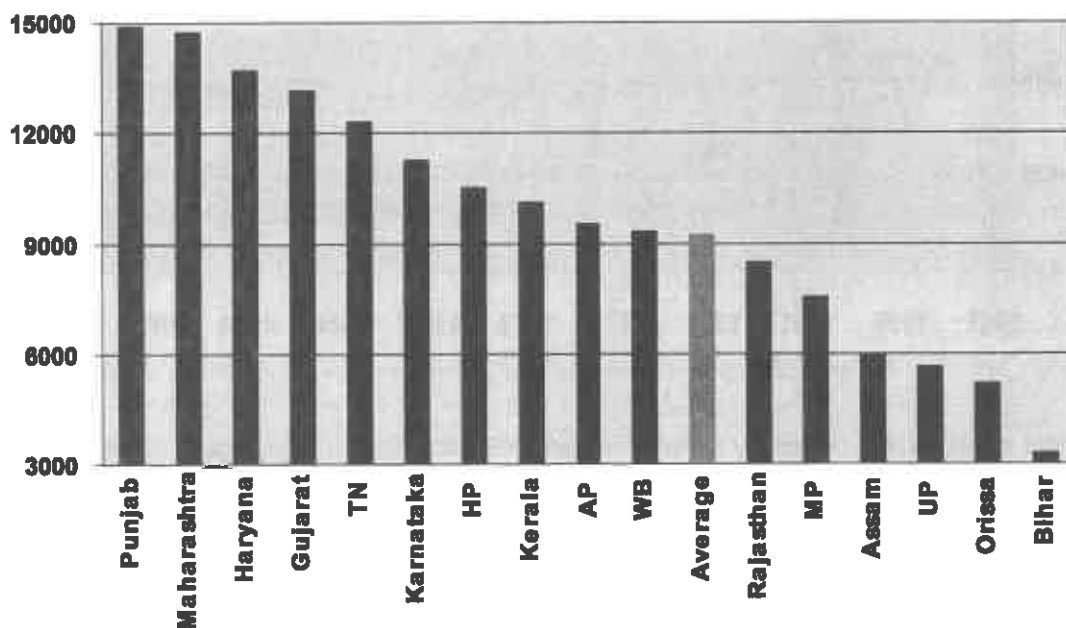
How much food is necessary to feed our people? According to government statistics, 26 percent of our people live below the poverty line. So if we take the population to be 100-crore, this amounts to 26-crore. The poor peoples' average consumption per month is 11 kg, whereas the amount of food they need is in the order of 14 kg. This leaves a gap to be made up of three kg per person per month. This would amount to less than 10 million tonne. If we could somehow manage to ensure that 10 million tonnes were made available to those that needed it, we could eliminate hunger.

At one particular point in time, in July 2001, we had 62 million tonnes of foodgrains. This just goes to show that achieving this aim is eminently possible. It is not something that is complex, or something that requires a lot of money or effort, it is something which is totally 'doable'. All that is required is sufficient political and administrative will and good monitoring mechanisms.

On paper, it would appear that the distribution of foodgrains through the PDS scheme has succeeded, as the figure has shot up from 14 million tonne to 29 million tonnes. But how much of this grain has actually reached the poor? In our reports to the Supreme Court, we documented cases in which foodgrains were not reaching their intended recipients, whether through the PDS or other schemes. We discovered that much of the grain was being sold in the black market. Although the schemes were in place to assist the poor, the effect of these schemes on the lives of the poor remains highly questionable. The government figures further show that despite food subsidies increasing very rapidly, there are no signs that the benefits are reaching the poor.

Poverty is becoming concentrated in the poorer states. In the 1980s, the poorer states were not faring so badly but the 1990s witnessed a sharp increase of inequities in distribution. In fact, if one compares the per capita NSGP of various states, one finds that the ratio of Punjab

Per Capita NSDP at 1993-94 prices: Annual averages for 1998-99 to 2000-01



right to food

to Bihar, which was 3:1 about 15 years ago, is now 5:1. This indicates that inter regional disparities, which may have political implications, are also on the increase.

The human development indices for some states in India are worse than those in the poorest countries in the world. If we compare ourselves with China we find that we are only at the same point that China was in the mid- 1980s. What is less well known is that a poor country like Vietnam, whose per capita income is lower than ours, is doing much better than India in terms of reducing the infant mortality rate and poverty and is also doing better than us in terms of overall human development indicators. Even with our limited resources it should be possible for us to be doing at least as well as Vietnam and China are doing. In order to achieve this, we will need policies that are pro-people and pro-poor.

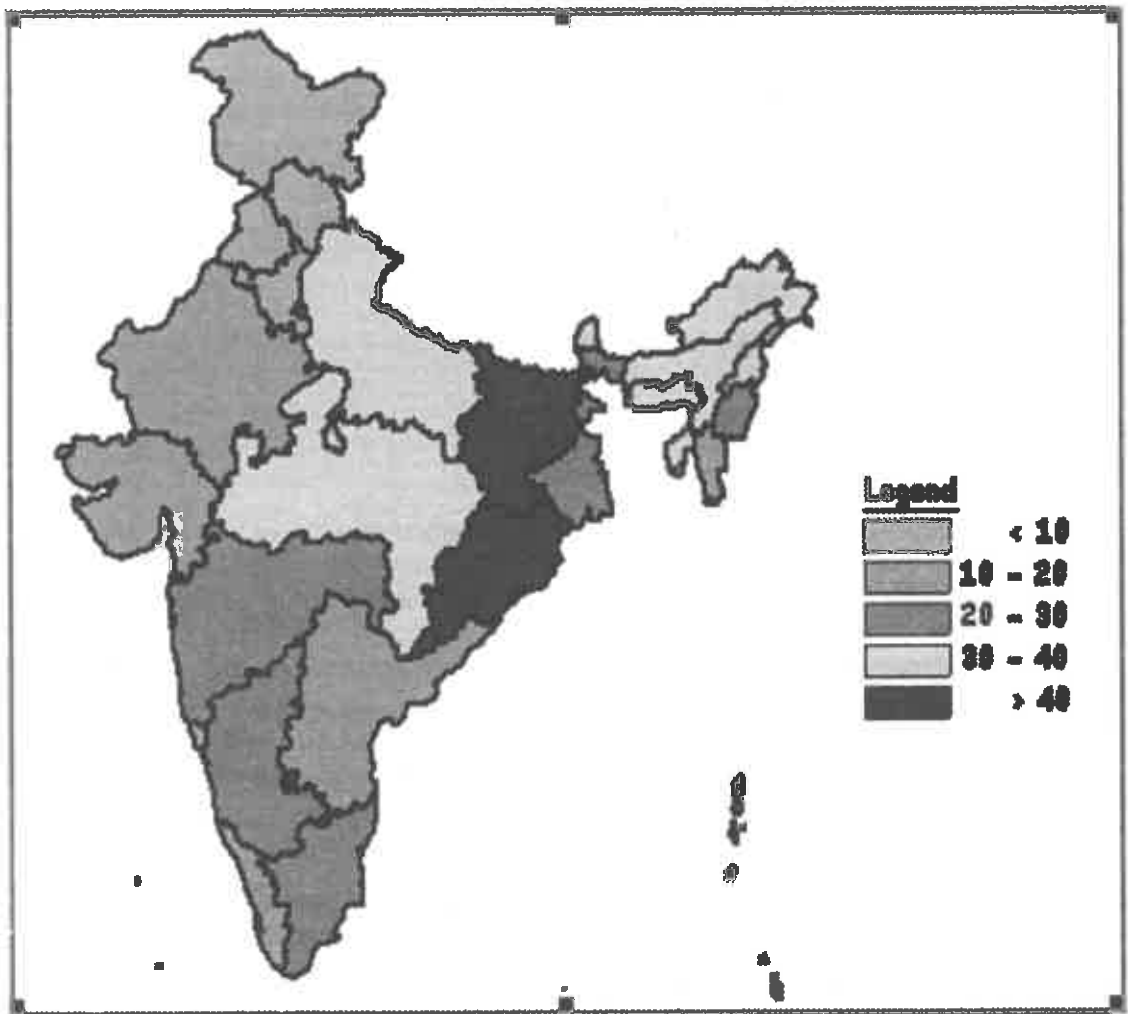
	Per capita annual Income PPP \$	percent Population below 1\$ / day	IMR	HDI
China	4,580	16.6	31	0.745
Vietnam	2,300	17.0	30	0.691
India	2,670	34.7	67	0.595

Levels of poverty vary greatly depending on region. Poverty is very high in Jharkhand, Orissa, MP and UP but much lower in the western half of India. Poverty is becoming concentrated in the poorer states. In the Seventies, 30 percent of India's poor lived in UP and Bihar. That figure today is 40 percent. And when you also take into account MP, Orissa and Assam, you find that 60 percent of India's poor are concentrated in just five states.

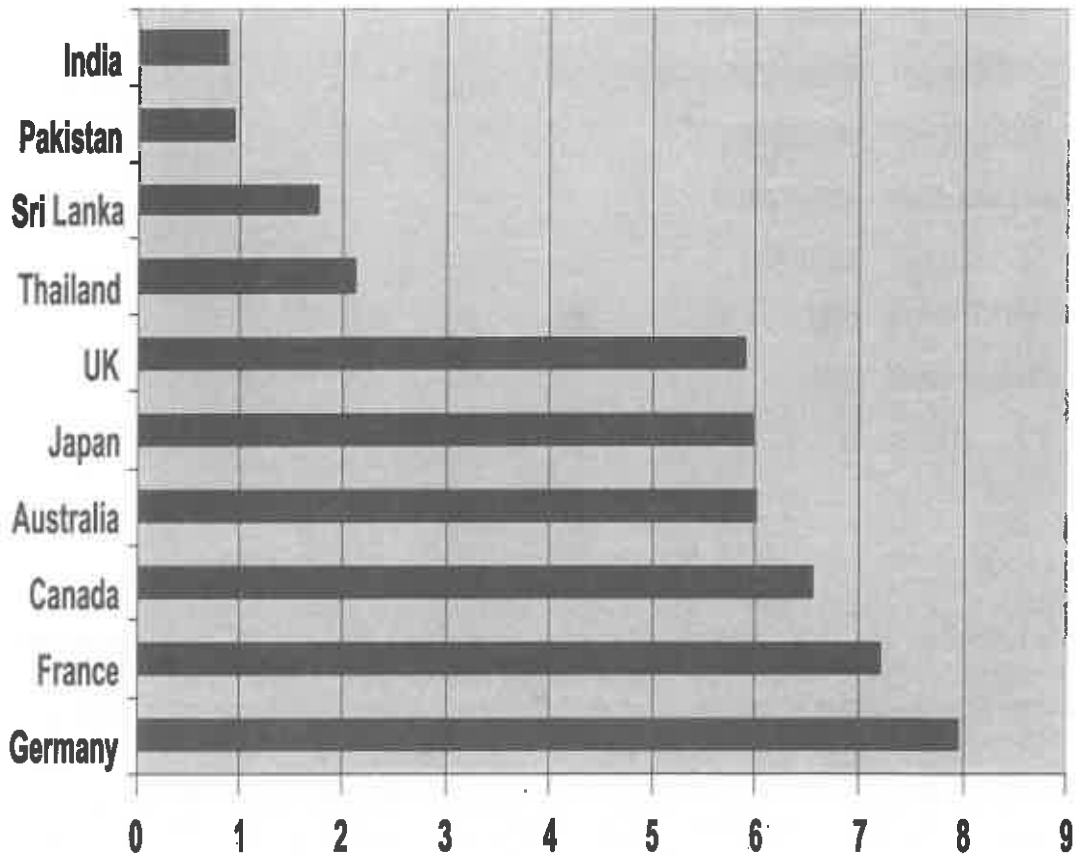
On paper it may appear that we are doing well as regards enrolment, but we must always bear in mind that on any particular day, in states like Bihar, Jharkhand and Orissa, less than 40 percent of children of school-going age are actually attending school. In states like Uttaranchal, parts of Tamil Nadu and Mizoram, this figure is anything up to 70 percent, but the national average overall is just 50 percent.

These startlingly low figures for school attendance are just one symptom of India's refusal to invest in the social sector. The expenditure on the social sector is going down every year. It is well known, for example, that India spends just 0.9 percent of its GDP on health infrastructure. What is less publicised is that inadequate public health services, non-functioning public hospitals and a lack of doctors means that people are forced to spend a great deal of their own income on health matters. This high expenditure on health plays a significant role in pushing already poor people below the poverty line. It is a sad fact that expenditure on health in India is actually higher than that of many developed countries like the UK, France and Germany. Thus, a major cause of poverty is poor health.

India : percentage of people below poverty line in 1999 - 2000



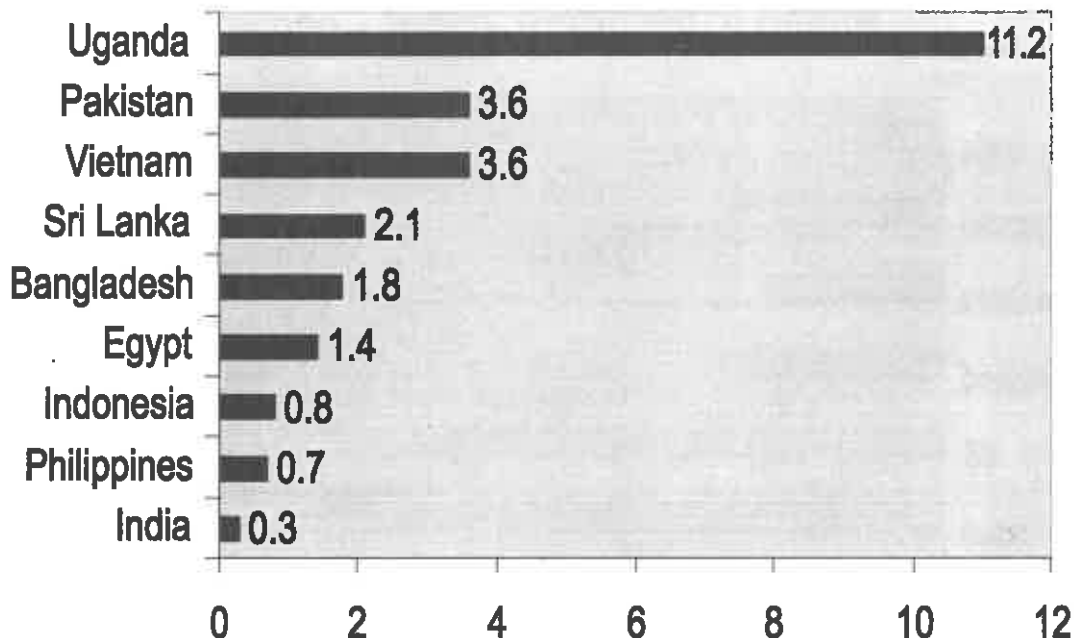
Health expenditure, public (percent GDP)



India does not receive much aid from donors. Uganda gets 40 times more aid, Pakistan gets 12 times more and the level of aid India receives has been falling rapidly since 1990. India does not set out to receive aid. In a controversial measure, in 2003, the Indian government decided that they would only accept aid from five or six specific countries. A number of countries, including Canada and Australia, were asked to wind up their aid operations in India.

Even overall expenditure in India is showing a declining trend. Once you discount pension payments, interest payments and the impact of the Fifth Pay Commission, you find that total expenditure for the last ten years has fallen from 13 percent to just 10 percent of GDP.

Aid as percent of GNP



Moreover, expenditure on health and expenditure are falling at the fastest rate. Nevertheless, the total amount of money which gets transferred from the central government of India to various states, by various means, is still enough to completely wipe out poverty. If just half of this money were well spent, it would dramatically improve the lives of the poor, so you can well imagine just how much of this money is going to waste.

Another reason for our failure on the social front is the high level of absenteeism among teachers and doctors in the villages - 40 percent of doctors and 30 percent of teachers are not present and even when they are, the quality of their service is often poor.

We need to increase and improve agricultural and foodgrain production. Production has increased somewhat due to public investments in irrigation, seeds and new technology, but our increase in the minimum support price has only benefited the large farmers in the surplus regions. However, the new technology is unavailable, public investment has fallen, there is a lack of focus on poor farmers and backward regions, states have gone bankrupt and groundwater continues to be exploited in a reckless and dangerous fashion. This is one of the reasons for farmers in Andhra Pradesh committing suicide - they invested in sowing and then could not find water!

There has also been an increase in the concentration of land ownership. Unfortunately, while it had been the case that rich farmers were leasing land out to the poor, the trend now, as a result of growing inequalities, is for poor farmers to lease their lands out to the rich, because

they have no money of their own with which to invest in farming.

This goes to show that not only do we need an increase in investment but we must begin to focus on poor farmers. We need to remove the present controls on the foodgrain economy. We need to update our land records and place these records online so that farmers can easily access them and obtain loans.

We need to remove certain restrictions on agriculture. At present, legal restrictions prevent farm produce from being easily transported. Processing industries are heavily licenced, which makes it difficult for farmers to set up industries such as flourmills, hi link plants, or cold storage facilities. We may have removed controls for major industries such as car manufacture, but an enormous amount of controls are still in place for industries in rural India.

Although it may not exercise a direct impact on agriculture, the fact that women lack inheritance rights is illustrative of continuing inequities. Ostensibly, women have fundamental rights of equality. However, if you look at the Zamindari Abolition Act and the Widow Act which were recently approved in UP, they state that in the event of a landowner dying, the land will go to the male children. Only in the event that there is no son at all will a daughter receive her share. In addition, because this law has been put in under the Ninth Schedule, it cannot be challenged on grounds of inequality. Similar laws also exist in HP, Punjab, Haryana and Delhi. The Punjab law stated that the right would devolve only on male descendants. Until recently, a similar inequality existed in the Hindu Succession Act, an inequality which has since been corrected. I contend that a type of PIL might be a good way to force the governments of these five states to change their laws.

To sum up, we find ourselves in a rather dismal situation but a situation from which it is eminently possible to extricate ourselves. A remedy is at hand, we simply need more funds for development, more imaginative policies in food and agriculture, less controls and more focus on the social sector. We also require a great deal more monitoring because unless we know what is happening in the field we will not be able to deliver justice.

Interactive session

Question : A significant reason of decline in agriculture is due to the construction of buildings on valuable land, best suited to agricultural purposes. There is also an increase in quarries, something which is not being looked into. What steps would you take to resolve these issues?

Dr Saxena: The data available from the last 30-35 years indicate that the net cultivated area has remained constant at 142 million hectares. It has neither increased nor decreased. This means that in the last 30 years, due to watershed development programmes and encroachment, some areas have come into cultivation, while other areas have gone out of cultivation, because of urbanisation, land becoming too marginalised or soil erosion. In

certain areas, like tribal areas, I am in favour of controls being imposed. We must have controls to prevent land alienation. In other areas, however, I am in favour of a reduction in controls. For example, one control which I view as being unnecessary is a prohibition on the purchase of land by farmers from outside the region, a prohibition which is in place in Karnataka and Maharashtra. I would contend that the loss of a small amount of land to urbanisation and construction does not significantly alter the overall picture. What is important is that we utilise good technology to improve the incomes of landless labourers and small farmers.

Question: It has been suggested that the minimum support price for foodgrains should be gradually reduced. However, given the current agricultural situation in India and the migration of persons from one section to another, how is it possible to justify a decrease in prices, when people are already incurring losses at existing price levels?

Dr Saxena: The question of what should be done with the minimum support price is of course a controversial one. In terms of trade, this price indicates what the farmer is receiving as compared with what he is paying for various inputs like water and fertiliser. It is interesting to note that from 1967-68, when the Green Revolution started, until 1984-85, the terms of trade moved against agriculture and fell from 105 to 84. During the earlier period new productive techniques and technology had enabled farmers to absorb the fall in terms of trade. However, in the last 20 years, the lack of new technology, the failure of banks to provide credit, increasing soil erosion and a decline in the ground water table have meant the only option left was to increase production or profit through giving higher prices.

Giving higher price will certainly help large farmers regions with a surplus, but it is not in the interests of poor farmers or poor regions who do not receive the benefit of the price increase. Two years ago, I spent some time in Varanasi villages. While Punjab farmers were receiving Rs 600 per quintal for their paddy, the Varanasi farmers were only getting Rs 300-350, because the FCI does not buy paddy in UP. They only buy rice from the millers and paddy is sourced to the millers at a very cheap price. So while poor farmers are surviving on Rs 300 per quintal, rich farmers are unhappy to receive Rs 600 per quintal!

The poor farmers rely on their labour as a means of production, the rich farmers depend more on capital. If the terms of trade were to remain constant then a number of things would happen; in contrast to what happens today, the poor farmers would become more profitable and would buy or lease land from the rich farmers.

Mr Parikh, member of the Planning Commission, examined the impact of Minimum Support Price (MSP) on agricultural productivity and poverty. After a very rigorous economic analysis, he concluded that an increase in MSP leads to an increase in poverty. In the MSP system, the government is forced to buy foodgrains. The government, being a notoriously inefficient manager of foodgrains, either exports the grain as cattle feed, or it rots away in godowns, or else it is smuggled out to Bangladesh! It is important then, that the MSP issue should be

examined carefully. The correct decision, however unpopular, has to be taken.

Question: In relation to the cotton procurement scheme in Maharashtra, the government both subsidises the cost of the farmer's agricultural inputs and purchases his products. Is this a sustainable policy?

Dr Saxena : Various studies have suggested that the system of compulsory procurement and monopoly procurement of cotton by the government in Maharashtra is not a viable scheme. In fact, one of the reasons why the government of Maharashtra has had to cut down on social expenditure is because of an increase in the subsidies being paid. Are the poor, landless labourers, tenants and sharecroppers benefiting from these subsidies? Non-merit subsidies, whose benefits do not proportionately go to the poor, need to be identified and to have their fund allocation reviewed.

Question: One of the reasons for the failure of the welfare schemes you cited was that of absenteeism, with 15 percent of teachers and 52 percent of health workers being found to be absent. Do you think that local recruitment will help solve the problem of absenteeism?

Dr Saxena : Absenteeism is due to a number of factors. When you recruit at the state level you find that people from urban areas are able to compete and get the jobs, but those who have studied in Bhopal, Cuttack, or Bhubaneswar do not seem to be willing to go to Jhabua or Koraput.

In the districts of Koraput and Malkangiri, 40 percent of posts remain vacant. Of the remaining 60 percent of posts, who knows how many suffer from absenteeism. As a result of insisting that recruitment must be made available to everyone on a state basis, there is now no government in these districts. I have suggested to state governments that they should recruit for a specific post. In the district of Koraput, for example, for the 'X' block there should be the 'Y' post. And for five-eight years there should be no question of a transfer. Some states are now following this approach. In UP and Rajasthan I found that the recent appointment of teachers had been done in this way. If someone from Bhubaneswar wants to go and work in Koraput, this is perfectly acceptable, but he should not be allowed to be transferred. Unfortunately, patronage is rife in our political system and certain people use pressure to place their relatives in capital cities! If we can ensure that there will be no transfer for the first five to eight years, then we can go some way towards reducing absenteeism.

Question: I am from Kerala which is the state which has the highest wages of any agricultural workers. I feel this has an adverse impact on the ability of ordinary or average farmers to engage agricultural workers. Can you offer a solution to this unfortunate situation?

Dr Saxena : Kerala's economy is unique. On the one hand, you find that Kerala has very high wages; on the other hand, you find that Kerala has the highest rate of unemployment in the country at 20 percent, as opposed to three percent in HP. Keralites tend not to perform unskilled work and so you find that 60 percent of this type of work is done by outsiders, either

people from Tamil Nadu, Orissa, or Bihar. The wage rate in Kerala is not primarily determined by government actions but by market forces.

Unfavourable market forces have led landowners in Kerala to shift the cropping pattern from paddy to that of horticulture. I would not advocate any government regulation which would set wages at more than Rs 50. If the poor are getting Rs 100, so be it. I support the view that artificial schemes to promote employment, such as SGRY and Food for Work, should not be run in Kerala. Kerala should instead be provided with money for old people or alternative social sector schemes. Why should the government invest in wasteful schemes? The reality for now, unfortunately, is that farmers and landowners alike will have to live with the phenomenon of high wages and high unemployment.

Question: What can be done for those hungry, impoverished farmers in the villages, whose lands are being acquired by the government for urbanisation and being handed over to real estate tycoons for construction developments, without an arrangement having been made to provide farmers with an alternative source of livelihood?

Dr Saxena : The present arrangement for providing compensation and rehabilitation is not only inadequate, but it is also unjust and inhumane. I recently made a presentation before Mrs Sonia Gandhi in the National Advisory Council, in which I suggested that instead of acquiring land, we should take a 99-year lease on the land and give the farmer twice its gross annual production as annual rent.

The land acquisition laws should be changed to incorporate rehabilitation into the law. Through irrigation projects, the productivity of land can be increased three to four fold, thus it should be possible for the government to acquire land in the command area from rich farmers and to resettle those people whose lands have been acquired. In a similar fashion, it should be compulsory for all SC and ST land owners to give land for land.

The land acquisition law itself should state, that before a Section 4 notice could be issued, a rehabilitation package must be announced, must be made public and must be subject to consultation with the people concerned. The entire process need not be conducted concurrently, but someone should at least go to the village and explain to the people what their options are in case of displacement and what their compensation package consists of.

A provision already exists in the Panchayat Scheduled Areas Act which requires that there be consultation with the Panchayat before any land can be acquired. five-six years ago, a circular was issued as to the manner in which the consultation should take place. Unfortunately, the policy announced by the government in March 2004 in this regard is entirely unsatisfactory and needs to be strongly challenged and reviewed.

Question: To what extent do you think the failure of the state government to implement the land reforms law is responsible for our current plight and what can be done, in Bihar in particular, to consolidate the Land Ceilings Act? These provisions currently only exist on paper. How can we bridge the gulf between theory and practice?

Dr Saxena : There is a great deal of variation between states as regards the implementation of land reforms. Land reforms in India have tended to revolve around three guiding principles:

- (i) That land should be given to the actual tiller, which means there should be no absentee landlordism or tenancy
- (ii) That holdings should not be too large, which explains the existence of a ceiling law
- (iii) That there should be a consolidation of holdings, fragmented holdings must be combined

The consolidation of fragmented holdings has only been successful in certain states Punjab, Haryana and parts of UP. Some of the better-governed states like Tamil Nadu and Karnataka, failed in their attempts at consolidation. The principal reason for this failure was that the quality of land in these states varied significantly from point to point. Farmers prefer to have garden land or paddy land because they feel it grants them greater security. If there is a good amount of rainfall, it is good for the paddy, and if there is less rainfall, they can grow something more productive. This reluctance on the part of farmers has ensured that consolidation has not succeeded. This is unlike the case in Punjab and Haryana, where consolidation has succeeded, because the quality of land within a village does not vary to any significant extent.

Patterns of tenancy also vary greatly among states. Some states like Punjab, where tenancy is legal, have a recorded tenancy rate of 12-15 percent. Tenancy is also high in Tamil Nadu, Bihar and West Bengal.

However, the old system of tenancy, whereby there would be a Zamindar and there would be the same tenants, for generation after generation, is now disappearing. An alternative system of tenancy exists in Muzaffarnagar (one of the most prosperous districts of UP) for paddy cultivation, in which one farmer will lease out his land to a poorer farmer. Investment and supervision would be undertaken by the owner, but the labour would be provided by the poor farmer and his family and sharing would be on a 50:25 basis. It has been argued that this new system of sharing land is preferable to the old feudal system which preceded it and which has now disappeared. To my mind, this new form of tenancy does not appear to be iniquitous or harmful.

In regions such as Uttaranchal, or in Terai pockets of Bihar and Champaran, it is certainly the case that there is a need for ceiling laws. However, on the whole, it can be argued that the increasing pressure on the land has eliminated the need for ceiling laws. Although certain areas still exist where agricultural relations remain iniquitous, nevertheless, I feel safe in declaring that land reform is not as important an issue today as it was 40 or 50 years ago.

A recent development, and one that is very worrying, is that inequities in land are increasing. In the Sixties, Seventies and Eighties, market forces helped to ensure that farmers could acquire land. However, now we are beginning to see a lot of people migrating because they

have lost their land due to debt or soil erosion or because they are unwilling to take the risk of cultivating their land. This last point is especially important. Farmers all over the country need guidance in regard to crop patterns, local needs, national needs and the system of marketing committees. In many parts of Karnataka, seasonal horticultural production is so high that the market becomes saturated and the vast quantities of produce which fail to sell end up being thrown in the gutter. Three years ago, production was so high that neither the middlemen, nor the private agencies, nor the FCI godowns could make a significant purchasing dent in the production and almost the entire production went to waste. The Marketing Regulation Act was intended to help in this regard but it has only managed to install the middlemen as a permanent agency. Although policies are required to be in place to help farmers to get a fair price, the reality is that the middlemen are making a 100 percent profit while the farmer is hardly making a profit at all.

In the sixties and seventies, supply was major constraint in agriculture and so we concentrated on developing technology, irrigation and better seeds. In the last 15 years, however, demand has become the chief constraint. Where is the demand for foodgrains? Where is the demand for vegetables? The dilemma we face is in large part due to the fact that our economy is not broad based; the benefits are entirely accruing to the middlemen. We need a better distribution of income as well as more employment initiatives to combat the rising tide of unemployment and to guarantee a market for our farmers produce.

Supreme Court orders and various schemes

The first major interim order of the Supreme Court in the "Right to Food" PIL was issued on November 28, 2001. The order focuses on eight food-related schemes: (1) the Public Distribution System (PDS); (2) Antyodaya Anna Yojana (AAY); (3) the National programme of Nutritional Support to Primary Education, also known as Mid-day Meal Scheme; (4) the Integrated Child Development Services (ICDS); (5) Annapurna Scheme; (6) the National Old Age Pension Scheme (NOAPS); (7) the National Maternity Benefit Scheme (NMBS); and (8) the National Family Benefit Scheme (NFBS). Although not mentioned in this order, a ninth scheme, Sampoorna Gramin Rozgar Yojana (SGRY) did figure in the initial list of food-related schemes and subsequently became the main focus of the next interim order, issued on May 8, 2002. Additionally, it is worth noting that the National Rural Employment Guarantee Act (NREGA), although not explicitly mentioned in any of the Interim Orders, will most likely figure in Supreme Court hearings in the future, as public work programmes are often mentioned, and the directions relating to these programmes can be regarded as being applicable to the NREGA also.

Essentially, the interim orders of November 28, 2001 and May 8, 2002 convert the benefits of these "schemes" into legal entitlements. This means, for instance, that if someone has an Antyodaya card but is not receiving her full quota of 35 kg of grain per month at the officially prescribed prices, she can claim her due as a matter of right, by going to the court if necessary.

At the heart of this order nestles the idea that, at the very least, the government should be held accountable to what it claims to be doing to protect the Right to Food, ie It must implement its food-related schemes in a genuine fashion. The various food-related schemes and the main Interim Orders related to them are outlined below:

"Umbrella" orders

While most of the interim orders concern specific schemes (eg ICDS or the Public Distribution System), some of them, commonly referred to as umbrella orders, apply "across the board" to all the relevant schemes. The order relating to lines of accountability is one such "umbrella order". Other important umbrella orders include the following:

1. **Responsibility for compliance:** Chief secretaries of the concerned states shall be held responsible for any persistent default in compliance with orders.
2. **Accountability to Gram Sabhas:** The Gram Sabhas are entitled to conduct a social audit into all food/employment schemes and to report all instances of misuse of funds

to the respective implementing authorities, who shall on receipt of such complaints, investigate and take appropriate action in accordance with the law.

3. **Access to information:** The Gram Sabhas are empowered to monitor the implementation of the various schemes and have access to relevant information relating to, inter alia, selection of beneficiaries and the disbursement of benefits.
4. **Dissemination of court orders:** Chief secretaries have been directed to translate and permanently display the orders of November 8, 2001 and May 8, 2002 on all the Gram Panchayats, school buildings and fair price shops. The central government is to give "wide publicity" to these orders through All India Radio or Akashvani and Doordarshan.
5. **Schemes not to be discontinued:** No scheme covered by the orders made by this Court shall be discontinued or restricted in any way without the prior approval of this Court.
6. **Full utilisation of grain quotas:** All state governments are directed to forthwith lift the entire allotment of foodgrains from the central government under the various schemes and disburse the same in accordance with the schemes.

The Public Distribution System

Background

The Public Distribution System (PDS) is a means of distributing foodgrain and other basic commodities at subsidised prices through "fair price shops". Every family is supposed to have a ration card. In 1997, there was a move to apply a "targeted" approach to the PDS: different ration cards were issued to households on the basis of being "Below the Poverty Line" (BPL) or "Above the Poverty Line" (APL), and each category held different entitlements. Today, both BPL and APL households are entitled to 35 kgs of grain per month, but the issue price is higher for APL households. In fact, the price for APL households is so prohibitively high that most families do not buy grain from the PDS. Thus, in practice, the PDS is restricted to BPL households.

Supreme Court orders

1. **Identification of BPL families:** On November 28, 2001, the Court directed the state governments to complete the identification of BPL families, issuing of cards and commencement of distribution of 25 kg of grain per family per month by January 1, 2002 at the latest. The entitlements of BPL families were subsequently raised from 25 kg of grain per month to 35 kg.
2. **Accessibility of ration shops and regular supply of grain:** On several occasions;

the Supreme Court directed the government to ensure that all ration shops open regularly. For instance, one of the very first interim orders (dated July 23, 2001), states: "We direct the states to see that all the PDS shops, if closed, are re-opened and start functioning within one week from today and regular supplies made." Similarly, an interim order dated May 8, 2002 states: "The respondents shall ensure that the ration shops remain open throughout the month, during fixed hours, the details of which will be displayed on the notice board."

3. **Accountability of PDS dealers:** The licences of the PDS dealers and shopkeepers should be cancelled if they: "(a) do not keep their shops open throughout the month during the stipulated period; (b) fail to provide grain to BPL families strictly at BPL rates and no higher; (c) keep the cards of BPL households with them; (d) make false entries in the BPL cards; (e) engage in black-marketing or siphoning away of grains to the open market and hand over such ration shops to such other person/organisations". Further, the concerned authorities or functionaries have been directed not to show any laxity on the subject.
4. **Permission to buy in instalments:** Arrangements must be made to permit the BPL household to buy the ration in instalments.
5. **Awareness generation:** Wide publicity shall be given so as to make BPL families aware of their entitlement.
6. **BPL list:** Orders relating to the "BPL list" are also relevant to the Public Distribution System, since the BPL list is the basis on which BPL and APL ration cards are distributed. It should be noted in particular that (1) the central and state governments have been directed to frame clear guidelines for proper identification of BPL families, and (2) no-one is supposed to be removed from the BPL list until such time as the Court deliberates this matter.

Comments

1. The Supreme Court orders on the PDS should be read together with the central government's "PDS (Control) Order" of August 2001. This Order contains sweeping measures for holding FPS managers and others accountable. The Order has also to be read in conjunction with the Essential Commodities Act. Taken together, these three sets of orders (Supreme Court orders, PDS Control Order and Essential Commodities Act) can be used quite effectively to ensure that people receive what they are entitled to.
2. BPL targeting has attracted widespread criticism. There is much evidence that the "BPL list" is highly unreliable: well-off households often have a BPL card while poor households only have an APL card, if any card at all. This is due to the fact that the "BPL survey" used for identifying families below the poverty line is fundamentally flawed.

Antyodaya Anna Yojana

Background

The aim of this scheme, launched in 2000, is to provide special food-based assistance to destitute households. These households are given a special ration card (an "Antyodaya card"), and are entitled to special grain quotas at highly subsidised prices. Today, Antyodaya cardholders are entitled to 35 kg of grain per month, at Rs two per kg for wheat and Rs three per kg for rice. Initially, the Antyodaya scheme covered one crore families, but this has since been expanded to cover two crore families.

Supreme Court orders

1. Orders related to the Public Distribution System also apply to Antyodaya Anna Yojana (AAY), since AAY is a component of the PDS. For instance, the order of July 23, directing state governments to ensure regular supply of grain to the ration shops applies to the AAY also.
2. The state governments were requested to consider providing grain free of cost to those who are so poor that they are unable to lift their quota, even at the highly subsidised the AAY prices.
3. The central government shall formulate the scheme to extend the benefits of the Antyodaya Anna Yojana to the destitute section of the population.
4. On May 2, 2003, the Supreme Court declared that all households belonging to six "priority groups" would be entitled to Antyodaya cards. More precisely, the Government of India was directed to place the following groups of persons in the AAY category:
 - (1) Aged, infirm, disabled, destitute men, pregnant and lactating women, destitute women
 - (2) Widows and other single women with no regular support
 - (3) Old persons (aged 60 or above) with no regular support and no assured means of subsistence
 - (4) Households with a disabled adult and no assured means of subsistence
 - (5) Households where due to old age, lack of physical or mental fitness, social customs, need to care for a disabled persons, or other reasons, no adult member is available to engage in gainful employment outside the house
 - (6) "Primitive tribes"
5. Possession of a BPL card is not necessary for inclusions in the AAY category. The central government was directed to issue guidelines to this effect.
6. In April 2004, the Court asked the central government to direct the state governments to

right to food

accelerate the issue of Antyodaya cards especially to primitive tribes. Further, the guidelines issued to state governments shall be implemented in letter and spirit.

7. In October 2004, the state governments were directed to complete the identification of AAY families and the distribution of AAY cards "by the end of the year", and to begin the distribution of grain to AAY cardholders "immediately". Further, the AAY cardholders should not be made to pay, directly or indirectly, any amount other than what they are liable to pay for the supply taken.

Comments

The most important order here is the order of May 2, 2003, whereby six "priority groups" are entitled to Antyodaya cards as a matter of right. However, the government is yet to devise (and implement) an effective procedure to ensure that every household in these priority groups are identified and covered under AAY. In the case of (so-called) "primitive tribes", the task is relatively easy, and in some states at least Antyodaya cards have been distributed to most families in this group. However, persons who belong to the other groups have no simple means of claiming an Antyodaya card as a matter of right.

Mid-day Meals Scheme

Background

The Supreme Court order of November 28, 2001 directs state governments to start providing cooked mid-day meals in primary schools. Every child who attends a government or government-assisted primary school is now entitled to a cooked, nutritious mid-day meal every day.

The provision of cooked mid-day meals in primary schools is an important step towards realising the Right to Food. Indeed, mid-day meals help to protect children from hunger (including "classroom hunger", a mortal enemy of school education), and if the meals are nutritious, they can facilitate the healthy growth of children. Mid-day meals also serve many other useful purposes. For instance, they are quite effective in promoting regular school attendance, and in that respect mid-day meals contribute not only to the Right to Food but also to the right to education. Mid-day meals also help to undermine caste prejudices, by teaching children to sit together and share a common meal. They reduce the gender gap in school participation, provide an important source of employment for women, and liberate working women from the burden of having to feed children at home during the day. Aside from this, mid-day meals can be seen as a source of economic support for the poorer sections of society, and also as an opportunity to impart nutrition education to children. For all these reasons, the Supreme Court order on mid-day meals has been widely welcomed, especially among the disadvantaged sections of society.

Supreme Court orders

So far, there have been two crucial Supreme Court orders on mid-day meals: on November 28, 2001 and April 20, 2004, respectively. Further orders have been issued from time to time also. The landmark order of November 28, 2001 clearly directed all state governments to introduce cooked mid-day meals in primary schools:

"The state governments / union territories are to implement the Mid-day Meal Scheme by providing every child in every government and government assisted primary schools with a prepared mid-day meal with a minimum content of 300 calories and 8-12 grams of protein each day of school for a minimum of 200 days."

This target was supposed to be achieved within six months, but most state governments took much longer, prompting the Supreme Court to issue occasional stern reminders to them, as on May 2, 2003. A series of follow-up orders were issued on April 20, 2004, to speed up the implementation of earlier orders, improve the quality of mid-day meals, and address various concerns raised in the commissioners' reports. These orders include the following:

1. **Timely compliance:** All such states and union territories who have not fully complied with the order dated November 28, 2001 shall comply with the said directions fully in respect of the entire state/union territory... not later than September 1, 2004.
2. **No charge:** The meal is to be provided free of cost. Money for the meal is not to be collected from parents or children under any circumstances.
3. **Priority to SC/ST cooks and helpers:** In appointment of cooks and helpers, preference shall be given to dalits, scheduled castes and scheduled tribes.
4. **Extension to summer vacations in drought-affected areas:** In drought-affected areas, mid-day meal shall be supplied even during summer vacations.
5. **Kitchen sheds:** The central government was directed to make provisions for construction of kitchen sheds and also to contribute to the cooking costs.
6. **Quality improvements:** Attempts shall be made for better infrastructure, improved facilities (safe drinking water, etc.), closer monitoring (regular inspection) and other quality safeguards as also the improvement of the contents of the meal so as to provide nutritious meal to the children of the primary schools.
7. **Fair quality of grain:** The Food Corporation of India (FCI) is to ensure provision of fair average quality grain for mid-day meals. Joint inspections of the grain are to be conducted by the FCI and state governments. If the foodgrain is found, on joint inspection, not to be of fair average quality, it is to be replaced by the FCI prior to lifting.
8. **Extension to Class 10:** On April 20, 2004, the Government of India was directed to file an affidavit within three months, "stating as to when it is possible to extend the scheme up to 10th Standard in compliance with the announcement made by the prime minister." In response to this, an affidavit was filed by the department of elementary education

(ministry of human resources development) in 2004, but the Court is yet to examine it.

In October 2004, the Court noted that some progress had been made with the implementation of earlier orders on mid-day meals. However the feedback received from the states made it clear that implementation was being held up by a lack of funds in many cases. The Court thus directed the central government to provide financial assistance of "one rupee per child per school day" to meet cooking costs. The Court also clarified that the responsibility to monitor the implementation of the mid-day meal scheme "essentially lies with the central government". Again, the Court stressed the urgency of the situation and directed that "every child eligible for a cooked meal under the Mid-day Meals Scheme in all states and union territories shall be provided with the said meal immediately".

Comments

The Supreme Court orders have led to lively "campaigns" for mid-day meals all over the country. The implementation of these orders has involved a long and arduous process, but over time, most state governments have fallen in line. Today, about 10 crore children are getting a cooked mid-day meal at schools every day. However, the quality of mid-day meals remains quite poor in many states: the content of the meal is inadequate, health safeguards are lacking and social discrimination is common. Also, nothing has been done to extend mid-day meals beyond the primary stage of education. Further action is required to consolidate the gains that have been made and to ensure that the mid-day meal scheme lives up to its promise.

Integrated Child Development Services

Background

ICDS is the only major national programme that addresses the needs of children under the age of six. It seeks to provide young children with an integrated package of services such as supplementary nutrition, health care and pre-school education. Because the health and nutrition needs of a child cannot be addressed in isolation from those of his or her mother, the programme also extends to adolescent girls, pregnant women and lactating mothers.

Services are provided through the ICDS centres, also known as Anganwadis. Today there are seven lakh Anganwadis in the country, covering 40 million children. This is less than one fourth of all children in the 0-6 age group. The coverage of ICDS is, therefore, far from universal. Moreover, in most states, the quality of the ICDS services is of a very low standard. The Supreme Court orders on ICDS are essentially aimed at achieving "universalisation with quality" within a reasonable time frame.

Supreme Court orders

The crucial order in relation to ICDS again goes back to November 28, 2001, when the Supreme Court directed the government to "universalise" ICDS:

"(i) We direct the state governments / union territories to implement the Integrated Child Development Scheme (ICDS) in full and to ensure that every ICDS disbursing centre in the country shall provide as indicated below:

- (a) Each child up to six years of age to get 300 calories and 8-10 gms of protein
- (b) Each adolescent girl to get 500 calories and 20-25 grams of protein
- (c) Each pregnant woman and nursing mother to get 500 calories & 20-25 gms of protein
- (d) Each malnourished child to get 600 calories and 16-20 grams of protein
- (e) Have a disbursement centre in every settlement."

The order, however, remained largely neglected for several years. Virtually nothing was done to implement it. In April 2004, several marathon hearings on ICDS were held in the Supreme Court and detailed orders were issued, followed by further orders on October 7, 2004. The crucial orders in this series are as follows:

1. The Supreme Court directed the Government of India to increase the number of Anganwadis from six lakh to 14 lakh habitations, and to file within three months an affidavit stating the period within which it proposes to increase the number of Anganwadi centres (AWCs) so as to cover the 14 lakh habitations.
2. The Court also asked the government to reconsider the "one rupee per child per day" norm for supplementary nutrition. In fact, it effectively directed this norm to be raised to "two rupees per child per day", with the central government and state government contributing one rupee each: "All the state governments/UTs shall allocate funds for the ICDS on the basis of one rupee per child per day, 100 beneficiaries per AWCs and 300 days feeding in a year, ie on the same basis on which the centre makes the allocation."
3. All sanctioned AWCs were to be made fully operational immediately.
4. All SC/ST habitations should have an Anganwadi "as early as possible". Until the SC/ST population is fully covered, all new Anganwadis should be located in habitations with high SC/ST populations.
5. All state/UTs shall make earnest efforts to cover the slums under the ICDS.
6. The ICDS services should never be restricted to the BPL families.
7. Contractors shall not be used for supply of nutrition in Anganwadis and preferably ICDS funds shall be spent by making use of village communities, self-help groups and Mahila Mandals for buying of grains and preparation of meals.

8. The ICDS funds provided by the central government under the Pradhan Mantri Gramodaya Yojana (PMGY) should be fully utilised by the state governments. Further these funds supplement, and not substitute for, ICDS funds provided by the state governments.
9. The central government and states/UTs shall ensure that all amounts allocated are sanctioned in time so that there is no disruption whatsoever in the feeding of children.
10. All state governments/UTs shall put on their websites full data for the ICDS schemes including where AWCs are operational, the number of beneficiaries category-wise, the funds allocated and used and other related matters.
11. Local women's self-help groups and Mahila Mandals should be encouraged to supply the supplementary food distributed in Anganwadi centres. They can make purchases, prepare the food locally, and supervise the distribution.

Comments

The Supreme Court orders of April and October 2004 provided the government with a useful wake-up call, at least as far as the universalisation of the ICDS was concerned. The universalisation of the ICDS was included in the National Common Minimum programme of the UPA Government in May 2004. The National Advisory Council submitted detailed recommendations for achieving "universalisation with quality" in October 2004, and some "follow-up recommendations" in February 2005. The expenditure of the central government on ICDS was roughly doubled (from Rs 1,500-crore to Rs 3,000-crore) in the union budget 2005-6.

Nevertheless, little progress has been made in terms of the situation on the ground. The expansion of the ICDS is excruciatingly slow, and there is no evidence of any substantial improvement in quality, and the central government is yet to submit an affidavit to the Supreme Court giving a time frame for the universalisation of the ICDS.

National Old Age Pension Scheme

Background

This scheme was launched in 1995 to provide "old age pensions" to the senior citizens (aged 65 years or more). It is a part of the National Social Assistance programme, which also includes two other schemes: the National Family Benefit Scheme (NFBS) and Annapurna.

The National Old Age Pension Scheme (NOAPS) is primarily addressed to old men and women with no assured means of subsistence, but the eligibility conditions vary from state to state, and so does the coverage of the scheme. The pensions are given in cash, with the central government contributing Rs 75 per month per person, often supplemented with a

contribution from the state government (eg In Rajasthan the old age pension is Rs 200 per month). The main problem with this scheme is the limited extent of its coverage: there are plenty of applications, but funds are limited.

In 2002-3, the NOAPS was "transferred" (along with other NSAP schemes) from a "centrally sponsored scheme" to the state governments and thus became part of the state plans. Intended to be a relatively minor administrative reform, whereby the central government gives a cash grant to the state government and lets it run the scheme, instead of co-implementing the scheme with the state government, in practice, however, this "transfer" tends to have several adverse impacts. Firstly, the cash grants disbursed by the central government are often "diverted" by the state governments for other purposes, or only released after long delays. Secondly, after a scheme is transferred to the state plans, the central government stops monitoring it. Lastly, the transfer has also terminated the payment of administrative charges by the central government, and state governments often fail to make up for this.

Supreme Court orders

1. State governments have been directed to complete the identification of persons entitled to pensions under NOAPS, and to ensure that the pensions are paid regularly.
2. Payment of pensions is to be made by the seventh day of each month.
3. The scheme must not be discontinued or restricted without the permission of the Supreme Court. This actually applies to all the schemes covered by the interim order of November 28, 2001 (see Section 2.1). However it is particularly relevant to schemes such as NOAPS, because these schemes are quite "fragile": there are no strong lobbies to defend them, and they often come under the financial axe when the state governments face a financial crisis.
4. The NOAPS grants paid by the central government to the state governments under "additional central assistance" should not be diverted for any other purposes.

National Family Benefit Scheme

Background

This scheme, like NOAPS, is part of the National Social Assistance programme. It provides for lump-sum cash assistance of Rs 10,000 to BPL families on the death of a primary breadwinner, if he or she is aged between 18 and 65 years. A "primary breadwinner" is a household member whose earnings contribute substantially to household income. The amount of assistance offered is Rs 10,000 for accidental deaths and Rs 5,000 in case of death due to natural causes. The payment is to be given to the "surviving head" of the household, after a local enquiry has been made.

Supreme Court orders

1. As with other food-related schemes, the Supreme Court order of November 28, 2001 calls for prompt implementation of the National Family Benefit Scheme. The BPL families are to be paid Rs 10,000 within four weeks through the local Sarpanch when the breadwinner dies.
2. As with the NOAPS, this scheme is not to be discontinued or restricted in any way without the permission of the Supreme Court.
3. None of the benefits should be withdrawn from this scheme as a result of this order till further orders, by any of the state governments or union territories.
4. None of the benefits should be withdrawn from this scheme as a result of this order till further orders, by any of the state governments or union territories.

Comment

The National Family Benefit Scheme has yet to receive much attention in the Supreme Court hearings, interim orders and commissioners' reports. Little information is available about how it works on the ground.

Annapurna Scheme

Background

The Annapurna Scheme was launched on 1st April 2000. It was intended to assist "senior citizens" who are eligible for an old age pension under the NOAPS, but who do not actually receive their pension. The beneficiaries, to be identified by the Gram Panchayat after giving wide publicity to the scheme, are entitled to 10 kgs of grain per month free of cost through the Public Distribution System (special ration cards are issued to them for this purpose). The intention appears to be to provide some sort of emergency food security to elderly persons who are waiting for a pension to be sanctioned to them under NOAPS. However, the coverage of Annapurna itself is very limited. In 2002-3, this scheme was "transferred" to the state plans along with the NOAPS.

Supreme Court orders

1. As with other food-related schemes, the Supreme Court order of November 28, 2001 calls for prompt implementation of Annapurna: "the states/union territories are directed to identify the beneficiaries and distribute the grain latest by January 1, 2002".
2. As with NOAPS and NFBS, this scheme is not to be discontinued or restricted in any way without the permission of the Supreme Court.

Comment

The status of Annapurna remains unclear. It seems to have been launched in a half-hearted manner, and to have never really "taken off". Field reports suggest that its coverage is very limited. In addition, there are occasional reports of the scheme being discontinued in particular states, in contravention of the Supreme Court orders. Ideally, those who are eligible for Annapurna Scheme should be promptly covered by the National Old Age Pension Scheme.

National Maternity Benefit Scheme

Background

This National Maternity Benefit Scheme constitutes a limited attempt to introduce "maternity benefits" into India's social security system. It was introduced in 1995 as part of the National Social Assistance programme, before being transferred at a later date to the health ministry. Under NMBS, pregnant women from BPL families are entitled to lump-sum cash assistance of Rs 500, up to two live births. The payment is to be made 8-12 weeks before delivery, but in practice there are long delays, partly due to the complex application procedures. Women are often paid months if not years after delivery, and this entirely defeats the purpose of the scheme. Furthermore, the coverage of this scheme is very low: according to official figures, the number of women who actually received cash payments under NMBS in 2003-4 was just 4.3 lakh - less than two percent of the total number of births in that year.

Supreme Court orders

1. As with other food-related schemes, the Supreme Court order of November 28, 2001 calls for prompt implementation of the National Maternity Benefit Scheme.
2. As with NOAPS, this scheme is not to be discontinued or restricted in any way without the permission of the Supreme Court.
3. On May 9, 2005, the Supreme Court refused to allow the Government of India to phase out the NMBS and provide maternity benefits under a new scheme, Janani Suraksha Yojana (JSY). The reason for the refusal was that the Court was not completely satisfied that the new scheme would preserve all the benefits available under NMBS as the government claims. It requested further information on the JSY programme and instructed the commissioners to examine the matter in depth and file a report.

Comments

This scheme appears to be in bad shape. The procedures are complicated, the benefits small, payments are often delayed for months if not years, and the coverage is very limited. The

government seems to be keen to phase out this scheme and replace it with the JSY, but this alternative programme contains many flaws itself. In fact, the main focus of JSY is not to provide maternity entitlements, but rather to promote institutional deliveries and safe motherhood. It also remains unclear as to whether the new scheme will preserve the entitlements available under the earlier NMBS, in particular in relation to maternity benefits in the case of a delivery at home.

Sampoorna Grameen Rozgar Yojana (SGRY) and National Rural Employment Guarantee Act (NREGA)

Background

The initial PUCL petition, submitted in April 2001, argued that assured employment at a living wage is the best protection against hunger. In this and other ways, the Right to Food is closely connected to the right to work. Employment issues have figured in the Supreme Court hearings from time to time.

Sampoorna Grameen Rozgar Yojana (SGRY) is a centrally-sponsored employment scheme. It was initiated in August 2001, and officially aimed at generating 100 crore person-days of employment each year. According to the official guidelines: "The SGRY is open to all rural poor who are in need of wage employment and desire to do manual and unskilled work in and around his/her village/habitat. The primary objective of the scheme is to provide additional wage employment in rural areas, thereby provide food security and nutritional levels. The secondary objective is the creation of durable community, social, economic assets and infrastructural development in rural areas. While providing employment preference shall be given to agricultural wage earners, non-agricultural unskilled wage earners, marginal farmers, women, members of the scheduled castes/ scheduled tribes and parents of child labour withdrawn from hazardous occupations, parents of handicapped children or adult children of handicapped parents who want to work for wage employment.

Supreme Court orders

Important orders pertaining to SGRY were issued by the Supreme Court on November 28, 2001; May 8, 2002; May 2, 2003; and April 20, 2004. These include:

- 1. Speedy Implementation:** Several directions were issued (notably on May 8, 2002; April 20, 2004 and October 17, 2004) to the effect that SGRY should be implemented "expeditiously" by the central government and state governments. In particular, funds should be released on time and fully utilised, and SGRY funds should not be "diverted" for other purposes.
- 2. Priority groups:** The respondents shall focus the SGRY programme towards agricultural wage earners, non-agricultural unskilled wage earners, marginal farmers and, in particular, SC and ST persons whose wage income constitutes a reasonable

proportion of their household income and to give priority to them in employment, and within this sector shall give priority to women.

- 3. Doubling of SGRY:** On May 2, 2003, the Court directed the government to "double" the scale of SGRY, in view of drought conditions prevailing in large parts of the country: "The present SGRY system should be expanded, at least doubled, both in terms of allocation of foodgrain and cash for the months of May, June, and July". On April 20, 2004, this direction was extended: "The directions for doubling the foodgrains as also cash in terms of the order dated May 2, 2003 shall be applicable this year also."
- 4. Timely wage payments:** Wage payments under SGRY are to be made on a weekly basis.
- 5. Ban on contractors:** The use of contractors is "prohibited".
- 6. Minimum wages:** The state governments/UTs are directed to pay minimum wages to the workers under the scheme.
- 7. Ban on labour-displacing machines:** The state governments were also directed to stop use of labour displacement machines under SGRY.
- 8. Role of Gram Panchayats:** Gram Panchayats are entitled to frame employment generation proposals in accordance with the SGRY guidelines for creation of useful community assets that have the potential for generating sustained and gainful employment. Further, these proposals shall be approved and sanctioned by the Gram Panchayats and the work started expeditiously.
- 9. Social audits:** Gram Sabhas are entitled to conduct social audits of SGRY (and indeed of all food-related schemes). On receipt of any complaint of misuse of funds from the Gram Sabhas, the implementing authorities shall investigate and take appropriate action in accordance with the law.
- 10. Transparency:** Access to all public documents including all muster rolls shall be allowed to such persons who seek such access and the cost of supplying documents shall not be more than the cost of providing copies of the documents.

Comments

Field reports suggest that most of the above orders are routinely violated in most states. Some specific instances, such as the violation of Court orders on SGRY in Badwani District (Madhya Pradesh), have been taken up by the commissioners or even referred to the Supreme Court through interim applications. However, even in such instances, attempts to seek redress have only been partially successful at best.

The National Rural Employment Guarantee Act, 2005 may be an opportunity to make a new start as far as employment programmes are concerned. Under this Act, anyone who is willing to do unskilled manual labour at the statutory minimum wage is entitled to being employed on public works within 15 days (subject to a limit of "100 days per household per year"), or failing that, to an unemployment allowance. The Act creates durable legal entitlements,

helps labourers to enforce their rights, and includes strong provisions for transparency and accountability. In due course, SGRY is likely to be merged with other employment schemes initiated under the Act.

Other interim orders

The BPL list

The identification of BPL families is highly problematic, and by implication, so is the "targeting" approach of the Public Distribution System. On May 8, 2002, the Supreme Court directed the central and state governments to "frame clear guidelines for proper identification of BPL families", but this is yet to be done. By then, the "BPL Census" of 2002 had been completed and the central government was keen to proceed with the finalisation of the BPL list on this basis. However, following reports of massive irregularities in the BPL Census and widespread criticism of the census methodology, the Supreme Court stayed the use of the 2002 list in an interim order dated May 5, 2003. More precisely, no-one is to be "removed" from the previous BPL list (which goes back to 1997) until further orders are issued in relation to the matter. The stay was intended to give time for further deliberation of the matter, but such a debate has failed to materialise.

Starvation deaths and destitution

The "Right to Food case" was begun out of a concern for the plight of drought-affected people. It was in this context that starvation deaths were brought to the attention of the Court. As the case evolved, starvation deaths were recognised to be the extreme manifestation of a much larger problem of widespread hunger and malnutrition. As we saw earlier, the Court has clearly stated that the prevention of "hunger and starvation" is "one of the prime responsibilities of the government – whether central or state". The Court also declared, on October 29, 2002, that starvation deaths would be taken as evidence that its orders had not been implemented. Moreover, the chief secretaries could be held responsible for incidents of starvation deaths. The same order directed the central and state governments to ensure that Antyodaya Anna Yojana be extended to cover "the destitute section of the population". Taken together, these orders represent a vigorous statement to the effect that the Supreme Court will no longer tolerate the continued existence of starvation deaths and extreme destitution.



PART TWO
how the schemes are being implemented



TPDS: Food not reaching those really in need

Justice DVS Kumar

Man is a social being. Judges have a social responsibility. I believe that in performing his duties, a judge should look beyond the court halls and the judgments he renders before them. He must respond to the needs of citizens, must show concern and provide solutions to the problems of citizens if these are the responsibilities of all citizens, they are also the responsibilities of judges.

The unique position that judges occupy not only provides them with a great opportunity to serve society, but affords them an advantage in grasping the problems faced by society, and also bestows on them the power to usher in remedial measures. The traditional and conventional role of judges and the courts has since been discarded. It is now fitting and appropriate that they function as judges under the constitutional scheme rather than remain chained under traditional English legal concepts.

This is made clear in the words of Chief Justice Sabyasachi Mukherjee, who said in his dissenting judgment in the Delhi Transport case vs DTC Mazdoor Sabha 1991: "I believe that they must do away with the childish fiction that law is not made by judiciary". In a similar fashion, Chief Justice Subba Rao, in the Golak Nath vs State of Punjab case, observed that "this court under Article 141 is enjoined to declare law".

The expression "declared" is wider than the word "found" or "made". To declare is to announce opinion. Interpretation, ascertaining and devolution are all parts of the process. That which is interpreted and ascertained is devolved and then declared as law. The law declared by this court is the law of this land. If, on the basis of some outmoded theory the court only finds law but does not make law, if the Court is denied the power to declare law, then you make ineffective the powerful instruments of justice placed in the hands of highest judiciary of this country. I would, therefore, plead for a more active and creative role for the courts in declaring what the law is.

The jurisdiction and power to declare laid-down law is confined to the Supreme Court under Article 141, but the Chief Justice used the word "courts". There is only one Supreme Court in India and if he is consciously using the plural then there is a role for the High Courts as well. The learned Chief Justice, in his powerful dissenting judgment, extolled the judges of the

Justice DVS Kumar was born in September 1951. He enrolled as an Advocate in June 1976. He practiced at the Madras and Karnataka High Courts before being appointed as an Additional Judge of the Karnataka High Court in December 2000. He was sworn in as a permanent Judge in April 2002.



superior courts to imbibe the spirit of the Constitution when interpreting the laws and the Constitution, and to develop an active constitutionally guided attitude in the task of interpretation. He speaks of changing the conventional, crippling and ineffective attitude, approach and understanding towards interpreting the law.

A question which remains problematic is the extent to which this can be translated in terms of utilitarian results, while continuing to remain governed by the facts the specific situation of the case, the scope of relevant law governing the situation, the manner in which it is to be understood and interpreted.

So far as food is concerned there can be no doubt or ambiguity that the Right to Food is an essential part of the Right to Life, itself covered by Article 21 of the Constitution of India. Therefore, in any of the cases with the Right to Life aspect that come before the courts, judges should be fully conscious and aware that the question is being considered in the context of Article 21.

So far as judges are concerned, it is important that they adopt a humanitarian approach to the problem. It is only through such an approach that the multiple dimensions of Article 21, which is a protection of life and liberty itself, emerge. It is a right guaranteed to the citizens' vis-à-vis the State. The honourable Chief Justice mentioned earlier on that it is also a private right. All rights under the Constitution are fundamental rights. These rights are to be enforced and the State can't diminish those rights. If any of these rights are trampled upon, it is the duty of the courts to protect the citizen from such trampling, from such interference. Therefore, the courts have a role to play under Article 21, and this includes the Right to Food.

It was not the statistics but the stark reality that elicited the sharp reaction and response from Justice Kripal when the PIL was moved before the Supreme Court. The humanistic approach of Justice Kripal was as ordained in our scriptures.

In our country, food has been accorded the highest importance. If we look into our own scriptures and earlier laws, food is life itself, sustains life, and all of us are mandated to produce more and more food, to ensure that food reaches everyone, and those who have excess food are themselves obliged to distribute it to others. There may be several persons in society who find themselves unable to produce food. The concept of socialism came much later but it had already been ordained in our scriptures long ago.

The mandate to the State to give equal rights to all citizens and an adequate means of livelihood was ordained in the Constitution as part of the Directive Principles of State Policy. Even in the Directive Principles, however, food is not directly mentioned as a subject. What is mentioned is providing the means to lead a dignified life i.e. to sustain and earn a source of livelihood. Food by itself is not mentioned. In this context the suggestion of Justice Srikrishna to include the Right to Food in the Fundamental Rights by amending the Constitution should be noted by the lawmakers.

Judges do not look at the statistics when a case comes before the court, they look at the problem. Statistics do serve a purpose in the context of overall planning and policy making

and in deciding which direction to move, however, this is not the function of the courts and the judges. Judges are concerned with the problem that comes before the court and how best to resolve the problem, particularly when guaranteed Constitutional and Fundamental Rights are violated or there is an indication of such a violation.

In this context, the role, theory and scope of the PIL in shifting the concept of locus emerges that when the person who is in need of relief cannot come themselves, that someone may appear on their behalf. The locus concept may have been widened in terms of the PILs but the violations are examined in just the same manner. The courts always examine within the ambit of the laws and the constitutional provisions. As judges, it is our duty to see how the problem can best be redressed within the four-corners of the law. The humanitarian approach is reflected in judicial innovativeness in understanding, interpreting and effectuating Article 21.

With regard to presentations and statistics, it is said that there are three types of lies the simple and ordinary lie, the blatant lie and the statistical lie! I believe that statistics dehumanise. Problems are viewed in terms of averages and not examined from the point of view of the individual. The real problem may remain hidden if looked at solely from the statistical angle. For example, if one person has an income of Rs one crore and another person has no income at all, according to the statistics, the average income is Rs 50 lakhs. In this way, statistics can sometimes deflect your attention from the real problem that exists. Despite the fact that there are millions of people in our country who are starving, there are still those who use statistics to claim that starvation doesn't exist, yet the fact remains that there is starvation. You cannot ignore the reality. Food may be plentiful but it is not reaching everyone.

The government should be primarily responsible for addressing this problem as it comes about from failures on their part. However, when the matter comes to the court and if there is violation of Article 21, it will be up to the courts to find a solution. This is the role of the court and it is on this basis that orders are passed.

A realistic approach to the problem which could be taken by the judges who are neither planners, nor policy makers, nor implementers would be to see that the State does not deny any citizen his right to life as guaranteed under Article 21. It is within this context that the discussion on how best to achieve justice should take place. I am a realist not an idealist. I do not pretend that poverty, hunger, or starvation do not exist in our country. Rampant begging exists in both rural and urban areas. Hunger is ultimately what drives a person to the extreme step of begging.

Many judges are unrealistic in their approach. Once, while delivering a lecture at Jagadguru Renukacharya Law College at Bangalore, Chief Justice Bhagwati remarked that it was only when he had gone out to rural areas in his capacity as CJ of Gujarat High Court that he realised the extent of the poverty in India. It changed his attitude to life itself. In our country poverty exists and it is not necessary to become a Chief Justice to realise this. It is a stark

reality. Therefore, we have to examine how best to address this problem within the constitutional functions assigned to the courts. I refer to the Sanskrit shlokas to drive home the point that the Importance of food was known to us thousands of years ago. Now, we seem to have forgotten this fact and seek to look elsewhere for inspiration and solutions, something which is not necessary.

In conclusion, the food problems in our country are not related to an Insufficiency of food, they are related to the distribution of food. Due to Incompetence and Inefficiency at the level of distribution, food is not reaching those really in need. Several schemes, such as the Targeted Public Distribution System, have been created with the goal of ensuring that food is provided to starving people, but the food is often siphoned off or diverted before it reaches its intended targets. The root cause of this is corruption. It is a cancer afflicting our society and it is the principal cause of all our ills. In order to achieve any progress, in order to solve any of our problems, including the food problem, we must first tackle the issue of corruption head on. Courts, acting within the scope permitted by the law, can also help to ensure that it is curtailed to the furthest extent possible. Most importantly of all, we need to raise public awareness of the problem. People should resist, resent and oppose corruption. Only then, will solutions to the problems be found.

The poorest in the poorest states suffer the most

Biraj Patnaik

The PDS, which provides subsidised foodgrains to nearly 20 crore families, is one of the largest food subsidy programme in the world. The PDS in India distributes food worth approximately Rs 24,000 crore through a network of 4.5 lakh outlets across the country. As large a scheme as it is in itself, when its linkages with other schemes like the Employment Guarantee Scheme are taken into account, it becomes clear that it is one of the most critical links in the entire food safety programme of India.

The PDS programme was first introduced in Bombay, in 1939, in an effort to deal with the crisis of spiraling food prices which was occurring at that time. Its basic principles were laid down in 1942 and it was only 45 years later in 1997 that its death knell was sounded with the introduction of the Targeted Public Distribution System (TPDS). Essentially, until 1992, the programme had made foodgrains available on a universal basis. In 1997, however, under pressure from the World Bank and other international bodies, and as part of a declared intention to reduce fiscal deficit, a system of targeting was introduced which had the ostensible aim of providing better foodgrains to the poor.

The years 1997 to 2001 subsequently witnessed a dramatic decline in the number of people lifting foodgrains from the PDS system. Even while this decline in off-take was occurring, the Food Corporation of India, which was set up in 1965 with the aim of transferring food from areas of plenty to areas of scarcity, continued to procure grains at an accelerating rate.

The Government of India has defined norms for the quantity of grains that must be in stock in case of emergencies and exigencies. This buffer requirement was 15.8 million tonnes but the FCI had procured an additional 13 million tonnes in excess of the buffer. The government response to this situation was to export the grain abroad as cattle feed.

- For families above the poverty line the entitlement is Rs six per kilo of rice, 35 kilos a month; Rs 4.50 per kilo wheat and 35 kilos per month per family
- For the Antyodaya scheme (for the poorest of the poor) which was continuously strengthened by the Supreme Court's orders and now covers two crore families. Thirty five kilo of rice per month per family is given @ Rs three per kg and wheat @ Rs two per kg

Biraj Patnaik has worked with the RTF Commissioner's office. He has also been involved in initiatives and campaigns in the areas of health sector reforms, agricultural biodiversity, tribal empowerment, the right to information and the Right to Food.



- Under the Annapurna scheme for the destitute 10 kilos of free foodgrains are given to the marginalised people

Over the past few years the Public Distribution System (PDS) has been completely sabotaged. There has been a shift from universal PDS to Targeted PDS, a shift designed to reduce the number of people benefiting from the PDS. Even with these new reduced numbers, the Planning Commission has estimated that food does not reach 57 percent of the poorest families. Ironically, it is the poorest families in the poorest states that are least likely to gain from the targeting approach an approach, which was implemented despite extensive international experience of the failure of such an approach.

Similar targeted approaches in Sri Lanka, Mexico and Jamaica all led to a dramatic reduction in food subsidies. After 1997, a large number of poor people saw their entitlements to food stripped away from them. A further damaging consequence of the targeting approach was to render the 4.5 lakh ration shops of India largely unviable. A report of the Planning Commission produced in 2005 based on a sample of 16 states indicated that only 20 percent of the ration shops remained viable and that 80 percent of the shops were making their money through the black marketeering of foodgrains.

One form of privatisation which slipped by completely unnoticed, long before the debate on public distribution services started, was the privatisation of the PDS. Whereas previously it had been the case that 90 percent of the shops in all the states were run by cooperatives and public bodies, from the Eighties onwards, the privatisation of FPS began in earnest and became linked to a system of political patronage. The rice millers lobby and transporters lobby, who are effectively running the system now, played an important part in sabotaging the PDS.

A PDS approach based on targeting violates the Right to Food of a large section of the population. Moreover, administering a targeted programme is far more expensive than administering a general programme. It is generally seen to be the case that, due to political pressures, the programmes, which are intended for the poor, end up being very poorly funded and administered!

In Sri Lanka, the introduction of the TPDS in the face of political pressure led to a reduction of 57 percent in the participation of households and to a reduction in food subsidies from three percent of GDP to just 1.3 percent of GDP. There are numerous examples of similar experiences in other countries.

In India, targeting is done on the basis of the Planning Commission's estimate of eligible households. This figure is 37 percent and is based on estimates carried out by the Planning Commission over twelve years ago in 1993-94. Each state is permitted a certain percentage of poor to whom they can provide BPL cards which will be subsidised by the central government.

There is no greater travesty than what actually happens in the field when the survey takes place. The survey is based on absolutely unverifiable indicators like the number of square meals the person has.

how the schemes are being implemented

- The government expects an official to be able to go to every household and check the nutritional value of the food each person consumes, the number of articles of clothing they own, etc.
- One highly disturbing aspect of the survey is that it contains a question about a person's aspirations. If a person aspires to send their child to school, this will be looked upon more favourably than if they state their aspiration is to acquire a house or to be able to eat two square meals a day. Thus people are punished simply based on the aspiration they state.
- The manner in which the survey is conducted results in a picture which almost entirely neglects the least visible and most socially excluded persons in society manual scavenging workers, dalits, disabled people, HIV/AIDS affected people, the urban homeless, etc.
- The survey is culturally insensitive and as a consequence it misrepresents the results from tribal areas, representing their estimated needs to be much lower than their actual needs and often attributing to them a score which is higher than what is required to be below the poverty line.
- In the landholding section of the survey, share cropping is placed on a par with land ownership and the quality of the land is not taken into consideration.

The amount of grain that is provided by the state governments for families identified as poor is much less than is needed for those who are actually poor. Moreover the figures from the commissioner's report seem to indicate that the poorer you are, the less you get. Of the cardholding families under the Antyodaya Scheme, four families out of 10 who don't receive their grain are from the states of Bihar and Jharkhand. Uttar Pradesh likewise has a similarly high figure. This indicates that it is the poorer states who suffer most by the system.

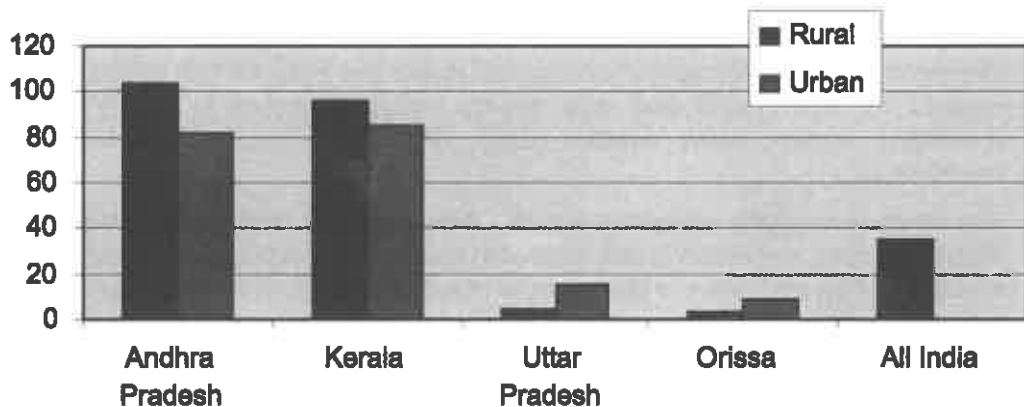
In states where the PDS system is well-administered, it does make a difference to the lives of the people. In states like AP and Kerala, BPL cards far in excess of what the government quota required were issued and the deficit was made up from the state budget. The decline in the level of poverty in Kerala is directly attributable to the PDS programme, which is much more significant and developed there than in the rest of the country.

It is the poorest states which are least impacted by the system. In an attempt to address the problem that people often did not have enough money to lift the entire stock of 35kg to which they were entitled in one go, the Supreme Court ordered in 2003 that the BPL card holders should be allowed to buy rations in installments. Despite the existence of such an order, violations continued to occur.

The Supreme Court laid down strict guidelines by which the privatised fair price shop could operate, allowing for the cancellation of licences for failing to keep shops open, for failing to provide grains, or for keeping the cards of BPL households. The Supreme Court also acted to strengthen the Antyodaya Programme. If the Supreme Court orders are implemented in the right spirit it will increase the number of Antyodaya cards provided, from the two crore issued

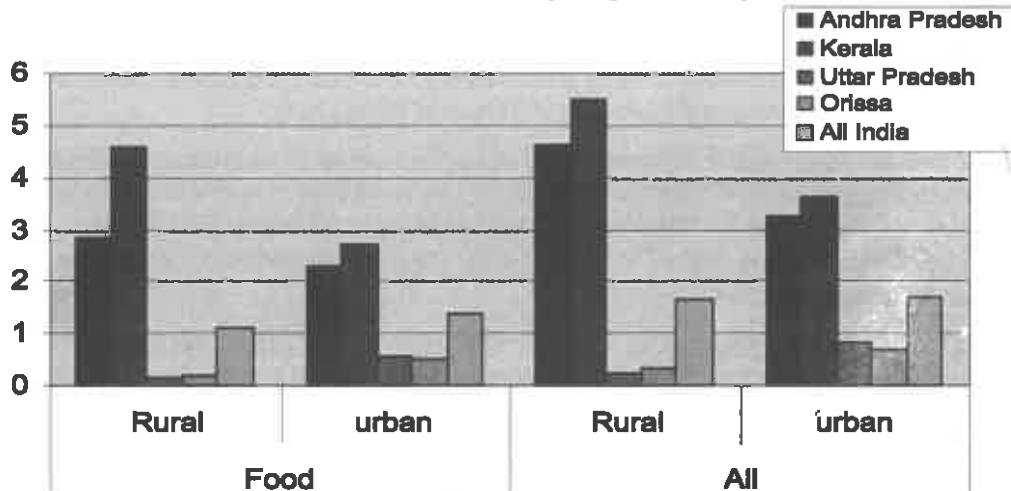
Does the PDS make a difference?

Per capita calorie gains due to PDS (all commodities): K.Cal/day



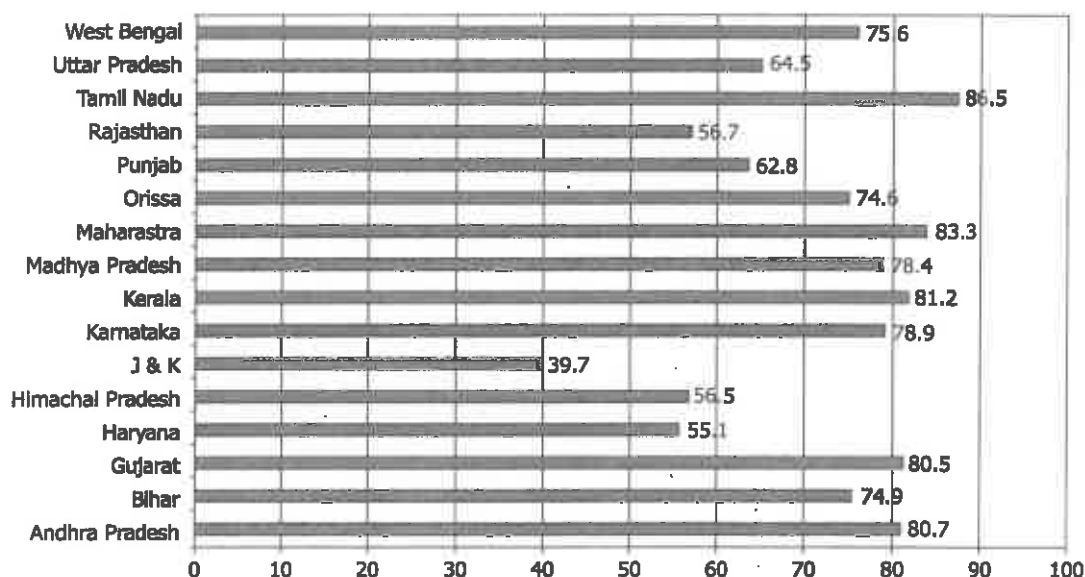
Source: Dev M, CESS, IFPRI
Resource Material

Decline in poverty due to PDS of food and all items (% points)



how the schemes are being implemented

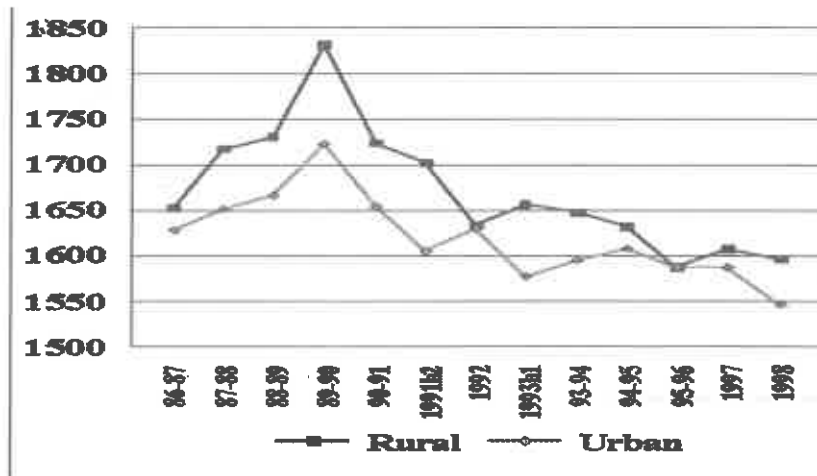
Calorie Deprivation by State (1999/2000)



% consuming less than 2400 K cal per day

Source: Meenakshi & Viswanathan (2003)

calorie intake of bottom 30% population



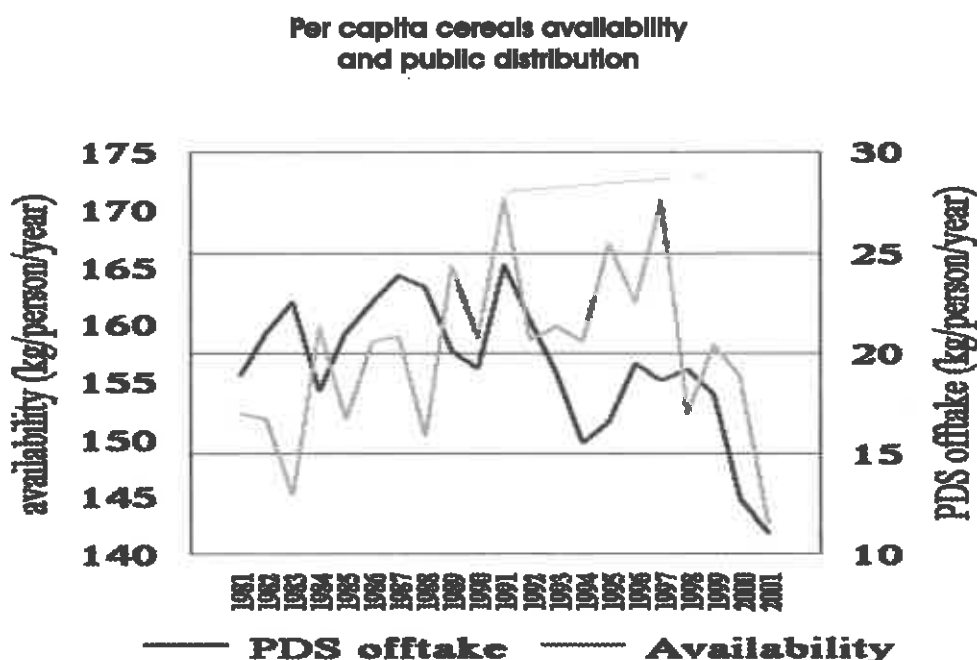
Source: Radhakrishna and Ravi
Quoted in Long Term Grain policy
Report

at present, to more than eight times that number. The scheme would then include the disabled, old persons aged 60 or more with no regular source of income, primitive tribal members, households where the earning member is not engaged in gainful employment, amongst others.

Between 1997- 2001, there was a very steep decline in the off-take, but after pressure from the courts this figure is rising steadily and is now in the region of 81 percent. However, it is disheartening to note that in the poorer states, the off-take is still well below what it should be. With the support of the commissioners of the Court, some efforts are afoot to try to bring about more progressive PDS control orders, for example, PDS controls which would help to ensure that leakages are prevented and that food reaches the poorest people.

The commissioners' order in relation to Chhattisgarh had enormous ramifications:

- 4500 shops or 50 percent of the shops in Chhattisgarh were de-licensed because they were held in private ownership. The state recognised that black marketeering and profiteering had risen to the greatest possible extent because of the private ownership of shops and so they decided to terminate the private ownership of shops.
- Households which had no legal housing or tenurial rights over lands, such as forest land



Source: Committee on Long Term
Grain Policy (Abhijit Sen et. al.)

how the schemes are being implemented

encroachers and the urban homeless, were given ration cards under this order.

- The cards were to be not just in the name of the eldest male but also in the name of the eldest female member of each household.
- Reservations were promulgated for both tribal and non-tribal areas; all shopkeepers in tribal areas would be required to be from tribal families; 33 percent of shopkeepers would be required to be women; preference would be given to schedule castes and OBC families as shopkeepers, with 33 percent of positions being again reserved for women and 10 percent being reserved for disabled persons.
- Vigilance committees were strengthened. At the state level, the advisor to the commissioner was made a permanent representative. Representatives from the civil society, charged with independently monitoring the system, are to be appointed at district and block levels. It is an ongoing process, but hopefully by next year we should have the vigilance committees in place.

In relation to reform of the PDS system, five issues in particular stand out and deserve to be highlighted.

1. We must have a universalised approach rather than a targeted approach.
2. We should follow the example of states which have successfully implemented the PDS, like Tamil Nadu, where 90 percent of the shops are run in conjunction with the cooperative sector.
3. We urgently need to de-privatise all fair price shops and to hand them over to Panchayats, self-help groups and cooperatives.
4. We need to strengthen the vigilance committees at the state, district and block level.
5. The current price levels for BPL families are too high and are in need of reduction. Studies have shown that sensitivity to price is such that even a small increase in price can lead to a dramatic decrease in the level of off-take.

Who is responsible for the failing of PDS ?

Arvind Kejriwal

The NDTV followed three trucks which emerged from the FCI godowns in order to find out where the trucks actually went. Although all of the trucks were supposed to head for the 3000 ration shops in the capital, few in fact reached their destination. Indeed, it is reported that up to 90 percent of the trucks never reach the ration shops. One of the trucks ended up at one of the oldest flour mills in Delhi, the Modi Mill. When questioned about the arrival of the truck, the shopkeeper straightforwardly replied that the truck owner regularly sells food stock from the FCI for illegal sums. This fact was confirmed by the records room. An entry showed the 1970 kg of wheat that the truck had just delivered. The officials of Modi mill refused to comment on record, simply saying that they were not concerned with where the grains came from.

Of the three trucks which left the godowns, only one made it to the ration shop, another went to Modi Mill and the third delivered its grain to a private godown. One of the transporters was willing to explain why the rations didn't make their way to the ration shops. He said, "What is wrong with getting grains delivered to my shop at Rs 15.60 per kg? I can't comment on anything else but I don't think theft on such a large-scale could take place without the direct or indirect involvement of the senior officials of the food department. It is against these people that cases should be lodged. The central government spends over Rs 26,000-crore on food subsidies, but much of these foodgrains are diverted from the poor. With so much money at stake, it will take a lot of work to ensure that the poor get their due".

To reiterate, three trucks were supposed to take foodgrains to the ration shops, but in reality only one went to the ration shops.

Rations are diverted at two locations. We have already seen that rations are diverted from the FCI, but rations

Arvind Kejriwal is a social activist who led a celebrated crusade for greater transparency in government. He joined the Indian Revenue Service



in 1992 and soon became aware of a culture of silence and extortion. He realised that much of the corruption prevalent in government was due to absence of transparency in the process and founded the organisation *Parivartan* in 2000 with the aim of combatting such corruption. After an appeal to the tax commissioner failed to bring about change, *Parivartan* filed a PIL demanding that the department show greater transparency. By 2002 most of the suggestions had been implemented. Kejriwal was one of the leading campaigners for the Right to Information Act, passed in 2005. In July 2006, he spearheaded an awareness campaign for the Right to Information across India. Kejriwal has exposed the misappropriation of funds for social projects, revealed collusion between shopkeepers and food department officials to steal grain rations and in 2005 was involved in the successful campaign to challenge plans for water-privatisation in Delhi. In recognition of his efforts and achievements he was awarded the Satyendra Dubey Memorial Award in 2005 and the prestigious Ramon Magsaysay Award for Emergent Leadership in 2006. He is involved at the grassroots level in the campaigns for the Right to Information and the Right to Food.

how the schemes are being implemented

are also diverted from the ration shops themselves. Various methods are employed by duplicitous shopkeepers in ration shops to deprive the intended beneficiaries of their grain. Either the shops do not open, or if they do open, the shopkeeper declares there to be no rations in stock, or else he gives very bad quality and adulterated rations weighing less than their entitlement, or charges more than the prescribed rates.

Such deceptions at the level of the ration shopkeeper ultimately boil down to a fudging of the records. This is accomplished by making bogus entries in the daily sales register, issuing bogus cash memos and making false entries in the ration cards.

The Right to Information Act in Delhi allows every citizen to obtain any government document and penalties can be imposed on officials if this information is not provided within 30 days. We used this Act to obtain copies of daily sales registers, card registers and cash memos. An analysis of these samples revealed that up to 90 percent of ration diversions were taking place in this area.

Let us look for a moment at one particular sample:

The first page contains the name of the cardholder – Haaruq. The second and third pages of his ration card, which correspond to the years 2002 and 2003, are totally blank, meaning that he has not received any rations from the ration shop. The fourth page, which was obtained under the Right to Information Act, is a copy of the daily sales register of the shopkeeper. According to the daily register, he was given 20 kg of wheat and 25 kg of rice in June 2002. This is obviously a bogus entry.

Another card, belonging to Janki, contains the name of all her family members. The shopkeeper has issued a cash memo for Janki but we know this to be bogus because the signature is that of Kamla, and there is no Kamla in that family.

The examples above illustrate how the Right to Information Act can be used as a powerful evidentiary tool to prosecute dishonest shopkeepers.

The PDS is governed by the Essential Commodities Act. Section 10 of this Act makes every offence cognizable, which means there has to be compulsory registration of the FIR. Section 7 prescribes the penalties. Under Sec. 3 the Act gives powers to the central government to make any orders and Sec. 7 says that if Sec. 3 orders are violated, then it will result in various penalties ranging from three months to seven years imprisonment.

Under section 3 of this Act, the government passed the PDS Order of 2001. This order laid down a series of guidelines and policies for the issuing of licences, the issuing of ration cards, and the distribution of rations. It requires of the shopkeeper that he sells the rations at the prescribed rates as per entitlements, maintain a card register, stock register and sales register, display prescribed information and not indulge in any diversion. A violation of any of these things should result in a jail term of between three months and seven years, but the law is neither being obeyed nor enforced.

According to the Planning Commission, there is a diversion rate of around 57 percent. This means that the PDS Control Order and the Essential Commodities Act are being violated by every second shop owner in the country.

When these records are presented to the authorities, neither the police nor the department of food takes any action. There seems to be an active collusion between the shopkeepers and the authorities to allow shop owners to divert rations with impunity.

Certain critical failures in the system need to be addressed.

- Officials lack accountability. They show negligence towards their routine jobs and ignore the complaints filed by aggrieved persons.
- The rules and procedures are ill-defined and unclear. They don't prescribe what action to take, under what circumstances, or even where responsibility lies.
- Shop owners receive a very low commission. The commission to the owner of an oil depot in Delhi is seven paise per litre of kerosene and on average the quota of a shop is 10,000 litres. This means that he receives just Rs 700, with which he is expected to pay his rent, bills and sustain his family. In order to reduce the temptation of shopkeepers to divert grain we must raise their commission.

The Delhi government conducted social audits on an experimental basis. On a pilot basis, two districts were to throw open the records of shopkeepers in that district. They also prescribed the pro forma, if rations were issued in your name without your receiving them, you could fill in the pro forma and the licence of the shopkeeper would be immediately suspended. The exercise received excellent results and is now being extended to cover all of Delhi.

A further problem which exists today is that cardholders are assigned a particular shop and have to receive their rations from that shop and that shop only. Could we not have a system where a cardholder is free to choose a different ration shop to the one he is assigned if he finds he is not satisfied with the quality and quantity of the foodgrains he receives? Not only would this bring about internal competition among shopkeepers, but the number of complaints would be lessened as the option to choose another shop would exist.

The officials need to be held accountable. For that we have presented a proposal to the government about the ways for holding them accountable for complaints and grievances. Also the government should increase commissions to reasonable levels. Another possible measure would be to provide food dispensers whereby people could be issued tokens and receive prescribed quantities of foodgrains, along the lines of Mother Dairy.

The present PDS system of artificial quotas is not working. It only ensures that a large number of poor and vulnerable people, who should be catered for, are neglected instead. The

Food and welfare schemes: Delivery and accountability issues

Dr NC Saxena

Delivery issues cannot be separated from policy issues. It is like a horse race, you need a good horse and a good jockey. Unfortunately, the last thirty years have witnessed a steady decline in the performance of the implementation machinery. This would seem to indicate that there are structural problems which need to be addressed, but in India we have tended not to examine the structure of institutions in a serious or determined fashion. Instead, when there is a problem with the delivery mechanisms, we generally look at the last link in the chain, we tend to appeal to individuals we should have a good collector, panchayat, NGO, etc. However, we do not look at those initiatives which could be taken to improve the performance of the average government servant, the average NGO or the average panchayat.

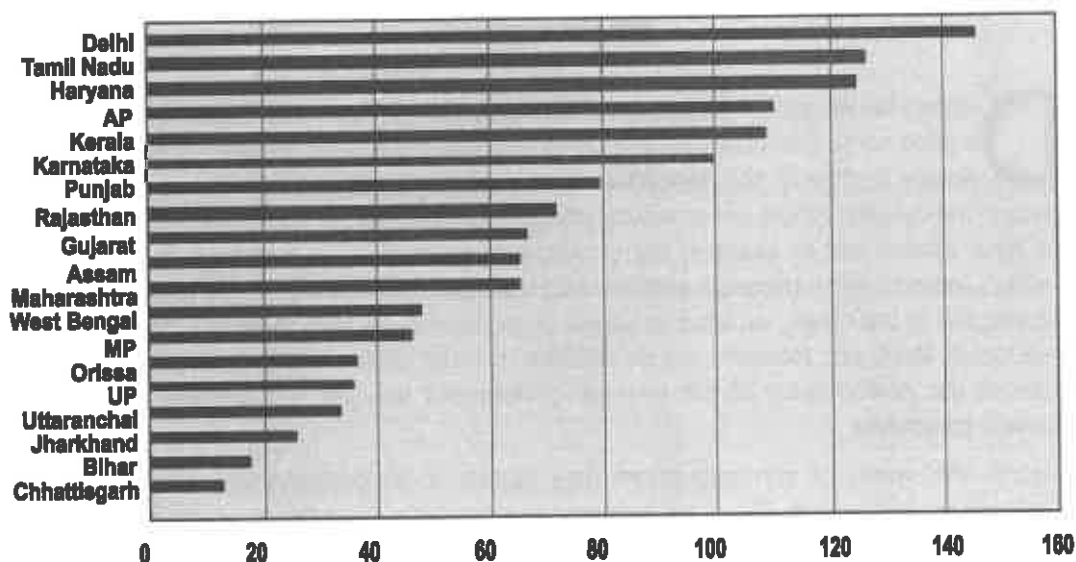
I admit that many of my suggestions may appear to be controversial, bizarre or even impossible to implement. This is because my ideas on this subject are at an embryonic stage. I consider this discussion here today to be an opportunity to expand, improve and fine-tune my ideas.

Why has our celebrated economic growth not translated into better social sector growth and an improvement in social indicators? The problems are not solely confined to PDS, ICDS, SGRY, etc. The problems are universal and present across all sections.

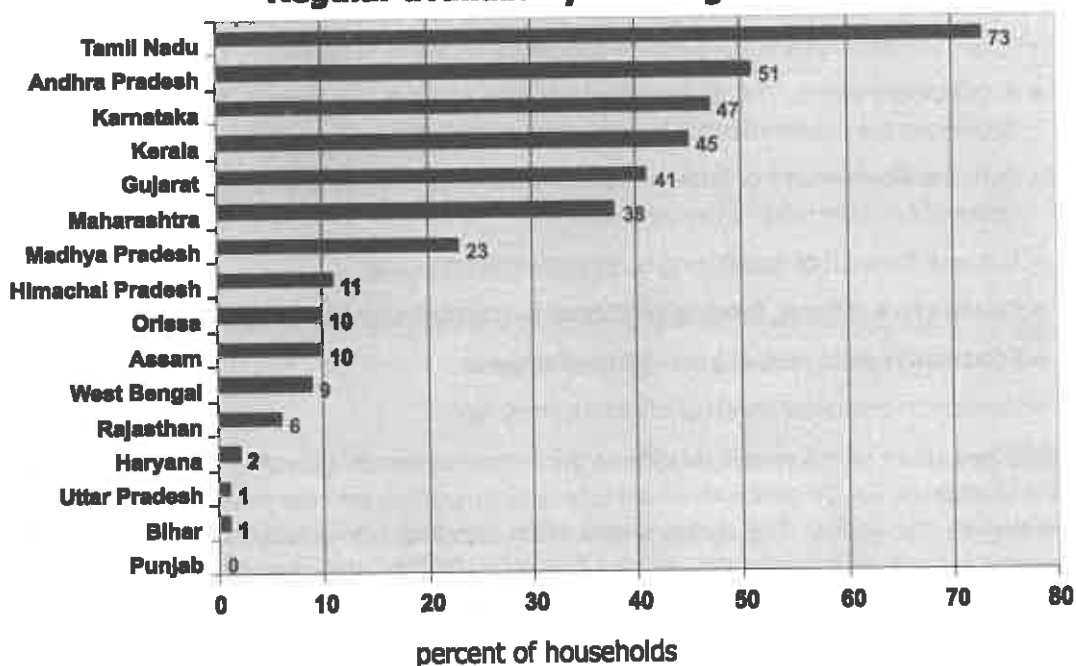
- A dichotomy exists. The Government of India controls the money. The states have no money yet the Government of India doesn't control the staff
- Both the Government of India and state governments tend to be passive. Neither has a sense of full ownership of the schemes
- It is well known that monitoring continues to be very weak
- Due to a lack of funds, funding allocations by the states tend to be inadequate
- Food continues to remain a non-planned scheme
- Corruption and good governance are incompatible

We talked about monitoring in relation to the Immunisation programme. The Immunisation results given by the UP government are utterly incompatible with the picture which has been painted by the survey. The survey's evaluation depicted Immunisation rates in UP at 16 percent but the UP government claimed it to be more than 100 percent. It is obvious that considerable lacunae have emerged because of a lack of monitoring.

Lifting per BPL person in kg/annum 2003-04



Regular availability of foodgrains



how the schemes are being Implemented

Each family should receive 35 kg of foodgrains through PDS. For a family of five this would translate to seven kg per unit or 84 kg annually. Against this figure of 84 kg, in poorer states like Jharkhand, Chhattisgarh, Uttaranchal, UP and Orissa, people receive less than 30 kg per year. These figures have been taken from the central government records, but they are not being used to take corrective action, to rebuke or reprimand states, or to analyse why there has been no improvement in the distribution of foodgrains in the poorer states.

A very large survey was carried out in which people were asked whether they were satisfied with the foodgrains that were available at their PDS shop. The survey was conducted by the Public Affairs Committee, a voluntary organisation based in Bangalore. The results were as follows: In Tamil Nadu 70 percent said yes and in UP and Bihar just one percent said yes. In many of the poorer states the 'yes' figure is between less than 20 percent and 23 percent.

Under the SGRY scheme a sum of Rs 20,000-crore is being spent and this sum may very soon rise to 40 or 60,000-crore with the implementation of the Employment Guarantee Scheme. In Bagwanl, in Madhya Pradesh, we found that the programme was being run using harvesters and other large machines, which were generally owned by MLA/BDOs/ Block Pramukhs, etc. In other words **Rakshak hi bhakshak ban gaye hain**. The entire work was being done by machines and the employment existed only on paper and not in reality. Any earth moving work that could have been done by people is instead being done through tractors and the scheme as it is being implemented is actually providing very little employment. Therefore, although in principle employment guarantee schemes are very fine programmes that should help the poor, there is a considerable danger that the way in which they are being run today might only act to increase corruption and to deprive people of its expected benefits.

A study was made of a poor state to find out how much money was really being spent under SGRY. Half of the money, in effect, was being looted by the government functionaries and panchayats. We should not automatically assume that panchayats are always honest people – they are in the same category as our politicians.

The recent elections showed that whether it was in Madhya Pradesh, Rajasthan, or AP – wherever chief ministers tried to improve governance, they lost. The general impression one gets in the states of Bihar and Jharkhand is that good governance and good politics are incompatible. The message is clear: Only if you want to lose the elections, should you try and improve the administration, otherwise continue as you are! The Indian State is becoming an open treasury. The attitude can be seen to be – if I don't loot, then others will loot, so why should I not join in the fray?

How can we correct such behavior and attitudes? In my view it will require reforms at various levels. All of these forms are complementary. For example, police reforms are not complete unless there are judicial reforms. Unless criminal cases can be dealt with in a reasonable length of time police work can not be efficient.

Political reforms need to take place. We have quite a good law against changing political parties, but it should also be possible to have a law to make political donations more transparent and accountable, perhaps by ensuring payments are by cheque, declare the donors name, and are published on a website. Administrative reforms are needed at the level of the bureaucracy, panchayats and NGOs.

The number of government servants in India is one of the lowest in the world. It is less than two percent even if you count all the people in the public sector units. In Western Europe it is four percent and in Eastern Europe it is six percent. But 93 percent of our work force consists of Group 'C' and Group 'D' persons. It is 1: 6: 93, which means each Class-I servant requires 93 babus and chaprasis to do his work. We need to change the structure and have more people in the line position and fewer in the staff position.

If you compare the salary which is paid to public servants in India as a multiple of per capita GDP, it is the highest in the world. If you take the purchasing power of all four categories of civil servants it is 7.2 times the per capita GDP. This figure is higher than anywhere else in the world.

It is difficult to explain how with high salaries, an open press and good democratic institutions that corruption remains widespread. I have been asked this question in international fora but I have not been able to explain why we have high levels of corruption alongside high salaries.

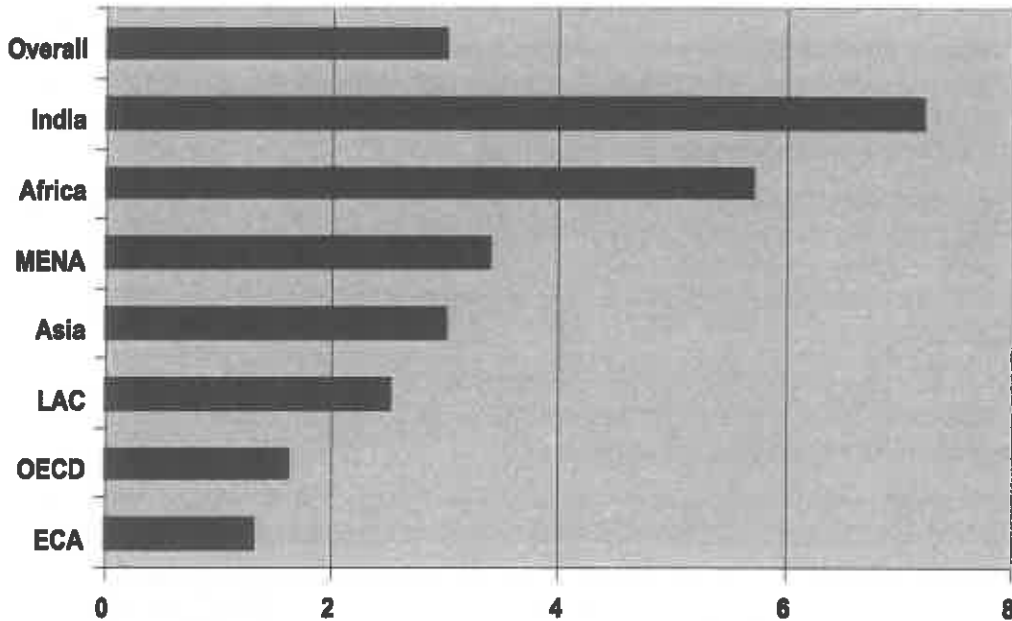
Why is corruption so prevalent in Indian society? It is not because of need but because of greed. It is a high reward and low risk activity. People are corrupt because they think it is rational and safe to be corrupt.

My suggestions:

- The right to information law has been passed in many states. In Rajasthan, where the implementation has been backed by civil society, it has met with success. In states where this has not happened, the implementation has been poor.
- The administration needs to be proactive and to put the information on its website. One simple measure which could reduce harassment in rural areas would be to computerise land records and publish them on the website. Some states, like Karnataka, Andhra Pradesh and Tamil Nadu have computerised land records, but farmers are being forced to go to the Taluka offices to get a copy of their land records. If they were put on a website, farmers would be able to access the information through STD shops in rural areas.
- In a similar fashion, petitions or FIRs should be able to be sent by fax or by e-mail, thus eliminating the need to go to the police station.
- We should employ measures to track funds, as in the case of SGRY in Orissa, to follow the money and see where it goes.

how the schemes are being implemented

Average government wage as multiple of per capita GDP



- Government servants should publish their property returns on the website. Public servants should declare their property not only to government but also put it on the website.
- In our efforts to improve transparency the Official Secrets Act should be scrapped. The oath of secrecy should be replaced by an oath of transparency. Instead of swearing an oath not to divulge information, public servants should swear an oath to publicise information, except when not in the interest of national defence or security.
- In the SGRY and Employment Guarantee Scheme, the most important document is the muster roll. We should start putting the muster rolls on the Internet so that members of civil society can check them. Even as a Supreme Court commissioner, I found it very difficult to go to the rural areas and to get copies of muster rolls.
- A similar improvement would be to publish the tenders on line.
- It is not enough to have put a law in place; we need to ensure there is a rigorous implementation of that law.
- Instead of just having vertical accountability, we should have upward, downward and sideways accountability. In projects funded by the World Bank or IMF, it is common for people to come from abroad to inspect the work. We should permit people, and people

from India not from abroad, to inspect, monitor and review the implementation of programmes. Third party inspections by civil society professionals should become standard practice for all important projects.

- We should develop a governance index and encourage states to improve their standard of governance through financial incentives. One could start with a small fund and declare that those states which can demonstrate an improvement in governance would gradually receive more money.
- The Government of India provides a lot of money to projects but does very little monitoring. We should improve both the capacity of government organisations and outside organisations to monitor. We should also reduce the number of centrally sponsored schemes from the 300 we have at present so that monitoring can be of a more rigorous nature.
- We must reform the expenditure budget, to make it valid for two-three years, so that capital expenditure and revenue expenditure can be conducted properly and to prevent the fudging of records due to time constraints.
 - We need a professionalisation of the civil service, the concept of having public servants who are "jack of all trades but master of none" is not applicable nowadays.
 - The structure of the IAS and IPS has become an inverted pyramid, there are too many people at the top fighting with each other for promotion. The only way to change that structure would be to start retiring people at the age of 48.
 - On account of the large numbers of Group 'C' and 'D' employees we need to do just the opposite for them and refuse entry to the government service at the level of babu or peon unless they are 35 years old. This may appear to be a bizarre measure but it is already being implemented in certain states.
 - Para-teachers should start at Rs 2,000 per month and should only be regularised after six to eight years of service.
 - Except in exceptional circumstances there should be no re-employment of a retired person. Retirement benefits should not include a car, house, or telephone.
 - The average tenure in the more backward states, such as UP, is between three and six months. This situation can easily be rectified by publicising short tenures and requiring that dedicated cadre posts should require an average stay of two years. It should be possible for a listless person to be transferred after two or three months, but someone else should stay for four years to maintain the average. This will not solve the problem entirely but it will certainly alleviate it to some extent.
 - At present the relationship between the politicians and the civil service is akin to the traditional model of the Indian family with politicians playing the role of a husband and the IAS officers in the role of a wife. We need to have a new relationship model in which

how the schemes are being implemented

the terms of interaction between the politicians and the civil servants is such that each has a pre-defined role and neither can take shelter behind the other.

- Corruption can be reduced if not eliminated by deregulation. Too many controls continue to exist in relation to the setting up of businesses and the movement of foodgrains. We also need to make greater use of information technology and to pass the Corrupt Public Servants Act.

On the subject of NGOs, having worked with them myself I know that about 80 percent of them are as bad as any government servant. Some NGOs do very good work, but it remains to be seen whether a system can be devised whereby only good NGOs and not bad NGOs receive government funds. This situation might be resolved by giving large bulk grants to credible organisations and having them decide which of the grassroots organisation is to receive money. In the same manner that we grade states, we should also grade NGOs, so as to ensure that only those who do good work receive money. The decision of the Government of India to cut down bilateral aid two years ago was disastrous in this respect is that it stopped the flow of funds to NGOs who were doing very good work.

Our panchayats are neither inclusive nor participative. There is also corruption among block level officers and panchayat samiti members. They behave more or less like contractors. Some village panchayats may have done good work but generally it is viewed merely as a money-making opportunity. It is not okay to assume that only MLAs and MPs are corrupt. They are all involved in construction work and tend to avoid programmes like health and education which are not as favourable to contractors. They prefer programmes where wages are given, that promote a vertical relationship and not horizontal mobilisation.

A first step towards solving these problems would be to provide the power of taxation, especially in relation to land revenue and water taxation to the Panchayats. In Tamil Nadu, 85 percent of the land revenue that the government collects is given to panchayats. I would suggest that the panchayats should instead collect the taxes and pass 15 percent to the government. The benefit would be that the sarpanchs would have a direct relationship with the villagers and would remain accountable to them at the time of collection. That 99.8 percent of the funds at the village level come from above only serves to reinforce the virtual relationship between the panchayat, BDO and MLA, and undermines the development of horizontal relationships.

In order to strengthen the capacity of panchayats:

- We need to grant them powers of taxation
- We need to link the amount of devolution they are to achieve to their level of performance
- We need to employ a grading system for panchayats
- We need to increase the panchayats powers and responsibilities in education, health and watershed schemes

- We need to grant them powers to make appointments on a contract basis. For example, if a teacher is not being appointed they should be able to step in and make the appointment

We have about six thousand blocks and six thousand MLA in the country. Should the MLA not be looking after the block panchayats? Such an arrangement would prove mutually beneficial as the state assemblies would become more favourable to the panchayats and the MLAs would gain more power under the panchayats.

At the time of the framing of the Constitution it was envisaged that the assemblies would meet for a minimum of 150 days a year, but today in UP, Bihar and the North-east assemblies meet for less than 20 days a year.

We created panchayats and gave them executive functions, but the MLAs feel aggrieved because they have been granted only recommendation powers. Could we not also involve the MLAs in the Panchayat structure?

We can think in terms of sectoral reforms, but those reforms which I have discussed above and which I consider necessary, are reforms of a cross-sectoral nature – ie greater transparency and accountability, greater use of IT, greater responsibility for panchayats and the strengthening of NGOs.

India is rightfully praised for having an open press, democracy and elections but its performance in terms of delivery has been abysmal. Our only consolation, and one of questionable value, is that we are better off than our South Asian neighbours, Pakistan, Bangladesh and Nepal.

To sum up, we need to:

- Increase civil service accountability and transparency
- Shift focus from input controls to monitoring of outcomes
- Use IT for good governance
- Reduce controls on NGO funding
- Link financial devolution with performance
- Greater authority with responsibility to Panchayats
- See whether the separation of the Judiciary from the Executive working in India
- Not appoint commissions, just act!

Malnutrition: From mother to child

Dr Vandana Prasad

We have witnessed terrible situations and circumstances in our country, but we have not learned to use those experiences to improve our laws and policies. It is easy to lose a sense of urgency and hope, but discussions like this will help to maintain that sense of urgency.

When we speak of child deaths, child health, child nourishment, child illness, or child mortality, we tend to view the situation on humanitarian grounds. However, it can also be seen as an index of the general socio-economic situation. The mortality rate of children under five is an important measure of development in every country and is intrinsically connected with the socio-economic conditions of the society.

Why choose the mortality rate of the under-5s and not over-5s? In my view, it is because they are the most vulnerable group in any society and are the most susceptible to changes in socio-economic conditions. This is again linked to employment, livelihood, gender equity, availability and distribution of food, water sanitation, environment, literacy, and education. Not only do these factors have an impact on the child mortality rate of the under-5s, but the under-5 child mortality rate in turn impacts upon these issues.

As Indians, we know that amongst us, a high premium is placed on children, both in our families and in the wider society. However, the fact remains that we have a very dismal track record in terms of child development programmes.

- One in three children is born underweight. This means they weigh less than 2.5 kg at birth. Such children are vulnerable to death, disease and improper growth
- One in two children is underweight
- Three out of four children are anemic, which in turn makes them vulnerable to disease, breathing problems and headaches
- We have twice as many hungry children in our country as Sub-Saharan Africa. We may recall the images in the media of the hungry, shrunken and frail children for whom we used to collect donations, but we have forgotten that similar children exist in our own country

Development, cognition, the ability to learn, and growth of the brain all happen exponentially in the first three years of a person's life. We have a section of our population that has already

Dr Vandana Prasad is a paediatrician and a national secretariat member of the *Jan Swasthya Abhiyan*, the Indian chapter of the People's Health Movement. She spoke on the subject of child malnutrition and in particular on the medical aspects of child malnutrition.



been effectively disabled because their growth has been stunted during this critical period.

Due to malnutrition, ordinary diseases take on the character of lethal diseases. A malnourished child's body cannot cope with diseases to the extent that a healthy child's can, which means that contracting a common disease such as measles can easily result in the death of the child. This situation has implications for the entire health care system. We are spending a lot of money on technology and interventions in the medical sector, rather than using public health expenditure on prevention.

We have not been able to deal with the issues of food, water and sanitation with any degree of success. Yet we spend vast sums on efforts to immunise children against water borne diseases. Immunisation is not a bad thing in itself, but it represents a reversal of the policies we should have followed in the first place.

Population control is seen as an important issue. At times human rights are forced to take a back seat vis-à-vis this argument. When we lower the mortality rate of our children, the fertility rate automatically lowers. This is evidenced in our own country in Kerala, Karnataka and Tamil Nadu, where the fertility rate is lowering drastically. There, as in Scandinavia, two children is the norm. It is self evident that when we care for our children, we produce fewer children.

It is a matter of national shame that we are continuously hauled up in front of international organisations and have to answer why we have not been able to change our development indices for the better. Initially we had some success in terms of infant mortality rates with the rate lowering from 140 to the present rate of 70, but for the last five-six years, the rate has remained stagnant.

Why are female children so important? We don't consciously think of it, but the entire population is derived from women. Her physical situation, her economic situation, her social situation impact the entire population. The girl becomes the adolescent, who becomes the mother of all children. Nevertheless, despite their irrefutable importance, women continue to face discrimination.

What does the Right to Food mean for a newborn child? A newborn child should be exclusively breast-fed for six months – this is his Right to Food. It cannot come from a PDS shop, ICDS, etc. It can only come through being next to his mother.

Many poor working women work for up to 15-20 hours a day. They often have to leave behind their child of four weeks and go to work. The medical community has laid an emphasis on the message that poor women must breast-feed. How does the State or family provide support for this? In order to breast feed her baby, she needs four hours a day, not to speak of the time she needs to bathe the child, clean, and do other household work. Four hours for the child's Right to Food under Article 21. Who is going to support this right of the child?

This Support should come from maternity entitlements and crèches but they are non-existent in the unorganised sector. The decisive years for malnutrition to set in and to take

hold of the body are between the ages of three and six, so these are the years for preventing the malnutrition.

Poverty and gender discrimination are huge factors in child malnutrition. We know it takes a long time to feed a child. Ensuring that children are fed thus requires support from family and society and changes in law and policy.

I have spent 11 years of my life dealing with poor urban children. This group is often neglected, as urban children are considered rich enough to fend for themselves. The urban poor are largely comprised of rural migrants, many of whom were dispossessed. In the cities they lack their traditional systems of care. Both the parents work and the woman's work is markedly different from her work in rural areas. She works for wages, at longer distances from home, in situations much less secure, and she is much less in control. This situation obviously has a detrimental effect on the children's nutrition. Poor families not considered to be under the BPL have to buy everything for cash, are not the beneficiaries of State benefits and schemes as the rural poor would be and thus suffer from a shortage of cash. Their aspirations rise as they are daily confronted with the richest of the rich, but they themselves are forced to lead a hand-to-mouth existence.

Statistics show that slum children are in fact worse off than rural children. This means that urban poverty must be given due consideration and should be examined carefully. The majority of cities use statistics in a very deceptive manner. Some cities even claim not to have slums.

It is critical that we look at the areas of inter-familial food distribution. Ante-natal care, maternity entitlement, and child care services. All are areas which still require enormous work, and all are related to labour and women. Much policy work can be done through judicial intervention. Let us not let statistics dehumanise the situation. It is real children who are dying.

Growing up with hunger

Justice Mohit S Shah

Every year 26 million children are born in India, but how many are privileged enough to have adequate access to food?

We are often told that one out of every five children in the world is in India, but we are seldom told that one out of every three children in India is malnourished.

Of the 26 million children born in India every year, 13 million are malnourished.

In a casual conversation with a friend – a fellow judge – he told me that he resented having the scope of Article 21 enlarged and felt that the judiciary had taken an excessive burden upon itself. He was of the view that the implementation part should be left to the better-equipped executive to deal with. Just because the executive were not doing their part did not mean that the judiciary had to take up the mantle. I replied that we were not burdening ourselves but giving a lead to society.

Between 1955 and 1973 the legislature would often claim that the judiciary were over-fed, knew nothing of the pangs of hunger, and were only concerned with enforcing the right to property. They would say "what about the socio-economic ideals set out in the Directive Principles of State Policy? The legislature is doing every thing it can to implement these policies but the judiciary is frustrating our attempts at every turn."

However, from 1973 onwards, the Supreme Court declared that the Directive Principles were as important as Fundamental Rights and that the courts were to ensure that the Directive Principles would be enforced to the same degree as fundamental rights. (Therefore), when the Right to Food or any other human right comes before the court, we are concerned to look at the issue in light of four kinds of rights and their corresponding obligations.

- The obligation to respect the citizen's right to freedom of speech and expression and to life
- The obligation to protect those rights
- The obligation to facilitate those rights

Justice Mohit S Shah was born in 1953. He obtained a Bachelor's Degree in political Science from MS

University of Baroda and in 1976 secured Gold Medal at the LLB Examination. He enrolled as an advocate in July 1976 and started practicing in the Gujarat High Court. He principally practiced in the areas of constitutional, civil and commercial laws and was a standing counsel for many boards such as the Gujarat Maritime Board and the Gujarat State Land Development Corporation. He has also been a part-time professor at various law colleges. He was appointed as an Additional Judge of the Gujarat High Court in September 1995 and was sworn in as a permanent Judge in June 1997.



how the schemes are being implemented

In this instance, we are concerned with the State's obligation to provide food.

Some interesting innovations in the mid-day meal scheme and the ICDS are being implemented in the state of Gujarat. Over 30,000 schools in the state are covered by the mid-day meal scheme, and with the help of funding assistance from the central government, 30 lakh of primary school students in the first to fifth standard are given mid-day meals. An additional seven lakh of students in the sixth and seventh standards are given mid-day meals at the expense of the state government.

The ICDS scheme covers three million children. Each of the schemes is different and each is designed to cater for a different segment of the population. The mid-day meal scheme covers school-going children aged six and upwards and the ICDS covers children who are under the age of six years, and concentrates in particular, at present, on children under the age of three.

One provision outlined under the ICDS scheme is supplementary nutrition. An effective technique for ensuring that supplementary nutrition like vitamins and minerals would be palatable to children under three and their mothers were to offer the medicines in candy form. It is now planned that "Project Candy" will be expanded to include every district in the state.

As part of an attempt to introduce micro-level monitoring, the secretary of the health department in charge of the ICDS is going to issue a "Mamta Card". This card is divided into three parts, one for the mother, one for the Anganwadi worker, and one for the health worker.

How can the judiciary make use of the already existing infrastructure to enable the Right to Food? It is vitally important that judges use their powers of discretion wisely in this regard. In one case, a lady health worker filed a petition challenging the order of a penalty she had received for not staying in the village she had been posted to. Her lawyer said she had been attending her duties between 10 am and 6 pm. I countered by noting that she was supposed to be canvassing for immunisation and that if she only went to the village during office hours and didn't actually stay in the village she would not be able to establish a rapport with the village people to encourage mothers to vaccinate their children. I told her that she would only be able to discharge her duties effectively if she stayed in the village. I agreed with her lawyer that the stoppage of future increments would be a major penalty and agreed to grant a stay on the penalty order on condition that she reside in the village.

When it comes to judicial discretion, we are told that judges must be concerned only with the decision making process not with the merits of the decision, but what would have happened if the government were to follow such a penalty procedure? There are 1, 34,000 lady health workers in Gujarat and even if 10,000 of them were not to stay in their village, imagine the time you would waste holding departmental enquiries. We should not give such latitude to the government that we are concerned only with the decision-making process and not the merits of the decision. As a lawyer, I found that it was easier to satisfy the court on the merits of administrative decisions rather than on the legality of the decision-making process.

I assert that when we decide such matters, we should go beyond procedural rules, the rights of the employee, and highlight and concentrate on the right of the child for whose benefit the post of the lady health worker was created.

Previously, it was part of policy that primary school teachers were recruited at a state level. A common advertisement would be published for all the districts. The government later realised the difficulties entailed in such an approach. Following a posting in one particular district, the employee would invariably seek to return to his home district to work. As a consequence, much of his time would be spent making transfer applications at the cost of his attendance at school. In response, the government altered their policy to make recruitment on a district-wide basis. It would now be possible to apply for only one district, but this would be a district of one's own choosing. That policy decision of the government was challenged, but the court upheld the policy decision, notwithstanding Articles 14 and 15, because these Articles do not prohibit differentiation on this basis, they merely require that the justification for the decisions not be arbitrary.

Let us turn to the contentious issues surrounding the prohibition of child labour. Although the law states that no child under 14 can be employed, it has been pointed out that there are many street children who don't attend school. They face a stark choice between food and school on the one hand and supplementing their family's meagre income on the other. Why should they be compelled to go to school? Instead of prohibiting child labour, couldn't we instead order their employers to provide them with food and education, so that their families could send them to school after they finish work?

I had a discussion with the additional secretary of the women and child development department regarding the legal bottlenecks that would be faced in implementing such a scheme. She was used to being hauled up in front of me for not implementing court orders, so she was surprised by my question. She said a stay on promotions to the post of mukhya sewika had led to 200 such posts lying vacant. I was surprised. A single mukhya sewika supervises the work of 25 Anganwadi workers, so this meant that 5000 Anganwadi workers were not being supervised. When it is borne in mind that each Anganwadi worker looks after up to 500 children the cascading effect of such a court order begins to be appreciated. Judges have to become sensitive to the impact of their court orders. To this end, I propose to request the Chief Justice to reform the recruitment rules for mukhya sewikas.

For example, I ruled on a temporary bail case where a prisoner's wife had pleaded for the release of her husband on the basis that their 1 ½ year old child, who had been suffering from jaundice, had been hospitalised. The public prosecutor countered that the last time the woman's husband had been released on bail he had absconded. The woman gave a personal account of her relationship with the prisoner and how he had absconded but later surrendered himself to the authorities. I decided that the prisoner should be released on temporary bail, that the child should be taken to hospital with the prisoner-father, and that the expenses of the police escort should be borne by the State.

how the schemes are being implemented

So to say that it is not necessary for a judge to be sitting on the PIL benches in order to accomplish much for children and their rights. The Right to Food is not to be seen in isolation, it is connected with the health care rights of the child. Immunisation, vaccination and other medicinal measures should go hand in hand with the Right to Food.


Mid-day Meals Scheme

Harsh Mander

Thanks to the judicial intervention, a major step forward has been taken in the area of child malnutrition. I will show how judicial intervention in one particular instance made a difference to millions of children who live in the kind of desperate situation described earlier by one of the speakers.

The Supreme Court has ordered that every single child in the country who attends a government school or government-aided school must be given a hot cooked nutritious meal at the expense of the State. There has been much debate about whether the Right to Food should be considered a fundamental right and entitlement. The historic impact of this particular order is that it creates a universal entitlement. No questions were asked or entertained as to whether the State could afford to pay or not it has to find the resources. Every child now has a legal claim to this level of nutrition at State expense.

I had a most heart breaking conversation with a group of Musahar women (Musahars are one of the most dispossessed dalit communities in the country living in Eastern UP and Bihar). The women told us that the most difficult lesson they had to teach their children was the lesson of how to live with hunger. They said, "It is often the case that there is no food at all in the house". One woman described the desperation they take to find food. She said: "we set out in the morning and try to collect whatever grain we can". They find the grain under the undigested dung of cattle, or they collect the grain that has fallen unnoticed on the field after it has been threshed, or they learn the habits of the rats and find out where they hide the grain. At the end of the day they, manage to take home just a fistful of rice. They put it in a large pot of water and add salt to it and somehow pretend that it is enough food for the entire family. She said that it is hardest when the child is very small, because it's impossible to reason with a small hungry



A former civil servant, Harsh Mander was head of six districts and one division in Madhya Pradesh. He used his position to initiate and implement a number of development programmes including rural development schemes, schemes for tribal and scheduled caste development and campaigns for literacy and prison reforms. He consistently fought to uphold the rights of persons displaced by major projects, such as Sardar Sarovar, Singrauli and Kerba. He is responsible for preparing the recent draft national rehabilitation policy for displaced persons. Between 1993 and 1996 as Professor of public administration at the LBS National Academy of Administration, Mussoorie, he introduced a number of innovative training strategies designed to sensitize new recruits to the problems of various disadvantaged groups. As country director of ActionAid India, between 1999 and 2004, he campaigned for justice and rights for some of the most intensely marginalised and disenfranchised people in India such as the urban homeless and the dalit community. He has been invited to lecture all over the world including at MIT Boston and Stanford University and was a recipient of the illustrious Rajiv Gandhi National Sadbhavana Award in 2002. As a journalist and scholar, he has produced countless articles and books on a wide range of social, developmental and justice issues. Principal advisor for the commissioner to the Supreme Court in the Right to Food case, Harsh Mander has been one of the foremost campaigners for the Right to Food.

child. In order to put the child to sleep they put a little bit of opium on their finger and feed that to the child. As the child grows older they start to reason with the child saying, "This is part of our life and you have to accept it. You have to learn to live with hunger."

What does it mean to go hungry? What does it mean for parents and children?

According to a UNICEF report, 60 percent of children go to bed hungry, 53 percent suffer from chronic malnutrition and nearly 75 percent are severely anemic. There is also a problem in relation to the non-attendance of schools and the accompanying high levels of illiteracy which this brings about. 43 percent of the rural population and 20 percent of the urban population, 49 percent of women and 26 percent of men remain illiterate. The mid-day meal scheme addresses all these problems.

Before recognising the right to a mid-day meal, which is encompassed within the larger Right to Food, as a Fundamental Right, we must return to Article 21 of the Constitution. The programme held a number of objectives at its outset. It was primarily motivated as much by educational as nutritional objectives. Its principal objective was to increase attendance in primary schools while also improving the nutritional status of children attending school.

The Supreme Court orders are of immense significance not just in the context of the Right to Food, but also in the context of creating a universal entitlement, a legal justiciable right, that every child in every primary school in the country would be given a mid-day meal. A minimum calorie content has been specified, for a minimum period of 200 days a year, with greater coverage to be provided for drought prone areas, even during the summer vacation. We have seen that once the Supreme Court declared the mid-day meal to be a universal entitlement, the government had to make funds available for it, even if this required the government to restructure its resources.

A number of interim orders were issued in relation to the scheme, one of which declared that under no circumstances can the cost of the food be recovered from parents; it must be State-allocated. For each rupee one per day given by the central government, the state governments are required to match that with their own rupee one. However, we found that when the central government provided rupee one, many state governments reduced the amount they would have budgeted i.e. rupee one.

It was also recognised that if the programme were to be correctly implemented, new infrastructure would be required, in order to store the grain, cook the food, etc. Hence, a separate kitchen, store/shed and drinking water facilities were required.

Given our cultural context, the issue of caste was always going to arise. In our caste-led society, caste prejudice is very strongly expressed in the dining process. Co-dining provides children not just with a nutritional benefit but has the added benefit of breaking down caste-barriers. In keeping with the spirit of the Constitution, the Supreme Court has stated that there should be many more cooks and helpers from the dalit communities.

The Supreme Court recognised that there was an urgent need to carefully monitor the

scheme and passed a series of orders to ensure that the orders it had already passed were actually being put into operation. There were also specific orders on numerous other matters including drinking water facilities, kitchen inspection and infrastructure.

When it came to the notice of the Supreme Court that the quality of the food grain used in the scheme was going to be an issue, the response of the Court was to order that the grain to be used in the scheme would be subject to proper inspection.

Nevertheless, it was found that the scheme continued to exist only on paper and not in practice.

- Even where funds had been allocated, utensils had not been purchased, and so students were forced to bring their own utensils
- The release of funds was taking place far too late to be effective
- The usual bureaucratic tangles were getting in the way of the proper implementation of the programme
- Leakages in the system were preventing children from getting food in the quantity and nutritional quality that had been prescribed
- Bureaucratic confusions were created due to the fact that state administrations declare a drought after the summer vacation is over, but the court has now ruled that what matters is whether the district is prone to droughts, in which case the child was to continue to be fed in schools during the summer vacation
- On the issue of infrastructure, many schools continue to be without drinking water and kitchen sheds
- With the honourable exception of the Karnataka government, no government has explicitly issued orders in relation to the SC/ST cooks and helpers
- Many states are only giving children pre-cooked rations rather than the nutritious, hot, cooked meals they are required to provide. In Rajasthan, I personally witnessed a boy take the dry food he had received as part of the scheme and carry it back to his family in the village across the river. He somehow managed to swim across with one hand while desperately trying to keep the food above the water with the other. On questioning, he said that he would share this handful of food between himself, his sister and his mother. This story clearly illustrates the importance of on-the-spot cooking and feeding

In collaboration with the Delhi School of Economics, we conducted a survey in three different states to find out how the mid-day meal scheme was functioning in the wake of the Supreme Court orders. The results were very encouraging:

- In 76 of the 81 schools in our sample we found that mid-day meal was being served on a regular basis

how the schemes are being implemented

- In a short span of time we found that there had been a significant jump in the number of girls enrolled in the programme
- Children appeared better nourished in schools where the scheme was running than those in schools where the programme was not running
- The scheme was found to have been particularly effective in tribal areas
- In single parent households we were satisfied that the child at least was receiving food.
- The survey also stated that instances of caste discrimination were rare. However, discrimination of this nature is not open but subtle. We conducted further studies on this issue which scandalously revealed that in ten different states, 75 percent of schools had separate seating and eating for children of schedule caste communities and that the majority of cooks came from the upper castes. It is important we do not delude ourselves; we must acknowledge the reality of caste discrimination in our society

Although the Supreme Court order is clear and unambiguous, some states have fared quite badly at implementing it. One such state is Assam, which has only implemented the scheme in five remote and undeveloped districts, and even this has been done in a haphazard and irregular fashion.

- In Manipur, only 10 schools in two districts are involved in the scheme
- In West Bengal, just six percent of the children are covered under the scheme
- In Goa, 47 percent of eligible students are not covered under the scheme
- In Gujarat, 40 percent eligible students not covered under the scheme
- In Jharkhand, 42 percent of eligible schools and 33 percent of eligible students are not covered under the scheme
- In Himachal Pradesh, only five percent of the schools are covered under the scheme
- Some states have not provided any reports at all

Our reviews also show that a very large number of schools still do not have access to clean drinking water, something which is vital for the health of children.

The instruction to construct separate kitchens in schools has been virtually ignored in most states, which raises additional problems for the health and safety of children. Our studies also indicate that the provision of necessary infrastructure has been largely on a sporadic basis.

In the face of strong opposition from teachers who felt that their duties extended only to teaching and not cooking, separate orders were issued which required that there would be separate staff for cooking and helping in order to look after the elementary programme. The

teacher's task now is merely to ensure that the food is of sufficient quality, to supervise the serving of the food and to check that the children eat in an orderly manner.

The central government is obliged to provide assistance for the free provision of foodgrains, transport and conversion costs. It is the duty of the state government, on the other hand, to be responsible for the organisation of the programme, something which is much less demanding in terms of fiscal responsibilities and outlays.

The greatest success story of the Right to Food campaign must be that several million children gain entitlement and access to nutrition solely due to intervention on the part of the Supreme Court which showed the way. The next step, and something we are currently working towards, is to extend this programme systematically to other groups.

However, three sets of problems remain to be overcome if we are to achieve our end.

1. The present scheme does not provide an entitlement to all children of school going age, but only to every child who attends school. Although it could be claimed that this might act to encourage children to come to school, the reality is that any child who does not go to school is obviously already socially disadvantaged. For example, one group who are deprived of the chance to go to school and by extension to the Right to Food under the mid-day meal scheme, are the 50,000 street children in Delhi who have no parents to take care of them. Instead of going to school and receiving food, they are forced to work and eat out of the rubbish heap, etc. Educationists have argued that they want to use this scheme as an incentive to get children to go to school, but I have many reservations about such an approach.
2. We tend to neglect the issue of discrimination but it is important that we acknowledge its existence and confront it.
3. We must address the scourge of corruption. In an experiment in Madhya Pradesh, a group of women formed a "Mothers Committee" to run the mid-day meal scheme. The programme is now decentralised and the mothers committee procures the grain, produces the food, distributes the food and monitors the programme. The committee members perform their work in an eager and enthusiastic manner because it is their own children who stand to benefit. The quality of the food is good, the menu is different each day, the food is both nutritious and delicious and corruption levels have been dramatically lowered.

The exemplary actions of the "Mothers Committee" show us how it is possible to find the solution to the problems we face, even to that most pressing and destructive of problems – corruption. Corruption remains a serious problem but we now have the means to address it. It only remains for me to acknowledge what a difference the programme and entitlement of the mid-day meal scheme has made for the hungry children in our society.

ICDS : A distant dream

Dr NC Saxena

Despite court intervention on its behalf, the ICDS has not had the same degree of success as the Mid-day Meal Scheme. The Mid-day Scheme is running well even in poorer states like UP and Rajasthan. Indeed, in Rajasthan I saw that under the scheme a different meal was provided to the children each day.

There are many reasons to explain why the ICDS is not doing as well:

1. ICDS only covers the 3-6 years age group. When the scheme was initially framed it was not recognised that the crucial age for child development was between six months and three years. As a result, the ICDS is concentrating on the wrong age group. In the last 5-6 years the government has tried to frame ration schemes for the younger age group, but the rations have tended to go to the family and not directly to the children.
2. Any scheme covering the six months to three years age group has to be household based. The worker must go from house to house and examine the nature of the food being provided a critical factor to bear in mind in this respect is culture. The quantity of food required by children in that age group is not very much and can easily be provided for within the family budget. So the need is that worker establish a relationship with each household, to form mother's committees, and to convey knowledge on how to prevent malnutrition in the age group six months to three years.
3. Unlike the mid-day meal scheme, which provides for a hot cooked meal, the ICDS scheme only provides ready-made, and often unpalatable food like Panjiri, Sattu, and Murrura.
4. Because the contracts are decided at the state level, the distribution system is subject to a great deal of corruption.
5. Despite a decision having already been taken to increase the number of centres, no actions have been taken to achieve this end.

On account of the limited number of centres, only 25 percent of children aged 3-5 are availing ICDS. Malnutrition is widespread in northern and central states and it is only in the northeast, Kerala, Punjab, and Sikkim that malnutrition is less than 30 percent. Not including pregnant women, lactating mothers and adolescent girls, the official number of children the scheme should cater for is 16 crore, but the number officially receiving supplementary nutrition is only 3.8-crore.

There are only about six lakh centres for 14 lakh settlements. 3-4 years ago, the Supreme Court ordered that there should be a centre in every settlement. These orders are yet to be complied with. The total money spent on the scheme amounts to about Rs 5,000-crore. Although this is a great deal of money it remains to be seen whether the funds are being well utilised.

The state governments complain, unlike the mid-day meal scheme, where the Government of India provides for the grain, the cost of the programme is being borne by the state governments themselves. However, they forget to mention the assistance they receive from the Planning Commission.

In Jharkhand, the government surrendered Rs five-crore out of the Rs 35-crore allocated to them because of a tussle within the government. The ministers wanted the entire money to be given to contractors because elections were nearing and they were interested in giving this money to the contractors. They could not decide, hence the money was surrendered. This is true in other states also where the procedures and the intentions are aimed at making money instead of helping and feeding children.

The number of children in Bihar is 1.60-crore, of which 50 percent are malnourished. The number of children who have access to Anganwadi centres is only 70 lakhs, and the number of children who are enrolled is only 15 lakh. Even then, owing to procedural rules, some children were only getting the supplementary nutrition for two months a year. That having been said, the Bihar government has improved its performance significantly in recent years.

In Bihar, it takes about 4-5 months for the budget to be passed, every scheme and release of funds must go through the chief minister, and there is a poor utilisation of funds as a consequence. Bihar would be considerably helped by the removal of this archaic and outmoded principle. In West Bengal only one-third of the children receive supplementary nutrition for more than 15 days a month. In Madhya Pradesh, there is a very large and disturbing gap between those who are eligible, those who are enrolled, and those who are actually receiving the benefit. All the government figures I use are taken from this year (2005).

When the Government of India starts providing money, states start withdrawing their own money. As soon as the union government released funds for the scheme, the state governments diverted funds allocated under the scheme to other purposes. This action was taken in the face of explicit instructions from the Government of India that such funds were merely supplemental and that funds already earmarked by state governments for the ICDS could not be utilised for other purposes.

A defective system of monitoring is responsible for much of the corruption in the utilisation of funds. Expenditure has not gone up. Rather, expenditure has in fact gone down from 90 percent to 49 percent.

In Uttar Pradesh, administrators have thrown their hands up in despair and declared the problem to be insoluble. The entire ready-to-eat food operation is centralised and the NGO CARE have decided to withdraw from UP because of the degree of centralised corruption.

Corruption exists in relation to the manner in which Anganwadi workers are appointed. At the interview stage each MLA, BDO and other important persons have their quota of appointments, and I believe the price of appointment is Rs 20,000 to 30,000 for a job whose salary only pays Rs 1500 per month.

how the schemes are being implemented

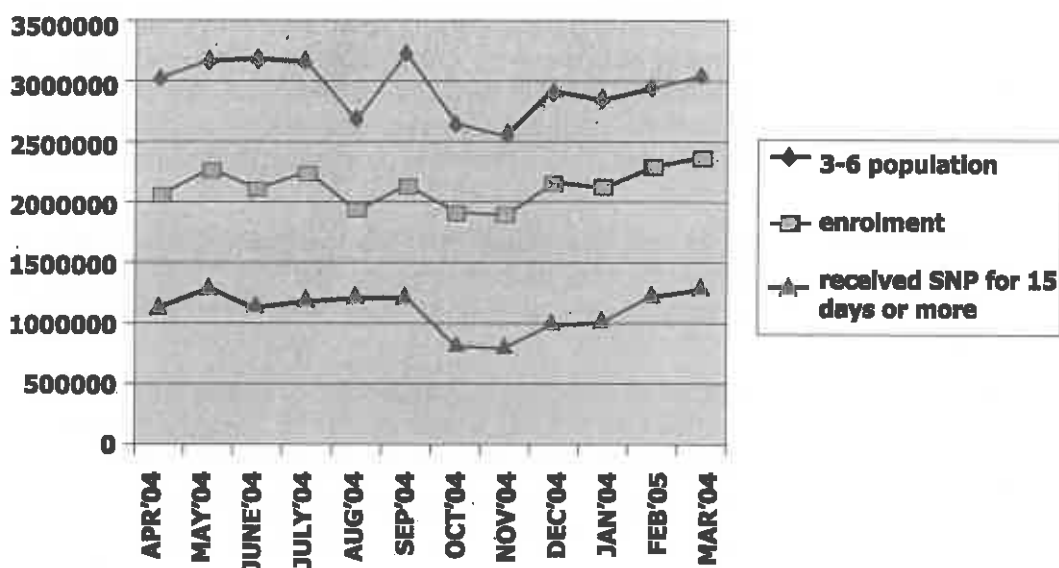
Most of the Anganwadi centres are in rented buildings, in areas where the rich live. This means that only the children of rich farmers and upper caste children have easy access to the centres. Very few ICDS centres are in the localities of poor people or dalits.

One solution might be for ICDS centres to have their own building. Although the government spends a lot of money through the SGRY on construction, the status of ICDS construction is very poor indeed. Only in Rajasthan and Madhya Pradesh, where there is a World Bank project, are new centres being constructed.

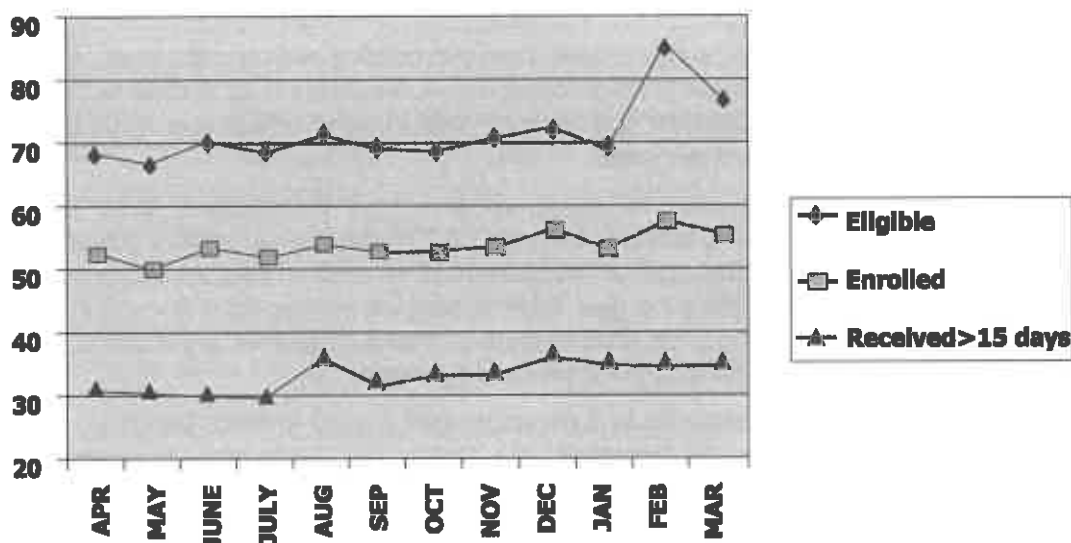
The ICDS centres are often in very small rooms where rent is in the regions of Rs 50-100 a month. Although the scheme is intended to cater for 100 children per centre, the entire centre might consist of just one room in which even 30-40 children couldn't sit. To make matters worse, the rooms often have poor lighting, and the cooking itself is done in the rooms. Thus, rather than doing some good through providing supplementary nutrition, the programmes may even prove harmful to children and their eyes.

In Bihar, 80 percent of the vacancies at supervisory level are left unfilled. Supervision by mukhya sewikas is very low. In Rajasthan, the CDPOs are mostly men from various departments who retain only a minimal interest in the job. For this reason I suggest that the CDPO post should be reserved either for the direct recruitment of women or for the promotion of supervisors.

ICDS Enrolment & SNP distribution 2004-05



Number of SNP beneficiaries for each month 2004-05 in lakhs



Although FCI, CARE, and SFP all provide foodgrains, the coordination between the various organisations is very poor. As I mentioned before, attention is directed almost exclusively on the 3-6 year age group and the six month-three year age group is largely overlooked. Neglect of this latter group is particularly dangerous, as if malnutrition sets in at an early stage, permanent damage can be done to a child's growth and learning capacity and later attention will not improve the capacity of the child.

Nevertheless, there have been some success stories. In states like Kerala, Tamil Nadu and Maharashtra, where the scheme is doing well, children are enrolled, vaccinated, and provided with free school education programmes and fresh-cooked food of the widest variety. There are excellent sanitary facilities, clean water sources and a similar scheme is also run for children under three years of age. Tamil Nadu is an admirable example of how to run the ICDS.

Maharashtra is also doing quite well. Most Anganwadi centres are now located close to the primary schools, on the premise that while older children are attending school they can take care of their younger sibling in the Anganwadi/ICDS centre. Luckily, the UP government too has accepted this principle.

Due to procedural difficulties, many Supreme Court orders are not being implemented. In April 2004, the Supreme Court decided that the number of centres should be increased, but according to my calculations, that number cannot be achieved before October 2007.

The government also decided to undertake this programme on account of the (outlined) Common Minimum Programme (CMP). The Cabinet has decided to increase the number of

how the schemes are being implemented

centres by 1.88 lakhs this year and have intimated that they will raise this figure still further next year (2006). They have also decided to bring the standard down from 1000 to 500 children.

Despite the fact that the programme now has the backing of Supreme Court orders, a cabinet policy decision and inclusion in the CMP, the central government has not yet been able to ensure its enforcement in the various states.

Even after Government of India has received the approval of Parliament and Cabinet – our Constitution is such that approval from the state legislature is still required. The state governments cannot spend anything without the approval of their legislature. This is nothing but a wasteful duplication of procedures.

Yet even at this advanced juncture, the procedures for recruitment and selection at the centre still remain to be overseen. Unfortunately, everything has to be done sequentially. The state governments can take no action until the Government of India has completed all the formalities. Nothing can be achieved simultaneously. Moreover, in a climate of political uncertainty, the state governments lose faith in the idea that the Government of India's decisions will really be carried into the next term. If only the state governments could learn to do things concurrently, rather than sequentially, a great deal of time would be saved.

If the states had started recruiting or selecting the centres immediately after the announcements of the Government of India, much delay could have been avoided.

Perhaps a constitutional amendment to streamline the implementation of schemes is required. A change should be introduced to extend the validity of financial sanctions and to allow Parliament-approved schemes to bypass the need for state legislature approval.

There is an urgent need for a change in our budgetary procedure so that the taxation budget would be passed each year but that the expenditure would be valid for two years, so that any issued sanction would remain valid for two years.

The state governments have completely flouted court orders in their implementation of the Family Benefit Scheme, the National Maternity Benefit Scheme, the Antyodaya Scheme and the Annapurna Scheme. The budgetary allocation for the National Social Assistance programme was reduced from Rs 1,000-crore to Rs 600-crore, despite the fact that the minimum amount necessary to cover everyone is at least Rs 1400-crore.

An additional worry is that the National Family Benefit Scheme and National Old Age Pension Schemes have been transferred to the states without receiving Supreme Court orders. This means that these schemes are no longer being monitored by the central government, but rather by states, that have thus far shown themselves to be either unwilling or unable to implement or monitor the schemes at an acceptable level. Under the National Family Benefit Scheme, when a bread winner dies, his family should receive a minimum payment of Rs 10,000 but some applications have been pending for the three-four years and no money is being disbursed under the scheme.

At present the National Maternity Benefit Schemes requires Rs 250 crore, but hardly Rs 50 crore is being spent. Rather than receiving a much needed and necessary boost in investment, the scheme finds itself in danger of being merged with another scheme called "Janani Scheme", or else being wound up altogether.

In many states, like Madhya Pradesh, another scheme, the Annapurna Scheme, has found itself being wound up, without a court order. The pension, which was fixed at Rs 75 per month in the year 1996, has never been reviewed. When we consider that government salaries have gone up by 100 percent during this period is it too much to ask that we increase the old age pension to Rs 200 per month?

Most of these schemes have been left languishing in a decrepit and decaying state. These schemes seem neither to be of interest to anyone in the states or in central government. My sincere and heartfelt request to the judiciary and the Bar is to demand answers from the states as to why those schemes, which are meant for the poorest, most marginalised and vulnerable people in society, are not being implemented.

Employment Guarantee Act and the Right to Food

Prof Jean Dreze

The National Rural Employment Guarantee Bill which was recently passed by the Indian Parliament constitutes a historic initiative. The prime minister was not exaggerating when he described it as the most important piece of Indian legislation passed since Independence. A precious opportunity now exists to realise the right to work. This immediate relevance to our discussion because without the Right to Work there can be no Right to Food.

The Act states that "anyone who is willing to do casual manual labour at the prevailing statutory minimum wage will be entitled to be employed in public works within 15 days and if work cannot be provided then unemployment allowance will have to be paid to the person. This is subject to a maximum 100 days of employment in a basic household."

The law, which is a much diluted version of the initial draft, contains many loopholes. Thus, the judiciary will have a very important role to play in ensuring that the law is applied not just in letter but also in spirit.

Many of the problems which arise in relation to the law are due to the fact that the drafting process was such a long drawn-out affair. It was passed back and forth between various committees and ministries to such an extent that certain confusion crept into the law in relation to issues of accountability. Although there was a last minute effort to put the Panchayat Raj firmly in charge of implementing the programme, this only resulted in a structure which was an uncomfortable hybrid of the vertical administrative machinery and the PRIs, and, as a consequence, it is not always clear where accountability and responsibility lie. The judiciary will therefore play an important role in clarifying and untangling the ambiguities that remain in relation to the law.

Initially the law had made a clear reference to the Right to Work, but the ministry of rural development had viewed such a development as unwanted and dangerous, because they felt it would make them accountable at every stage of the process and leave them vulnerable to litigation. The term "right to work" was deleted in favour of a commitment to enhancing the livelihood and security of poor households in rural areas.

Jean Dreze has written extensively and authoritatively on food security and globalisation issues. He has



collaborated with Prof Amartya Sen on a number of works including *India: Economic Development and Social Opportunity*, *India: Development and Participation*, and the seminal *Hunger and Public Action*. His influential article "Hunger and Poverty in Iraq, 1991" provided an early warning of the human cost of sanctions in Iraq. He is honorary Professor of Economics at the Delhi School of Economics.

- The Bill will come into force progressively, on different dates in different states, but will be applicable to the whole of rural India within a period of five years from the date of enactment of the Act.
- A strong point in the Act's favour is that it will be irreversible, meaning that once it comes into force in a particular area, it will be impossible to withdraw it.
- The basic entitlement is defined in Sec.3.1. The entitled person should be employed within 15 days of applying but is subject to a limit of 100 days, per household, per financial year.
 - During the campaign we had vigorously argued for entitlements to be on an individual and not a household basis. It would have been preferable to have an open ended guarantee on an individual basis as is the situation in the Employment Guarantee Act in Maharashtra.
 - The UPA had made a commitment to a maximum 100 days per household per year, but this raises problems in relation to the definition of a household, giving power, as it does, to the bureaucracy, to determine what constitutes a household
 - It creates competition for work within the family in relation to who gets these 100 days of work
 - In certain areas there is no existing tradition of women participating in the work force and women will be marginalised in the competition for work in these areas as a result. This is yet another argument which makes the case for individual entitlements rather than household entitlements
 - A positive provision in the legislation is that it allows the central or state governments to make provisions for securing work for every adult member of the household, even for a period beyond the already guaranteed
- The Act is a national Act and does not require a state specific Act. The Act states that within six months, the state governments will have to have programme in place to give effect to the legal entitlement to work.
- There is also a clause which says if any state already has an employment guarantee Act which provides work for labourers which is not less than that provided under the national Act then the state Act will be applicable. Thus, the State Employment Guarantee Act in Maharashtra, which gives work for 365 days a year, will continue to be applicable. The Act also provides that state governments may, if they wish, introduce their own Employment Guarantee Act, just so long as it provides at least as much employment for labourers as the national Act.

A complex issue which may soon require the intervention of the courts is that of wage rates. Prior to the passing of the Act, there had been a great deal of discussion about wage rates, whether it should be at the prevailing statutory minimum rate, or whether payment should

how the schemes are being implemented

be at the uniform rate of Rs 60. A compromise was reached whereby the labourers would get the minimum rate, the central government would pay Rs 60 and the state government would pay the difference. It was further agreed that the specified wage rate could not under any circumstances be less than Rs 60.

However, it has been contended that such an arrangement could deride the Minimum Wages Act. The judgment of Justice Bhagwati says the Minimum Wages Act cannot be withdrawn under any circumstances because it is linked to Article 23 and 14 of the Constitution and so the question arises as to whether it is possible to override the Minimum Wages Act. Moreover, there is apprehension that if the Minimum Wages Act can be overridden in this instance, could it not be overridden in other contexts too.

A solution to this thorny question might be for the central government to proceed to notify the rate of Rs 60/- for the purpose of the Employment Guarantee Act, under the Minimum Wages Act, so that the two Acts are reconciled immediately rather than be in conflict.

However, the downside of such an approach would be that the measure would require recognising those employed under employment guarantee programmes as employees of the central government, something which is perhaps undesirable.

Some matters also remain to be resolved in the area of unemployment allowance. Although the work is to be organised by the state governments, the bulk of the employment cost will be paid by the central government. However, in the event that people are not provided with work, unemployment allowance would have to be paid by the state governments. The rationale behind such a measure is that it will create a strong incentive for state governments to provide work.

The national Act is better than the Maharashtra Employment Guarantee Act, because under that Act, all costs were covered by the state government and they could refuse work to anyone. But with the notification of the central Act, since the burden is being shared, the state government will have to provide work, or it will have to cough up for unemployment allowance.

It is also unclear as to what happens if employment is not provided due to the non-receipt of requisite central government funds. It was suggested during the drafting stage that a clause be inserted which would require that the central government reimburse any unemployment allowances paid for by the state governments as a consequence of not receiving adequate central government funds. In the end this fair and logical measure was not included.

The decision not to include such a measure seems to have been taken without foresight as it meant that a large loophole was left in the Act. At present, the Act states that even in the event that the central government does not provide funds, the state government becomes liable for providing unemployment assistance, but the Act also states that the payment of unemployment allowance is conditional on the capacity of the state government to pay. The end result of these measures is that a lot of discretion is left in the hands of the state government, which greatly lessens the pressure of the Act. If this issue remains unresolved

then the whole idea of legal entitlement will begin to break down. I hope the courts will hold the payment of the allowance to be mandatory and refuse to accept a lack of capacity to pay as an excuse, because there is more than enough resources in India to pay half of the minimum wages as an allowance.

There is also an anti-corruption clause. It states that if the central government receives any complaint regarding improper use of funds and if it is satisfied that there is a prima facie evidence of the misuse of funds, it can order an investigation to be conducted and order the release of funds to the scheme to be stopped.

Although this clause looks good on the surface, it may prove to be counter-productive, because it is anti-victim.

Two dangers exist in relation to this clause :

1. One is that the central government is given sweeping powers to discontinue the release of funds in a selective manner because of the evidence or non-evidence of corruption. This allows the misuse of funds to be used as a pretext to discontinue funds in a selective manner. Additionally, the clause acts to undermine the incentive for whistleblowers to come forth with evidence of corruption. Why should a labourer highlight the misuse of funds when it will cost him his job? As the experience in Rajasthan has shown, the best way to fight corruption is through the right to information movement. The most reliable way to get results is to give the power to blow the whistle to those who are at the receiving end of the programme. Put redressing measures in place that hit those responsible for corruption and not honest workers.
2. The second is that the anti-corruption measure has retained an immunity clause which declares that district programme officers and programme coordinators can't be prosecuted so long as they are working in the public interest. Again, this is opening the door for corruption, because it is giving protection to those officers who are most responsible for the failure of the scheme. In one clause it says that no labourer shall be paid less than the wage rate. Why does it have to be expressed in this unnecessarily vague manner? Why can it not expressly state that under no circumstances should a labourer be paid less than the statutory minimum wage rate?

It is vital that certain points outlined in the programme be monitored to ensure they are adhered to. One such point is that contractors should not be used in this scheme, yet it is a well-known fact that contractors are widely used in such programmes. It should be possible for the Panchayat Raj institutions to implement this programme and ensure that this clause is enforced.

A second point which must also be rigorously enforced is the law which says that machines should not be used in the programme, have often been used in similar programmes in the past and this only acts to deprive people of employment.

The anti-corruption clause is not entirely without merit. We have advocated that the

how the schemes are being implemented

Employment Guarantee Act should be enforced in conjunction with the Right to Information Act. Although earlier drafts of the Employment Guarantee programme contained clear provisions for transparency and accountability, many of these provisions were subsequently diluted.

A notable example of this kind is to be found in relation to muster rolls. Muster rolls must be maintained in order to pay wages and experience has shown that making these muster rolls transparent is the best protection against the misappropriation of funds. Originally, the maintenance of muster rolls was mandatory and anyone could inspect them free of cost, but now inspection requires the payment of a prescribed fee. The fee is unaffordable for most people and effectively means that the muster rolls are unavailable for public scrutiny.

In recent years the courts have become less sympathetic to the cause of labour than they were at the time of Justice Bhagwati – who made it clear that there could be no tinkering with the minimum wage. However, it is clear that in interpreting this law, which could become the basis for the social security system in India, the courts should take a strong stand and ensure that the interests of labourers are protected.

Interactive session

Question: The Act is a very laudable piece of legislation. The Act clearly defines both what constitutes a household and what constitutes a rural area. But poor households also exist in urban areas and they have no employment guarantee. Should they be denied such a guarantee solely on the basis of where they live? Many people remain unaware of their existing rights. In order to make the Act effective, should something not be done to spread the awareness of rights?

Prof Dreze : Indeed, a lack of awareness about their rights has left many people completely helpless. Even those dimly aware of their rights often do not know how to have their rights enforced. More than 50 years after the introduction of the Minimum Wages Act, labourers, except in a few areas, have no idea about their entitlement to a minimum wage. The whole purpose of this law is to provide durable and enforceable rights to labourers. But the law, by itself, is not going to be enough. We must accompany it with a campaign to make people aware of their rights.

Regarding the right to work for the urban poor, it has been generally accepted that there has to be a similar programme for an urban employment guarantee, but perhaps introducing a separate act would be less problematic than attempting to cover the rural and urban areas under one Act.

food security and judicial activism in India



PART THREE
food security in india



The agrarian crisis

P Sainath

I am the rural affairs editor of The Hindu, but I see myself primarily as a reporter of the countryside. I have been in this profession for 25 years and I have spent 12 of those years as a roving reporter. I spend at least 270 days a year with the people in the villages. I base myself in the communities I write about. Journalists are not required to be specialists in anything. We are generalists. We are not dumb enough to try and do everything ourselves!

Exactly a year ago, on September 1st, 2004, the first hearing of the National Farmers Commission (which had been set up by the new government after the elections and was chaired by Dr MS Swaminathan) was held in Chennai. Dr Swaminathan brought together an array of representatives of the countryside, including farmers, landless labourers, bankers, lawyers, insurance officers, insurance providers, government officials, ministers, including the Ministers of Agriculture and Finance, journalists, scientists, agriculture experts, economists, statisticians, nutritionists, trade unionists, activists, and NGOs. An extremely heated debate took place. When you put farmers and bankers under one roof, you are always going to have a riot! Such is the degree of anger felt by farmers towards bankers.

A central problem of rural farmers is the collapse of credit. From the outset of the Green Revolution until 1991, India followed a policy of social banking, which resulted in a massive expansion of rural banking. Since 1991 the number of rural banking branches has declined in absolute terms and massively in percentage terms.

As this furious debate continued to rage, Dr Swaminathan set for me the onerous task of finding common ground and a unity of purpose.

Three things emerged from the meeting.

1. Everybody agreed that the rural economy had collapsed

P Sainath is widely considered to be Asia's leading development journalist. Over the last 25 years,

Sainath has won several national and international awards, including Amnesty International's Global Human Rights Journalism Prize in 2000 and the FAO's AH Boerma Award for his contribution to changing the nature of the development debate on food, hunger and rural development in the Indian media in 2001. He has spent the last several years of his life living amongst villagers. He has traveled extensively with migrant labourers, documenting their lives as they moved from city to city. His book entitled *Everybody Loves a good Drought* (1996) has gone into twelve prints and has been translated into a number of languages. He says that he has never seen a crisis as deep in our countryside as that which he sees today. He provides a vivid and illustrative account of what is happening in the countryside.



2. Everybody agreed it was a policy driven crisis
3. Everybody agreed that if the policy dimensions of the crisis were not addressed then it wouldn't matter which great task have been accomplished

In 12 years reporting on rural affairs, I have never seen anything approaching the levels of rural distress that I have witnessed since 1998-2000. It is an extremely worrying development. And the collapse extends far beyond agriculture. Although it accounts for a much smaller share of the GDP, agriculture employs 65 percent of the population. So, if agriculture does badly, everybody does badly.

The starvation records show that in Andhra Pradesh, carpenters died of hunger. Why? Because when nothing is produced by agriculture for three years, no one orders new ploughs or new axes, tools and implements are recycled, and the carpenter starves. Thus we find that collapse of agriculture leads to the deprivation of weavers and carpenters. There is an agrarian crisis. It involves all sectors of rural society.

When we do not address the source of the crisis, we are merely mopping the floor dry while all the taps remain open. Any long-term solution demands that we address this problem. It is difficult to explain hunger to those who have never known it the Indian rich and the Indian elite, including the Indian media, whose approach and performance on this issue have been nothing short of despicable.

The policies must be located in the social and economic context, against the backdrop of the fastest growing level of inequality in India since the colonial Raj. The gap between the rich and poor has greatly accelerated over the last 15 years. This is a far cry from the legacy left to us by the egalitarian struggle.

The UNDP has published a report each year since 1991, the year we embarked upon a slew of new policies. From 1991 to 2004-05 every Human Development Report has demonstrated worsening levels of inequality in India. At a time when we were celebrating "India Shining", a survey showed that the quality of life in our country had slipped from a pathetic position of 124th to 127th in the world. What does being 127th mean? It means that you are better off being a poor person in Botswana or the occupied territories of Palestine than you are being a poor person in India!

The Times of India published a United Nations report which highlights the growing inequality gap between rural and urban areas, especially in countries like China, India and Thailand.

The report shows us that 80 percent of the world's gross domestic product is now in the hands of less than 20 percent of world's population and that the remaining 20 percent of the world's GDP is shared by five billion people ie 80 percent of the population.

This trend worries me greatly, because when you begin to debase humans to such an extent, eventually you stop thinking of them as human beings. One of the first things a student is told when he enters medical college is that 'what the mind does not know, the eye cannot observe'. I would say that 'what the heart does not feel, the eye does not see'. The biggest

disconnect of our times is between the mass media on the one hand and mass reality on the other. There is a huge gap between what is being debated in our forums and what is happening in the countryside.

Abhijeet Banerji, a student of Amartya Sen, conducted a study in which he demonstrated that the share of the top 0.01 percent of the top one percent of total income shrank substantially between 1956 and 1990. It then rose sharply until the year 2000. Banerji and his collaborator, Thomas Piketty, observed that "while in the 1980s the gain were shared by everyone in the top one percent, the gains of 1990s went mainly to those in the top 0.01 percent of the wealthy. The massive gap which has emerged between the poor and the super rich is most clearly shown by the fact that a gentleman of Indian origin could hire a palace to hold his daughter's wedding at the cost of 240 million dollars. This event was seen as something to admire and glamourise by the media.

I am a paid loafer. I have the freedom to live as I please in the villages. I spend 50-60 days of my year as a migrant, because I feel I can only write authentically about migrants by living as a migrant. I have also boarded the tops of the trains. In 1993 I took a bus from Mehboobnagar to Mumbai, where I live. The bus journey took 36 hours and we had to change buses twice before reaching Mumbai. On the bus there were 40 to 50 landless Lambada Adivasis, heading to Mumbai to look for work. In 1993, there was only one bus a week from Mehboobnagar. In 2003, when I made the same journey, there were 47 buses a week, counting only government transport services provided and not those of illegal operators.

The government's approach to keeping data on migration is farcical. Not only does the data completely neglect millions of people but the data from which the government's migration policies are created is 10 years out of date.

In 1993, the bus I took had contained a bunch of Lambada Adivasis who were going to Mumbai as landless labourers. Ten years later the composition of the travelers had completely changed. In 2003, landed farmers with 3-12 acres, farm labourers, teachers who had lost their jobs, school drop-outs who could not afford further study, carpenters, mistris, weavers and mochis all were on the bus.

In one particularly poignant scene, I saw a landlord of 15 acres sitting next to his former bonded labourers! That day I wrote a piece which noted that, except for the privileged elite, "we are in the same bus". The bus to Mumbai was no longer the bus to Mumbai. Many also went to Pune, Sangli, Kalyan, Thane and Panvel. They were going wherever there was construction work to be found, 15 days in Kalyan, 10 days in Panvel. What kind of a life is this? How can the children of these people possibly have access to education or a decent life? A class of millions is being condemned in perpetuity. Their children have no rights.

Mehboobnagar is a poor district. In 2003, thousands of free kitchens were set up to provide free gruel. The minister of information in Andhra stood up in the legislature and scornfully declared "Who in our Andhra Pradesh will eat Ganji?"

The answer came when lakhs of villagers, including the sarpanch, queued up for food in Kondapur village in Mehboobnagar. This illustrated the extent of the hunger in the district. That free-food camp was being run, incidentally, by a poor Telugu journalist.

It defies comprehension that this was the same year that we were boasting surplus food stocks and exporting food. At the height of the hunger we exported 13 million tones of grain at a price lower than the below poverty line of Rs 5.45 a kilo, while we sold to the same grain to our poor people at Rs 6.45 a kilo! Isn't it madness to subsidise the exporter while your own populace starves? That day I wrote to the present editor of Hindu and predicted that there would be a massive electoral defeat for the Andhra Chief Minister, then at the height of his popularity. It would be a defeat that would shock the rest of the country but no Telugu-speaking person.

At the farmers meeting- the Kisan Sabha- it was calculated that today in Telangana it is possible to own 8 acres of paddy fields and still be below the poverty line. This is the direct result of policies that have led to an increase in input costs - increased seed costs by 300-350 percent in many cases, fertiliser costs by 100 percent, the utility rates by 70 percent, and water rates by 70 percent. Agriculture has been made economically unviable.

In this era of "theme" weddings, where some people can afford to have replicas of the Taj Mahal or Fatehpur Sikri made for the occasion of their daughter's marriage people in the countryside are unable to afford weddings. Many of the farmers' suicides are linked to their inability to get their daughters married.

The Church registers for collections in Vaynad in Kerala show a decline by 50 percent between 2002 and 2004. The church collections are now just 10 percent of what they were five years ago and this in the richest district in Kerala. Vaynad is a cash crop district that used to earn Rs 1500 to 1800-crore in foreign exchange through the exportation of coffee and pepper it is yet another example of a district undone and destroyed by policies such as our trade liberalisation policy and our agreement with the WTO.

In April of this year coffee prices began to boom in London - they returned to the heights of November last year. The paradox is that coffee prices are booming in London but coffee-growing farmers are committing suicide in India. In 1992 the world coffee market was worth 30 billion dollars and producer countries such as ours were getting 10 billion dollars or 1/3rd of the total. Today the world coffee market has doubled to 60 billion dollars, yet we now earn less than 6 billion dollars.

The crisis in the countryside is not due to drought or famine. In 1991 development expenditure in this country accounted for 14 1/2 percent of our GDP, last year it accounted for 5.9 percent, which represents a fall of Rs 30,000-crore. If you remove Rs 30,000-crore from the countryside, it translates into an income loss of between Rs 130,000 and Rs 150,000-crore. Is there any section in this country which could withstand such a massive loss of income? Those cuts in expenditure are responsible for a whole series of escalating crises.

I took a bus from Manantwari in Kerala. In 1991, there wasn't a single bus service to Kuta. In

1995, six buses a day went to Kuta. Today 28 buses a day go to Kuta. Vainad had been the only district in Kerala known for in-migration and not out-migration. People from outside the region came, settled, purchased Adivasi lands and became landlords. They made the best pepper in the world Malabar Pepper - for which Vasco-da-Gama sailed across the oceans and acquired a colony nearby!

The Malabar pepper is the highest premium grade pepper in the world, but because of the policies our government has adopted, it is being destroyed by cheap pepper dumped in Kerala from Vietnam, Indonesia, Nicaragua, and Sri Lanka, which is then remixed with Malabar pepper and exported to western markets as "Indian" pepper. It is killing the pepper farmers of Malabar and it is also endangering the quality of seed because the inferior seeds are entering the food chain. As a consequence, we now have pepper diseases, such as slow wilt, in Malabar pepper plantations.

The distance between Kuta in Karnataka and Manantawadi in Kerala is 40 km each way. This journey is taken each day by five year old Anushri, who attends first class. This means that we have reduced a five-year-old to traveling 400 km a week just to go to school, at a time when bus fares are being raised by 60 percent in the area. Can there be anything more unjust to the child?

However, when it comes to giving handouts to the rich, whether in terms of land or anything else, there does not seem to be any shortage of resources. Anything you give to the rich is considered an incentive and anything you give to the poor is called a subsidy!

The deregulation of agriculture was a policy which consciously allowed manufacturers to downgrade the quality of their produce. It is a legal requirement that a packet of seeds contains information about the minimum germination rate of the seeds. In the 1970s and 1980s the minimum germination rate of seeds was above 80 percent and 90 percent. Mr Naidu signed MOUs (Memoranda of Understanding) with the multinationals that have since become the norm across the country – and now the required germination rate is 60 percent. This means that if a village buys 1000 bags of seeds, it pays for 1000 bags, but gets 600 bags. Where is justice?

Coffee growers were getting Rs 130 a kilogram in 1992-93. Now they are getting Rs 15 to 16 per kg. At a time when prices are doing very well, they are doing very badly. Sixteen coffee farmers had committed suicide in that one year. I went to the coffee board to find out. I was welcomed in, but was offered a cup of tea. This is their commitment to promoting coffee! When I asked why I hadn't been given coffee, they said "the filter is broken!"

Pepper, which was fetching Rs 27000, per quintal in 1998-2000, is now getting Rs 5000, per quintal. This is having disastrous consequences for the Church, which is the biggest land-owner in Kerala. Many of the churches, including the Church in Vayinad, have gone bankrupt because they used to own the pepper plantations.

Thanks to the Maharashtra courts, the state government has become defensive on the issue of suicides. It has been forced to produce figures, but I assure you that these figures do not

come close to the truth. However, the important thing is the human dimension of what has been happening.

Since 2000, I have visited 300 to 350 households where suicides have taken place in different states of this country. What you discover is that it was not necessary for the person to take their own life but yet it still happened. When a farmer kills himself, he is sure to get his crop value as compensation for his family.

Banks are converting non-agricultural loans to agricultural loans and offering them at the rates of non-agricultural loans. Today, if a farmer wants to buy a tractor he will pay @ 18 percent, but an urban middle class professional gets a loan from the same banking system for a Mercedes Benz at 6 percent rate of interest without collateral security! We all get such offers on a daily basis. Where is justice?

Unless you are a rich farmer, the minimum support price mechanisms are in a state of disarray. A further inequality in agrarian society exists in relation to water. At present, India is moving along the path of privatisation of water, a natural resource. Do they not realise that this will cause a civil war in the countryside?

In Bidarbhya district, under Nagpur Rural, there is a town called Bazargaon which receives water less than once every five days. In the same village there is a gigantic water-amusement park which uses millions of liters of water each day. Each year it pays the Panchayat of the village just Rs 50,000, although this is less than half of what it earns in ticket sales daily, and all because it is owned by a rich and prominent politician. The park is owned by the Fun & Food Village group which set it up by buying out a local politician. The children of Bazargaon die without water, but the rich classes can play and frolic in the water amusement park, that specialises in 18 kinds of water slides and has India's only snow-dome!

Even during the severe power crisis in Bidarbhya not one bulb in the amusement park was switched off. Bazargaon went without electricity for weeks but the amusement park did not go without power for a single moment.

It is patently clear that a slew of policies have converged to privilege the profits of corporations over the well being of the public. The Maharashtra Water Resources Regulatory Authority Bill was passed despite the fact that more than 20 MLAs told me that they hadn't read it. They said they had been informed that it was a very good pro-farmer measure and so they had given their assent to it. The Bill will produce a dramatic escalation in the costs of agriculture and will result in even more people leaving their farms and coming to Mumbai. Farming is becoming a completely unviable occupation.

The effects of this Bill will be just as disastrous as the policy which Naidu introduced in 1997 which shut down the Irrigation Development Corporation of Andhra Pradesh. That resulted in the unrestrained sinking, at enormous expense, of an inordinate amount of bore wells. A village of just 3000 people in Nalgonda District called Mushampally now has 6500 bore wells. The aquifer of the entire region is destroyed and the crisis is spreading. The bore wells have now arrived in Bidarbhya and Kerala.

In examining these developments we must always bear in mind the inequality matrix which is fuelling social turmoil and discontent on a staggering scale.

Farming today is akin to Russian roulette. If you sow too soon there may be a drought, if you sow twice, you have doubled your input cost. Perhaps a flood will come and then your entire crop will be wiped out. Farming has become a gamble.

Rampant commercialisation has also hurt the farming community. Health costs and those of education and travel have gone up. We are talking about the 200 million people in India who the government admits are poor. For hundreds of millions of people, globalisation means globalisation of prices, and Indianisation of incomes. What about the rights of these citizens?

When the Tsunami struck the coast of Tamil Nadu, 30,000 houses were destroyed in Nagapattinam, the worst affected district by the Tsunami. At the same time the government of Maharashtra destroyed 84,000 houses in Mumbai. What has possessed us?

India, Indonesia, Thailand, Sri Lanka and Malaysia were the five countries worst affected by the Tsunami. Each of these countries have big stock exchanges and in each of these countries the stock exchanges reached their highest ever point at the same time as the Tsunami. There is a very real link between the prosperity of the few and the penury of many. The market has the biggest say in the formulation of government policy. The CII says that less than 1.15 percent Indian households hold any investments.

But why should they be heeded more than the mandate delivered by the public in the 2004 elections?

We will never know the exact number of suicides in Andhra Pradesh. We have proof that the numbers the government produced were false, but thankfully, as a result of regime change, we are finally getting access to more accurate figures. The Andhra Pradesh government no longer denies that 3000 suicides took place in the Rayalseema region and that more than 2000 suicides took place in the Anantapur district alone.

Yet, there are many ways of excluding people from being categorised as suicides. In order for a death to be officially considered a suicide it must fulfil 43 different indicators. In Yavatmal, they told me they can't even commit suicide in peace because they have to follow the indicators! They do not take money-lender loans into consideration, only nationalised bank loans, when determining whether there was a bank loan. Ninety percent of Bidarbhya suicides are therefore going to be excluded from the list because they received loans not from the bank but from money lenders.

The biggest source of exclusion of suicide, and this is particularly the case in AP, where suicide by woman is not considered that of farmer because there is no land in her name. If she commits suicide because of the stress of running the family household it is determined not to be a farmer's suicide but the suicide of a farmer's wife. She may be running the farm and managing the farm operations but she is not considered a farmer in Indian society.

The same measurement system has affected hundreds of households in Maharashtra. The

head of the Indian household typically keeps the land in his name until the very last moment, because he wants to avoid a fragmentation of the land, and because he views it as insurance for the future. Let's suppose that I am a farmer aged 75 and I have a son aged 48, and on account of my old age, it is he rather than I who is running the farm and taking on the burden of work. If he were to commit suicide, it would not be registered as a farmer's suicide, but rather as an ordinary suicide, because the land was registered in my name. The farmer who actually works commits suicide, but since the land is in the father's name, the family cannot claim any compensation.

The greatest incidence of exclusion took place in Anantpur. Over the course of six months, we conducted an investigation which revealed that the government was stating a very high number of suicides. However, the number of suicides attributed to farmer distress by the National Crime Records Bureau was miniscule. We found that 95 percent of the suicides were committed in the same manner, as a result of the consumption of a pesticide called Monochrotophos. The only free agricultural input available to farmers, it had been dumped on them by the state government at the behest of corporations! Hundreds of suicides of this kind were recorded by the police as death due to "unbearable stomachache".

These suicides illustrate the human side of the story, but they still constitute only a symptom and not the cause of a much larger rural and agrarian distress.

The policies which are responsible for bringing this agrarian crisis about include:

- the cuts in the development expenditure from 1991.
- the collapse of rural credit at a time when prices were going up.
- the government's policies in relation to water, something which will be a huge source of contention in society in the coming years.
- A drastic fall in investment in agriculture.
- the slow rate of growth of food production. According to Manmohan Singh and Montek Singh, the annual output growth rate of agriculture in the 1990s was 1.2 to 1.3 percent compared to 3.54 percent in the 1980s.
- Soaring input costs.
- the extensive commercialisation of education, which led to poor farmers withdrawing their children from schools.
- the removal of restrictions on global commodity products, even while European and other rich countries introduce ever more protections for their farm produces.
- the disintegration, in the 1990s, of the notion that banks are the social responsibility of the state.

The entire process might best be described as the "predatory commercialisation of the countryside". Human values have been replaced by market values. And the media still

obstinately refuses to give the agrarian crisis the coverage that its seriousness and importance deserve. I remind you once again that agriculture affects 650 million people in this country. In 2003, when the crisis was at its worst point, I did a check among my friends, many of whom were owners of newspapers and channels, to see how many had covered the crisis. I asked them how many people they had sent to the countryside for a week to cover the crisis. In all I could find just six journalists. To put this in perspective, 412 accredited journalists and 100 more with daily passes covered Lakme India Fashion Week in Delhi. Something has gone seriously wrong!

Interactive session

Chief Justice Ajoy Nath Ray : Does or should national growth take precedence over the enforcement of equality?

P Sainath: Depending on how you define growth you will get different figures, one only needs to look at the government's provisional and final figures. Indian genius lies in statistics. It is one of our greatness of talent as a nation! I don't agree with growth before justice, or growth with elements of justice. I am for growth through justice. They have to go together. As for the analogy of the cake, their attempts at expanding the size of the cake have been disastrous, and we are now in danger of losing the whole bakery, never mind the cake!

Agricultural production has fallen from 3.4 percent to 1.2 percent. The living standards of a very great number of people have declined. This trend is not just confined to India but is prevalent the world over. The Thatcheronomics and Reagonomics of the 80s proved disastrous in their countries of origin. According to Prof Paul Truman of Princeton University, and as per official data from the United States, since the time of the great depression of 1929 in which 2000 farmers killed themselves, the US has never been a more unequal society than it is now. Child poverty in the UK has tripled perhaps in the last 20 years according to Oxfam. So in the very countries where the trickle-down theory itself originated, the trickle-down effect has failed to materialise.

In this country of grotesque inequalities, adhering to such fallacious economic reasoning will simply serve to entrench the inequalities that already exist.

I would also argue that the growth of inequalities affects the equality of a citizen before the law. One's ability to access the courts and seek justice is fettered by one's inability to raise the necessary resources to appear before the court. This is an inability from which a lot of people suffer in this country. To quote the famous American economist, Edward Eddy, "growth for the sake of growth is the ideology of the cancer cell". It grows, but it doesn't do the holder of the growth much good.

What would we do if all the major political parties had the same policies? I feel proud of this society and country because I believe that rural Indians have kept democracy (and not the chattering classes) alive in this country. It is the rural poor who change the governments. Six-

hundred million voters gave the world a lesson in democracy. With all the pundits and opinion polls favouring the ruling party, the final results in the last general election proved very humiliating for the ruling party. I will never give up hope as long as people are searching for answers, even if they have not found that answer yet.

Question: Don't you think that journalists should shoulder some of the responsibility for educating the masses about the ill effects of policies? Shouldn't you suggest ways and means of how to educate those who are reasonably informed and also common poor, so that at the time of the elections they can exercise an informed choice?

Salunath: I consider myself a journalist. I frequently interact with policy makers and they are quite aware of the problems. Many are ideologically blinkered and believe that in the long run the cake will expand! Some of those driving policy are committed to a particular political slant. When they run for election they present a completely different slant to the people. They create a set of policies which can be backtracked upon the moment they come to power. Many of the fights over the Common Minimum programme were a precise reflection of this. The same people presided over the cut from 14 ½ percent to 5.9 percent. Why are major political formations the world-over doing this? They are doing this because of the consensus of globalisation. It has two elements. It is an elite consensus. The consensus is that all achievements are due to globalisation and all failures due to nationalisation. The second consensus is the TINA (there is no alternative) factor. I believe that once we believe change is possible, then change has already begun. Don't underestimate the "Aaam Admi" and "Aam Aurat". They may not be economists. They may not know the policies. But be sure they know the policies that have damaged them.

No farmers' organisation in Maharashtra ever demanded free power, but the Maharashtra government gave them free power. They demanded cheap power, and good quality power. This constant process of falsification goes on. How do I educate the editors, the media, my colleagues, and above all, how do I educate myself?

We are constantly struggling to find the answers. People didn't defeat the BJP - they defeated those governments who had damaged their livelihoods. They defeated those regimes which had relentlessly and remorselessly enforced their policies on the masses. But it is the time to speak up for the elites. I was on a Board of Trustees for five years with my friend Dr Manmohan Singh, the PM. As an individual he is a nice man but he is rigidly set on his political line and economic agenda. I totally question the merits of his policies. I think they will be a failure and not work.

The general elections of 2004 were the most historic elections since 1977. The new parliament session was a historic parliament session. On the first day of the session the finance minister of the country absented himself from Parliament. He had flown to Bombay because the stock exchange had fallen, to be with the distraught millionaires who were

concerned over the fall in the Sensex. The Sensex corrected itself in two days but the Finance Minister only arrived for the Parliament session after three days.

On the first day of the session, eight farmers in Nalgonda, Mehbubnagar and Kurnool committed suicide. In the eight days of the parliament session, in my district of Nalgonda, 68 farmers committed suicide. Neither the finance Minister nor the prime minister flew to meet the families of these farmers. Finally, when 149 suicides occurred in AP, then the PM went there. This shows the importance we attach to Dalai Street as opposed to the farmers.

Question: Do you think that the Rural Employment programme enacted recently will help put a stop to rural migration?

Salath : If implemented properly, yes. But I have a caveat. My friends who are working on the Right to Food know that I am supportive of them and I will be with them. There is going to be a limitation to its effectiveness. What is the use of trying to create some jobs if you are going to destroy many others? We are the lowest spenders on social welfare programmes in the world.

The estimated cost of this scheme is given as Rs 30,000 Rs 40,000 crores. According to the Central Board of Direct Taxes, the taxes owed by just two people Ketan Parikh and Harshad Mehta - accounts for Rs 31,000 crore. The money is there but they are not willing to spend this money on hundreds of millions of people!

Yet this scheme will help, but employment for 100 days will not help in a state like Orissa. If the scheme gets locked into a contractor-driven system then it is in serious trouble. The governing structures in different states are of different nature and caliber. As a result, no national programme will play out exactly the same everywhere. Even a scheme provided for under panchayats can get converted into a contracted scheme. We must put a lot of safeguards in place. I am all for the programme, but I am also very deeply interested in plugging the loopholes in the larger policy framework.

Question: Can the judges make a difference as far as policy is concerned?

Salath : If I believed that judges couldn't make a difference I wouldn't have come here. Judges have a very important role to play. Many things are passed by the legislature without being sufficiently checked or monitored to ensure that they are not in violation of peoples' rights. You, the judges, are going to have to settle a number of issues in the near future. For example, in relation to water, you may have to decide the issue of ground water rights. For example, the Maharashtra Water Regulatory Bill which is anti-people and anti-poor is due to come before the courts. So you are going to have many contentious issues placed before you. The decisions you make will be of immense importance. You have the power to bring a great deal of change. Because of the courts in Maharashtra, something positive has been achieved on the suicide front. It is shameful that in the richest state in the country there are thousands and thousands of malnutrition deaths. Your role is crucial.

Some of the disasters you read about in the media have begun to get a great deal more attention than they used to.

In the last 5-10 years, although there has not been a recorded decline in rainfall, the rainfall pattern has become quite erratic. Is there any discernible pattern to this erratic change? Can the agricultural schedules be rearranged to account for this pattern? Farmers are already attempting to do just that. They are gambling. In such a high-risk environment they must sow for a second time and so the input costs double. Scarcity in the market drives up input costs by an additional 20-40 percent. Yet nowhere is a study being done to examine the nature of the changed rainfall pattern. Whether we will be able to deal with such emerging problems as this will be determined by the policies we make.

Why hunger is on increase ?

Prof Utsa Patnaik

The question we must ask is: Why has hunger increased in the last 10 years and particularly during the last five years? One of the most distressing developments in India in the era of new liberal reforms has been the drop in foodgrains absorption within the population.

Food grain production has dropped from 176.8 kg per annum per capita in the three years leading up to 1998, to 164 kg per annum per capita in 2003. Even more striking is the fact that the level of foodgrains availability or absorption has dropped much more sharply, from 174 kg per annum per capita in the three years leading up to 1998, to 153 kg in 2004. This means that the average family of five is actually absorbing just a little over 100 kg.

We are facing a crisis!

Most of our economists have failed to appreciate the seriousness of the problem we face. The fact is that the present level of foodgrain production in India has fallen to the absorption level of the period of the first plan 1951-55. In the last 12-13 years we have lost all the gains that we had made from 40 years of successful efforts to raise our foodgrains absorption.

I wish to clarify something in regard to the definition I employ. When I am talking about the availability of foodgrains or absorption I do not take this to simply mean what people consume. I also take it to include all the foodgrains given to animals and converted to livestock and poultry products as well as all the grains used in industry. In short, I include all processed grains.

These figures suggest we are back to the consumption level that we had in the First Plan period and the absorption level we had in the colonial period, or the years 1937-1942. These figures indicate we are down to 153 kg per capita per annum which is one the lowest levels in the world. Only the Sub Saharan and least developed countries show figures comparably low.

Prof Utsa Patnaik is an illustrious scholar and a founder-member of the Centre for Economic Studies and

Planning at Jawaharlal Nehru University. She has researched and written extensively on problems of agrarian transition during industrialisation, both in a historical and contemporary context. She has published over 60 books and papers including, *Chains of Servitude Bondage and Slavery in India*, *The Agrarian Question and the Development of Capitalism in India*, *The Long Transition Essays on Political Economy, Export Oriented Agriculture and Food Security in Developing Countries and in India* and *Food Availability and Famine - A Longer View*. In her presentation here she made an analysis of the latest Census data to show how steep the rise of hunger and how sharp the fall in per capita foodgrains consumption have been the case in India. In more recent times her research has concentrated on the impact of imperialist globalisation on food security and poverty in developing countries.



China, in comparison, has a food absorption level of more than 300 kg. Mexico's absorption is 375 kg. European countries range between 650-750 kg. The figure for the United States is 850 kg or more.

What are the reasons for the loss of food security, not just in relation to the drop in production, but also in terms of the drop in absorption? The situation is highly abnormal. Usually a growth in per capita income should not be accompanied by a drop in production. When a country's economy takes off and grows, there is normally an increase in food grain absorption as a higher proportion of grain is converted into high value, high protein products that are very grain intensive. There should never be a decline in per capita production when the country is improving in per capita terms.

I assert that such an unusual situation can only be explained by the fact that it really has to do with income distribution in the country. We know that urban areas have not witnessed any drop in income. According to the latest data, urban areas have also seen an increase in per capita calorie intake. This means that the decrease is principally concentrated in rural areas.

What is the content of neo liberal reforms? The IMF studied 78 countries tracking fundamental reforms in 1980s. The principal policy package adopted by these countries was the deflationary package.

It required governments to implement certain economic measures. These included, imposing restraints on central government expenditure, limiting credit expansion, reducing the ratio of the budget deficit to GDP, imposing strict wage restraints, and employing a prudent exchange rate policy.

The adoption and implementation together of the first three measures have a strongly contractionary or deflationary impact, which means that the government starts cutting expenditure. In their attempts to reduce expenditure, governments have tended to firstly look at the development, investment and social sectors.

The impact of such policies has been very well documented in a number of studies. The data taken here is from a study by Kornia and Julia Stewart, which was sponsored by UNICEF because the organisation was concerned about the adverse impact such policies were having on Human Development Indicators. The studies were published back in 1987 and provided a summary of the experiences of Latin American, African and Asian countries that were already following the economic reforms package.

From 1991 onwards India began following exactly the same set of policies in earnest. Here in India, the third measure in particular, the reduction in the ratio of budget deficit to GDP, is strictly adhered to.

Our finance minister and prime minister repeatedly talked of the need to adopt this measure and at the moment it is legally enshrined in an Act, the so-called Fiscal Responsibility and Budgetary Management Act, which sets a statutory cap on what the budget ratio to GDP can be. I would rather call it the Fiscal Irresponsibility Act!

Yet, when you don't have a cap on unemployment or on hunger, what business do you have to put a legal cap on how much the government spends on development?

As a result of dutifully following these contractionary policies we experienced a negative per capita GDP growth for the first time in 30 years. There was actually an immediate fall in per capita GDP after our country began to follow these contractionary policies.

Let's examine the impact of these policies on agriculture. The rural development expenditure as a percentage of Net National Product (NNP) was cut very sharply as compared to the 7th plan period. At that time, under Rajiv Gandhi's premiership, rural development expenditure had increased to almost four percent of NNP. By 2000-01, it had been slashed to exactly 1.9 percent of NNP. When structural outlays are taken into account it amounts to a fall from 11 percent to just 5.8 percent. The slashing of rural development expenditure – including all the central and state government outlays on agriculture and rural development, irrigation and flood control, cottage and small scale industry and special areas programmes led to a phenomenal rise in unemployment.

Annual output growth rates in the 1990s, for foodgrain and non-foodgrain crops, were just half what they were in the 1980s. As a consequence, even though the population growth rate has reduced slightly, it has fallen at a rate much less than that of the agricultural growth rate.

A decline in the rate of output will automatically result in a corresponding decline in employment as long as the labour co-efficients are unchanged. In actual fact, the growth rate of employment has fallen much more than the output growth-rate.

There has been a real collapse of employment growth. Between 1993 and 2000 the work force growth rate had fallen to just 0.7 percent, compared to a rate of 2.4 percent between 1983 and 1993. The only thing that is growing fast is unemployment at 5.3 percent per annum in rural areas. You can't talk about a rise in unemployment without talking about the fall in growth rates. Moreover, you cannot ignore the damage that has been inflicted as a result of the adoption of contractionary policies.

The growth of unemployment not only in terms of days lost due to open unemployment, but also in terms of the number of days worked by farmers and agricultural labourers, which has also dropped very dramatically – means a drop in the purchasing power in rural areas. This drop in purchasing power is the major factor behind the drop in foodgrains absorption.

I disagree with the view put forth in our official government publications eg in RBIs report on currency and finance or in the finance ministry's Economic Survey. They contain an analysis of the fall in food grain-availability, which I consider to be completely fallacious and incorrect. In these publications it is stated that people are voluntarily reducing their cereal intake, voluntarily diversifying their diets from foodgrains towards higher value crops and this is viewed to be a consequence of the operation of Angle's Law. However, Angle's law was formulated in the context of advanced countries, where the population starts from a fairly high level of income and begins to substitute a direct consumption of grain and bread with a greater consumption of meat and animal products, as their income rises. The American life style is an example of this.

But in our country we have an absolute decline in food grain-absorption, which is not at all due to any voluntary diversification, it is owing instead, to a loss of purchasing power. The crucial index, in this regard, is the energy intake per consumer in rural India, which is dropping sharply. This trend is very much contrary to the usual Angle's law phenomenon that you get in advanced countries. Any diversification is due to distress. As people struggle to afford the basic staple foods, which provide the major part of the energy for the poor population, they are being forced to cut down on their basic energy intake.

As a consequence we have the dubious distinction of being only slightly above Sub-Saharan African countries in terms of energy intake. As a matter of fact, roughly half of the rural population of India is at the average intake level of the 46 Sub-Saharan African countries taken together and the situation is deteriorating rapidly.

The other major reason for the phenomenal drop in the purchasing power in the rural India is due to the fact that that we opened up our agricultural economy at the wrong time. In our efforts to seek compliance with WTO requirements, we did away with restrictions on agricultural trade and exposed our farmers to global competition at a time (from 1997 onwards) when global markets in advanced countries had gone into recession and when a global crisis in crops was deepening.

The prices of important traded primary products, not just the tropical crops, but wheat, rice, maize etc. suffered a significant drop between 1995 and 2001.

In the case of crops like tea, coffee, pepper and spices in India, the fall started a little later, in 1998, and has continued to the present. The price of coffee received by the grower in 2003 is just 25 percent of what it was in 1998. The price of tea received by the grower is just one-third and the same is true in the case of pepper.

This is why in Wayanad, a single district of Kerala, the region most affected by price crashes, almost 1300 farmers have committed suicides in the last five years.

The 1980s witnessed a global price crash on a similar scale, but Indian farmers were not affected by it, as Indian agriculture was not open to world trade at the time. So you can't blame for all this global prices.

Instead, you have to blame the phenomenal drop in output prices. You have to blame the fact that we liberalised our trade at the wrong time, which resulted in a drop in purchasing power, and which has caused severe distress for India's farmers. .

In terms of cotton production, between 1995 and 2001, the price of cotton dropped to one-half of what it was. During the same period, under the advice of the World Bank, (particularly in AP, as AP had taken a structural adjustment state-level loan from the World Bank) the power tariff was hiked five times. This was accompanied by a reform of the banking sector, under which agriculture and small-scale industry were no longer considered priority sectors for lending. Farmers could no longer get loans at lower rates of interest from the banking system and as a result they were driven into the arms of private money-lenders.

I have personally been to villages in Andhra Pradesh where the annual rate of interest charged by private money-lenders varies between 36 and 60 percent. Failure to pay means the interest is compounded to the actual amount. Farmers are now facing an income squeeze of unprecedented dimensions.

I have pointed out in one of my papers that the situation is as bad, if not worse than the agricultural crisis experienced during the great depression years of the late 1920s. Farmers are sinking ever deeper into debt with no prospect of escape. Global projections made by international bodies like FAO and UNCTAD, which deal with international trade in primary commodities, all project a continuous fall in terms of trade in real prices of primary products until at least 2009-2010. Access to external markets will therefore not provide the solution.

I can't understand why any economist, including Dr Manmohan Singh, can say we should opt for agricultural diversification of produce for exports, or invite transnational corporations. The transnational corporations are also operating within the milieu of falling global prices. The only way they can maintain their profits, which they have already begun to do in the case of tea, coffee, pepper and spices, is to grind the grower down to lower and lower levels and to give him less and less. Indian growers are feeling the pinch. The coffee grower today is getting only a quarter of the price he was getting five years ago. What can you expect him to do except to commit suicide?

Over 9000 farmer-suicides have been recorded in our country since 1998. More than 5000 of these were in Andhra Pradesh but new centres of crisis include Karnataka, Vidharba and Kerala. Because of the fall in domestic absorption of foodgrains, the farmers of Punjab and Haryana are not exempt from this trend either. When their produce was procured by the FCI, the farmers of Punjab and Haryana used to produce surplus grain. They had an internal market. The fall in absorption level has meant that they have lost an internal market to the tune of 26 million tonnes. If per capita absorption today were maintained at the same level as in 1991, the internal demand for foodgrains would have been 26 million tonnes higher than what actually it is today. Thus, even the most prosperous agricultural states are in crisis and are being forced to diversify into exports. But where to export when the unit dollar prices are slated to fall further?

These are the dimensions of the crisis we face in agriculture today. Too many people are fooling themselves with "fairy tales" like the "voluntary reduction" of consumption. How can you have voluntary reduction when there is rising unemployment, a fall in calorie intake, and phenomenal agricultural distress? The suicide of 9000 farmers' is just the tip of the iceberg. In the face of deepening indebtedness, farmers and labourers will not react by reducing their consumption immediately but will instead try to maintain their meager existing consumption pattern by parting with their assets, immovable assets. Farmers will try to sell their lands if they can't meet their consumption needs. This means that people will sell all their transferable assets as they have no other alternative than to go hungry.

The agrarian crisis was the main reason for the resounding defeat of the government in last year's general election. By July 2002 there were 63 million tonnes of foodgrains – almost 40 million tonnes in excess of the buffer norms for the time of the year.

We pointed out that the 63 million tonnes were not the result of any voluntary reduction they were the result of the fall in purchasing power. The government should provide people who are impoverished with purchasing power, should put some food in their stomachs, and should start Food for Work programmes on a massive, more intensive, scale. It was only in Rajasthan that the Food for Work programme was employed to any desirable degree, and that too was as a result of the drought conditions.

We are completely fixated by drought. We don't understand that even without drought, a food crisis can still arise when foodgrains are available, but people lack the purchasing power to obtain those foodgrains. The solution to a drastic drop in effective demand is to provide employment.

This is why the recently passed National Rural Employment Guarantee Act is so important, but it is only the first stage. We have to ensure that those who control the nation's finances aren't allowed to put forward the claim that they lack resources. The resources are there, but we have to ensure that they get correctly distributed. This is the only means out of the dismal scenario which faces us at present.

The foodgrain-availability per capita we have today is the same we had in the period 1937-42. The absorption rate is going down even faster because of the drop in purchasing power. The huge foodgrains stock built up when the PDS off-take decreased from 20 million tonnes in 1991 to 10.5 million tonnes in 2001.

What did the government do with these huge food stocks? Instead of engaging in Food for Work on a massive scale and providing food to the people who were getting increasingly hungry, it instead exported the stocks at less than the BPL price. As a consequence, we had the highest level of exports in the history of independent India!

Through the year 2002-03, even as foodgrains output dropped by 30 million tonnes, the government exported over 22 million tonnes of foodgrains. Moreover, I believe most of these foods were used by the importing countries as animal feed ie they were used for feeding European cattle and Japanese pigs! Is it any wonder that there is such a feeling of anger about a situation where your population is going hungry and you are feeding foreign cattle!

This was one of the main reasons that the rural electorate gave such a drubbing to the government in the last election. It is imperative that we ensure that genuine measures are taken to restore the purchasing power which has been lost due to dubious policies. A step in this direction would be to sincerely implement the Rural Employment Guarantee. Another helpful step would be to delete the artificial division between the above poverty line (APL) and the below poverty line (BPL).

The present definition of poverty consists of a per capita expenditure on all goods and services as to allow the person to access 2400 calories in rural India and 2100 calories in urban India. I earlier highlighted the fact that in 1999-2000 a person required about Rs 575 a month to access an average calorie intake of 2400 calories. Relying on the same data, what was the Planning Commission's poverty line for the same year? It was Rs 328. What the Planning Commission did not tell us is that that a person in rural India living at this poverty line can only access 1870 calories and not 2400 calories. In this way, they are reducing the poverty percentages spuriously because they are not keeping the nutrition norms constant. I could make poverty disappear from this country statistically if I choose to lower the nutrition norms! I only hope the Planning Commission will not be misguided enough to tell us that rural poverty has declined below 20 percent because this is just what will happen if they continue to use such procedures!

The Planning Commission procedure is not based on an examination of the current data, but on a more- than 30-year-old poverty line relating to 1974-75. I object to the official Planning Commission's estimates because they are not based on an academically valid procedure. It is unacceptable to set lower consumption standards in order to say that poverty is diminishing. You have to inform the public. There is no transparency in their estimative method.

If you correctly interpret the data, what you find is that the correct estimate of poverty in rural India is 74.5 percent not 27 percent. It does not make any sense to divide the population into APL and BPL and to deny ration cards to those who are not poor by official standards. The number of people who are officially poor may be very small, but the number of people who are actually poor is very large.

Interactive session

Question: Don't you think that most of the government policies now seem to place more emphasis on direct subsidies to production? Should there not be a focus on cottage industry, rural agro-based industry and the formation of rural cooperatives? Especially in the context of what Dr Saxena said about it becoming more viable for the small farmer to lease out his land rather than taking on a lease, if we were able to focus on rural cooperatives and on cottage industry, would we not then have a greater impact? China is actually following the liberalisation policy and India is trying to replicate its approach, yet China is faring much better.

Prof Patnaik : China's liberalisation is very different from ours. In China there was a revolution and a very comprehensive land reform in which about 43 percent of the land was redistributed. This left no landless people in rural China. After that, they had the formation of primary cooperatives, advanced cooperatives, and people's communes which lasted until 1980 and they had very high rate of collective capital formation in agriculture. This ensured that the rural market expanded in terms of purchasing power within China. If we forget large-

scale industry in China and just look at the rural market, that was growing fast because they started with the internal market.

In our case I can say with conviction that any attempt to have cottage industries that will be viable will stumble on the problem of a decreasing internal market and a contraction of purchasing power. You have to restore your internal purchasing power. Foreigners are struck by our obsession with the external market. They argue that ours is the second largest country in terms of population, potentially a vast internal market and the logical thing to do is to make sure that the internal purchasing power grows. If that grows, it will automatically give rise to a high rate of demand for small scale and cottage industries and this can, in fact, benefit our large scale industries also.

In relation to subsidies, as far as agricultural production and cottage industries are concerned, we have been told again and again by the WTO to reduce our subsidies. It is part of the WTO discipline. Our central and state governments are cutting down on irrigation subsidies and fertilisers subsidies. This is the reason why the cost structure for the Indian farmer has gone up.

The interesting thing is that the advanced countries, which are keen to tell us to do all this, are doing precisely the opposite. Faced with a fall in global agricultural prices, they themselves are actually raising their own agricultural subsidies to unbelievable levels. This is happening both in the US and in the European Union. They are able to do this because they have already written the clauses of the agreement on agriculture in the WTO in such a manner that although they can't increase subsidies which they call distorting, it is perfectly possible for them to instead, increase other kinds of subsidies which they define as "non-trade distorting", which consists of simply giving farmers handouts from the budget - cash transfers. Part of the reason for deadlock in negotiations with the WTO is precisely because of this unfair situation. The advanced countries like the USA are providing 3.7 billion dollars in subsidies for its 27000 cotton farmers, which means the per-farmer subsidy works out to the tune of more than 100,000 dollars a year in cotton production alone. Whereas in the African cotton-growing countries, not to speak of the AP and Maharashtra, cotton growers are getting nothing and their input costs are rising. So it is not surprising then that they find themselves in a grim crisis.

NHRC and Right to Food

Chaman Lal

I am a retired policeman. I have always accepted the restrictions imposed by law on the functions and powers of the police. I have volunteered to serve in difficult regions of the country Punjab, J&K, Nagaland – and I have always believed in performing my duties within the restrictions of law.

In a matter directly related to the Right to Food, I would like to discuss the National Human Rights Commission's intervention in the Orissa starvation death case. At some point in 1996 a PIL was filed in the Supreme Court by the Indian Council of Legal Aid alleging that starvation deaths had occurred in some regions of Orissa.

We received a complaint from Chaturanan Mishra, the then Agricultural Minister, which made allegations along similar lines. The Supreme Court said it would await the NHRC's report, since it was aware that the issue had also come to the attention of the NHRC. The Court said that the petitioners could approach the NHRC with a fresh petition and this was duly done. The Court ruled that the NHRC's directions in the matter should be complied with – hence the NHRC's recommendations would have the force of law and would be binding. The Court advised the petitioners to approach the NHRC in regard to some interim measures which required immediate implementation.

The NHRC found that the matter required an in-depth examination. It studied theories relating to famine, relief, drought, the socio-economic and political history of Orissa (with a particular emphasis on arable regions), and also Amartya Sen's theory of entitlement. The NHRC then came to the conclusion that this matter should be taken out of the contentious and adversarial arc and should be converted instead into a participative and cooperative endeavour. To achieve this end, all the parties concerned were required to agree to a package of interim measures for a period of two years. The targets set for the period were quite specific in terms of location, physical targets, financial targets, methods of execution and mechanisms for monitoring. It was observed that however brilliant a plan of action is at the design stage, ultimately its success will be determined by the quality and extent of its

Mr Chaman Lal

is a former director of the Border Security Force Academy, Additional Director-General of BSF



and Director General of Police. He has been a recipient of the celebrated President's Police Medal for Distinguished Services and the National Award of Padma Shri. His work as a special rapporteur with the National Human Rights Commission has led him to conduct investigations into human rights violations in numerous regions of India. He spoke about the interventions made by the NHRC on starvation issues, particularly in Orissa, where repeated investigations were made into starvation deaths and gave outline of the reforms suggested by the NHRC.

monitoring. At the time, the Commission was seeking a Chief Secretary to take on the task of monitoring. I stepped in to volunteer my services for free and for the last 6-7 years I have been working in and visiting the Kalahandi-Bolangir-Keonjhar (KBK) region.

A team led by the Secretary General and DGI visited the area and said that certain measures were required to be taken immediately. They visited those places from which the reports of starvation deaths had come. They concluded that the area was afflicted by high levels of deprivation, low income, inadequate relief measures and repeated and frequent crop failures. The deaths were not clinically starvation deaths; the deaths were due to prolonged hunger and malnutrition compounded by disease. This painted a much clearer picture of why people had died.

The Commission took a series of measures aimed at solving the problems of destitution, deprivation and migration.

The short-term measures were:

- Rural water supply and sanitation – to provide tubewells. I used to personally visit, make sample checks and demand quarterly reports. Within two years the target was achieved
- Primary health care – the Commission ordered the opening of a certain number of primary health centres, providing mobile health units to 34 blocks. Now all 80 blocks of the KBK region have mobile health units which visit the villages on the basis of a programme formulated by the Panchayati Raj institutions
- National Old Age Pension Scheme – We found that a ceiling had been imposed on the number of pensions. Therefore we approached the Government of India to remove this numerical ceiling. As a result, one lakh more pensions were sanctioned to the KBK region. Dr Saxena was deeply involved in the matter and helped us greatly
- Mid-Day Meal Scheme – In these districts, Children had been provided with cooked meals in schools since 1998-99. On only one occasion did I find that raw cereals had been provided to schools in urban areas. The NHRC immediately intervened and rectified the situation
- Employment Assurance Scheme – We found that soil conservation and water segmentation, afforestation, and the rural development programme Jawahar Rozgar Yojana - were all important areas and we ensured they were monitored
- Land Reform – We appointed a committee to study the existing land reforms and to see how they could be improved

As part of the work I conducted visits every three to six months. On January 17, 2003 the National Human Rights Commission issued a ruling which reviewed what had been done over the period of the previous two years. By this stage the Government of India had introduced a revised long-term action plan. It consisted of 11 components including agriculture, irrigation, watershed, horticulture, primary health care, employment generation, SC/ST welfare, and

afforestation - with an emphasis laid on monitoring. Since the monitoring had not been conducted properly, the petitioners requested that monitoring be decentralized and be made to involve the NGO sector and civil society.

In each of these proceedings the NHRC indicated that the Right to Food was assumed to be an integral part of the Right to Life as enshrined in Article 21 of the Constitution. Reading Article 21 in conjunction with Articles 39 and 47 the Right to Livelihood and the Right to Nutrition and an adequate Standard of Living ensured the Right to Food was taken as implying a Right to Food of an appropriate nutritional value.

Firstly, starvation is injurious and constitutes a violation of the right to life. The State is responsible because of its acts of omission or commission and must provide a remedy.

Secondly, there is a need for a shift - from the earlier crown - subject relationship, to a state-citizen relationship, from State benevolence or charity to a rights regime. How does the state operate or respond in the present system? The Commission noted that the State responds only after hunger has already taken its toll. A person has to die to become eligible for relief because it is only after the person dies that compensation takes place! A person should be entitled to claim his right and a paradigm shift is necessary to change the perception that mortality should be taken as proof of starvation. Clinical proof of starvation should rather be based on signs of chronic destitution or malnutrition.

Thirdly, there is a need for a paradigm shift from the assessment of agricultural output to the assessment of hunger. Our relief codes are based on the Famine Codes of 1880, where relief was based on an assessment of harvest (the term is Fasal Assessment) and not on an assessment of hunger. This system needs to be restructured urgently. What is needed is to directly address the rights issue.

Another thing we noted was that during sowing time January and February poor farmers become trapped by money-lenders because this is when the farmer needs assistance to defray other loans. The Supreme Court has endorsed the monitoring of this issue and I will be returning to all eight districts to see what has been done in this regard.

The Panchayati Raj Institutions have come in for criticism recently because of their potential for corruption. We found that people were not satisfied with the system whereby the block officer used to distribute rations. I could see from the ration cards that people were not getting their proper rations. We decided that the Gram Panchayat should be involved in the distribution process. Now, in the eight districts, more than 90 percent of the Gram Panchayats are involved in this work and ration off-take and distribution have greatly improved.

The NHRC also empowered women's self-help groups. Previously we had received a number of complaints about the distribution of kerosene. Now, at our insistence, in certain areas women's self-help groups are actively involved in the distribution process. I firmly believe that we must involve the Panchayati Raj institutions in PDS activities.

Although additional primary health care centres have been opened and every block now has at least one mobile unit, people are still dying from diarrhoea and malaria. There is still a shortage of doctors to treat malaria. At our suggestion, the state administration has started to appoint doctors on a contract basis and vacancies have begun to be filled, but this remains an area of concern. We also found a decline in the immunisation programme.

Our long-term planning has laid an emphasis on irrigation as it is critical that we better utilise districts with irrigation potential. utilisation remains only 10 percent to 11 percent. Although there have been some improvements in afforestation, monitoring of this remains crucial.

We still receive reports of starvation deaths due to hunger and malnutrition and investigated the Kashipur mango kernel case. In my report I recorded that as per the post mortem reports, they were not starvation deaths. But why did people die? The case received attention primarily because the wife of the landowner had died alongside the tribals who had been eating mango kernels. I checked the ration cards of the tribals and found that although they were entitled to 25 kg per month they were unable to obtain more than 10 kg per month. A few months prior to their death the rate under the targeted PDS had risen from Rs 2 per kg, to Rs 4.3 per kg. A lack of employment in the region had left the tribals with no income and as a consequence they could not obtain the grain from the ration shops.

A lack of money or resources is not the problem, because even in a place like Kalahandi, each block gets Rs four 4 crore per annum for various programmes. The problem lies with the commitment of the bureaucracy to implement, operate and monitor the programmes.

The NGOs disagree with my assertion that they cannot create a parallel administration. But, if praising the district magistrates ensures they work, why not praise and support them? I have found this to be the case wherever there are dynamic district magistrates. I have also suggested that officers should be posted to the KBK area early in their career, rather than at the end of their careers when they are more concerned with medical benefits than developmental matters. Our experience tells us that such "small interventions" can make a huge difference to people's lives.

Social ostracism and food security

Harsh Mander

I wish to talk about those groups that constantly live with hunger but for whom very little is done by the State. Even in terms of judicial and civil society activism, much less attention is currently focused on these groups than should be the case.

Once I went as part of a Commissioner's team to investigate hunger deaths in Andhra Pradesh. While there I learned the sad story of a 32-year-old widow who had died leaving three small children behind. She used to scour the forest for produce to sell and come back with between Rs 10 and Rs 30 in the evening. She used to deny herself food so that her three children could eat, but eventually she grew so weak that she could not leave her bed. Her eldest son, who was 12-13 years old, took over the task of collecting produce in the forest, but he was able to collect even less than his mother, who continued to deny herself food for her children's sake. After slowly wasting away for a year, she finally died.

It is customary in her Madiga (dalit) community to tie a little rice to the sari pallu when burying the dead, but it is considered inauspicious for that rice to come from another household. When she died, however, there was no rice to tie in her pallu and so she had to be buried exactly as she had lived.

How can hunger continue to persist in a country where there is an abundance of resources? What is happening in our society when a young widow of 32 can be allowed to waste away and die of hunger?

Famines have been consigned to history and we no longer hear of deaths on a massive scale. Tens of millions may have died of famine in China, but there have been no such famines in India since Independence. But hunger still persists. Why does hunger still persist?

Why do young widows like Gajalakshmi still live and die with hunger now that we have so much grain and resources?

It is essentially due to a collapse in governance.

It is an issue of corruption, accountability, sensitivity and responsiveness.

There are other problems in relation to distribution, inequality in land holdings, incomes and assets, but I would like to focus on the social barriers created by gender, caste and disability.

Why does food insecurity continue to persist? Why is hunger rampant not just in remote tribal villages but on the streets of Delhi? Vandana spoke about a malnutrition level of 80 percent 90 percent in slums, but if you looked at street and homeless families the malnutrition levels would be even higher.

What is the State doing for these vulnerable groups, for the estimated 50,000 street children on Delhi streets? Not a single food scheme is in place for taking care of the nutritional needs of these children. I am sad to say that it has taken two years to convince even the progressive chief minister of Delhi that we have a duty to ensure food for these children.

Research has been conducted on where these children find their food. It is easy to imagine the amount and kind of food that children without homes get. They get their food primarily from three sources. Firstly, from the rubbish heap, secondly, from begging at temples and mosques, thirdly, with whatever money they earn they buy greasy food of questionable nutritional value.

It is unconscionable that street children are being denied not just an education but a meal also. It is not through choice that street children do not attend school. Various social and economic factors have led to street children finding themselves in the position they are and there is no justifiable reason for the State to deny them shelter, schooling and food.

There is currently no scheme in place to tackle this problem, but following an uphill battle, the state government has taken responsibility and announced a budget.

People with leprosy are a particularly marginalised group. I have worked with them in Madhya Pradesh and Chhattisgarh. Another stigmatising ailment is TB. Between 50 percent and 60 percent of the rickshawpullers in Mussoorie have TB. This severely impacts their earning capacity. There is a vicious cycle leading from low nutrition to TB but no programme exists to address this problem. In a similar fashion there is no programme designed for people with HIV/AIDS. No targeted food programme exists either for workers in the unorganised sector such as quarry workers, construction workers and rickshawpullers.

There has also been a shameful neglect of another category of persons - urban slum dwellers whose houses have been demolished. In a peoples tribunal recently organised by HRLN and other groups in Mumbai, the issue of demolitions was extensively studied. Although, not theoretically barred from possessing ration cards, they face many obstacles if they wish to access their rightful entitlement to food. The ration card for accessing foodgrains from the PDS has become a proxy proof of citizenship, but when the people whose houses are to be demolished approach officials for the issue of ration cards they are told they must produce a cancellation certificate of their ration cards from officials in their respective states. This requires that they travel to their home states which may often involve a huge expenditure of money, time and effort. Even after this is accomplished, the ration inspectors who are supposed to come and inspect their residence may arrive when the person is working. They are thus deprived of the ration cards which both act as proof of citizenship and enable access to food programmes and the PDS. This is then taken as an excuse by the municipal authorities to demolish their home.

Thus, slum dwellers do have some degree of entitlement, but they are effectively denied access to it.

Those workers who migrate from rural areas to urban areas and who are constantly on the move in search of work are the same workers who have no access to PDS. No food programme of any description caters to the needs of these workers and their children are not covered under the ICDS, nor can they gain access to the mid-day meal programme. These same workers also face an extremely hostile work environment.

It has been my experience that whenever starvation deaths are investigated it is almost invariably discovered that the deaths involve three categories of vulnerable people in particular.

1. Infants from very poor families
2. Old people who don't have caregivers
3. Single women who are either abandoned, widowed, or live alone, with or without children

At present, very few states have schemes for widows. Pensions for widows are generally very low. Policies in this area have particularly neglected the needs of young widows who have a family and young children to look after.

Although there is a pension scheme for persons with disabilities, it is extremely limited both in terms of scope and resources. People with disabilities continue to suffer multiple disadvantages. In rural areas there is next to no institutional support for people with disabilities and mothers with mentally handicapped children have to stay with them and look after them. As a consequence, these women can neither go to work nor access the programmes which are meant for them.

Why, even in cities and prosperous states, do we continue to find families and communities that live with hunger as a way of life? Equal access to food continues to be denied to persons on the basis of gender, caste, class, stigmatised ailments and disabilities.

It is an established fact that two-thirds of women in India are highly anemic and that among poor families the levels of malnutrition are much higher for women than for men. In almost every family, including our own, women tend to eat last and eat least!

India has an adverse sex ratio, but the common perception that this is because girl fetuses are killed at birth, is only part of the story. A comprehensive and accurate explanation would also include the story of life-long neglect, denial of food and denial of health care to girls and women within the family.

People often say that the state should not interfere in internal family matters and that this should extend to include intra-family inequalities and food access. The same argument used to be made for not intervening in domestic violence, but due to a landmark judgment, a law now exists in relation to domestic violence. The State must now take cognizance of the intra-family inequalities between genders in relation to access to food. For certain categories, like single women, aged women, mothers and adolescent girls there should be a robust programme of direct food transfers.

The fact also remains that in almost every part of the country the ICDS outlets continue to be located in the main part of the village, something which discriminates against the dalit settlements which are always located far from the village centre. In acknowledgement of this fact, we acquired an order from the Supreme Court to say that future ICDS centres should first be opened in the dalit settlement of the village.

It is striking, however, that despite repeated reminders from the commissioners, not a single state government has actually issued a set of instructions to open the new centres in dalit settlements.

We are very accepting of the idea that a dalit child would go to a non-dalit centre to eat but we are taken aback by the idea of a non-dalit child going to a dalit settlement to eat. We have to acknowledge that it is in the dalit community that hunger is at its most severe. There is also discrimination against dalits in schools in relation to the mid day meals. For example, 25 percent of schools surveyed by us have shown that they are against the idea of dalit cooks.

Our laws continue to regard slums as illegal and to deny forest dwellers rights over lands and forests, despite the fact that such laws adversely affect the most vulnerable people in society. These people are also routinely denied other entitlements, including the Right to Food.

Everywhere the story of starvation is the same. When starvation deaths are reported in the media, the government goes through a long process of denial. The standard government response, one I have often come across in my visits to the Sahariya community in Rajasthan, is that there is no starvation at all; the people did not die of hunger but due to sickness, the people are superstitious and don't look after their health! I acquired a government document that had studied the habits and expenditure patterns of the Sahariya community. The government report showed that the highest expenditure of the Sahariya community was on food and that the second highest expenditure was on health care. It was clear that not only were the community not receiving free food, but that they were also being forced to go to private health practitioners.

Only few days ago the Maharashtra government was forced to admit that 2000 children had recently died of starvation. The Starvation story perpetually repeats itself. Each and every time the tragedy of starvation occurs a sad, unseemly and undignified process must be undergone in which the government administration hotly denies that there are starvation deaths and instead tries to shift the blame onto the victims.

It is abundantly clear that a definition of starvation which is taken to mean that there is no food at all is entirely unacceptable. Long ago, according to international standards, an acceptable definition of starvation was considered to be a daily intake of food of less than 800 calories.

Thus, a first step would be to establish a legally agreed definition which would then be followed by a system of social verification. Very often the question of whether a death was due to starvation hinges upon whether or not the post mortem was properly conducted. How do you prove that a death was due to starvation if the body is not available? As much as there is a need for medical autopsies there is now an urgent and pressing need for social autopsies.

The State must adopt mandatory relief, rehabilitation and preventive measures. There is a desperate need for accountability. When someone dies of starvation on the streets of Delhi it must be clear who is to bear responsibility, it must be apparent whose duty it was to ensure that this did not happen.

The character of the State has changed a lot. When I joined the IAS in 1980 the alarm bells would ring whenever there were communal riots or starvation deaths. The administration would become frantic and everybody, including the media and the judiciary, would be gravely concerned about the matter. Today, nobody cares about communal riots or starvation deaths. A general indifference to human suffering has set in. The State today refuses to accept that it has a responsibility to prevent such crises from occurring. We now find that the barriers of gender, caste and disability have not been confronted and that hunger has been allowed to remain unchecked, despite the fact we have more than enough food to feed everyone in our country.

Interactive session

Question: Are we still importing foodgrains and vegetables? Is there any need for it?

Dr Saxena : The objective of production and distribution policies for foodgrain should be to improve consumption levels among the poor. If you look at the bottom 30 percent of the population, their consumption of cereals is 11.4 kg/month. However, the top 20 percent consume 40.5 kg/month, despite the fact that the top 20 percent have better access to fruits, vegetables and meat as well. Hence we need to make a distinction between the demand for foodgrains and the need for foodgrains.

The present levels of income distribution, coupled with the fact that the purchasing power of the poor is going down, means that there is no demand for foodgrains. When the government procures foodgrains from regions and farmers with a surplus, it has to export it, keep it in food godowns, or subsidise it and sell it through PDS.

However, there continues to be a great need for foodgrains. This need can be met either by increasing purchasing power or through various schemes. The mid-day meal scheme, ICDS, etc. - all require a very well oiled machinery. They require a committed delivery system, whether it is in the form of Panchayats, civil servants or NGOs, but there are problems with each of these three mechanisms. Hence, the first step must be to improve purchasing power and then, if needed, to import foodgrains.

Justice Kumar: In Karnataka many temples and many Mutts are providing food free of cost. Particularly in the southern districts, temples are giving out free food each afternoon. The Udipi Mutt alone is giving food free of cost to 33,000 students every day.

In one incident concerning judicial intervention, while interpreting the mid-day meal scheme, the Karnataka government issued an order that cooks were to receive food as payment instead of money. A writ petition was filed before me by the cooks that their rights were being affected. I ruled that a social responsibility had been placed upon the state government and that they should implement the mid-day meal scheme in a proper fashion.

Harsh Mander : Giving free food is a traditional part of every Indian faith. I have seen many

masjids and gurudwaras distribute food. This is a good thing and should be encouraged. However, this is very different to when the state takes responsibility and creates an entitlement. It is not like charity, which is sometimes available and sometimes not. I feel that we should create a basic entitlement and then, if other religious groups wish to provide food over and above that, well that is welcome.

Question: At times it is found that some of the food is not of good quality, that sometimes reptiles are found in the food and that hygiene is not observed. How can we tackle this problem?

Harsh Mander: In a very large decentralised programme of this kind there are always going to be problems of this nature. We will have to find solutions for the problem such as people control, peoples committees, etc. It is when women have taken control of the entire programme that I have seen the greatest degree of success. This is where we find implementation at its best.

Dr Saxena : This problem should have been solved by now because the Government of India has permitted the use of Food for Work and SGRY funds to be used for the construction of kitchen sheds. The problems most commonly arise when schools don't have the proper space to cook and store foodgrains. The orders were issued a year ago. Once the kitchens are ready, the problem of unhygienic conditions will be taken care of.

Harsh Mander : This problem is more acute in urban slums because the overall environment there is much more degraded. A good innovation by the Government of Andhra Pradesh in Hyderabad in relation to this problem is a project called "Nandi". Under this project the government provides very hygienic food and the distribution is taken care of in a very hygienic manner. Under this project more than 1,300,000 children are fed every day. This project is now being replicated in many other areas.

Question: In relation to the acquisition of land, there is a provision that villagers should be informed about land acquisition policy. However, neither under the Land Acquisition Act, nor under the Awas Vikas Act, nor indeed under any other Act, is there a provision for rehabilitation. Does it require a drastic amendment either in Land Acquisition Act or the Awas Vikas Act so as to ensure the rehabilitation of villagers whose land has been acquired?

Dr Saxena : Only in Maharashtra, Gujarat, Karnataka, Madhya Pradesh and Orissa is there either a policy for rehabilitation or an Act dealing with rehabilitation. In some states the rehabilitation policy may apply only to irrigation projects. However, there is a provision by the Coal Ministry that there will be rehabilitation whenever mining for coal is undertaken. In general, however, there is a notable absence of good policy on rehabilitation.

The policy paper issued by the government in March 2004 is very weak and doesn't cover all the issues. It will not help the people who have been displaced in any way. The ideal answer would be to amend the land acquisition law, make rehabilitation a part of that policy and introduce good elements of displacement policy including:

- Minimum displacement
- Consultation
- Land for land
- Jobs for people
- Taking land on lease
- Giving shares if it is a commercial undertaking
- No second displacement
- If the acquired land is sold again at any stage 10 percent should be given to the original land owner
- From the total cost of project keep 10 percent away for distribution as pension to the widows, and old people etc

We have drafted a model rehabilitation policy and we hope the government accepts that.

Question: What should be the nature and extent of obligation of the state with regard to the Right to Food for infants and malnourished children having working mothers in urban areas?

Dr Vandana Prasad : There are a number of formulations to which states can turn to in order to identify their obligations, including the ILO Convention, Maternity Protection, etc. In the case of working mothers it is pretty straightforward. In the government sector, it should consist of six months of maternity leave with pay and 15 days of paternity leave. However, nothing at all is available in the unorganised sector because the women are not able to prove their status as working persons. Nowadays, even the organised sectors are becoming increasingly unorganised in the sense that contract work is on the increase. This means that less regulations and laws will apply to the organised work sector and there will be a loss of job security as a result. 97 percent working women have nothing in the name of the maternity protection.

The Maternity Protection Act was not conceived of in terms of protecting new mothers, but more as a sort of charity to provide nutrition to women.

Nothing has been done about the labour rights of women working in the unorganised sector. There is a proposed Bill for providing maternity protection to working women in the unorganised sector, but implementing the bill might stumble over issues such as the board system, how to identify working mothers etc. We say, why the need to identify at all? Poor women should not have to prove their identity as working women and they should not be asked to prove their poverty. Children are born not just to women, but for society. Poor women are suffering because of a complete absence of State intervention and assistance.

Harsh Mander : The idea of providing a crèche at every work place, may seem unimportant

but we have to realise that breast feeding and frequent feeding is necessary for a child at that age to avoid malnutrition setting in, something which could harm the child for life. In the absence of a crèche at the workplace, mothers have to leave their infants with their small siblings at home. Consequently, the children don't get to feed regularly and receive contaminated water then the whole malnutrition cycle sets in. Setting up a crèche at the workplace of a working mother would be extremely beneficial for a child's nutrition.

Question: In relation to the prohibition of child labour, how do you respond to the suggestion that children should be allowed to work in non-hazardous industries?

Chaman Lal : The distinction is entirely artificial. Nothing can be non-hazardous for the child. An activity like cooking which is non-hazardous for adults can be very hazardous for children. In MC Mehta's case, it was said that in those trades, processes and occupations where children are allowed to work, the children should be withdrawn for two years and receive an education paid for by the employer. However, this in fact has not been implemented. I feel we should not consider employing children in any capacity, since the Right to Education has now become their fundamental right and this needs to be made operational.

The popular perception that poverty is the sole cause of child labour is a mistaken one. Poverty may contribute to child labour, but poverty is also a consequence of child labour, as it results in unemployment and wage depression for the adult population. Indeed, wherever minimum wages are being enforced, we find an increase in the number of children who are not going to school.

I have found that in places like Champaran, where they receive Rs 9 or Rs 10 per day, people have started sending their children to school because they realised that it is in their best interests. Shanta In the Ranga Reddy district of Andhra Pradesh has freed more than 4000 villages of child labour, not on the basis of scholarships or any other incentive, but by convincing the parents that it is in their interest to send the children to school. Our task is to ensure that children go to school - child labour should not be tolerated for any reason.

In rural areas of Karnataka the government has arranged for the supply and preparation of food to schools. In cities like Bangalore social organisations are sharing the responsibilities. The government pays the association Rs 2 per student. They have high quality kitchens and a fleet of transport vehicles. They prepare and supply hot meals of the highest standards and before the children eat the food it is tasted by the teacher to ensure there is no unhygienic aspect to it.

Question: What are the reasons for the failure of the PDS system? Why has it not reached the poor? What can be done to overcome this failure?

Dr Saxena : The PDS has failed due to a large number of factors. There has never been enough thought and planning given to the subject of Food and this continues to be the case, with the result that state governments have not made any investments in godowns or transport and storage. Generally it is from the FCI godowns that the PDS dealer is supposed to supply the foodgrains. All the costs, however, which should be borne by the State

government, are passed instead on to the dealers who in turn try to recover the money through devious means like by increasing the number of cards or by not giving it in time.

In certain states, like Bihar and Jharkhand, there are no FCI godowns even at the district level. The poorest quality of foodgrains is made available for PDS. When you calculate the total cost, ie transport etc., it increases the burden on the state exchequer, whose subsidies have increased in the last seven-eight years from Rs 7,000-crore to Rs 29,000-crore, and so the benefits do not reach the people.

One suggestion is to transfer money directly to the poor by asking them to open a bank account. Today, with the possibility of internet and electronic transfers, there should be no problem in developing a scheme similar to the Old Age Pension, where we identify the poorest people and transfer the required amount.

The PDS was premised on the philosophy that you needed to open a shop in each and every remote area in order to ensure the physical availability of foodgrains. However, today the problem is not that foodgrains are unavailable, but rather that the poor lack the purchasing capacity to obtain it. This purchasing capacity needs to be increased through substantial investment in agriculture, artisans and cottage industries. For the time being though we need to try more experiments of the kind described by Chaman Lal, in KBK, in which the old age pension was increased from 50,000 to 1 lakh people something which really helped large numbers of people. Similarly, in those states where PDS does not work, a worthwhile initiative might be to directly transfer funds to the poor. In UP and Bihar, in particular, a great deal of improvement is required. One way of ensuring state investment would be to declare food as a planned subject. It is ironic that food, being such an important subject, continues to be a non-planned subject in state governments.

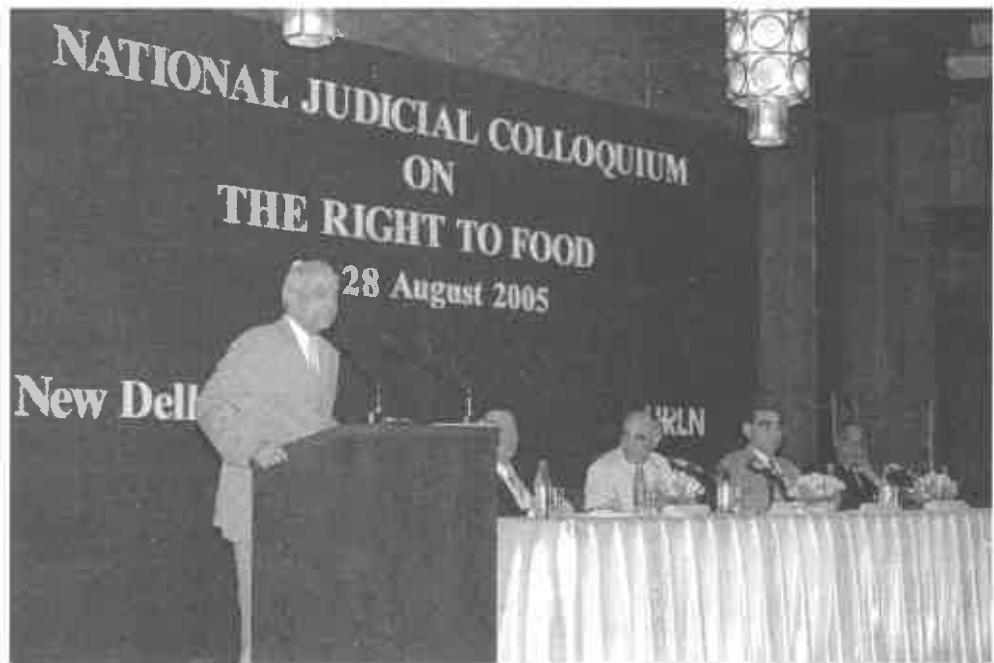
Question: Is there a scheme to provide extra nourishment for poor mothers, given that they have to breast feed their children for at least six months?

Dr Vandana Prasad : The notion that under-nourished mothers cannot breast-feed their children is a medically inaccurate one. The mother will continue to produce milk as long as the child is suckling. However, she needs extra nourishment. The ICDS is supposed to cater for poor women and to provide supplemental nutrition to pregnant women as well. However, at the moment its primary aim is to cater for women in pregnancy. In poor families, women are generally less well nourished than other family members. This occurs as a consequence of the gender-related aspect, where woman is being expected to eat last and eat least. Only drastic change will significantly improve the health of women in our country.

Dr Saxena : If you look at rates of malnutrition along age lines, only 15 percent of children under six months are malnourished, but this figure rises to 65 percent in the 12 to 18 months age group. This indicates that the real malnutrition starts setting in only after breast-feeding has stopped or when it has not been complemented by additional nutritional food. This proves that despite the large numbers of mothers who are malnourished, only a very small number of children are malnourished.



PART FOUR
the international perspective



The Right to Food: An international perspective

Jean Ziegler

It is a great honour for me and my collaborators to be invited to this important colloquium and to speak about the international perspective of the Right to Food. I have been the Special Rapporteur for the new Human Right to Food since 2004. For the first time, India is accepting the visit of a special rapporteur and for this I am thankful to the Indian government.

We are here for ten days, and over the course of those ten days we intend to talk to the civil society and also to do fieldwork research. We met the agriculture minister and other responsible people at the federal level, then we went on to Madhya Pradesh to talk to people at the state level and then to Shivpuri to the tribal areas, to talk to people in six different villages there. We will also go to Orissa, in the interior, before returning for a final consultation with the government. We will then write a report on the violation of the Right to Food in India. I will have to present this report before the Human Rights Commission of the UN and then before the General Assembly of the UN in New York. We will then have an interactive dialogue between all of the member states before the rapporteur will finally write a resolution.

I am convinced that there should be a dialogue between the national and international levels. It cannot wait. India is a very powerful State, the fourth largest economy in the world. India has an excellent human rights record on all of the international human rights conventions. India, since the beginning, has been a very active member of the Commission of Human Rights. I think you could refer to some segments of international law and be very impressed with India and South Africa also, because they are the only states in which the magistrates have traditionally taken up the fight and have produced a very interesting doctrine on the Right to Food. Other countries have not done likewise. My report will deal with Indian example so that all the member states of the United Nations can learn from India.

Jean Ziegler is the UN Special Rapporteur on the Right to Food and a senior professor of social sciences and economics at the University of Geneva. At the University of Geneva, he established the laboratory of sociology for the study of the societies of the third world. He is qualified as a lawyer, with doctorates in international law and sociology from the University of Berne. He was also a Member of Parliament for the Social Democrats in the Swiss Federal Parliament from 1981 to 1999 and was a prominent member of the Swiss Parliament's foreign affairs committee. He is a widely published author whose books have been translated into many languages. His best-known work is the best-selling and controversial *The Swiss, the Gold and the Dead* which details the role of Swiss banks in illegally holding the dormant bank accounts of Jewish victims of the Holocaust. Ziegler has also maintained a decades-long interest in issues of global poverty and hunger and is widely considered to be one of the leaders of the anti-economic globalisation movement. In 2000, he was appointed by the United Nations Commission on Human Rights as the UN Special Rapporteur on the Right to Food.



On the other hand, you could use some of the international norms established by us in your fight inside India. Large numbers of people are dying from hunger and its immediate consequences everyday. On this planet every five seconds a child below 10 dies from hunger. Last year 39 percent of greatly and permanently undernourished people were in India. At the same time the world food report of FAO says that the level of development of world agriculture today is such that we could provide 2700 calories/per person/per day for double the number of humans in the world.

Everybody who dies from hunger on this planet is actually assassinated. So the world order is not only murderous, it is also absurd. It is murderous because it kills, and it is absurd because it kills without necessity.

Within the Commission of Human Rights there are two camps fighting each other. On one side are the people who defend the United Nations Organisation. On the other side, the human right to food is contested by a number of powerful states, most notably the US and more generally by everyone who believes in neo liberal theory.

For the US, there can be no such thing as social economic or cultural rights - these rights are non-existent. The American Ambassador voted against my mandate, as a matter of principle he votes against everyone! For the neo-liberals, a sack of rice is a commodity, food is a merchandise like any other and all they are concerned about is fixing the production price, transport price, storage price, and distribution price and so on.

The US and other neo-liberal governments say that their position in the UN should not be taken to mean that they are cynical. It is a coherent, theoretical argument - they say there are no such rights, but if the world market is not working well, if there is hunger and under-nourishment, then the world community has a moral obligation to help these people. And I have to admit that this is exactly what the US does.

The World Food Programme, of which India is one of the biggest contributors, last year distributed food to 91 million persons. You might say that is not such a considerable figure because there are over 805 million gravely under-nourished persons in the world. The world food programme is 60 percent financed by the US, either through its surplus, or through the importation of genetically modified foods, or through cash donations. We should accept that our adversaries who oppose the existence of the Right to Food at an international level at least have a theoretically coherent position. They say there is no such thing as a Right to Food, but that if the market happens not to be functioning, then humanitarian aid should intervene and take over. And to be fair to them they do make a significant contribution to humanitarian aid. They want to control the definition of the Right to Food and make it market-oriented - they want it to be called international humanitarian aid.

The International Monetary Fund has also adopted the American position. For the IMF there is no Right to Food either. I want to inform you about Oxfam's study on the various countries where the International Monetary Fund has been imposing its programme of structural adjustment and international debt recognition. It shows that every time they impose their policies on third world governments, hunger goes up. It is empirically proven.

Food has a long history of being debated in a contradictory manner in the UN General Assembly. International norms don't simply fall from the heavens - they are the product of peoples' struggles, the products of intellectuals conceptualising, and so on. The history of the Right to Food starts in 1945. In June 2005, the UN celebrated its 60th anniversary. In June 1945, the Charter was formed by the victorious states of the Second World War. Very strangely, the founding members of the UN could not agree on a human rights declaration. As a consequence, in the charter of the UN you will not find a single reference to human rights. Eventually they nominated a Commission to elaborate upon the Universal Declaration of Human Rights, which came into existence on Dec 18, 1948, and which every member state was required to sign. It is true that Article 25 of the Universal Declaration contains a reference, not specifically to Right to Food, but to the well being of the people, but this is a very small reference.

The preparatory stage of the Universal Declaration was completely dominated by American and French intellectuals. The chief American intellectual was Roosevelt and the leading French intellectual was Prof Cassar from Paris. It should come as no surprise then to find that the Universal Declaration of Human Rights which we have today is very much marked by two presidential texts the American Declaration of Independence of the 4th of July 1776 and the Human and Citizens Right Declaration of the French Revolution of 1789 - and that it is almost entirely concerned with civil and political rights.

With the beginning of the Cold War, human rights development was effectively discontinued. All discussion stopped. The western powers said that only civil and political rights were valuable like the democratic rights, the right to expression, right to assembly, etc. The communist powers said that such rights were of secondary importance and that the crucially important rights were social, economic and cultural rights, as Marx said, the voter cannot eat his palm, it will not nourish him. The Communists gave priority to the social economic cultural rights and the western powers gave absolute priority to civil and political rights. The two accused each other of bad faith. The western powers said the Communists only criticised civil and political rights because they did not want democracy and wanted only party dictatorship. The communists said the western powers were hypocrites- they wanted democracy but they opposed any progress for the socially dependent classes and so they refused to recognise social, economic and cultural rights.

The ambassador of Great Britain said "We want free men and not well nourished slaves" and the ambassador of Soviet Union retorted "even free men can die from hunger".

Eventually the Soviet Union imploded in August 1991 at the same time as a very intelligent Secretary General was appointed in New York Boutros Boutros Ghali. In 1993 he convened a human rights assembly in Vienna at which the social, economic and cultural rights were defined and conceptualised. The Vienna Declaration of 1993 states that all human rights, social economic and cultural and civil and political rights are from now on universal, indivisible and independent. Neither can exist in isolation. You can never divorce democracy from the Right to Food, each right is universal and there can be no hierarchy between them.

I was nominated as the first UN rapporteur for the Right to Food. The Vienna Declaration and the special rapporteur's discussion on social, economic and cultural rights are not the only instruments relating to the Right to Food. What is also of relevance is the International Covenant on Social, Economic and Cultural rights which in Article 11 has defined the Right to Food and also general comment no. 12 on the Right to Food. Every covenant has a guiding committee and every country which has signed the covenant has to come before this committee every two years and report on the steps they have taken to bring about the realisation of the Right to Food, the right to work, etc. India is an important member of this committee and has accepted the Right to Food, the right to work and social, economic and cultural rights, but India is very late in presenting the report.

When the report is presented to an 18-member committee of judges, academics and professors from all over the world, they critically analyse and give recommendations to the government. A monitoring system is also in place.

In essence, General Comment no.12 means that the committee has given a comment of the nature of "We as a committee think that Article 11 should be interpreted as follows..." The Americans refuse to accept that it constitutes a law, that it is merely the individual opinion of the 18 members of the committee. However, we consider it to have become customary international law.

General Comment - 12 considers that "The Right to Food implies for the state positive and negative obligations". It should actively do something and at the same time it should abstain from doing something - doing and not doing define the human Right to Food.

The state has the responsibility to respect, protect and fulfil the rights of its citizens. In relation to respect, for instance, if a dam is constructed which greatly affects a number of persons and if they are not given equivalent land or compensation, then their Right to Food is violated. The state has to respect that.

New and powerful actors have emerged in today's world like the multinational companies. Last year, World Bank statistics indicated that 52 percent of the world gross product was controlled by the 500 largest multinational corporations. The power wielded by these 500 multinational corporations' acts to weaken all States. They completely dominate the World Trade Organisation which is in reality a purely mercenary organisation which solely serves the interests of the transnational corporations. The state has an obligation to protect its citizens against these multinational corporations!

The greatest problem faced by Africa and Latin America for example (regions in which the foreign debt is so high that States have no option but to sell their resources) is in relation to the privatisation of water. They turn to privatisation solely as a means to escape the clutches of foreign debt. These countries are completely paralysed as they are forced to dedicate 62 percent of their foreign earnings to serving their debts. When municipalities are placed in such a situation, privatising their water supply soon becomes a tempting option. This has already happened in Bolivia, Brazil, etc. The multinational companies come in, they repair

the water infrastructure a little, and then after just a year or 15 months, they increase the taxes and force people to pay for their drinking water. In Sao Paulo, there are 18 million people (6 million by government measurements) who have no access to regular pure drinking water as per WHO standards because they cannot pay the new fees. Thankfully, however, this is not the case in India, where there is a strong public sector.

The second obligation of the State is to protect. The State must impose taxes in order to assure drinking water or the right to drinking water for the population. In South Africa where their Supreme Court has also played a very active role, two cases of water privatisation have been revoked.

Finally, there is the States obligation to fulfil, which is at the centre of discussion in India. If people are living below a subsistence level, then the State has an obligation to help. They have the obligation to keep people alive, in existence, or as in the case of Africa, the State has a duty to appeal to the world community for timely aid. In order to keep people alive, the State must ensure that people are provided with a livelihood. They must fulfil this obligation.

In Burkina Faso and Niger, where hundreds of thousands of people have been dying since April, the locusts destroyed an already poor millet harvest. For political reasons, the government was very slow to sound the alarm. This amounted to a violation of their obligation to fulfil.

Any international covenant can have an additional protocol. An example of this kind is the protocol dealing with the prohibition of torture. This has the effect of enabling individual victims to address themselves directly to the committee and say that they were a victim of a violation of the international convention.

We would like to have a similar additional protocol in the Covenant on Economic, Social and Cultural Rights for the Right to Food. The specific stakeholders - the persons, peasants union, workers union, members of other groups and individual families - should be able to bring a plea against the duty bearer who has violated their Right to Food (in the human rights terminology, the duty bearer is always the State and stake holders are always the human person). Many powers, amongst them Canada, are completely sabotaging our attempts to introduce an additional protocol, something which is desired by third world countries, progressive organisations and international lawyers. A lack of movement on the issue led to the United Nations setting up an open-ended working group. I wish to mention this fight because the Indian position on the additional protocol to the Covenant will be of immense importance.

There is also the problem of progressive realisation. In international doctrine, the dominant theory asserts that social and economic rights should be progressively realised by the State, while civil and political rights must be immediately realised by the State. I completely and utterly reject this dichotomy.

For example, if torture, a violation of civil and political rights, is denounced under the convention, it has to stop immediately. There should be no delay. However, when you are

suffering from malnutrition or hunger, is it not just as necessary that it stop immediately. Protecting civil and political rights also require some progressive elements- to stop torture you should have a civil-rights-conscious police force, traditional monitoring elements, and you must make the prisons safe - so realising civil and political rights requires a long term investment. Many social and political reforms must take place if a real existence is to be granted to these civil and political rights. For the sake of immediate realisation of the Right to Food the State should also, on every occasion possible, in every programme it makes, every law it makes, every budget it sets, prioritise the human Right to Food. In terms of its financial policies, employment policies and international policies, the State should give absolute priority to the Right to Food.

The suggested voluntary guidelines are outlined in the second edition of the Right to Food book by Colln Gonsalves. It is a very practical document which details the history of support for the progressive realisation of the right to adequate food in the context of national food security. These guidelines were adopted by the World Food Council of FAO. We have so far had two World Food Summits one in 1996 and the other in 2002. There has also been the United Nations World Conference on Women in Beijing, on Population in Cairo, etc. These summits are extra-institutional; they are specific world conferences which the United Nations organizes in order to address a specific problem.

In 1996 the first summit was organised in Rome. In the actual programme, the "Right to Food" was inscribed as an obligation for the State to realise. Then in 2002, a summit was held to examine the progress since 1996 and to provide for new directions and approaches towards achieving the Right to Food.

The entire Congress proved to be a failure. Although a large number of third world leaders were present, practically nobody from the dominant western world attended the conference. Only Berlusconi, who was there for barely half an hour and only on account of being the Prime Minister of Italy (he made the facetious comment that he came from a family where everybody worked, so they ate!) and Aznar, prime minister of Spain and president of the European Union were present. Apart from these figures there was not a single chief of State from the northern hemisphere. Naturally, progress could not be made. We managed to achieve one notable coup, nevertheless, in that we were able to set up a working group for two years with the task of elaborating voluntary guidelines on the realisation of Right to Food. The voluntary guidelines carried obligations for the 192 States of the UN. The guidelines are very useful and the independence of judiciary can be of help in ensuring their implementation.

This set of 19 guidelines relate to monitoring indicators, benchmarks for national human rights institutions, support for vulnerable groups, safety nets, national financial resources, ways in which a national budget should be constructed to prioritise the Right to Food, international access to food and assets, the rule of law, how corruption interferes and how it can be combatted, ways in which the market system can be normatively organised etc. They are very practical guidelines.

I am very happy that the international community and the World Food Council have accepted these guidelines and are now putting them into action. We next need to impose these guidelines on the World Bank and International Monetary Fund, something which we have been unable to do thus far. However, many western governments, including those of Germany, France and England have used these guidelines to formulate their bilateral and multilateral cooperation programmes. Additionally, 22 specialised organisations of the United Nations have employed the voluntary guidelines in the formulation of their programmes. These developments have concrete implications for the prioritisation and definition of the Right to Food. The UN General Assembly will meet next month to discuss the millennium goals and at this meeting, combating hunger will be established as the primary goal.

I wish to conclude with two remarks. First, our report from India will contain recommendations to the international community, to international organisations and to the government of India. They have to make realistic recommendations which will be able to be executed, not just pronounced, and which can turn into resolutions, and in this exercise your help will be of utmost importance to us.

My parting remark is one of which Prime Minister Nehru was very fond. The French Philosopher of the 18th century, one of the fathers of the French revolution, Ceauescu said "Between the rich and poor, it is freedom which oppresses and freedom alone which liberates".

Interactive session

Question: If the neo-liberal group and their opponents were to accept all of these recommendations and were to put these international norms into practice, both in their national and international policies and actions, would it be right to say that world hunger could be eliminated within one year?

Ziegler : The problem does not lie with the United States alone. I took the United States as an example only because they were so articulate and powerful when confronting me at the UN. However, the neo liberal theory is based on the Washington Consensus, and most of the private sector argues that if you liberalise the movement of capital, service, goods, and so on, throughout the world, we can all make maximum profit riches for all - Privatise every public sector and the profit maximisation strategy will take over and then accumulation and riches will go up. Liberalisation, privatisation, macro-economics, budgetary complexion - these are the four pillars of the private strategy first defined by Williamson in his famous book and later repeated by Wolfonson. Wolfonson was a very intelligent man. He said "the horizon of history is stateless global governance". He argued that the more the centralised, integrated, world market is completely free from state activity, parliament or territorial limitation, the greater the riches. In one sense he is not mistaken.

However, he neglects to mention the problems which this would cause. Between 1992 and 2002 the world gross product more than doubled as a consequence of the globalisation process. World commerce has more than tripled to over 6000 billion dollars, a feat which had previously been thought to be completely impossible. Energy consumption has doubled in the last four years. Therefore, from a purely quantitative perspective, globalisation works.

What is not working, and what the proponents of globalisation fail to tell us, is that we live in an age of neo-feudality, in a time when these incredible riches are utterly monopolised. Last year, 85000 transnational companies were inventoried by UNCTAD, the 500 biggest accounted for more than half of the world gross product. This is a huge problem. If the Bush administration were to change its stance and to say that the Covenant on Economic and Social Rights was a beautiful and desirable thing, and decided to push the human Right to Food in the World Trade organisation, the International Monetary Fund and everywhere else, we would have a much better chance of winning this fight.

Question: Man being man, and nationalities being nationalities, is this idea of stateless global governance not just a product of pure capitalist ideology and therefore an entirely impractical notion, in the same way that the withering away of the State and the dictatorship of the proletariat will never happen?

Ziegler : The great philosopher of Germany once said "We live in the breaking of the times, not the evolution". The French revolution destroyed the feudal system and ushered in the republican system and the human rights and sovereignty of the people. We are living with similar problems today.

WTO, agriculture and hunger

Dr Devinder Sharma

We live in the era of globalisation. We were promised that this new globalised world would bring improvements to every area of our lives, including agriculture. We were promised that poverty and hunger would become a thing of the past. Instead, what we find is that globalisation has not eradicated but rather exacerbated poverty and hunger. Moreover, although globalisation was supposed to reduce global inequalities, it has only acted to increase these inequalities rather than reducing them as promised.

The best way to show the inequalities in today's globalised world is to compare the pampered life of a cow in the USA with the miserable existence of a farmer in India.

In order to rear a cow in one of the rich countries you require a fan, shower, tube light and centrally heated conditions but such things are an unaffordable luxury to farmers from India.

In the US, it requires approximately 8-10 hectares of land to grow the feed needed to rear a single cow. In India, in contrast, the average landholding size for a farming family is 1.47 hectares. This means that six or seven families, each family comprising 5 people plus two cattle, can survive on a piece of land on which a single cow is reared in the US.

In Europe and America, cows are milked by machine. Each cow has a strap around their neck which has a computer chip embedded in it. When the cow goes for milking and puts its head in the feed bin, the chip on the strap will display the exact body weight of the animal, how much food and protein it needs and other detailed information.

The cow is the most food secure animal in the world today. In India, 320 million human beings go to bed hungry every night. This constitutes 1/3rd of the world's hungry.

- In Europe and America, each cow gets a subsidy of 2.7 dollars a day. In Japan, each cow gets a subsidy of 8 dollars a day. In India, half of our farming population earns less than a

Devinder Sharma is an award-winning Indian journalist, writer and thinker, whose books and articles offer a



uniquely Indian perspective on global trade issues. As chairman of the Forum for Biotechnology and Food Security and a member of the Central Advisory Board on Intellectual Property Rights for CGIAR, he is an expert on the implications of policy decisions on agriculture and trade. As a leading agricultural economist, well known for his views on food and trade policy, Mr Sharma is at the forefront of the global debate on genetic engineering, globalisation and free trade and has written extensively on these issues. His books include *GATT to WTO: Seeds of Despair* and *From Liberalisation to Liberation: Revitalising Indian Agriculture*. His book, *Keeping the Other Half Hungry*, is an incisive analysis of how globalisation is accelerating the marginalisation of small farmers in the third world.

dollar a day. I am sure that if George Orwell were alive and writing his work 'Animal Farm' today he would have added one more sentence to that book "All animals are equal but some animals are more equal than human beings".

The year 2004 was celebrated internationally as the year of rice, but no significant development happened in 2004. The first time the international community had celebrated the year of rice, in 1966, was just after the introduction of dwarf rice, which had been ushered in during the Green Revolution.

Why dedicate 2004 as the year of rice? Rice originated in India. It is the staple food of India as well as most of the world. I was given the privilege of delivering the inaugural address of 2004. What I found most incomprehensible was that the year was being celebrated in Switzerland! Ninety-seven percent of the rice in the world is grown in Asia and yet the International Year of Rice was being celebrated in Switzerland.

Why was it being celebrated in Switzerland? The reason soon became clear. We are in the age of genetic engineering and genetic engineering today is not only concerned with cutting edge technology, but also with how to control the genetic resources and wealth that exist in our part of the world. Ironically, a Swiss company, a multinational corporation called Syngenta, one of the biggest corporations in the world, is actually mapping the genetic make up of the rice plant. The genetic mapping of rice reveals that it has 37,500 genes. Syngenta has mapped 99.5 percent of the rice genome. No wonder the International Year of Rice was celebrated at Basel in Switzerland, the headquarters of the Syngenta Corporation! The event was actually held to raise a toast to the emergence of Switzerland on the rice map of the world. Switzerland doesn't grow rice, but its desire for control is clear. Only a few weeks ago we found out that Syngenta has filed for patent on thousands of genes of rice. This means that control of the crop which originated in our backyard has now shifted to Syngenta and other such companies.

In this era of globalisation, the Right to Food is crucially affected by two things, one is trade and the other is control over genetic resources.

Let us examine the discrepancies and disparities that exist today between agriculture in India and in the USA.

- With a population at the time of 330 million, India gained its independence in 1947 against the backdrop of the Bengal famine. At that particular time, 80 percent of the population was involved in farming. In the US, at that time, 10 percent of the population was involved in farming. Today, there are 600 million farmers in India, which means that every fourth farmer in the world is an Indian
- In 1947, the average land holding size per family in India was about 4 hectares. Today, it is just 1.47 hectares. In America, however, it has increased to 200 hectares
- A survey conducted in 2000 revealed that there were just 7 lakh farmers left in America. There are more people in American jails today (2.1 million) than on

American farms! America, like India, carries out a census every ten years. In the last census in 2000, the US did not bother to count the number of farmers because their numbers were so few. This means that farmers as a community have effectively disappeared from America

- When America talks of agriculture, it talks of corporations. When India talks of agriculture, it talks of 600 million farmers

Ronald Reagan stated in the 1980s that "if America cannot find a market for its agriculture produce the American economy will collapse under its own artificial weight of agriculture subsidies." Is it any wonder that shortly afterwards the WTO regime, with the inclusion of agriculture, it was introduced purely to solve the problems of overproduction in the US and the European Union!

A few million farmers on either side of the Atlantic are provided with one billion dollars in subsidies every day. 600 million farmers in India are provided with a corresponding subsidy of one billion dollar a year. Moreover, these subsidies are not as price support or income support for the farmers, they are as input subsidies they provide for cheaper fertilisers, cheaper food, cheaper electricity and cheaper water.

In America, or in Europe, the farmer receives a subsidy for not growing anything at all. If you are a young person in the US who wants to get into agriculture, you get a subsidy. If you have a piece of land, you get a subsidy. If you keep a cow, you get a subsidy. If you keep a horse, or you grow crops, you get a subsidy. If you set aside a portion of land and do not grow crops, you get a subsidy and ultimately if you want to retire at the age of 58, you still get a subsidy! This means that farmers in America and Europe are insulated from global effects and that their income is secure.

In India, we believe that our politicians use the exchequer for political gains. It seems the same is true of the US. When George Bush first became US President, he needed two seats in the American Senate and he was aware that these two seats could come from the agricultural mid-west. He prepared an additional package of 180 million dollars which secured the two seats and also ensured that he won the next presidential election.

We have all been repeatedly told the theory that once the world opens up and trade distortions are removed, that the farmers of the South will gain because they will be able to export their produce, to receive dollars and that the economy will grow as a result. But what has happened in reality? The agricultural agreement hinges on three pillars; domestic support, export subsidies and market access.

India has the largest area of cotton growing land, but cotton is a crop dominated by the US. There are only 25000 cotton growers in America, but the total output of cotton in America is worth 3 billion dollars. The farmers with the highest productivity levels in the world receive a subsidy of 4 billion dollars a year. This means that 25000 farmers get a subsidy of 10.7 million dollars every day. This subsidy is to ensure that the American dominance of cotton continues. In addition, the American government provides a subsidy of 180 million dollars to textile

companies to buy that cotton. The resulting depression in global cotton prices not only impacts cotton growing farmers in Western African countries but also in India.

The minimum price we pay our farmers has become the maximum price they can hope to receive. In reality, it is the farmer who is paying the price for subsidies in the rich countries. Whether it is wheat, rice, milk, or cotton, the subsidies farmers receive in these countries is what lends them comparative advantage. If you removed the subsidies, they would have no comparative advantage in any crop in which we are competing with them. Moreover, these distortions in international trade have not gone down in the last ten years, but have gone up instead.

An agreement was signed in July 2004 which became known as the "July Framework." Our Commerce Minister Kamalnath proclaimed it as a significant victory for India. However, to my understanding, that framework takes us one step forward but three steps backwards.

The subsidy reduction formula would allow a country to increase their subsidies before making a percentage cut, effectively allowing them to increase subsidies in actual terms. This means all that we had gained in the last ten years while fighting for the removal of subsidies has been negated by the July Framework.

On the other hand, the developing countries have been asked and have agreed to lower their tariffs still further in order to make the market more competitive. What is the result of this agreement? The rich countries have ensured that the protective fortress around their agriculture has been further bolstered. All the subsidies and parameters are in place to prevent entry of our agricultural products into those countries.

I was asked to speak in the Australian Parliament. The first thing that greets you once you land in Sydney, even before you reach baggage reclaim, is a notice board which demands that you surrender anything that is plant or animal based. To ensure your compliance, puppies sniff around your baggage and it is announced that failure to declare items will result in a possible jail term. What is Australia doing? It is using non-tariff barriers to prevent the entry of food export from our countries.

When you examine the situation at the global level, you see that rich countries are erecting non-tariff barriers, putting up barriers to market access, and providing subsidies, all in an effort to prevent products from countries like India from entering into their countries. In contrast, countries like ours have become a kind of open market. What does this mean for India? For a country like India, importing food means importing unemployment. And the first casualty of unemployment is the Right to Food.

When you import food, it is always the poorest and most marginalised farmers that are the first to be forced out of agriculture. When this happens, the poor farmer will naturally head to the bigger cities in search of employment. However, our current thinking is that we should convert the big cities into places like Shanghai and New York, which effectively means that we want to push the poor people out of the cities. Where will the poor people go? What will we do with the 600 million farmers? The WTO will never provide the incentives to be more productive, the incentives will only be provided by a thriving domestic market.

The last ten years have witnessed a decline in the economies of 57 countries. This means that what was to be a "golden decade" has instead turned out to be a "dark decade". A soon-to-be finished audit of the WTO will reveal that most of developing countries, including India, which had been food exporting countries, have now become food importing countries. In India, whether it is tea, wheat, cotton, or cooking oil, the imports of agricultural produce have gone up by 300 percent. Does the opening up of India not mean that cheaper food is available and is this not wonderful news for consumers? Many people believe that cheaper food will be of great benefit to the consumer. Let us not be under any illusions about this. In America, when we talk of agriculture, we are talking about corporations. However, we must remember, that in India, the consumers and the producers are one and the same. If 600 million people do not have money in their hands, they cannot buy food and this is what the Right to Food campaign is all about.

The PDS is in danger of being dismantled in the days to come. There is lot of pressure being brought to bear on India to dismantle the PDS as the WTO clearly says that the PDS is a subsidy scheme and that India can only provide subsidies up to a certain level. As Prime Minister, AB Vajpayee made an effort to decentralise the PDS. If you removed the PDS in one go the government would be sure to crash, so it had to be done in a slow and subtle manner. The idea was that states that produce a surplus should manage their own surplus, but requiring states may take care of the surplus internally. They would to all intents and purposes dismantle the PDS. Vajpayee ultimately failed in his attempt to dismantle the PDS due to the public outrage generated by the proposal. The present government is similarly trying to dismantle the PDS. With one hand they claim to be defending the Right to Food, but on the other they are destroying those elements which are necessary to realise the Right to Food.

This is exactly what the WTO wants. For India to maintain the PDS will require a sacrifice in another area. India is expected to open up on investment issues if it is to keep the PDS intact, they must lose on one issue of trade if they are to gain in another. But what happens when you lose on the agricultural front?

America exercises sovereignty over just five plant species and three animal species. On the other hand, India has a mega-diversity of species. It has 45,000 plant species and 81,000 animal species, of which 7,000 plant species are endemic, which means that they exclusively belong to India. America cannot be an agricultural super power with just five plant species, so, through legal and illegal means, it collects and appropriates genetic resources from all over the world. It has been remarkably successful in this endeavour. The US Agriculture Department possesses the largest number of plant germ plasma with no global control over it. The US thus has the raw material, the latest technology for genetic engineering and the financial resources, but they lack the basic knowledge to know what to do with these plants, which only those communities who have traditionally lived with the plants possess. The US is responding by cleverly claiming that undocumented traditional knowledge constitutes lost knowledge.

An effort is being made in India and other developing countries to document this traditional knowledge. Those companies which have acquired plant species are the beneficiaries of this traditional knowledge. First they acquire the plant species and once they have gained the knowledge of where and how to use it, they genetically manipulate it and return it to us with intellectual property rights attached. Basmati rice is just one of the many plant species on which patents have been taken and snatched out of our hands.

The CSIR carried out an analysis of the database of the American patent office. It found that out of the 4000 plant-based patents which America had been granted, 48 percent of the plants species were of Indian origin and on which there was traditional knowledge in India. Can these patents be questioned?

Our traditional knowledge could be used to fight these patents, but after the Basmati patent had been issued, the ministry of commerce declared that there was no money with which to fight the legal case. If you can't find the money to fight for just one Basmati patent, where will you find money to fight for the patents of the other 1000 plant species?

Agricultural research in India is in an extremely worrying state. The Indian Council of Agriculture Research which was ushered in during the Green Revolution of the late 60s and early 70s today faces extinction. It is being pressurised to either become a private institution, or to scuttle its agricultural research programmes. It must be recalled that this is the second biggest agricultural research infrastructure in the world, second only to China.

Since I am on the board of the IPR, I know very well the kind of threat that is looming over the International Agricultural Research Institute (CGIR). Syngenta has gained control over the rice plant and rice genes. This means that if you wish to carry out genetic research, you have to first buy their genes, because no other genes exist in India.

A few years ago, ICAR scoured the world for a single gene of rice. They ended up purchasing a gene for Rs three million from the Mitsubishi Corporation of Japan. When it was inserted into the rice in India it was found not to work. In India today there is a huge problem of audit objections and the idea that Rs three million had been spent on a single gene of rice would have caused a scandal, so in order to mollify the public auditors they decided to insert the gene into Brinjal, even though they knew full well that it never had any chance of success.

At least 50 percent of the agricultural universities don't have enough money to pay for the salaries of their staff. If you can't afford to pay the salaries of your staff, how can you hope to pay for genes? Unless radical steps are taken to address this situation soon, the future of agricultural research seems doomed to failure.

As Indians, we must choose between whether we want the Americans and Europeans to provide us with food, or whether we want a self sustaining model through which our 600 million farmers can both earn a living and become viable consumers. Today, it seems to be accepted that the cheaper food arriving from Europe and America is the answer to all our food needs, but such an attitude should be tremendously worrying to our policy makers.

In 1965, during the premiership of Lal Bahadur Shastri, at the same time as we were experiencing a severe drought, India went to war with Pakistan. At that time, under PL-480, India was importing 10 million tons of foodgrains from America. However, when Prime Minister Shastri expressed the view that the Vietnam War was a war of aggression, US President Johnson responded by halting food supplies to India. I asked C Subramanian, the then Agriculture Minister, how he had been able to tide over the crisis. He informed me that at one point during the emergency there was only food enough left for one week. Prime Minister Shastri called an emergency meeting and suggested that the foodgrain ship closest to India should be identified and implored to send aid. The closest ship was found to be an American one and an SOS was immediately sent to the American President which stated that unless the food was diverted, thousands of people would die. We were truly leading a ship-to-mouth existence!

Forty years later we are being asked to return to that same time. We are being asked to stop food production because it is cheaper and economical to import food from abroad, something which can only lead to the abandonment of agriculture. Should the country obediently consent to this request or should we instead ensure food security?

Wherever we are today is due to food security. Those countries which were not food secure, like Iraq, Iran and Afghanistan, have met their fate. Food secure countries, in contrast, have been able to withstand many pressures, even in contentious areas like nuclear testing etc.

We must stand as a nation and ask ourselves whether the approach we are taking is indeed in our best interests. And if it is not good for us, then why do we find ourselves "crawling when we are asked to bend" before the globalised community? We must ensure that poor farmers produce enough for themselves and for the nation. We must stop viewing them, as they are viewed throughout the world, as a burden.

Unfortunately, we tend to believe that farmers receive all the freebies and benefits, but nobody seems to want to talk about the considerable subsidies that industries receive. It is the farmers, not the industries, who are chiefly responsible for the political, social and economic wealth of the country. As JL Nehru said in 1955 "It is very humiliating for any country to import food - Everything else can wait but not agriculture".

Interactive session

Question: Where do we stand vis-à-vis China? Given that we are both large, populous countries? Why can't we display a common front together?

Devinder Sharma : When China was desperately attempting to become a member of the WTO, it was appropriately asked why India was seeking to put hurdles in the way of China's membership. China eventually became a member of the WTO in Doha in 2001.

In Cancun in 2003, India, China and Brazil were the three major players in the G-20 that argued against the use by rich countries of agricultural subsidies. Thus, in the space of two

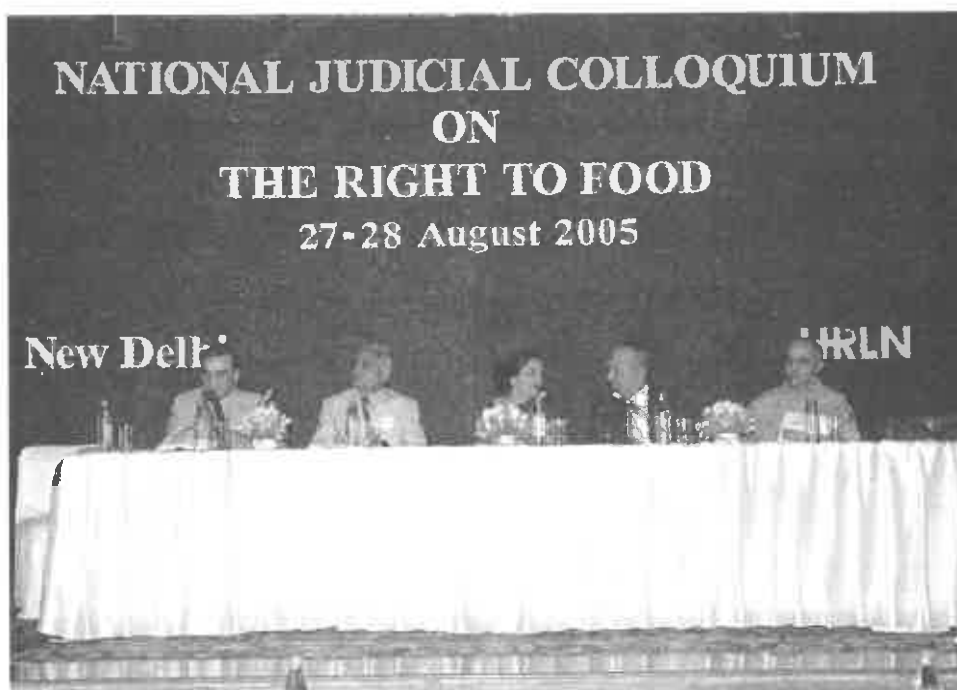
short years, China had realised that such barriers would also be to their detriment. China is just as worried as India about the impact that WTO membership will have on its agriculture and this explains why they are now seeking to form an alliance with India. The two countries together account for half of the world's farmer population, and as in the case of India, cheaper imports are forcing people to abandon agriculture and to swarm into cities.

Studies in India have shown that up to 32 percent of farms are now managed by women, because the men have abandoned agricultural operations in favour of seeking employment in the cities. The same phenomenon is occurring in China. As per our analysis, we are expecting that 400 million people in India will migrate from rural to urban centres by 2015. A similar number of people will also migrate from rural to urban centres in China. It will be one of the greatest social upheavals that the world has ever seen.

Question: It is not enough to merely criticise our enemies. In Taluga, the districts have been reduced to village levels. Employment opportunities exist only for manual labourers and not for educated persons. The only solution is to urbanise and industrialise the rural areas, to shift the industries to the villages, rather than swell the cities with ever more people and unwieldy infrastructure. Agriculture is a seasonal employer and farmers should have the opportunity to switch over to other forms of employment in the off-season. Subsidies alone will not provide the solution, employment opportunities must be created in the Taluga area. A lobby should be created to inform the government of the needs of Taluga.

Devinder Sharma : The G-20 group was formed in Cancun owing to pressure from the respective countries involved. It is clear that over the last ten years the developing countries are beginning to realise the negative impact of such policies. I am certainly not advocating that farmers should be living on and sustaining their 1.47 hectares, without the benefit of supportive policies such as those you have outlined. We should produce an agro-business based model which for once does not centre on asking multinationals to move into the countryside, the value addition can take place simultaneously. Such a model has been shown to work very well in several other countries and there is no reason to suggest that it wouldn't be successful in India. At present, in India, however, we seem to be pushing for corporate agriculture almost at the same speed at which we are driving farmers out of agriculture. This is an especially worrying development, as once the corporations move in, the farmers will struggle to find employment. They may end up losing the rights to their farms except serving as labourers.

PART FIVE
judicial activism
on the right to food



Problems for judiciary vis-a-vis the Right to Food

Justice Ajoy Nath Roy

I shall be speaking today from the point of view of a judge. A judge, before looking at the details, policies, points of view, so as not to go wrong, always looks first at the common sense point of view. If this perspective is lost then everything is lost – authorities, discussions, quotation of authorities and their discussions will not get anyone anywhere.

Suppose a few of those people who are under discussion, ie hungry people from various states, were to walk into this auditorium today. Suppose they stood there and asked, "What is going on?" and were told, "We are discussing the Right to Food" and they then asked, "The Right to Food of whom?" imagine their reaction if they were answered, "Your Right to Food...!"

I am quite sure that they would not say anything, because hungry people usually keep their tongues well folded within their mouths and don't speak out. However, they would certainly think, "These well fed, maybe some of them even over-fed, well-dressed gentlemen and ladies - are they equipped to discuss our problems when they do not know our problems first-hand at all?"

This has occurred to me because, when one is at peace with oneself, with a full belly, one can neither think nor talk nor get anywhere which will ultimately help ones future actions. This is the first conference of this kind that I am attending. My answer is very simple. Well blessed by fortune I might be, discussing poverty and hunger in plush and posh surroundings. It might seem that I discuss the misery of people over tea, but I have convinced myself that when I engage in these discussions - whether about the actuality of the problem or the jurisprudential aspects or philosophies or the legal points - internally I keep my head bowed down. I am aware that I am discussing my countrymen and their basic necessities, but I am also aware that the discussion I am engaging in is unavoidable and necessary.

It is impossible to avoid discussing the basics of the legal system. It has been said in England and this is true also in India, truer in the High Courts than in the District Courts and truer still in the Supreme Court – that the gates of the courts of law are as open to the public as the

Chief Justice Ajoy Nath Roy was born in October 1946. After obtaining a science degree from Calcutta University and

a BA from the Honours School of Jurisprudence, Oriel College, University of Oxford, he enrolled as an Advocate at the Calcutta High Court in August 1970. He practiced in civil matters at the Calcutta High Court before being elevated to the position of permanent Judge of the Calcutta High Court in August 1990. He was appointed as the Acting Chief Justice of the Calcutta High Court between June 2004 and January 2005. He was sworn in as Chief Justice of the Allahabad High Court in January 2005.



gates of the Hilton Hotel! It is not possible for the ordinary litigant to walk in, to approach the highest members of the judiciary and to obtain the best legal advice at a price that is not beyond the means perhaps even of High Court and Supreme Court judges.

The courts discuss the finer points of law and it is very difficult to have a matter argued before them, but when decisions are given in relation to the Right to Food it is a different matter. First of all, it can be assumed that we have to do whatever we can, because an Indian mouth is hungry. I am an Indian and therefore I have to pass orders even in the face of opposition. No central or state government will be so foolish and so politically naive as to say that the Court has no power at all to force them to give food to a hungry mouth.

I share the view that we must see that all mouths are fed sufficiently. I am concerned about the entirety of the sub-continent ranging from western-most Peshawar to eastern-most Chittagong, from Kashmir in the North to the southernmost tip of India. I say these things, while always bearing in mind the importance of legal accuracy, which I believe to be the foundation of all legal orders. I therefore outline, for your consideration, the points of view of lawyers, of jurists, as to the significance of litigation on the Right to Food.

We were given, courtesy of the Human Rights Law Network, several copies of the Supreme Court judgments in the PUCL cases. From 2001 onwards, numerous honourable judges of the Supreme Court have passed orders directing the central government and state governments to abide by their commitment to making food available. This was to be achieved by

- Issuing a red card which would allow the purchase of grain at a very low price
- enforcing, overseeing and supervising the practice of work for food, by which means employment would be guaranteed
- ensuring that those children who attend school actually receive a mid day meal in school, thus ensuring that their food is not eaten by their hungry parents

These orders are being enforced.

On a slightly different note, I would request this august assembly to consider that PUCL-type litigations are not Public Interest Litigation (PILs) in the classical and true sense. A PIL, to my mind, is about an issue in which the numerous members of the public are interested. In one sense it is about a public right.

However, when we enforce the Right to Food, we do not enforce a public right in the strictest sense. We enforce numerous private rights. One hungry man, in the lawyer's point of view, is not interested in feeding another hungry man. Those of you who have read the Lords of the Flies may know that at this level, humanity may descend to bestiality. The enforcement of the Right to Food possessed by hungry individual X is his own right. When we pass orders for the enforcement of the Right to Food subject to correction, the judges are in effect passing orders for numerous private rights. 'Private right' has to be understood in this context.

It has another extremely important and different meaning. One thousand blue dots will not make one red dot. And 1000 red dots will not make one blue dot. Therefore enforcing a thousand private rights by a single litigation will not make it a PIL. Rather it constitutes an enforcement of private rights and as such it is a litigation of a very peculiar type, one whereby the private right in one sense is actually a public right in another sense.

We shall, of course, hear and learn with pleasure from economists and sociologists about the causes and extent of hunger. This will certainly enrich our orders. In this way, while passing orders, we shall get facts and figures and everything served on a plate for us. However, our task is to apply the correct law. The ground-work will already have been laid; experts will have come and provided us with a great deal of assistance. We are ordinary men in extraordinary positions. However, we must remember that the judicial angle is the angle for which they will come to us. We don't have to be good economists, good sociologists, or good policy makers, but we are bound to try to be good lawyers. It is our duty to pass orders on the basis of laws, rights and decisions which we believe will withstand criticism and attack. It is from this that faith in the legal system is derived. If the lengths to which lawyers go to in defending the rights of commercial people, interested in ordinary trade and business, were explained to them, it would appear to them to be nonsensical. Trade mark law, patent law, they know nothing of all this, but the legal system cannot run without this type of discussion.

The Directive Principles of State Policy, which the states must follow, were initially unenforceable. However, enforcement have now been made on the basis of Article 21. As Justice Srikrishna has said, if a matter is questioned, as long as the matter continues to be questioned, it remains a grey area. A resolution of this grey area is only possible on the basis of adversarial procedure, but that type of procedure is not likely to happen in our courts in the near future.

The parties against whom these cases will be filed are not politically interested in society. They would rather have an order from the court and then take a date for the next hearing. However, the court of law does not function in that way. A court, after determining an exact right, passes an exact order and that exact order is to be complied with exactly.

The Right to Food

Justice Mridula Mishra

At the 1996 World Food Summit, leaders from 185 countries and the European community reaffirmed, in the Declaration on World Food Security, 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, they further pledged to cut the number of hungry people by half by 2015. The Declaration asserts that the Right to Food and the fundamental right to be free from hunger is a matter of international law and is specifically enshrined in a number of human rights Instruments to which states around the world have committed themselves.

Mrs Justice Mridula Mishra was appointed a Judge of the High Court at Patna in February 2004. Here she



traced the linkages that Right to Food has come to have with constitutional and statutory provisions as well as International Covenants.

The World Food Summit goal was included last year in the UN Millennium Declaration, which resolved to halve, by 2015, the proportion of people who suffer from hunger.

The right to freedom from hunger is a Fundamental Right. It is intrinsically linked to the Fundamental Right to Life. It must be produced in a manner that is environmentally and socially sustainable. Finally its provisions should not interfere with the enjoyment of other human rights. For example, the acquisition of sufficient or adequate food should not be so costly so as to threaten the satisfaction of other social or economic rights or be fulfilled to the detriment of civil and political rights. To be able to enjoy the Right to Food fully, people also need access to health care, education, the right to own property, to respect for their cultural values, and to the right to organise themselves economically and politically.

The Right to Food is written into the Constitution of over 20 countries. However, the Right to Food was not written into the Constitution of India. Nevertheless, on the basis of a liberal interpretation of the words "Life and Liberty", the Right to Food has come to be considered as a Fundamental Right. In respect to a writ lodged with the Supreme Court by a citizen's organisation, the state minister for agriculture admitted that deaths due to starvation were taking place at the Kalahandi, Bolangir, Keonjhar and Koraput districts of Orissa. The Supreme Court gave a new interpretation to Article 21 of the Constitution, supporting the Right to Food as a Fundamental Right.

Article 21 establishes Right to Life and personal security including the right to a dignified existence. Article 37 proclaims that the State will endeavour to provide adequate means of livelihood. Article 47 establishes that the State will endeavour to enhance the level of nutrition of people. Taking these three Articles together, the right to be free from hunger can be construed to be a basic human right and a Fundamental Right.

About 145 countries have ratified the 1996 International Covenant on Economic, Social and Cultural Rights, which explicitly requires the signatory States to legislate for the right to adequate nutrition. What is the legal implication of the Right to Food according to FAO? There is a sharp distinction between one, a narrow interpretation being the right to obtain food through one's own effort and two, a broad interpretation being the right to be supplied with food when one cannot obtain it.

There has been a hint of this broad interpretation of the Right to Food from ancient times in India. Indeed, in the *Arthashastra*, there is a discussion about an employment relief programme for food security. The role of the food safety nets in India should be seen in the same light.

The broad interpretation guarantees adequate nutrition and work and land, even when these are not accessible, and therefore employs the use of the State's resources to feed people. People have a responsibility to obtain food, so the citizens cannot automatically blame the State for malnutrition. Yet the State can be held responsible for the circumstances that bring about malnutrition.

The International Covenant on Economic, Cultural and Social Rights further goes on to say that States must do everything possible to ensure adequate nutrition and must legislate to that effect. However, hungry citizens can prosecute the government and implement the covenant only under the country's own laws. If a country has never passed any such laws, it has violated the International Covenant, but the citizen has no legal redress. The UN monitors the implementation of the Covenant through its Committee on Economic, Social and Cultural rights, which is serviced by the office of the Health Commissioner for Human Rights. In 1999 this Committee insisted that countries should pass laws protecting the Right to Food, to be implemented by state governments.

In India, these schemes consist of food and employment assurance schemes, which may have been replaced by or renamed variously as:

- Sampurna Gramin Yojana
- Mid – Day Meals Scheme
- Integrated Child Development Scheme
- National Maternity Benefit Scheme for the BPL pregnant women
- National Old Age Pension Scheme for the destitute persons of over 65 years
- Annapurna Scheme
- Antyodaya Anna Yojana
- National Family Benefits Scheme
- Public Distribution Scheme for the BPL and APL families

food security and judicial activism in India

- All state governments were directed to
- take the entire allotment of foodgrains from the Central government under various schemes and disburse the same in accordance with the schemes
- that the food for work programme in the scarcity areas to be implemented by the various states to the extent possible
- to complete the identification of BPL families for the issuing of cards
- to commence distribution of 25 kg grain per family per month latest by 1st January, 2002

However, according to media reports on the 'Right to Food' campaign, the Supreme Court orders relating to the Right to Food in the PUCL vs UOI case are being violated in many villages. For instance, in some areas, the Public Distribution System is not functioning and mid-day-meals are not being provided in the local schools. In other areas, no attempts have been made to prevent starvation deaths. Bihar, Uttar Pradesh and Jharkhand are violating the order to a greater extent than other states like Karnataka and Chhattisgarh. In Rajasthan, the grain quality is hampering the scheme. In Kashiapur in Orissa and Anantpur in AP in particular, there have been many starvation deaths.

The orders issued by the Supreme Court have far reaching implications for the Right to Food in India. It clearly establishes that the Court understands the Right to Life found in Article 21 as implying the Right to Food. In the orders of the Supreme Court, there is a legal context of the changed food security situation in India. "Amongst plenty there is scarcity" this phrase captures perfectly the changed environment in India.

The legal community has to be insistent in reminding the government of its commitment and to draw attention to the lack of sufficient progress on this issue in the nearly six decades since Independence. These changed circumstances in India imply that, increasingly, the legal context of the Right to Food has to be oriented towards outcome and monitoring. The crux is that, although in principle the government has recognised the Right to Food by running a host of safety nets like the PDS and employment programmes, the outcomes of these schemes leave a lot to be desired. The programme should recognise targeting the beneficiaries as the central element in the food security programme.

Political resolve is ultimately sensitive to public opinion. The media and academia can play a major role in raising public awareness of the magnitude of the problem of hunger and the need for action. Yet public opinion is crystallised when people see redress, when courts ensure proper protection of the Right to Food. Hunger, unlike many other manifestations of poverty, is relatively easy to identify measure and target. The solution lies in ensuring regular access to nutritious and safe food. This could be achieved quite simply, as unlike many other health problems, eradicating hunger does not require many years of costly scientific research. Thus a real opportunity exists to address the problem of hunger.

Judicial activism on the right to food

The people of India are optimistic. They look to the judiciary to get its orders implemented and to monitor the activities of the State. If the schemes outlined by the government, or the laws they pass, are not monitored by the judiciary, the people may think that the Right to Food, which is the birthright of everyone, is unachievable.

Implementation of Supreme Court orders on PILs

Justice Sunil Ambwani

We have been provided with statistical information here, but these figures are not ordinarily available to those of us living in the states. Only today have I learned that agricultural production is actually going down and that poverty, which is officially put at 26 percent, is actually 74 percent in rural areas! Today I will be talking about court intervention on the PIL matters. The court orders for a PIL, and the consequent monitoring, are the essence of the PIL.

One of the cases for which I appeared, as a lawyer, was a cancelled contract to supply foodgrains to Anganwadi centres under the mid-day meals scheme. The contract was to supply a dry food mixture called Panjiri. This Panjiri supply was cut so that Modern Food Industries, which was then going into losses in Kanpur, could supply bread to the Anganwadi centres. Two slices of bread would be provided for children with malnutrition, two slices of bread for lactating mothers and two slices of bread for poor people dying of hunger! For three years I fought this case. Numerous senior advocates tried to convince the courts that two slices of bread would have more nutrients and minerals than the Panjiri, which is a locally produced and sustaining food.

Later, after I had been elevated to the status of a judge, a case came before me relating to an order of the Supreme Court. The Supreme Court directed that, in the UP region, unqualified and unregistered medical practitioners were to be identified, to have their names published, and to be prosecuted. After two years of monitoring we had identified 27,000 quacks. Seven thousand cases were registered against them and 4,000 chargesheets were filed. We found, however, that most would simply get bail and return to work in the same clinic. We realised that qualified doctors would never go to rural areas voluntarily and that they must instead be required to go there.

Dr Saxena has already pointed towards the serious problem of absenteeism. Surveys we carried out indicated that hardly any doctor went to the rural areas. The clinics remain closed. It took an entire year for the court to persuade the government to mobilise doctors to go to the rural areas. A number of startling facts were revealed.

Justice Sunil Ambwani was born in August 1953. After obtaining a law degree from the University of Allahabad in 1975, he



enrolled as an advocate in April 1976. He practiced at the Allahabad High Court during the periods 1976-1985 and 1992-2001. He practiced at the Supreme Court on civil and constitutional matters between 1985 and 1992. He served as a Special Counsel at the High Court between 1998 and 2001. He was sworn in as a permanent Judge of the Allahabad High Court in April 2001.

judicial activism on the right to food

- Out of 11,000 government doctors, only 9,000 have been appointed to their posts. 2,000 vacancies remain to be filled
- Of the 9,000 working, 2,000 hold administrative posts like directors, additional directors, etc
- Of the remaining 7,000 doctors, 3,000 are posted in one particular district for 15 years or more. In reality, they are in private practice and are not interested in going to their rural posting

After much persuasion we were able to convince the government to at least transfer those who had put in 10 years. Yet even in the wake of the Supreme Court orders, it took six months to get just 50 percent of them transferred.

In the PUCL matter, the orders of which have been circulated, on the mid-day meals scheme, the state government of Uttar Pradesh (where there is a high degree of poverty, starvation and malnutrition) filed an affidavit on January 25, 2005 stating that Uttar Pradesh has a scheme to cover 93,187 schools targeting 169.97 lakh children. It indicated that the scheme had been implemented in about 80,000 schools with 40 lakh children. Now if 80,000 schools have 40 lakh children, the remaining 13,000 schools will have the remaining 120 lakh children who are not covered under the Mid-day Meals Scheme. The affidavit also said that for the purpose of providing a double gas cylinder connection to each school, they had taken money from SGRY. This is directly contradictory to the order of the Supreme Court, which expressly states that funds should not be transferred from one scheme to another.

Now I pose the questions:

1. How do we ascertain facts in the PIL matters? When a complaint comes to the court and we begin investigations into the facts of the complaints, we either have the service of the petitioner/ NGO, expert agencies like NERI, or else local agencies. To what extent should we rely on those facts?
2. When you formulate a scheme based on the suggestions of a petitioner/ expert bodies/ state agencies, whom do you trust once you start monitoring?

My experience is that you often get cooked up reports – crisp, beautiful, spirally bound reports which appear excellent but which are completely removed from the realities on the ground.

Another problem is that an officer in open court might inform you that there is a problem with implementation. He may not agree with the court's suggestion and might provide an alternative solution to the problem. He may say that the scheme is difficult to implement at a practical level.

Another problem is the tendency of the state government to change policy mid-way through a scheme.

The Courts have to follow the golden rule of non-interference in policy matters. Yet the golden rule of non-interference in policy matters is very whimsical and arbitrary.

A final question concerns the winding up of PIL matters. Some schemes go on endlessly. The Ganga cleaning scheme had been in operation for six years. I had been monitoring the matter for three-and-a-half year. I formed a committee but was forced to wind it up. As a consequence, all the work done during these years went waste.

Before I leave these questions with the house I have one further suggestion. Many of us have been resisting calls for legislation on PILs, because it is unhelpful to impose unhelpful limitations when PILs depend for their success on individual ingenuity, practicality and keeping in mind the situation as it actually exists on the ground. I say, don't give any option to the government. Once you formulate a scheme to be implemented in a specific way, don't give the administrator concerned any leeway.

It is impractical to use contempt powers to threaten a person to follow an order as it will simply result in him not cooperating in the matter. That is why I strongly suggest we provide a legislative mandate to an effective monitoring committee. In this way, the persons who are adversely affected can come to court and claim it as a legal right, and not by way of another PIL intervention

Can we afford to be mere onlookers?

Justice AK Banerjee

I have highlighted various aspects of the Right to Food vis-a-vis India's relationship to international resolutions, Supreme Court interference, the contentious issues of the communisation of food, and whether the Right to Food can be joined with the Right to Work and read into Article 21. Much deliberation has taken place on these issues.

I simply appeal to your conscience to reflect on my words. At the age of 45 or 46, we find ourselves in the fortunate position of being in the top 5 percent of the total population, with children that have grown up with best of education.

Can we afford to be mere onlookers when we see a chief minister supervising the demolition process of a petrol pump without following due process of law? Will the court be a mere onlooker? No, certainly not. Fortunately, in this particular case, the court intervened and that learned judge is amongst us today.

My Allahabad brothers can corroborate what I say – when an elected government was thrown out of power in UP without following the appropriate norms and procedures, the High Court rose to the occasion. That learned judge is amongst us today.

Are you suggesting we have crossed our limits? Will you allow somebody to pull your strings? What is your commitment to the Constitution? What about the oath we pledged when we took office? Call this activism if you will, but we are not crossing our limits. Can you contradict me? Can you cite a single judgment in the last 57 years of Independence where the court has flouted the Constitution, where the court has deliberately violated the law? There might be erroneous conceptions, or judgments, but who knows which judgment is correct?

A seven-judge bench, ruling on the definition of Article 12 of the Constitution, was overruled by Pradeep Mishra's ICSR nine-judge bench. Who was right and who was wrong? That is a separate matter, regardless of who was correct, the process was transparent. We may be mistaken in our perception; we may deliver erroneous judgments because of our misperceptions, but the process is transparent. I assert, whether you agree with me or not, that the Indian judicial system is the best in the world. The judicial system cannot be held responsible for the individual errors of those working in the High Court and Supreme Court.

Justice AK Banerjee was born in June 1953. He obtained a science degree from Scottish Church College,

Calcutta in 1972. In September 1976, he enrolled as an Attorney and became an Advocate with the West Bengal Bar Council, Calcutta. He principally practised in the Original Side of Calcutta High Court and became a specialist in corporate law. He was appointed a Judge of the West Bengal High Court in September 2000.



Public Interest Litigation is like riding a tiger, but you can't get down from a tiger whenever you want, because you are compelled to ride! After knocking at the door of the executive and the legislature, when people find that everybody else has turned a deaf ear, they knock on the doors of the temple of justice. Reflect on our Indian culture and heritage. Sita was burnt alive without being given an opportunity of being heard, but kindly appreciate the position of Rama. He delivered his judgment without considering the fact that the person undergoing the process was his beloved, the person nearest and dearest to him. You can imagine the people raising their fingers at the king – there cannot be a separate law for the wife of the king. This is our cultural heritage.

Yesterday I posed a question to Dr Saxena on the issue of the reduction in total area of agricultural land. A complex situation exists in this country. With the exception of one state, there is a continuous change in government every five years or even less than five years. The people who come to power are unsure of their return, and use the time to earn as much as they can.

The DVC project was set up in the 1960s. To this day litigations are still pending in the Calcutta High Court for jobs in the land-losers category. Who will get the job? The person whose land was taken has died, his son has died and now his grandson is claiming it by way of substitution. Can we afford to be mere onlookers in a case like this?

The courts are bogged down with the amount of litigations piling up in courts. We must use our discretion to give priority. A person, who has been a primary school teacher for 30 years, does not receive the pension he is entitled to after retirement. He knocks on the doors of justice. After 10 -15 years, when his case finally comes up for hearing, he asks his lawyer, "Is today the date for my hearing?" The lawyer says, "No, don't you know the court is busy with important litigation?" The teacher says, "But I could not get my daughter married, I do not have money to feed my family..." The lawyer says, "The court is busy with a controversy about who is to get the television rights of a cricket match!" We must decide litigation but we should also have a sense of priority.

Let us look for a moment at the issues which surround ecology and environmental law. In the name of real estate development and urbanisation, many bodies of water are being filled in, thousands of trees are being cut down, and the delicate ecological balance is being disrupted. In cases such as this, the intervention of the courts is absolutely necessary. It is true it is not our duty to discharge executive functions, but when the executive is not performing, the courts must intervene, up to the level that the courts think fit and proper and up to point at which the court feels that intervention is no longer required.

Why have we come into this world? God alone knows and God alone is entitled to judge our performance. We are here to perform the duty assigned to us and as judges that is to discharge our functions as God's representative in the temple of justice. When pilgrims are coming in their thousands, knocking at doors of justice, we cannot remain mere onlookers. I cannot stop my conscience from pricking. Sometimes as judges we are told to watch our

step. I will not step beyond my boundaries, but I will stretch them to their permissible limits. Democracy is placed on three pillars. I feel proud of being part of one of those pillars – the judicial system. And the Indian judicial discipline is the best in the world. We only have to think back to the days of the International War Crimes Tribunal for the Far East and the minority judgment delivered by an Indian, Dr Radhabinod Pal. He is still worshipped in Japan as a result of his decision.

We have to leave this podium and hotel and go back to our homes. One day we will have to leave this world also but we still have the opportunity to leave behind something through our work and I appeal to your conscience, brothers. We are not here to serve somebody else's purpose. We are committed to the Constitution, and we must honour that commitment.

Food security, poverty and the law

Justice Kamal M Mehta

There are so many facets of the problem of the Right to Food that still need to be discussed. Our age-old tradition on the Right to Food, the ancient Indian concept of Dharma, laid an emphasis on growing and sharing food in abundance. Life arises from food and the world is sustained by food and hence it is ordained that we should try to produce an abundance of food. It is also ordained that you should not turn away anyone who comes seeking your hospitality. The Rigveda prescribed moral and legal duties upon the individual to feed the starving and the sages. This is an ancient tradition. In Gujarat, particularly in South Gujarat, if anybody visits somebody, he will immediately be offered lunch or dinner. Thus, our society has always recognised a Right to Food.

The Preamble of the Constitution of India provides that we should constitute India into a sovereign, socialist, secular, and democratic republic and secure for all its citizens just social, economic and political rights. Social justice requires us to ensure the greatest good for the greatest number without the deprivation of the legal rights of anyone. If such a thing is to be accomplished, then social justice must prevail over any technical rules. If a deal is made between two parties, without serious detriment to either party, then the odds should lean in favour of the weaker party.

We should also note the Fundamental Rights and the Directive Principles of State Policy in this regard. Article 39(a) provides that citizens have equal rights to the means for an adequate livelihood and 39(b) provides that the ownership and control of the material resources of the community are to be so distributed as to serve the common good.

The Supreme Court has expanded the scope of Article 21 the right to life. Besides food, I feel its scope should be expanded to include a good environment, clean drinking water and a minimum degree of shelter.

Justice Kamal M Mehta was born in September 1945. He has gained science and law degrees from Sarva Janik



College, Surat and has also obtained an LL.M degree in taxation from LA Shah College, Ahmedabad. He enrolled as an Advocate with the Bar Council of Gujarat in May 1968 and started practice with late Giriraj Navinchandra Desai. He was appointed as an Assistant Government Pleader in 1989, an Additional Public Prosecutor in the Gujarat High Court in 1991 and also worked from October 1998 onwards as an Additional Standing Counsel in the Gujarat High Court. He has appeared before the Gujarat High Court and the Supreme Court on a number of important cases related to tax and corporate issues. An acknowledged expert on tax and corporate law matters, he has lectured part-time on aspects of corporate law, tax and administrative law at various universities. He was sworn in as a permanent Judge of the Gujarat High Court in September 1999.

judicial activism on the right to food

The Right to Food is of critical importance, as a person must be able to access food in order to survive. We cannot allow the situation to arise where there are large godowns, full of foodgrains, in the country. If such is the case, then the State is obliged to provide a better distribution system.

We must also ensure that there is less wastage of food. At many conferences, marriages, etc., huge amounts of food are wasted. Large amounts of food could be saved if we were to prevent food wastage at the level of the individual. Our conscience tells us that such a waste of food should be considered a crime. When we waste food, we are depriving somebody else of that food.

I share the view that there should be a balance between Fundamental Rights and Directive Principles. If this balance can be struck, it will go a long way towards ensuring the Right to Food. As Justice Srikrishna says, for a right to be guaranteed, a constitutional amendment is required. Until such time as we have this legislation, if we interpret Fundamental Rights in the light of Directive Principles and we harmonise them, we will be able to realise the Right to Food.

The Right to Food and Article 21

Justice Rajesh Tandon

This topic requires much deliberation. Society needs to protect the right of the citizens guaranteed as Fundamental Rights under Article 21. This Article deals with the protection of life and personal liberty.

First of all, let us talk about the Right to Life. It is not merely confined to clothing and shelter but also entitles one to live in a dignified manner. It has to be construed in as broad a manner as possible.

The Right to Food is necessary to achieve our right to livelihood. The Right to Food arises from our natural instinct to fulfil hunger. The Right to Food has a spiritual (or religious) basis. The Right to Food is one of the basic concepts of the right to life, as outlined under Article 21 of the Constitution, and represents a type of social security.

Article 21 has to be read in conjunction with Articles 38 and 39(a) of the Constitution. Article 21 deals with protection of life and personal liberty. Article 31 requires the State to secure a social order for the promotion of the welfare of the people. Article 39(a) says men and women equally have the right to an adequate means of livelihood.

In his book, Justice Krishna Iyer has said that "human rights have emphasised that a hunger-free human order alone can think of peace, security and freedom."

I wish to address the effects of poverty. Poverty has been called the most deadly of diseases as up to 15 million people die each year from poverty-related causes. The foremost of these is hunger and the majority of its victims are children.

The statistics indicate that 34 percent of children under the age of five years are malnourished. Even if these children do not die from chronic hunger they will almost certainly suffer mental impediments as a result of malnutrition. Nutritional deficiencies put children at risk of learning disabilities, blindness, mental retardation and premature death. Poverty also adversely affects families, often forcing them to abandon children they can no longer feed. Some 100 million children make their homes on the streets of the cities, struggling to survive in desperate conditions.

Justice Rajesh Tandon was born in July 1946. He enrolled as an Advocate in March 1968. In April 2000 he was designated as a Senior Advocate by the Allahabad High Court. He appeared as Senior Advocate in various petitions concerning civil, criminal, constitutional and rent control matters at the High Courts at Nainital and Allahabad. He has twice been elected as Vice-President of the High Court Bar Association of Allahabad. He was appointed as Additional Advocate-General in September 2003. In July 2003, he was sworn in as a Judge of the Uttaranchal High Court.



Poor people cannot afford enough food to maintain adequate nutrition levels, which in turn severely impairs their capacity to learn and work. This creates a vicious poverty cycle, where the effects of poverty nourish the root causes of poverty.

Only by providing sufficient nourishment to pregnant women and Infants can this cycle be broken. Only then can a new generation of children be given an opportunity of a better life.

Illiteracy is also a root cause of poverty and ranks as one of the principal obstacles to earning a living wage. An estimated 900 million people do not have the literacy and numerical skills required to hold on to a job or to improve their present one. Helping people to attain these skills and to become self-sufficient is a critical tool in the fight against poverty.

Children do not have sufficient access to education and women comprise 2/3rd of the illiterate population. Providing women with literacy skills would have far reaching and positive effects for everyone.

We are also facing a water crisis. Millions of people have no access to safe drinking water or adequate sanitation services. The right to safe drinking water should be treated as a social and cultural good and not a commodity.

Although the Universal Declaration of Human Rights enshrined the doctrine of human rights as natural rights which are inalienable to every human being, the State had long argued that the provision of such rights must fall within the state's financial capacity. However, the apex court has for the first time ruled that, in so far as the right of the child to primary education is concerned, the economic capacity defence is no longer acceptable. The Supreme Court found in Article 21 itself, the child's right to education.

The Unnikrishnan case

Justice FI Rebello

The defence that the State must have the capacity to pay has been soundly rejected in the Unnikrishnan case, at least in so far as the child's right to free education is concerned. Subsequent to an amendment by Parliament it has now been manifested as a Fundamental Right.

What can the Unnikrishnan case tell us about Article 21? Can the argument be developed that in so far as the child has a right to primary education, she/he also has a right to adequate food based on the calorie standards that are set out? If the State is reluctant to accept this assertion then we should resort to natural theory – that man has certain inalienable rights, not bestowed upon him by the Constitution, but simply by virtue of being born a human being. This theory can provide the courts with an opportunity to move in a new direction. Article 21, as it stands, is too static.

Today, the apex court's reading of Article 21 is informed by theories from the courts of the United States and England and not just by the Constitution of 1949. The Supreme Court has largely used Article 142 to import rights from International conventions and for the development of rights under Article 21 in particular.

We are concerned, as judges, with upholding the Constitution. Bearing in mind our limitations of course, we believe that we are in a position to activate the bureaucracy and Parliament.

Perhaps a petition could be filed, with the help of other organisations, to develop this theory, either on the basis of the Unnikrishnan case or natural theory.

Justice FI Rebello was born in July 1949. After obtaining an LLB degree, he enrolled as an Advocate in July 1973.

Between 1973 and 1982 he practiced at the Judicial Commissioner's Court of Panaji. From 1982, he practiced at the Panaji Bench of the Bombay High Court on matters relating to constitutional law and local self-government. He also worked as a part-time lecturer at Saigonekar between 1975 and 1977. He was President of the Goa High Court Bar Association between 1994 and 1996 and was designated as a Senior Advocate in December 1995. He was appointed as an Additional Judge of the Bombay High Court in 1996 and was sworn in as a permanent Judge in April 1998.



Hindu law and poverty amongst women

Justice KT Sankaran

Is there a connection between the Hindu Succession Bill 2004 and the Right to Food? Yes! hunger is the result of poverty. If poverty is eradicated, hunger is contained. How can poverty be eradicated? The haves must share with the have-not – assets and resources must be shared equally. I am prompted to express my views only because of Dr Saxena's statement that there are certain laws in certain states which exclude females from inheritance in spite of the Indian Succession Act. He is not mistaken.

As a consequence of Entry 5 of the Schedule, ie the Concurrent List, states can make laws with regard to the inheritance of agricultural lands and even leasehold rights. Certain courts have even held that, so far as leaseholds are concerned, females have no rights.

Let us now examine the proposed amendments. Rajya Sabha has passed this Bill and it will come up before the Lok Sabha shortly. Three sections have been amended. Sec. 6 has been substituted, Sec. 23 has been taken away and a minor amendment has been made to Sec. 30.

Prior to the amendment, Section 6 had stated that when a male Hindu died, having at the time of his death an interest in Mitakshara co-parcenary property, his interest in the property would devolve, through survivorship, to the surviving members of the co-parcener in accordance with the Act. Yet even after passing of the Hindu Succession Act, the principle of co-parcenary and the Prestine Hindu law will continue to apply in those parts of the country where Bindakshra principle applies.

But the rule provides for an exception. Provided the deceased has left a surviving female relative as specified in Clause-I of the schedule, the interest of the deceased in the Mitakshara shall devolve by testamentary or intestate succession, as the case may be, and not by survivorship.

Now what is being substituted or is being proposed to be substituted in Sec. 6? It is based on a theory which was not there in the Prestine law. Women were never treated as co-parceners. They were never given any right to the property, except a right to maintenance. After the 1936 Hindu Women's Right to Property Act, women gained a right to continue in possession of property in lieu of maintenance and this in turn was transformed into a full right by the Hindu Succession Act.

Justice KT Sankaran was born in December 1954. After obtaining a law degree from Saraswathi Law College, Karnataka, he started practicing at Munsif Magistrate Court. In 1982 he shifted his practice to the High Court of Kerala. He was appointed as an Additional Judge to the High Court of Kerala in February 2005 and was sworn in as a permanent Judge of the High Court of Kerala in November 2006.



Now this New Section 6 says that from the commencement of the Hindu Succession Act 2004, in a joint Hindu family governed by Mitakshara law, a daughter of the co-parcener shall also by birth become a co-parcener in her own right and have the same rights as the co-parcener in the property as she would have. This is a novel theory.

However, in Andhra Pradesh, Tamil Nadu and certain other states females are recognised as co-parceners by state laws. What are the practical implications of this?

A Mitakshara holds an ancestral property. He has a son and a daughter. How is the property to be divided between the son and the daughter if he dies? As per the 1956 Amendment Act his property will be divided into two. However, applying the Mitakshara principle will mean the property would be divided into three and not two. The son will gain, by birth, a right along with his father. He is entitled to half. If the father dies, along with his own half right the son will get half of that which was to be divided between the son and the daughter. So the daughter gets one-fourth and the son gets three-fourth! It is gender discrimination such as this which the amendment seeks to take away. However, there is a rider that a female who is married away will not get this right. Certain women's organisations have voiced their grievance about this provision arguing that even a married daughter is also entitled to a right.

Under the Pristine law of 1956, rights under Streedhan were recognised in certain parts of the country. Streedhan is the property gifted by her husband and in-laws to a woman at the time of her marriage. The Streedhan is a property that will be inherited only by females and not by males.

The commentator Vignyaneshwara expanded the definition of streedhan, adding that any property acquired by a female through her work and toil should be included in the definition of Streedhan. This was a very progressive approach, but it was ultimately rejected in 1912 by a decision of the Privy Council. Subsequently, however, the Madras High Court said such an expansion would apply. In other parts of the country, before the 1956 act, even illegitimate children born to concubines were recognised as sharers, but this practice was ended after the 1956 Act.

Let us examine the matrilineal system of inheritance. It is called the Markayam system. It is the most progressive law in the whole world. For example, there is an ancestral property called Tarva and there are two female members in that joint family. One female member has three daughters. The other female member (her sister) has three sons. The three daughters have each got two children, some of whom are male. How then is the ancestral property (Tarva property) to be divided? The sister who is alive will get a share, her daughters will each get one share and each of their children will also get a share. So $6 + 3 + 1 = 10$ shares, whereas the other sister will get only three shares. In Kerala, this was how women's rights were protected under the old system of law prior to the introduction of the 1976 Hindu Joint Family Abolition Act. The law in Kerala had been viewed at the time by several women's groups as being a model law should be implemented throughout all of India. If Section 6, which has been substituted, is now to be introduced, the people in Kerala will have to decide

whether or not to abolish the 1976 Act. Under the amended provisions the joint families will continue and females will gain rights by birth. However, in those states where this system has been abolished, there will not be any joint family to continue and therefore females may not get their rights.

By virtue of Section 4 of the Hindu Succession Act, states can make laws. And even if the central law opposes this, the state law will prevail. In many cases, in the name of preventing the fragmentation of holdings, there has been gender discrimination and females have not been given a right to property at all. In states where such laws prevail, it is necessary to do away with such laws and give rights to female members as well. Otherwise, the Hindu Succession Amendment Bill will not fulfil its purpose; it will not reach the needy, poor, oppressed, women and children.

If women are given rights, it will be as good as giving rights to children and the entire family. Let us first forget the traditional conception of the man being the head of the family. Let us think, for a few years at least, of the woman being the head of the family. Let us see what a difference this will make.

We should do away with any state laws which are contrary to the right of women to inherit agricultural holdings. Otherwise it is meaningless to insist that "we eradicate hunger and that the Right to Food is a fundamental right". Without agricultural land, how can we speak of the fundamental Right to Food? Let us have equal laws and equal protection for women!

Another section which the Hindu Succession Bill sought to abolish is Section 23. This is another area where gender discrimination exists. Where there are Class-I heirs and the property to be partitioned includes a residential house, the female is not entitled to claim partition at all unless and until the male relatives agree to partition it. Such a barbaric law completely disregards the rights of women. Let us hope that the Hindu Succession Amendment Bill which seeks to omit this section will be passed by the Lok Sabha and become law.

If you take Class-I heirs for example, gender discrimination extends as far as the third degree ie to the grand children. This was not the case under the Prestine Hindu law. Under the law which prevailed in Kerala, which I have described above, the woman was the head of the family, made the decisions and held the greatest number of shares. Why have such laws been abolished? When we make laws which deny females the right to inherit property, where they are not even considered as members of the family so far as agricultural holdings are concerned, how can we say that females are being treated equally?

I wish to conclude by noting the welcome consensus that exists amongst the speakers. Mr Chaman Lal has remarked that land reforms laws are necessary, but in spite of the land reform laws, in certain parts of the country, women are excluded on the basis that land-tillers are protected by state laws, and that women have inadequate right to property.

Mr Chaman Lal stated that the Right to Food is not simply the right to have just any food – it is the right to have food of a sufficiently nutritional value. There is also a consensus emerging that a shortage of foodgrains is not the reason for the widespread hunger which exists in India.

Similarly, it is not a shortage of resources which is responsible for the refusal to grant equal rights to women in respect of the succession laws. It is not because land is unavailable that it is not being given to women. There is no valid reason for not treating women equally to men. Eradicate these regressive laws. Let us have one law for the whole country.

Right to Food and poverty alleviation schemes

Justice Gyan Sudha Mishra

It is a matter of satisfaction that the organisers have selected a topic to deliberate which is of such a great social relevance and value, but I cannot take pride in participating in this discussion about the Right to Food when it has taken 58 years to acknowledge that it is a right to be realised and a right to be enforced.

I perceive the Right to Food to be a consequence of natural human existence. In any discussion, the Right to Food as a human right to natural existence cannot be denied, but this would be too simplistic a manner of addressing the issue before this august house.

One speaker said that if there was a Right to Food then there was also an obligation on the part of the individual to make an effort to realise or get the benefit of that right. This is also a simplistic way of putting the matter.

I am reminded of an old novel, 'Godan', by Munshi Premchand. The central character "Hori" perishes along with his entire family while attempting to realise the Right to Food and right to existence. His family perishes in spite of ceaselessly toiling and labouring to earn a livelihood. Due to drought and suffering they could not even have two square meals a day, because they had to pay 'lagan' to the zamindar. This work, which the novelist put forth in an attempt to make people realise the suffering that the common man goes through, constitutes a landmark in the attempts to demonstrate that the Right to Food is a basic and fundamental right. I think that novel was a milestone in helping to make people realise why zamindari should be abolished. Ultimately zamindari system was abolished and the Land Reforms Act came into existence.

We must recognise that a deep-rooted ailment exists in our society and it is up to us to create the conditions whereby no person sleeps without two square meals a day. I cannot restrain myself from recording my appreciation for the international body that made us realise that the Right to Food is the basic right of the whole mankind.

Following the Universal Declaration of Human rights, the Right to Food was recognised as a basic right. Subsequently, the International Covenant on Economic, Social and Cultural Rights was signed by various nations, which eventually culminated in the World Food Summit in 1996. At this conference, a large number of nations signed the Covenant and pledged that the Right to Food and the right to a dignified existence was a basic human right and that the

Mrs Justice Gyan Sudha Mishra is with the Jaipur bench of Rajasthan High Court. Here she recalled how

one of the works of the famed Hindi writer Munshi Prem Chand - *Godan* - had influenced her about hunger and exploitation under the feudal Zamindari system.



number of hungry people in the world should be reduced to half by 2050. We know that however important a right or a situation may be, it is only when it gains a brand identity that it gets reinforced. We are living in an age of branded goods and when a brand is for the right cause, it is most welcome.

In the wake of the World Food Summit, the process of speeding up the realisation of the Right to Food took place and we gradually came to realise that the Right to Life and the Right to Food were inextricably linked. You have heard the views of the speakers on the theoretical aspect of the Right to Food and initially I thought I would simply benefit from the views of the speakers as a listener. Yet even though temperamentally we tend to listen, by virtue of this office we are also inclined to preach. I have no intention of preaching to this august house; instead I only wish to share my thoughts and views as to how we can realise the Right to Food.

When we talk of globalisation there is a section of society which asks why there should not be globalisation the middle and upper segments. However, my entire focus is on the bottom of the entire social pyramid. We must be aware that if the lower layer perishes, the entire social system is bound to crumble.

We need an action plan with an identifiable first step. If we cannot start with "a", we will never reach "z". I am not trying to underplay the object of this conference, I am simply emphasising that we must first address the basic issues, the basic first step.

We are trying to address the public distribution system. We are trying to address why the farmers are not getting an adequate price. We also have an obligation to ensure that there are no beggars in any of our cities, that no person in a village is forced to go to sleep hungry and that no one does without minimum wages.

Fortunately we were informed about the Bill on the Right to Employment. I was also informed about the Right to Work for Food. The right to employment guarantee is a very laudable effort, but I am reminded of the many provisions which were outlined under the Industrial Disputes Act.

Let us imagine a situation in which a workman gets dismissed, he receives an award in his favour and an appeal is filed in the High Court. He then files an application for wages while the appeal is pending at the wage rate which he had been receiving prior to his dismissal. Not only the government lawyer but also the courts begin to get the feeling that he is getting ten years wages for doing nothing.

One speaker had said that the laws have been diluted ever since Justice Bhagwati's decision and that a conservative view was cropping up. The Statute also relates to the right to employment. When the right to employment guarantee was passed, the bureaucrats, administrators and people at the helm of affairs were eager to become aware of the consequences and commitments which would be entailed by the Act.

Courts do not have the intention of making administrators stand before the court. The judges have to be patient enough to listen to others. Therefore, if the legislators are enacting laws and the bureaucrats are executing the laws we have every right to know how we will be affected by their actions.

I have been sitting on miscellaneous writs for a number of years and the number of cases in the court is swelling. I try to emphasise that the law-makers and the executing agencies have to realise and be committed to what they are doing.

Public Interest Litigation has its limitations. There was a news item in Rajasthan that adulterated milk was being supplied to the state and the whole of Delhi. Those involved were small milk manufacturers and producers. They had converted detergent and oil into froth and put it into pure milk. This news item occurred some years ago. Two years later the same news item was again published. How can we be indifferent to such a situation?

I recall that no bureaucrat has ever appeared in my court for contempt because we are anxious that the orders are executed and do not wish to have unnecessary delays in the courts. We receive reports about fellow judges saying that they continue to haul bureaucrats up before the courts. They have to realise that this is not the intention of the courts and that the bureaucrats themselves create a situation whereby the courts are forced to take action of this kind. In regard to poverty alleviation, there needs to be an honest commitment to the eradication of poverty. They need to come up with concrete schemes.

Why should we be poor ?

Justice Markandey Katju

I have learned a lot from this colloquium, such as the fact that food production is actually declining in this country and that while small farmers used to lease out land, the reverse is now true.

These colloquia are very useful for judges because they address the cases that come before us which involve social and economic problems. Such colloquia provide us with a wealth of information which assists us in delivering judgments. The Brander's brief in 1908 led to a dramatic change in the manner of delivering judgments. Before 1908, both in America, England and elsewhere, the technique for giving judgments was based more on deductive reasoning, based on abstract concepts, which without going deeply into the facts, was derived from the method of Plato.

The Brander's brief consisted of just two pages of legal arguments and 100 pages of facts and statistics. The point involved concerned the constitutional validity of a law in America prescribing maximum working hours for women. The validity was challenged. Louis Brandson presented a totally novel brief, which rather than relying on abstract concepts and deductive reasoning, instead consisted of two pages of legal argument and 100 pages of statistics and facts in order to show that excessive working hours were harmful to the health of a woman.

This was the method of Aristotle. He removed the method of inductive reasoning and instead employed the method of deductive reasoning, which means you first observe the fact and then you reason from this starting point. This change in reasoning has extended to courts all over the world and has not been simply confined to the American courts. We now observe facts and we do not simply rely on our own abstract notions of what human behavior should be like. We take into account the statistics and facts and then we deliver our judgments.

Justice Markandey Katju was born in September 1946. He obtained an LLB from Allahabad University in 1967.



Thereafter, he practiced law in the Allahabad High Court specialising in labour law, taxation and writ petitions. He was appointed Judge of the Allahabad High Court in 1991. He has since delivered many landmark judgments, most notably, in the Rama Muthuramalingam case, on the constitutional question of the relationship between the Judiciary, the legislature and the executive, in which he emphasised the importance of judicial restraint and the impropriety of an encroachment by the judiciary into the legislative or executive domain. He was appointed Acting Chief Justice of Allahabad High Court in August 2004, Chief Justice of Madras High Court in November 2004, and Chief Justice of Delhi High Court in October 2005. In April 2006, he was elevated to the Supreme Court. In addition to his judicial work, Justice Katju maintains an interest in a wide range of academic areas and has been particularly keen to bring to light the great intellectual achievements of our Indian ancestors. His book *The Mimamsa Rules of Interpretation* stands as a milestone work in this regard.

In the course of this colloquium, I have gained an enormous amount of knowledge about food and I am grateful to the organisers of this event. More such colloquia should be organised. We tend to live in an insulated world. We should have access to more social and economic facts and this in turn will help us to deliver better judgments.

Regarding the Right to Food, the advent of modern industry, following the industrial revolution, has led to the creation of a unique situation in world history. Up until feudal times ie before the industrial revolution, society was primarily agricultural and used primitive productive methods. For example, oxen were used to till the land. Production was very low and this meant that only a handful of people could be rich while the rest had to remain poor. The primitive methods of agriculture employed in the pre-industrial era meant that 95-99 percent of the population was poor. Only the kings and aristocrats could be rich.

Following the industrial revolution, which began in Europe in the 19th century, modern industry has become sufficiently productive to ensure that nobody should have to remain poor. Everybody should be able to be provided food with reasonable employment, housing medical care, etc.

It is natural in such an environment for people to ask "why should we be poor?" The productive forces of society are so great that it is perfectly understandable for people to demand food, employment, housing and medical care.

It has been said by many speakers here that the Right to Food is implied by the Right to Life which is enshrined in Article 21 of the Indian constitution. Let us go beyond this. Given our access to modern industry, science and technology, no serious obstacles exist to prevent us from increasing our food production five fold what it is at present. The problem relates to the purchasing power of the people.

We can give food to the people in one of two ways. We can either provide it for free or we can make it available at an affordable price. Providing food for free is a totally impractical solution as it will add to the already existing deficit the country's exchequer is facing. Providing food for free would be detrimental to the national character. Giving food to people at an affordable price requires that people have the money to buy the food, which in turn requires employment. Without a job, how can you hope to have the money to buy food?

There is massive unemployment in India. For each class-IV job, there are thousands of applicants, many of them holding BA, MA or even MBA degrees. Job creation needs to happen on a massive scale. How can this be achieved? It can only happen through rapid industrialisation. Only when thousands of industries are set up will employment rise significantly.

But setting up an industry requires a market for the product of that industry. If the products are unsold, they are of no use. Again, selling these products requires that people have sufficient purchasing power. Everything boils down to strengthening the purchasing power of

food security and judicial activism In India

the one billion people of India and in particular the 70 percent or more Indian people who are poor. This is the major problem facing our country how do we raise the purchasing power of 700 or 800 million people so that they have the money to buy goods?

The time has come for the intellectuals of this country to tackle this problem. Only in this way will we solve the food problems of the Indian masses.

Judiciary, executive and legislature

Justice Cyriac Joseph

Justice Srikrishna started his address with a statement that the subject of this colloquium is both important and controversial. Indeed its importance has been stressed by almost everyone. The remarks about a controversial aspect were made in the context of the inclusion of the Right to Food as a Fundamental Right under Article 21 of the Constitution of India, yet there should be no scope for controversy left given that this point has been established in subsequent interventions.

There is no doubt that food is essential for the sustenance and growth of the human being. Food is necessary for the maintenance of life and thus food is a basic human need. If food is a basic human need then it becomes a basic human right. If it is a basic human right it is perfectly legitimate to interpret it as part of the right to life under Article 21. Therefore, it was concluded by my eminent colleagues, that whether or not you amend the Constitution, the verdict of the Supreme Court on the Right to Food means that is also part of the Right to Life under Article 21.

I want to add a corresponding responsibility. The Right to Food implies an obligation or duty on the part of the government. However, I want to point out that there is a corresponding duty or obligation on the part of the citizen. If I have a Right to Food, I also have an obligation and duty to earn my food so long as I am able and healthy. This has to be emphasised particularly in the context of a new generation of people who have developed a tendency to look for favours, or assistance from the government even if they don't deserve it. Nobody can expect to sit at home and declare that they have a Right to Food and expect the government to bring the food to their house! Let us highlight the fact that people have a responsibility and duty to work hard if at all possible, so as to earn their food. However, we should expect the government to provide the opportunity and facilities for this to happen.

Justice Cyriac Joseph

was born in January 1947. He enrolled as an Advocate in October 1968 and began practice in the High Court of Kerala at Ernakulam. He worked as a Government Pleader from 1976 to 1979 and then as a Liaison Officer/Senior Government Pleader from 1979 to 1987. Between July 1991 and July 1994 he served as Additional Advocate-General, Kerala. He was appointed as a permanent Judge of the High Court of Kerala in July 1994. He was transferred to the Delhi High Court in August 1994 and served there until September 2001 when he was transferred back to the High Court of Kerala. He served as Acting Chief Justice of the High Court of Kerala on a number of occasions before being appointed as Chief Justice of the High Court of Uttaranchal at Nainital in March 2005. He was sworn in as Chief Justice of the Karnataka High Court in January 2006.



Nobody denies that the government has a social responsibility to provide food for the sick, disabled, and the destitute. I fully endorse the view of Justice Kumar from Karnataka which implied a social responsibility and individual obligation to avoid waste, extravagance and luxury. Justice Kumar also spoke about the social responsibility of the judges. I fully support the idea that judges have a social responsibility but it has to be clearly understood that judges are not social activists. We do have social responsibilities but we must also be careful to refrain from becoming social activists.

This can only be achieved by maintaining correct perceptions and reflecting those perceptions in our decisions and judgments. This much was indicated by Justice Shah from Gujarat when he illustrated examples of how our perceptions can influence our decisions and attitudes.

I wish to add something to what Justice Kumar and Justice Shah said – in addition to preaching through judgments we must also be able to practice what we preach in our personal lives, official lives and judicial lives. I have come across “great judges” who practiced little of what they preached in their own lives! If no one else can criticise us we have to criticise ourselves. We must practice what we preach or we will not carry any credibility.

Whether one is in the executive, legislature, or the judiciary, discharging responsibility in society requires two important dimensions. The first is awareness. Without awareness our decisions, judgments, and orders cannot be correct. Secondly a conscience is necessary.

Even those persons not strictly from the legal field can make an effort to make the judges conscious of better ways to perform their responsibilities and duties. If that has been the open agenda of the colloquium, I am sure that the purpose has been achieved and I can say that I am more aware and more conscientious today.

My personal perception is that there cannot be an unending, indefinite and permanent monitoring of any PIL. You shouldn't carry on with your PIL until you retire. We must have some rationale. The matter is brought to our notice, and we are seized of the matter and then having understood the problem, identified the solution, we issue necessary orders and directions to the persons concerned and leave it at that, and at most, we ask them to file a report of compliance. We have a tendency to claim a monopoly of the public interest. I don't think judges are entitled to do this. Judges are not the sole repository of wisdom in this country.

We have painted the legislature and the executive with black paint, as if everybody were corrupt. To my knowledge there are many honest and dedicated workers in the legislature and in politics. There are many dedicated and honest officers in the executive also. They are as good as we are and they are as efficient as we are, as committed and as patriotic as we are. We have no right to claim a monopoly on virtue and to say that everybody is foolish and corrupt, has no love for the country and society, and has no sense of social responsibility. We have no right to do that, but that is exactly what we are doing. We are claiming that judges alone have social responsibility, that judges alone can achieve results and that we can't trust the legislature and executive for results.

My view is that once you have identified the problem and the solution, leave it to them, give them a chance to try and implement it. If they don't do their job, then there may be a second round of litigation, others may approach us or we may take the matter upon ourselves, but it is important that we show that we trust people.

There was so much discussion about the mid-day meals scheme. Did any one recognise that this scheme was conceived by a Chief Minister, a politician? It was MG Ramachandran, the chief minister, who conceived this scheme and implemented it. If a politician, a chief minister, could conceive a mid day meal scheme and if it was found to be very good and the Supreme Court said it must be implemented all over India, we must have the humility and generosity to concede that there are right thinking people in other fields also, whether it is in the legislature or in the executive.

There are instances when NGOs become tools in the hands of vested interests. In such instances the Supreme Court and the high courts come down heavily on them for unnecessarily espousing certain causes and misleading and misinforming the courts. Mutual respect between the judiciary, executive and legislature is necessary. It may very well be the case that many government officers are corrupt and irresponsible. However, when you generalise, when you summon politicians to the courts and when you pass orders against them, as judges who do not apply restraint and do not maintain the decency and dignity they ought to in such matters do, then the politicians may not be able to react inside court, but they will most certainly be able to act outside the court and you will suddenly find that you have acted at your peril.

So let us respect the executive, the legislature and give them their due. Let us recognise that honest, patriotic, good, efficient people also exist among the politicians and bureaucrats and that there are people who are prepared to serve the country with as much dedication as we claim to. Let us discharge our duties and give them an opportunity to do the same. If they don't rise to the occasion then we can invoke our jurisdiction. So long as we keep within our limits, do not cross the Lakshman Rekha and continue to respect and recognise each other, I think the judiciary will command even more respect and obedience. This is the best way of achieving what we have in our minds to achieve. Any other method will only be counter-productive. The signs of such counter-productivity are already manifest in the media, public statements, and reactions from other sections of society. We must be able to see the writing on the wall. If we are not able to see the writing on the wall now then we will regret it later on.

Global scenario and judicial activism: The needs of the hour

Justice Dilip R Deshmukh

Thirty five years back when I joined the judicial service, I was taught that good judges should speak only through their orders, decisions and judgments, and that is why being asked to address an audience like this is such a difficult task.

We have heard from many speakers on the various dimensions of the complex issue of the Right to Food. It was mind blowing to hear from Sainath of the anomalies and realities which exist on the ground. It was thought-provoking to hear Dr Vandana's depiction of the plight of under-fed and under-nourished infants and working mothers, whether in urban and rural areas. It was painful to hear from Dr Saxena and others of the corruption prevalent in the PDS.

The very fact that such a large number of judges and Chief Justices of High Courts are here to attend this colloquium lends us confidence that judges in this country are alive to the issue of the Right to Food and the plight of the millions who are suffering from hunger and starvation. Justice AN Roy's depiction of the hungry man questioning this august gathering of judges as to what was being discussed and for whom – pierced my heart through and through. As Sainath has said, growth simply for the sake of growth is like a cancer cell – its growth does not benefit the human being.

The eradication of hunger and the establishment of the Right to Food is a global movement. There is a growing awareness throughout the world that food and nutrition is a human right and that a legal obligation exists to ensure that all people are adequately nourished. The Right to Food is recognised directly and indirectly all over the world. It would therefore be apt to throw some light on the international state of the Right to Food.

Justice Dilip Raosaheb Deshmukh was born in September 1947. He obtained a commerce degree from the Durga Arts and Commerce College, Raipur in 1966 and graduated with a law degree from the Law College, Raipur in 1968. He obtained a post-graduate degree in commerce in 1969 and received a post-graduate degree in law from the Jiwaji University, Gwalior, in 1982. In 1970, he joined the MP Judicial Services and was posted as an Additional District Judge at Bilaspur in 1987 and later posted as an Additional District Judge for Durg between 1989 and 1991. He was posted as an Additional Welfare Commissioner for the Bhopal Gas Tragedy in 1995-96. He was appointed as District and Sessions Judge from March 1997 to May 2001 at Bilaspur. From June 2001, he worked as legal advisor to the Governor of Chhattisgarh until September 2004 when he took up a position as director of the Judicial Officers' Training Institute, High Court of Chhattisgarh. He was appointed as Additional Judge of the Chhattisgarh High Court in May 2005.



The UN has identified access to food as both an individual right and a collective responsibility. The 1948 Universal Declaration of Human Rights proclaims that everyone has a right to a standard of living adequate for the health and well being of himself and his family. This includes food.

While framing the constitution of the Food and Agriculture organisation in 1965, the preamble stated that the nations accepting this constitution, should be determined to promote the common welfare – by furthering individual and collective action with the purpose of raising levels of nutrition and standards of living and thus ensuring humanity's freedom from hunger.

Subsequently in 1966, the International Covenant on Economic Social and Cultural Rights developed these concepts more fully, stressing the right of everyone to adequate food and specifying the fundamental right of everyone to be free from hunger.

Article 11 of the International Convention on Economic, Social and Cultural Rights, 1966 states that the "State Parties to the present covenant recognise the right of everyone to an adequate standard of living for himself and his family including adequate food. The State Parties will take appropriate steps to ensure the realisation of this right."

Article 24 of the UN Convention on the Rights of the Child, 1989, states that "the State Parties shall take appropriate steps to combat diseases and malnutrition through inter alia the application of the readily available technology and through the provision of adequate nutritious food."

Article 27 states that "the State Parties in accordance with the national conditions and within their means shall, in case of need, provide material assistance and support programmes particularly with regard to nutrition."

The World Food Summit Plan of 1996 has recognised the right to adequate food as the fundamental right of every one, to have access to safe and nutritious food consistent with the right to adequate food and fundamental right of everyone to be free from hunger as stated in the International Covenant on Social, Economic and Cultural Rights and other relevant international and regional instruments and shows its commitment for its implementation and the full and progressive realisation of this right as a means of providing food security for all.

Article 21 of the Constitution of India guarantees for every citizen a right to live with human dignity. Article 47 provides that the state shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as amongst its primary duties.

On the basis of a PIL filed by PUCL, the apex court has taken a first step in tackling the issue of malnutrition, and reforming and strengthening the food security system in India: "The anxiety of the court is to see that the poor and the destitute and weaker sections of the society do not suffer from hunger and starvation. The prevention of the same is one of the prime responsibilities of the government whether at central or state level. How this is to be

ensured would be a matter of policy, which is best left to the government. All that the court has to be satisfied with and which it may have to ensure is that the foodgrains which are overflowing in the storage receptacles especially in the FCI godowns which are in abundance should not be wasted through dumping into the sea or through being eaten by rats. Mere schemes without implementation are of no use. What is important is that the food must reach the hungry. In our opinion what is of utmost importance is to see that the food is provided to the aged, infirm, disabled, destitute women and men, those in danger of starvation, pregnant and lactating women, and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them. In the case of famine a shortage of food might be a problem, but in this instance the situation is such that amongst plenty there is scarcity. Plenty of food is available but distribution of the same amongst the very poor and destitute is scarce or non-existent leading to malnourishment, starvation and other related problems”.

Directions were given to the famine code for the immediate release of surplus foodgrains lying in the stocks of central and state governments in the drought affected areas and for framing fresh schemes for the public distribution system of foodgrains so that meaningful and immediate relief would be given by the central and state governments.

Various schemes for the destitute section of the population like Antodaya Anna Yojana, the scheme for providing mid-day meals for every child in government and government assisted private primary schools with prepared mid day meals with a minimum content of 300 calories and 8-12 kg of protein for each day of school, for a minimum of 200 days, were to be implemented both in letter and spirit.

It is thus clear that the Right to Food is recognised in every civilised society in the world. The Right to freedom from hunger fundamentally means that the state has an obligation to ensure, at the very least, that people do not starve – as such, this right is intrinsically linked to the right to life.

In addition, states should do everything possible to ensure the full enjoyment of the right to adequate food for everyone within their territory. In other words people should at all times have physical and economic access to food that is adequate in quantity and quality for a healthy and active life. For food to be considered adequate it must also be culturally acceptable and it must be produced in a manner that is environmentally and socially sustainable. To be able to enjoy the Right to Food fully people need access to health care and education and respect for their cultural values, the right to own property and the right to organise themselves economically and politically.

Without adequate food people cannot lead healthy and active lives. If they are not employable they cannot care for their children and their children cannot learn to read and write.

The Right to Food thus cuts across the entire spectrum of human rights. Its fulfilment is essential in the fight against poverty. Herein lies the need for judicial activism to combat the

forces cutting at the roots of the Right to Food – either through non implementation of PDS or by utilising the food meant for the poor, disabled, and starving for their personal gains and to ensure that the Right to Food becomes meaningful.

It is in situations of conflict and man made disasters that the Right to Food is most likely to be violated. In 2001 there was a massive drought in several states of India like Orissa, Rajasthan and MP. On account of the drought, which had been going on for months, and due to the extreme poverty and lack of access to foodgrains, people were starving in large numbers. While the poor were starving in the drought hit villages, the central government had excess foodgrains in its storehouses, which were not disbursed and were rotting. The agitation in the country – over the lack of access to foodgrains in the drought-hit states was provided with momentum after shocking incidents of people dying due to starvation in some districts of Orissa.

Slowly, the agitation over access to food became a full-fledged campaign for the Right to Food in the country. A PIL was filed by the PUCL in April 2001 in the Supreme Court for the enforcement of the Right to Food of the thousands of families in the drought hit states of Rajasthan, Orissa, Chhattisgarh, Maharashtra, and Gujarat.

The Right to Food petition asked three questions:

1. Starvation deaths had occurred while there was a surplus stock of foodgrains in the government granaries. Does the Right to Life mean that starving people who are too poor to buy foodgrains should be denied foodgrains free of cost by the State when there is a surplus stock of foodgrains which is lying unused and rotting?
2. Does the Right to Life under Article 21 of the Constitution of India not include the Right to Food?
3. Does the Right to Life which has been upheld by the apex court not imply that the State has a duty to provide food to people who are drought-affected and not in a position to purchase food?

Relief measures the petition sought included the immediate release of foodgrains for the drought relief areas; the provision of work for every able bodied person and an increase in the quota of foodgrains under the PDS for every person.

For the first time a distinct Right to Food was being articulated. The Supreme Court, which held that the Right to Food was encompassed within Article 21, now sought to enforce this right.

The Supreme Court expressed grave concerns about the increasing number of starvation deaths and food insecurity despite the overflowing foodgrains in stores and FCI all over the country. The Supreme Court widened the scope of the petition from the initial six drought-affected areas to include all the Indian states and union territories.

At subsequent hearings the court directed all state governments to ensure that all PDS shops be kept open with regular supplies and stated that it was the prime responsibility of the State to prevent hunger and starvation deaths.

The Supreme Court recognised the distinct Right to Food under the Constitution under Article 21 and also sought to broaden the scope of the right to not only encompass the right to be free from starvation but to also distribution and access to food and the right to be free from malnutrition.

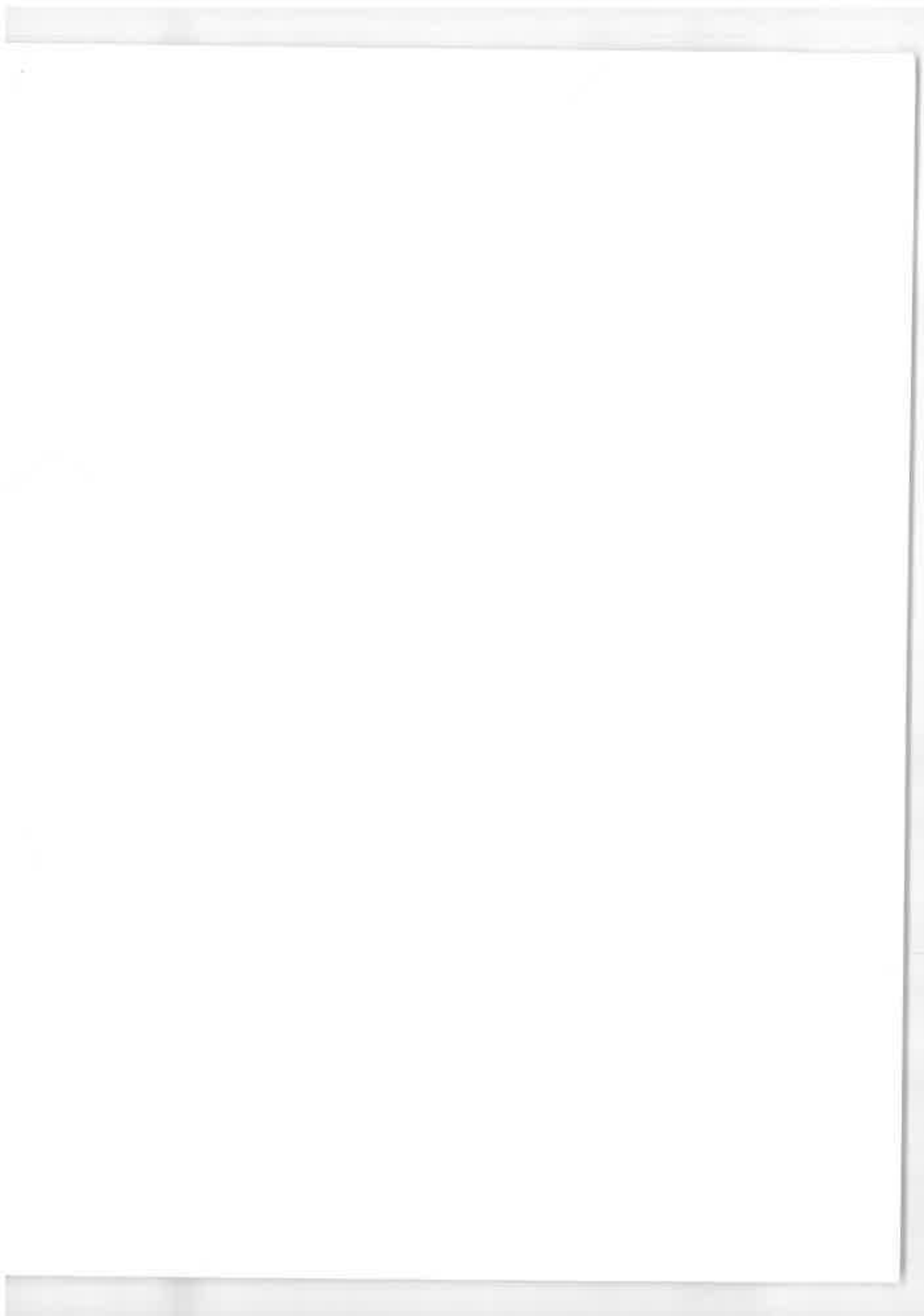
These orders of the court are of enormous relevance to social rights jurisprudence. It establishes that the courts do have the authority to order positive action by the state despite any financial budgetary implications. Take for example, the Supreme Court Interim order requiring state governments to provide cooked mid-day meals to children within three years. The orders also illustrate that social rights can be concretely enforced. Even financial implications did not deter the court from making an order for enforcement of the Right to Food for the thousands of people starving in the drought-stricken states.

The Human Rights Law Network, which had the objective of initiating judicial awareness, intervention and activism on the issue of the Right to Food, needs to be congratulated for organising such a wonderful judicial colloquium. HRLN has been at the forefront of the nation-wide campaign to make the Right to Food a realisable and enforceable goal for millions of people. The nation-wide movement needs the active intervention of the High Court if starvation in this country is to be eradicated. As a consequence, as Jean Ziegler put it, it will be the judiciary that liberates.

I have been wondering how I am supposed to react to the knowledge I have gained over the last two days. Every day I send food from my house to one family in particular who are starving and hungry. Following this colloquium I am going to double the amount.

I am fortunate to be the chairman of the committee for training judicial officers in the state of Chhattisgarh. I will ensure the subordinate judiciary in the state of Chhattisgarh is keenly aware of the plight of the starving millions, of the sabotage of the PDS, and of what their approach should be to cases which appear before them under the Essential Commodities Act. This is my commitment to Chhattisgarh. Let it be known that anyone who tampers with the PDS in the state will be dealt with by the judiciary!





Large-scale famines may be consigned to history, but the battle against hunger in India is far from won. One in every two children in India remains malnourished, two in three women are anaemic and families in both villages and towns contend with hunger on a daily basis.

In 2001, a group of activists under the banner of the People's Union for Civil Liberties (PUCL) filed a case in the Supreme Court, demanding that the Right to Food should be recognised as a legal right of every person in the country. Mrs Mary Robinson, former high commissioner, UNHCHR, acknowledged that the PUCL vs UOI case was the leading case in the world on how to deal with issues relating to hunger, poverty and starvation.

In the various hearings of the PUCL case in the Supreme Court, a number of important orders have been passed to advance the Right to Food. However, it is imperative that knowledge of the decisions and of the practical situation in the country be disseminated as widely as possible within the judiciary.

To address this knowledge shortfall, in August 2005, the HRLN organised a National Judicial Colloquium on the Right to Food to discuss matters relating to starvation in the country with a view to evolving a legal framework on food security that would for the first time practically ensure a right to live with dignity for all persons.

Sixty one High Court judges from seventeen states, a Supreme Court Judge, numerous resource persons and international guests including Prof Jean Ziegler, UN rapporteur on the Right to Food, all attended the colloquium.

This book comprises the expert analysis of leading commentators and Justices on the food security situation in India, the current implementation status of Supreme Court orders and food-related schemes and the role of judicial activism in securing the Right to Food.

The Human Rights Law Network, a division of the Socio-Legal Information Centre, is a nationwide collective of lawyers and social activists dedicated to using the legal system to advance human rights and ensuring access to justice for all.

In addition to pro bono legal services, the Network works to strengthen human rights mechanisms through trainings, investigations and campaigns, to protect civil rights and liberties and safeguard the rights of the poor and marginalised.

We work with women, prisoners, dalits, workers, children, farmers, indigenous people, refugees, HIV positive people, the homeless, disabled, religious minorities and sexuality minorities among others.



Human Rights Law Network
575 Masanj Road, Jangpura, New Delhi-110 014
Tel: +91-11-24374501, 24376922
Email: hrln@vsnl.net, hrln@vsnl.net
www.hrln.org

ISBN 818947923-7

