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The Right to Life Is the Right to Food:

People's Union for Civil Liberties v. Union of India & Others

by Lauren Birchfield* and Jessica Corsi**

INTRODUCTION

India is experiencing a human rights paradox. While its GDP has been climbing steadily over the past decade,¹ rates of malnutrition and starvation-related morbidity remain extremely high.² In a notable refusal to accept the negative effects of globalization upon access to basic nutrition for its poorest populations, however, the Supreme Court of India has established itself as a champion of food security and committed itself to the realization of the right to food in India. Through its landmark decision in the public interest litigation Petition (Civil) No. 196/2001, *People's Union for Civil Liberties v. Union of India & Others (PUCL)*, the Supreme Court explicitly established a constitutional human right to food and determined a basic nutritional floor for India's impoverished millions. Over the last ten years of this open and ongoing petition, the Supreme Court has not only reconfigured specific government food schemes into legal entitlements, setting out in detail minimum allocations of food grains and supplemental nutrients for India's poor, but has also clearly articulated how those government schemes are to be implemented and identified which public officials to hold accountable in the event of noncompliance.³ The latest manifestation of government action on the right to food is the proposed National Food Security Act. While the proposed legislation provides an important opportunity to codify entitlements currently protected under court order, the draft of the bill currently being prepped for debate in the national parliament has raised substantial concern among food security-oriented activists and economists. This article provides an in-depth analysis on how the Supreme Court has sought to establish and fulfill a constitutional right to food by transforming government food security schemes into constitutionally protected legal entitlements, and examines the social and political impact of *PUCL* in India.

CREATING AND EXPANDING A CONSTITUTIONAL RIGHT TO FOOD

India's ongoing effort to realize a constitutional right to food began with a petition brought in July 2001 on behalf of the poor in the state of Rajasthan who had not been receiving the required employment and food relief mandated by the Rajasthan Famine Code of 1962. Filed in response to the failure of the federal and state governments to address acute hunger and starvation deaths



Courtesy of Leigh Anne Gilbert.

Children enjoy a mid-day meal at the Rainbow Primary School, India.

at a time when India was producing a grain surplus, the *PUCL* petition sought enforcement of a constitutional right to food under Article 21 of the Constitution of India.⁴ Ten years into the litigation, *PUCL* has been expanded to apply to all state governments and to address larger, more complex issues of hunger, unemployment, and food security. To date, the litigation remains open, standing as one of the longest running *mandamus* cases of its kind.

While early interim orders in the litigation addressed mainly the public distribution of food grains to families and persons falling below the government-designated poverty line,⁵ the Supreme Court order of November 28, 2001 critically and expansively transformed *PUCL* by identifying which food schemes were to be considered legal entitlements under the constitutional right to food and determining in detail how those government schemes were to be implemented. Since this watershed order, *PUCL's* interim orders have sought to define gradually, but in increasing detail, India's constitutional right to food. Important developments to government schemes in recent years have included preservation of the Public Distribution System, through which grains are delivered to people of extreme poverty; the universalization of the Integrated Child Development Scheme (ICDS), which allows all children to access services provided at ICDS feeding centers;⁶ the mandated continuance of the Mid-Day Meal Scheme (MDMS) in schools;⁷ and the issuance of court directives prohibiting any modification or discontinuance of any food scheme covered in previous orders without prior permission of the Supreme Court.⁸

This remarkable case, while supported and advanced by the highly effective Right to Food Campaign and a Supreme

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The Supreme Court's ruling that the right to food is a justiciable, reviewable, expandable, legally enforceable, constitutional — and thus inviolable — right opened up new avenues both for political discourse and for concrete action.

Court-ordered Commission responsible for the implementation and monitoring of protected food schemes, was made legally possible through progressive, activist judicial interpretation of the Constitution and through the development of a public-interest litigation mechanism that relaxes standing requirements in cases where public injury has been caused by the government.⁹ The Constitution contains robust national protections for human rights and both explicitly and implicitly provides for a right to food. Explicitly, Article 47 of the Constitution, an aspirational “Directive Principle,” creates a non-enforceable “[d]uty of the [s]tate to raise the level of nutrition and the standard of living and to improve public health.” Given the aspirational and non-justiciable nature of the Directive Principles, however, most of the work to locate, explicate, and realize a right to food was done at a more implicit and interpretative level under Article 21, the right to life, which is located within the enforceable “Fundamental Rights” section of the Constitution. Drawing on constitutional precedent defining the Article 21 right to life as “the right to live with human dignity and all that goes with it, namely, the bare necessities of life such as adequate nutrition,”¹⁰ and a history of activist, human rights-oriented judicial interpretation of this Article, the Supreme Court in *PUCCL* interpreted the right to life with dignity to include the right to food, thereby affirmatively incorporating the right to food — originally an aspirational Directive Principle — into Article 21 and transforming it into a justiciable and enforceable fundamental right.

In addition to favorable constitutional human rights provisions, the availability of the Public Interest Litigation (PIL) mechanism utilized by Colin Gonsalves, Jawahar Raja, and Aparna Bhat to litigate *PUCCL*, is a crucial element to the success of India's right-to-food case. The PIL system addresses situations in which there is compelling evidence of legal injury caused to the public interest, but no individual with proper standing to bring a claim,¹¹ by removing the standing requirement present in private interest litigation. This makes it possible for any person to bring a case on behalf of others too impoverished or otherwise prevented by hardship from accessing a court.¹² In addition to allowing lawyers to bring public interest petitions on behalf of an injured population, the PIL system also grants courts the ability to review administrative implementation of social and economic entitlements, such as the right to food, and to hold government officials accountable in the event of noncompliance.¹³

FROM COURT ORDERS TO MEASURABLE RESULTS

The *PUCCL* case is notable both legally and politically, but most importantly it is remarkable for the tangible and ever growing positive effects that it has had on the lives of the poor and the hungry. The Supreme Court's ruling that the right to food is a justiciable, reviewable, expandable, legally enforceable, constitutional — and thus inviolable — right opened up new avenues both for political discourse and for concrete action. Justiciability provides a vehicle for ordinary people to access and utilize the courts. Moreover, enshrining the right to food as a legal entitlement provides an extremely important tool for holding the state accountable and demanding change. This change may take the form of opening a specific ration shop, increasing government inputs for agricultural production, or raising the quality of the cooked food provided at school mid-day meals. As the last decade under *PUCCL* has shown, when the right to food is protected as a legal, constitutional entitlement, the option for the government to rollback programs designated to fulfill the right to food disappears. The legal entitlement also provides a foothold for preserving and expanding existing right-to-food programs and for developing new programs to fight hunger, malnutrition, discrimination, and poverty.

Concrete examples of the *PUCCL* case's marked, positive impact on the lives of India's poorest citizens abound. In perhaps an unprecedented move, the Supreme Court forced the government of India to increase its budget and spend millions of dollars on programs related to ensuring adequate food and nutrition. According to one of the principal lawyers on the case, “No court in the world would force its government to increase its budget,”¹⁴ and yet this is exactly what has happened in India. For example, the October 7, 2004 interim order increased ICDS funding, which controls the allocations of food for children ages zero to six at feeding centers throughout India, from one to two rupees per child.¹⁵ The November 28, 2001 interim order commanded state governments and union territories “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” and mandated that “those Governments providing dry rations instead of cooked meals must within three months start providing cooked meals in all Government and Government aided Primary Schools.”¹⁶ A subsequent interim order, handed down on April 20, 2004, required that the Indian government



Farmers play a critical role in the National Food Security Act debate.

allocate funds to cover the conversion cost for food-grains into cooked meals and absolutely prohibited the recovery of any portion of these costs from children or their parents.¹⁷

The success of India's Mid-Day Meal Scheme¹⁸ is an excellent example of the power and utility of the *PUCL* case. The Supreme Court's 2001 interim orders galvanized the mandatory provision of cooked lunches at government-run schools throughout the country. While the MDMS was officially launched in 1995,¹⁹ prior to *PUCL*, it was poorly implemented, reaching only a handful of states throughout the country.²⁰ Additionally, the original program only provided for uncooked grains as opposed to a nutritionally balanced cooked meal,²¹ which allowed for more "leakages" of food grains (i.e., the siphoning off of grains for personal use or sale on the black market). The activists drafting the original pleas asked the Supreme Court to mandate proper implementation of the MDMS. Right-to-food advocates knew that the states of Tamil Nadu and Gujarat were implementing the MDMS extremely well, and thus provided a successful model for how combining central-government and state-level resources could result in significant and measurable improvements in student enrollment and nutritional intake.²² The Supreme Court's interim orders, issued in response to this petition, set off a spark that completely reversed the non-implementation of the MDMS in other states.

One of the ways the Supreme Court orders galvanized the MDMS was by handing down specific instructions regarding operationalization of the program and designating the state governments of India as the entities responsible for the implementation of this scheme. Placing responsibility on state governments allowed the Court to ensure proper implementation by targeting more organized, powerful, and better-funded government entities. Moreover, requiring specific minimum calorie and protein contents and that the meals be cooked transformed the program into a scheme that is inherently more difficult to corrupt and, on its face, much more supportive of school attendance and child-nutrition goals.

The reshaping of the MDMS gave the Right to Food Campaign, as well as concerned parents and community members, a foothold for further advocacy. The Campaign launched

a "country-wide 'day of action on mid-day meals' in April 2002" and spent several years monitoring, reporting, organizing, lobbying, and campaigning on the issue. The Campaign's work involved raising awareness about the fact that every child in India has a legal right to a cooked mid-day meal and explaining what it means to possess this legal right.²³ Through both grassroots and national advocacy and community participation,²⁴ including the reporting and advocacy efforts of the Supreme Court-ordered Commission,²⁵ the program has begun to be implemented more uniformly throughout India, and the nutritional content of the meals has greatly improved.²⁶ The Campaign also used the interim orders to link the right to food to the right to education.²⁷ Because it is provided free of charge, the mid-day meal acts as an incentive for impoverished families to enroll their children in school and for the children to attend at least the morning session prior to the meal, if not the full day.

THE NATIONAL FOOD SECURITY ACT

Perhaps the most salient example of how the *PUCL* litigation has launched the right to food into both mainstream political discourse and public consciousness is the debate surrounding national legislation that would codify — and hopefully expand — food security entitlements set forth in *PUCL*. On June 4, 2009, the President of India announced her intention to enact the National Food Security Act (NFSA), which would "provide a statutory basis for a framework which assures food security for all."²⁸ The President's proposal was supplemented by a concept note, laying out the basic framework for the Act.²⁹ Since June 2009, several ministries have been engaged in the development of the draft act, as have civil society entities, such as the Right to Food Campaign. In March 2010, government ministers cleared a draft of the bill for discussion at the federal government level, with the intent that the bill then be introduced to Parliament for debate.³⁰

While this movement towards codification of the *PUCL* entitlements demonstrates a national commitment to promoting the realization of the right to food, both economists and activists question whether the bill, in its latest form, adequately incorporates, protects, and ensures the implementation of the food guarantees set forth by the Supreme Court. Major concerns with the current draft bill include whether it will provide for sufficient grain allocation, do enough to ensure a base level of nutritional intake for all citizens, and accurately capture the number of impoverished people in need of the government subsidy.³¹

The draft bill focuses primarily on the distribution of food grains through the Targeted Public Distribution System (TPDS) and fails to adequately address nutrition-focused schemes, such as the ICDS and MDMS programs, or to sufficiently incorporate programs benefiting the most destitute, the aged, and pregnant and lactating mothers currently protected by *PUCL*.³² Such provisions, which signal a reduction in the scope of the *PUCL* programs, have raised concern that the legislation could be a step backwards in ensuring a right to food and basic nutritional intake for the most vulnerable populations. This concern is especially genuine given the unique barriers to access and control over food that women and children face. Another main concern regarding scope is how the government will determine who qualifies as "Below Poverty Line" (BPL), and therefore, eligible

to receive TPDS benefits. Who will qualify under the NFSA is of particular importance because the government's poverty estimates have traditionally been far lower than those put forth by independent surveys and organizations.³³ At the time of writing, the Government of India had yet to officially determine the poverty line criteria and thereby determine the number of BPL families eligible to receive food benefits under the draft bill.³⁴

Related to the concern of scope is the question of whether the proposed bill includes adequate mechanisms to ensure effective enforcement and implementation of the benefits it would codify into law. Civil society activists argued that the framework put forth by the government in 2009 lacked adequate enforcement mechanisms since it neither authorized firm penalties for officials who fail to implement or deliver an entitlement nor created an adequate system of redress for individuals to demand the fulfillment of their right to food and receive compensation when denied the benefits they are due.³⁵ Finally, in addition to potential enforcement and implementation problems, activists and analysts have also criticized the Indian government's failure to comprehensively address fundamental elements and root causes of food security in its iterations of bill development. With a heavy emphasis on food subsidies, both the Food Ministry's concept note and the proposed NFSA bill fail to consider other essential factors of hunger alleviation like rural development and income security.³⁶

If the NFSA becomes law, it should build on the human rights framework set forth in *PUCL* and emphasize the active and democratic participation of society. For example, the Act should establish or recommend the creation of community representation schemes to harness grassroots participation in administrative mechanisms. The Act should also assist in coordinating all relevant government bodies under a unified food security platform by naming specific actors and agencies and describing how they are to work together. It should clearly articulate goals, benchmarks, and timeframes to facilitate and monitor efficient implementation. Finally, the Act should allocate adequate funding for implementation of its contents.

Thus far, the Congress Party has not acted on its promise to table a draft bill within the first 100 days of its presidency. This delay could prove to be a good thing, however, as it allows right-to-food advocates more time to strategize, organize, refine their demands, and lobby government officials. For example, the Right to Food Campaign, which has publicly rejected the draft bill,³⁷ has already staged protests in New Delhi to draw media

and public attention to shortcomings of the draft bill.³⁸ Delay also allows time for national consultation on the contents of the proposed act; various groups are planning to conduct such an initial consultation and roundtable discussion on the topic in the spring of 2010.³⁹ This may provide an opportunity to redesign the bill to include a stronger emphasis on livelihoods and other important but currently absent components of food security, such as land rights and the rights of farmers.⁴⁰ Given their close connection to the right to food, these issues will play a critical role in the implementation of a successful food security act. Were the Right to Food Campaign to connect to farmers groups and land rights movements, or if the latter movements were to choose to take up the issue on their own, a popular movement in favor of an expansive, powerful National Food Security Act could get legislation moving in the right direction.

PUCL: MORE RELEVANT THAN EVER

It is neither natural nor humane for people to starve when the means to produce food are at hand. When the government of India began undertaking economic policies that brought great wealth to the country, but allowed the poorest Indians to slip backwards into malnutrition, hunger, and death from starvation, the Supreme Court of India courageously stepped in and halted the inhumanity through a series of detailed interim orders commanding swift government action. Consistent monitoring by Supreme Court-appointed commissioners and civil society has kept high pressure on the government and successfully expanded the case to its current, wide reaching, and tangibly effective level.

While core programs, such as the Mid-day Meal Scheme, appear to be working remarkably well, hunger, malnutrition, permanent stunting, and death caused by a lack of adequate food continue to haunt India in equal and perhaps larger numbers than before the court case began.⁴¹ The Supreme Court Commissioners who are monitoring implementation of the *PUCL* case state that they have seen more starvation deaths in the past year than in any year since their work began in 2001.⁴² Both the success of the case to date and the current state of hunger illustrate the continued relevance of the human right to food as a tool for positive change in India. Now more than ever is the time for the Indian government to take ownership of the entitlements developed through *PUCL*, expand upon them, and create policies that strike at the core of hunger, poverty, and malnutrition, routing them out once and for all. **HRB**

ENDNOTES: The Right to Life Is the Right to Food: *People's Union for Civil Liberties v. Union of India & Others*

¹ See, e.g., THE WORLD BANK, INDIA COUNTRY OVERVIEW (2009), available at <http://go.worldbank.org/ZUIBUQT360>.

² India's Global Hunger Index (GHI) 2008 score is 23.7, which gives it a rank of 66th out of 88 countries. This score indicates a continued poor performance in reducing hunger in India. The GHI aims to capture three interrelated aspects of hunger — inadequate consumption, underweight children, and child mortality. INT'L FOOD POLICY RESEARCH INSTITUTE, GLOBAL HUNGER INDEX REPORT (2008), available at <http://www.ifpri.org/pubs/cp/ishi08.pdf>.

³ Most of the interim orders are comprised of directions to the state and central governments. In the case of the state governments, the Chief Secretary is answerable to the Supreme Court on behalf of the government. In regards to the Indian government, the person whom the Supreme Court will hold responsible depends on to what department or ministry it addressed its directions. If an order is addressed to a department or ministry, then the secretary of that