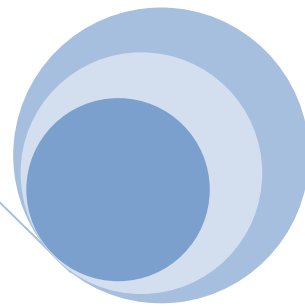
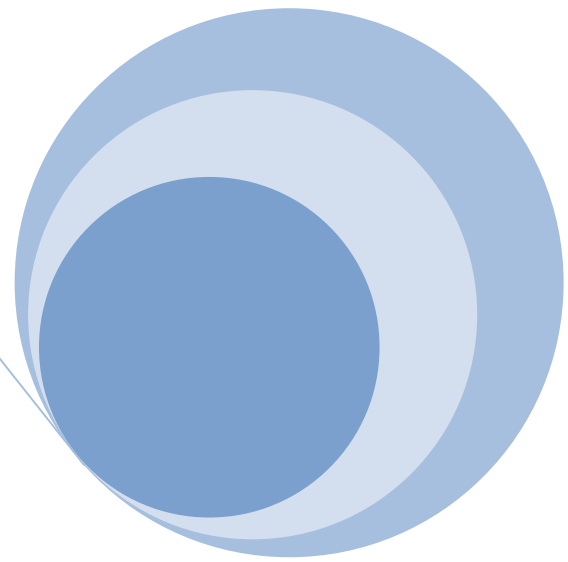


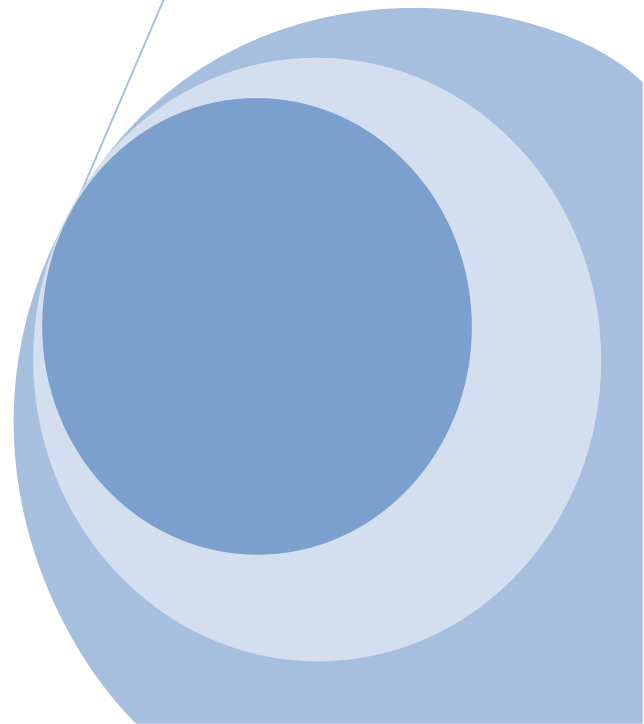
Draft



# **The Supreme Court Commissioners' Booklet**

*A brief on their work on the "Right to Food Case".*

**23/12/2010**



## **Prelude**

Barely seven days had passed since a widowed mother, Gajalachmi, died of hunger. Her thirteen (13) year old elder son, Balachandran, still badly shaken of his mother's death recalled that, "If there was even a little rice in the house, she would force us to eat." When he would press her to share the food, she would reply, "You need food more than me. My life is done. You should eat...be strong...study hard... and grow a good man."

Gajalachmi was only 32 years old when she lost a battle against hunger. Her husband died two years earlier of kidney failure. Being the most oppressed Maliga dalit caste, they owned no land. Even when he was alive, they found work as farm workers only sporadically, and wages for agricultural workers in the Telegana Region of Andhra Pradesh was half the legal minimum wage for men, and a quarter for women. When she did find work, Gajalachmi do not earn more than twenty five rupees a day. Her predicament was compounded by four years of consecutive drought which pushed most farmers of their village Gonepally in Medak district were forced to abandon their parched and barren fields.

During her husband's illness, she borrowed seventy thousand rupees from a local moneylender. After his death, she woke-up at dawn to collect curry leaves and sell them at the village market. Part of her earnings went to the moneylender, part to the owner of fields from where she plucked curry leaves. Usually not more than ten rupees was left a day to feed her three small children and mother-in-law.

Some dalit youth were moved by her struggle helped her secure admission for Balachandran and his nine year old sister, Rajani, in a government hostel for scheduled caste children. This freed her from worries to feed them during school days except her youngest, Suman, who remained with her and her husband's ageing mother, Gajalachmi, who had nowhere else to go.

Gajalachmi's strength and spirit slowly ebbed as she toiled often without food for days at a stretch. During her last months, she could not even rise from her bed. Her teenaged son Balachandran dropped out from school and hostel, to take care her and feed the family. He would also spend the day gathering and selling curry leaves.

My colleagues quietly pressed a thousand rupees in the hands of Bala's grandmother. She was so absurdly grateful, that despite all protests, she insisted on grabbing every pair of feet that she could see through her cataract clouded eyes. We shuffled with shame.

In the neighbouring village of Kasturpalli, we encountered elderly Dalit couple Yalliya and Narsamma, silently waiting for death, with dignity, but without hope. They had spent thirty years of their lives helping build multi-storeyed skyscrapers in Mumbai, often strapped with ropes at dizzying height for hours. But they were too old for such work and it was their three sons who inherited their vocation in contribution to Mumbai's unending journey skywards.

*Their sons send their savings to the village from Mumbai but this money is to feed their own wives and children. The couple tried hard to keep the bitterness out of their voices when they said, "Our sons have to look after their own families. How can we expect that they will look after us?"*

*Almost all able-bodied people have fled from their villages in desperate search for work. Left behind are children, widows, disabled and old people. Children usually eat at least one meal in fairly efficiently administered school mid-day meals; for the rest, there is often no recourse except a slow, invisible, unacknowledged starvation.*

*It is a custom in the Dalit Madiga caste of Andhra Pradesh to tie some grains of rice to the edge of the saree of a woman who dies before she is buried in an unmarked grave. When Gajalachmi died, there was no rice in the house to tie to her saree. It is considered inauspicious for neighbours to donate grains for funeral rites. So Gajalachmi had to be buried as she had lived, without the solace and dignity of even a fistful of rice.<sup>1</sup>*

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<sup>1</sup> Harsh Mander, Mimeo

## Chapter 1 India and Her Battle Against Starvation

In contemporary India, large-scale famines have been overcome. The nightmare of calamitous decimation of enormous populations due to denial of food necessary for bare survival has passed into the yellowing pages of history. As observed by Sen, "India has been successful in preventing famines". No extensive food crisis has beset the country since her independence in 1947 despite crop failures covering large regions, and declines in food production. Famines in Maharashtra in 1973, West Bengal in 1979, and Gujarat in 1987 were prevented speedily than the occurrence in Bihar in 1967. This according to him is attributed to increased efficiency especially in efforts averting famine.<sup>2</sup>

The battle against starvation, however, has not been won. Public vigilance, more so, state efforts has achieved little in confronting the root cause of prevailing hunger and malnutrition. The country is still the haven of fifty percent (50%) of the world's hungry - a composite of 35 percent or 350 million of the population consuming less than 80 percent of minimum energy requirements, nine (9) out of 10 pregnant women aged between 15 and 49 years suffering from malnutrition and anemia, and more than half of the children under five (5) enduring moderately or severely malnourishment or stunting - according to the World Food Program.<sup>3</sup> They basically belong to the social category of unorganised sectors such as landless workers and artisans, socially oppressed groups like Dalits and tribal peoples, single woman headed households, destitute persons, children in difficult circumstances like street and working children, disabled and old people without care-givers, and migrant workers.

A closer look at the life of tribal peoples, for instance, one could tell how much they are suffering from food denial rooted in their socio-economic status. A recent study of the Centre for Environment and Food Security (2005)<sup>3</sup> reveals that in a total of 1000 sample tribal households of 40 sample villages surveyed in Rajasthan and Jharkhand, an astounding 99 per cent of them are facing chronic hunger. Twenty-five percent (25%) of these tribal households have been in a situation of "semi" starvation in a week prior to the survey while, twenty four percent (24%) have been living in the same condition throughout the month.

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<sup>2</sup> Amartya Sen (1990), "Public Action To Remedy Hunger", Tanco Memorial Lecture , London, 2 August 1990

<sup>3</sup> Centre for Environment and food security (2005), Political Economy of Hunger in Adivasi Areas, 2005.

Out of 500 tribal households surveyed in Rajasthan, none have secured two square meals in a day for the whole previous year.

Women and girls are undergoing the same distress. Culture brought up girls in a belief that their duty is to sustain the need of other members of the family, even at the cost of their nutrition or health. If food is short, conventionally, male members of the family specifically the bread winners, eat first. Women eat whatever food left. Underlying this practice is a belief that women are dispensable.

As mentioned famines that loomed perilously earlier prior to independence that took the lives of millions of the population had been prevented to happen. The persistence of starvation and its immense impact among the poor, the disadvantaged and the marginalized is now viewed as the result of unequal distribution of land vis-a-vis food worsened by low agricultural production being dependent on capricious monsoons. The implementation of land reforms enhanced food-grain production in almost four decades (from 1974 to 2010), and improved government interventions in terms of food distribution through the countrywide network and have substantially receded the dilemma of starvation.

However, attempts to enhance food security at the household level by targeted anti-poverty wage and credit programmes, and subsidised food-grain through the PDS, still, failed to bridge the food needs of large number of households. These programmes have not reversed the scarce resource of the most affected groups such as the tribal peoples nor altered the unequal access for food within households enormously affecting women and girls.

## Chapter 2 Deliberate Neglect of Starvation

Starvation continues to lurk in shadows. If large numbers of people die in starvation, it occasionally captures media attention, and elicits transient public outrage and or debate. Often, the contest wrangles within the discourse whether indeed it was a starvation death. Public officials again and again deny the allegations, provide post mortem and other evidences they can muster to prove to everyone that the cause of death is not starvation. Repeatedly, they claim that the death was due to illness. Or few would quibble that he/she was chronically malnourished, but not starving. This argument is hard for lay observers to distinguish; even nutrition experts and medical practitioners are divided on the modes of verifying an incidence of either.

The omission of starvation and related debates, such as efforts to address it, derives in part from the problematic narrow definition of *starvation*. This is apparent in the working agenda of the *National Institute of Nutrition* in Hyderabad. The institute occupies itself with minor technical questions about micronutrients, while, practically ignoring the cause of widespread hunger all around the country which is deeply political, barely, a technical matter.

Moreover, the Planning Commission, the government arm that formulates a plan for an effective use of the country's resources always maintains that the "The Green Revolution"<sup>4</sup> ensures a boost in food production to keep the demands of the increasing population. *Starvation* is merely an aberration caused by vagaries of the monsoon and/or other natural disasters.

The government should recognize that *starvation* is only the outcome of chronic, invisible, malaise of destitution. These large numbers of "forgotten" people living at the edge of survival each day of their lives can only have physical and economic access at all times to sufficient food or means for its procurement when the government take this as accountability.

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<sup>4</sup> A research, development and technology transfer initiatives deemed to increase industrialized agriculture production)

It has to integrate in its national development agenda the social and human dimensions with entitlements of its people at the core.<sup>5</sup> This framework will capture the needs of the individual poor, under privileged, and marginalized and definitely address the dilemma of those living in *starvation*, which, is urgently pressing.

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<sup>5</sup> Lamentably, the government's focus has been directed to increasing the buffer reserves and its apprehension as regard to *starvation* has been fixed on deaths.

### Chapter 3 The “Right to Food” Legal Imperatives

India is a signatory to several international human rights instruments and a party to international commitments which enshrined the realization of the right to adequate food for everyone.

The Universal Declaration of Human Rights (UDHR), which serves as the milestone documents in the history of human rights, and the International Covenant on Economic, Social and Cultural Rights (ICESCR) which is a multilateral treaty granting economic, social, and cultural rights to individuals are the main instruments in the progressive full realization of said rights.

Article 25 of the UDHR specifies the right of everyone to adequate standard of living. This right is encompassing of the right to adequate and sufficient food corresponding to the cultural traditions which the person belongs; physical and mental, individual and collective, fulfilling and dignified life free from anxiety; and the right to security in the event of unemployment, sickness, disability, widowhood, old age or lack of livelihood or in circumstances beyond his/her control.

The ICESCR provisions substantiate the aforementioned UDHR stipulation. Article 2 of the Covenant specifies that the government has to “undertake steps to the maximum of its available resources in achieving progressively the full realization of the rights” stipulated in it, which, essentially guarantees the right to food. This denotes exhausting all appropriate means including particularly the adoption of legislative measures. Accordingly, its Article 11 stipulates the recognition of the fundamental right of everyone to be free from hunger. This provision warrants that the government has to take steps apt to ensure realization of the right to food including adoption of specific programs needed to improve methods of production, conservation and distribution of food.

Other treatise that contain provisions relevant to enjoyment of the right to food, specifically of women and children, which India is a party are the Convention of the Rights of the Child and its protocol, the Convention on the Elimination of All Forms of Discrimination Against Women and its protocol, and the four Geneva Conventions.



The “The 1996 World Food Summit Declaration” and the “The Millennium Declaration” are India’s international commitments which stress the importance of strengthening the respect to all human rights and fundamental freedoms. The former reaffirms the commitment of the government to ensure that everyone has access to safe and nutritious food, consistent with the right to adequate food and fundamental right of everyone to be free from hunger while, the latter is a pledge to expand its development vision to human development by sustaining social and economic progress through adopting measures in achieving eight (8) goals including the eradication of poverty and hunger.

At domestic level, India is among twenty countries in the world that has referred the right to food in its Constitution. The highest law of the land explicitly mentions the right to food in its several provisions. Article 21 of the Constitution warrants protection of life and personal liberty and specifically mentions that no person shall be deprived of these entitlements which explicitly include the right to food. The National Human Rights Commission (NHRC), an autonomous statutory body working on the protection of human rights, interprets this provision correspondingly. The government has foremost accountability to its citizens which no less accounts a life with dignity. Understanding broadly the nature of this accountability, the Commission ensues that Article 21 should be read with Articles 39(a) and 47. Article 39(a) specifies that the government should direct its policy towards securing its citizens, men and women an equal right for adequate means of livelihood while Article 47 spells its duty to raise the standard of living and the level of nutrition of its people.

Clearly, the government has fundamental duty to enforce said provisions of the Constitution which nevertheless envelop securing its individual citizens entitlement for food. In practice, however, a great deal of ambiguity surrounds the actual justifiability of this right, which depends ultimately on discretion and interpretation of people in power.

Only in the event of progressive and responsive judges, judicial intervention has cumulatively strengthened the realization of the right to food. The two most significant cases in this regard are *Writ Petition (civil) No. 42/97* filed before the Supreme Court on 1996 by *Indian Council of Legal Aid and Advice and Others* and *Writ Petition (Civil) No. 196* filed before the Supreme Court on 2001, by the *People’s Union for Civil Liberty (PUCL), Rajasthan*.

Anent to the former case, the Supreme Court directed the statutory National Human Rights Commission to monitor reports of starvation deaths in KBK<sup>6</sup> districts of Orissa brought to the notice of the Supreme Court of India. The Commission through its hearings and painstaking field visits over several years lay down that destitution and chronic distress aside from mortality are proofs of starvation; and that starvation constitutes a gross denial and violation of the fundamental right to be free from hunger.

Significantly, with the latter case, the Supreme Court, through a series of interim orders held both the union and state governments accountable for securing food especially of vulnerable populations. It is worth mentioning that throughout these struggles for food entitlements, on 23 July 2001, the Court observed that:

“In our opinion, what is of utmost importance is to see that food is provided to the aged, infirm, disabled, destitute women, destitute men who are in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family do not have sufficient funds to provide food for them. In case of famine, there may be shortage of food, but here the situation is that amongst plenty there is scarcity. Plenty of food is available, but distribution of the same amongst the very poor and the destitute is scarce and non-existent leading to mal-nourishment, starvation and other related problems.”

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<sup>6</sup> Kalahandi, Balangir and Koraput, now subdivided into several small districts

## Chapter 4 The Right to Food Case

In year 2001, a group of activists under the banner of the People's Union for Civil Liberties, filed a case in the Supreme Court<sup>7</sup>. They demanded that the right to food should be recognized as a legal right of every person in the country, whether woman or man, girl or boy. The group contended in the appeal that the right to food is fundamental in the fulfilment of the right to life enshrined in Article 21 of the Indian Constitution. This petition was filed at a time when the country's food stocks reached an unprecedented level, while hunger in drought-affected areas was terrible.

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 larger issues of chronic hunger and undernutrition, and all the State Governments were added to the list of respondents and accordingly the petition turn to argue that Central and State Governments have violated the right to food by failing to respond to the drought situation, particularly they fell short in accumulating gigantic food stocks while people went hungry. The petition mentioned nine (9) food schemes and went to highlight two specific aspects of state negligence: the breakdown of the public distribution system (PDS), and the inadequacy of drought relief works. In the final "prayer", the petition requested the Supreme Court to direct the government to: (a) provide immediate open-ended employment in drought-affected villages; (b) provide "gratuitous relief" to persons unable to work; (c) raise food entitlements under the PDS; (d) provide subsidized foodgrain to all families and; e) the central government to supply free foodgrain for these programmes.

The Supreme Court noted, as regard to these petitions, that though there are adequate schemes to ensure food security for the poor, but its provisions seldom reaches these people due to ill implementation. The impact of lapses in the implementation of these schemes to the well-being vis-a-vis survival of the poor is therefore crucial. Hence, in an interim order dated 28 November 2001, the Supreme Court converted the food-related schemes into legal entitlements and directed all State Governments to execute fully its provisions.

Over time, the scope of this public interest litigation (PIL) has expanded considerably. Now it covers wide range of issues including urban destitution, homelessness, the right to work,

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<sup>7</sup> *ibid.*

starvation deaths, as well as issues of transparency and accountability. Many of these issues however, are barely discussed.

To date there are nine (9) reports of Supreme Court Commissioners, 382 affidavits and 55 interim applications have been submitted to the Supreme Court. It had passed 58 interim orders relevant to this petition.<sup>8</sup> Two of these orders paved to the installation of Commissioners to the Supreme.

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<sup>8</sup> Some of these orders are considered historic due to its bearing on the lives of millions living desperately in poverty and hunger.

## Chapter 5 The Commissioners of the Supreme Court

The Commissioners are appointed to track side-by-side the condition of hunger and the implementation of interim orders relevant to the right to food case as well as governments' performance across the country. Their mandates are entrenched in orders dated 8th May 2002 and 29th October 2002. The former stipulates that the Commissioners of the Supreme Court are empowered to investigate violations of interim orders related to the case, and demand redress while, the latter extended the Commissioners authority to monitoring and reporting the implementation status of said orders to the Supreme Court, and conducting inquiry to respective government authorities on their efforts in placing the orders functional. Explicitly, this broad and complex authority of the Commissioners are carried out through but not limited to the following: a) analysis of state performance using macro data; b) rigorous participatory research; c) respond to emergencies; d) ensure the functioning of an effective micro-level grievance redress system; (e) ensure dissemination of information by State Governments; f) articulate alternative demands regarding state policy especially on hunger; g) prepare periodic state reports; h) establish a permanent monitoring mechanism for hunger-related issues and; i) ensure accountability for failures of state functionaries.

In concurrence of the Commissioners, an Assistant to the Commissioners and a Nodal Officer is appointed by a State Government's Chief Secretary. The former are mandated to render support to the Commissioners as they require while, the latter are appointed to ensure the full implementation of food schemes by making state records accessible and information available to the Commissioners relevant to the right to food case.<sup>9</sup>

Moreover, the Commissioners seek the assistance of individuals and reliable organizations in its work. The Supreme Court order dated of 8 May 2002 stipulates this authority appending a phrase that government institutions, agencies vis-à-vis officials are bound to fully cooperate with these individuals and or organizations; Hence, the nomination of an Adviser in every state. They essentially serve as bridge in Commissioners work with State Governments and local citizens' groups. Moreover, the Advisers brief includes: a) sending periodic report to the Commissioners; b) conducting enquiries in response to local complaints; c) sending appeals to the Commissioners for intervention whenever required; d) organizing conduct of research and surveys; e) working towards a more effective

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<sup>9</sup> Supreme Court Order dated 29<sup>th</sup> October, 2002.

monitoring and redress system and; f) liaising with State Governments in behalf of the Commissioners. The role of Advisers is not rigid and specific, and their activities are wide-ranging.

Broadly, with the assistance of these people, the Commissioners get hold steady information channels. Major stakeholders concerned with the litigation in few states are accessed moreover grassroots “real” concerns are filtered through them. These concerns form as knowledge base which facilitates the monitoring likewise stakeholders’ compliance with the orders and drawing out informed policy decisions to improve (in a vacuum) delivery of services to the poor, the marginalized and the disadvantage as envisioned by the Supreme Court.

## Chapter 6      The Commissioners of the Supreme Court and the Impact of Their Work

The eight-year litigation of the case on the right to food escorted the passage of number of significant interim orders advancing the right to food of the “deprived” population. The bearing of these orders in general, measure the impact of initiatives in securing the human right to food for literally millions of people living in hunger. The Commissioners, in access of these orders, played an immense part in making this impact.

Through *The Commissioners* advice, modes of the implementation of several schemes were altered so as to enhance the facilitation of its contribution. These includes the ruling out of the SC that school meals under the Mid-Day-Meal Scheme shall be locally produced, hot and cooked<sup>10</sup> hygienic, nutritious<sup>11</sup> and in varied menus in a week. This ruling comes along with the normative recognition that school meals are instruments to teach the community particularly the children of social equality; hence the preference of Dalit cooks. Contractors were band from supplying ready to eat food to pre-school children under the Integrated Child Development Scheme (ICDS). Hot cooked meals for children for three (3) and above years of age were imposed. This made an impact on centralised procurement and eventually on large-scale centralised corruption<sup>12</sup>. Higher on time monthly pension was also instigated through the SC Commissioners recommendations. Furthermore, the legislature passed a law on employment security which provides a guarantee to all rural families of 100 days wage employment a year at statutory minimum wage.

Universalization of food schemes were ordered by SC as worked out by *The Commissioners*. The SC converted MDM, ICDS and NOAPS into enforceable entitlements highlighting that every potential beneficiary must be covered, an indication of the expansion of the programme several times<sup>13</sup>. The imposition of SC’s issuance on “hot-cooked nutritious mid-day-meal” in every state at all state-aided schools benefitted more than a hundred school

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<sup>10</sup> Prior to the advice most state governments were distributing dry snacks or grains.

<sup>11</sup> It should meet the prescribed minimum caloric level.

<sup>12</sup> There was an attempt among powerful biscuit-manufacturers to connive with the parliament across party lines and influential cabinet ministers to replace the hot-cooked meals with biscuits. This proposal was fought by an informal alliance of conscientious public servants, the national media, and concerned professionals together with the SC Commissioners.

<sup>13</sup> It is highly significant that the SC refused to concern itself with the ‘fiscal feasibility’ and entertained no caveats as regard to the universalization of food schemes. It is a challenge to the ability of the government to raise sufficient resources by putting no escape door open in keeping its accountability to the people.

children daily - the largest ever school feeding programme in the world. The installation of a feeding centre at every habitation of all villages and slums to cater each child below 6 years, all pregnant and lactating mothers, and every adolescent girl doubled the number of feeding centres. Moreover, this burgeon the coverage of ICDS given as well that below the poverty line criterion in accessing the benefit of the scheme was removed. Staff vacancies were also filled in within the scheme's institutional structure. Nevertheless, the extension of the old age pension to its entire population, not just to those below the poverty line, expanded the coverage of the scheme from half to every aged person.

The SC order on the universalization of several food schemes bears enormous impact as well on budget allocation. In between the implementation of the 10<sup>th</sup> and 11<sup>th</sup> Country Plans, the percentage of provision for ICDS increased to 372 per cent (372%) and 317 percent (713%) for MDM. Similarly, TPDS resource allocation was utilised better after the court order; it increased to around 50 percent (50%). Moreover, the employment provided to households has increased manifold under MNREGA.

*The Commissioners* intervention count significant also in instances where the government intended to remove/alter some conferred entitlements. When the government wanted to modify the NMBS/JSY by linking it to institutional deliveries and family planning objectives, *The Commissioners* cautioned the government about the court order requiring prior permission. This led to its application to the SC, which in turn referred the matter to *The Commissioners* discretion. Following series of meetings between the parties, the government was forced to retain the entitlement and did not attempt then on to discontinue the provision of any existing entitlements.

Further, the contribution of *The Commissioners* has been invaluable in overseeing the food schemes. The reports it had been submitting to the SC attempted to: a) review and analyze the performance of Central and State Governments in the implementation of schemes and programmes ensuring food security of the particularly of the poor, the vulnerable, and the marginalized; b) investigate and report complaints and reports of failures in food programmes, including starvation deaths, at the local level and; c) make recommendations to central government, state governments and the SC as regard to actions to consider in protecting and fulfilling the right to food specifically of the above mentioned social categories of the population. These details have been significant to justices' deliberations on



concerns as regard to the right to food case as well as affluent source of information of food related situation in the country, the implementation of interim orders, and the functioning of various schemes. This allowed *The Commissioners* to play a key role in ensuring that interim orders are taken seriously by central government, state governments and concerned national and local agencies aside from giving direction to this complex litigation.

The above broad effort paved to *The Commissioners* intervention in a number of violations of orders. Say, in situations when local governments or implementing agencies failed to address reported incidence of hunger, the joint commission of enquiries (JCEs) was constituted comprised of *The Commissioners* or their representatives and a high level state government emissaries. The findings have been utilized to address the issue vis-a-vis impose a policy measure.

While, *The Commissioners* have endeavoured to boost the overall functioning of the food schemes, they give special attention to the entitlements of the vulnerable groups. Several orders passed through *The Commissioners* efforts ensure their entitlements. The most important is the distribution of destitute cards (Antyodaya Cards) to the following groups of people: a) aged, infirm, disabled, destitute, pregnant and lactating mothers; b) widows/widowers and single women with no regular support; c) households with no assured means of subsistence and; d) primitive tribe households.

Though *The Commissioners* efforts made a significant impact on the lives of countless number of the population, they failed to address some important issues. For instance, despite its recommendations the coverage of NOAPS, NFBS, and NMBS has not been expanded. So far, the unrealistically limited beneficiary quota is fixed for said schemes. This is due to the question of coverage and resource allocation that have not been raised in the court; inefficiency in the implementation of these schemes has dominated the discussions<sup>14</sup>. *The Commissioners* have not addressed as well larger structural issues that affect food security in the national context such as issues surrounding the procurement, storage, and delivery of supply of food grains. Small steps however, were undertaken to lessen these

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<sup>14</sup> The government functioning within a framework of progressive reduction of subsidies for the social sector followed the trajectory of lower subsidies and quotas e.g., when the SC asked the central government to consider expansion of the AAY, the latter doubled the AAY (destitute) cards which entitles eligible beneficiaries access to 35 kg of food grains at very low rates, however, it decreased the BPL cards.

structural issues. For example, with the advice of *The Commissioners* the SC passed orders directing state governments to give preference to local women groups and persons from disadvantaged communities such as Scheduled Caste communities in hiring cooks, and ban contractors under the ICDS supplementary nutrition program. In cases where the tussle of roles between central and federal states was adversely affecting the entitlement of the people, again, the intervention of *The Commissioners* has limited success. Such as, when the central government was asked to direct state governments to file an affidavit on its plan of action as regard to the conversion of food grains into quality-cooked-food under the MDMS and ICDS, despite repeated notice, some states did not meet the requirement. Consequently, the central government set the norm higher and increased funds per child for “conversion” cost in said schemes.

All in all, this PIL filed at SC, “winning” interim orders passed relevant to it that benefitted countless individual, is a combined civic and judicial achievement, not just of the Commissioners’.

## Chapter 7: The Commissioners in Years Ahead

Withstanding the limitations of *The Commissioners'* extent of authority, its rally for the promotion, respect and fulfilment on the right to food, with the unwavering support of SC, has gone a long way. This, however, does not mean complacency on *The Commissioners* part but growing trust vis-a-vis expectations. Hence, towards the following years *The Commissioners* will be more persevering in resonating its mandates.

Concretely, *The Commissioners*, will function day-to-day as drawn-out by these recent and current activities:

*The Commissioners* is now in the process of putting together its 10<sup>th</sup> Report. Unlike previous reports which are based on secondary sources, primary data are presented in this report depicting the actual situation of food schemes implementation on the ground in twelve critical states namely Assam, Bihar, Chhattisgarh, Gujarat, Jammu and Kashmir, Jharkhand, Madhya Pradesh, Nagaland, Orissa, Uttar Pradesh, and West Bengal. Aspects of schemes implementation covered in this report include coverage; availability, accessibility, and quality; implementation issues and concerns; and common grievance and grievance redress. Meanwhile, in the process of conjugating the 10<sup>th</sup> Report, *The Commissioners* is as well preparing the 11<sup>th</sup> and 12<sup>th</sup> Reports, respectively. The former would be basically quantitative; it would draw a picture of food schemes functioning in terms of i.e., coverage and budget allocation, released and disbursed. The latter, on the other hand, would be essentially a portrait of food schemes implementation from governments' perspective. Both reports would be quite a tough detailing vis-à-vis monitoring of food schemes implementation status with governments' themselves involved in shaping it.

*The Commissioners* has been proactive and responsive in monitoring of governments' compliance to interim orders. Through, and on the bases of Commissioners State Advisers' reports, *The Commissioners* have been responding to issues and concerns on food schemes implementation, accordingly. For instance, lately due to ample feedbacks received by *The Commissioners'* State Adviser regarding the non-coverage of adolescent girls under the supplementary nutrition programme (SNP), *The Commissioners* decided to visit Jalpaiguri District, West Bengal. The visit verified whether the SC interim orders relevant to the *Right to Food Case*, particularly the Integrated Child Development Services (ICDS), are being

properly implemented, and allowed *The Commissioners'* representatives to discuss with district level officials ways to improve functioning of food schemes, basically of ICDS.

States' reports submitted for Commissioners' 10<sup>th</sup> Report depicts discrepancies on several aspects of food schemes functioning. *The Commissioners* is accordingly seeking amends with states' Chief Secretaries in this regard which, include meetings to present said reports highlighting pressing and urgent issues. *The Commissioners* visited Bihar, Jarkhand, Madya Pradesh and Nagaland recently which, earned positive results as the attention of these states' Chief Secretaries are called for to address specific governments' shortcomings on the implementation of the food schemes.

*The Commissioners* are also been vigilant in responding to complaints brought to their attention as regard to violation of interim orders relevant to the *Right to Food Case*. Earlier, *The Commissioners* through the State Adviser, learned that the government of the State of Meghalaya is providing choco malt, milkose milk substitute and ready to eat noodles as supplementary nutrition under the SNP of ICDS and stops the local groups in procuring the supply for said programme. *The Commissioners* called the attention of the government of Meghalaya for violation of the SC orders dated 28 November 2001 and 13th December 2006, which state that supply for SNP and ICDS funds shall be spent mobilizing village communities, self-help groups and mahila mandals for buying grains and preparation of meals, and governments shall ensure universalization with quality food meals given under SNP, respectively. Also, *The Commissioners* directed the government to adopt measures immediately towards eliminating contractors and making provisions simultaneously for the supply of SNP (hot cooked meals) through local women self-help groups and mahila mandals who can make the necessary purchases, prepare the food locally, and supervise its catering.

In Andra Pradesh, *The Commissioners* came to know that the Project Officer of the Integrated Tribal Development Agency, Bhadrachalam District issued an order to their Deputy District Health and Medical Officer "*not to enroll non-tribes and non-BPL patients at its Nutrition and Rehabilitation Center (NRC)*". This order caused refusal of services to children of Internally Displaced Persons (IDPs) from Chhattisgarh. Corollary, the Commissioners issued a letter directing the government of Andhra Pradesh to take necessary action, and submit a report on this regard and coverage of all other food schemes and employment entitlement in the

state. The correspondence as well reiterated the order of the Supreme Court dated 7 October 2004 which stipulates that all services of the ICDS should be universal and not restricted to BPL families only. Also, it reminded the government that the aforementioned non-admission of children at the NCR is not just a violation of several legal entitlements but on top of a denial of their fundamental human rights.

*The Commissioners* has not faltered to look into issues of starvation. Two (2) Joint Commission Enquiry (JCE) are initiated previously- in states of Bihar and Orissa. Enquiries are done on bases of starvation-death reports. Conducted with the representative from the high-level position of both states, it is focused on facets of people condition in worst affected districts where alleged starvation-deaths have occurred<sup>15</sup> which, are the following: i) living situation of the poorest of the poor; ii) access to food and income of this segment of population; and iii) functionality of government socio-economic measures, particularly food schemes, in areas where incidents have occurred. The Commissioners already forwarded findings of these inquiries to government of Orissa and Bihar, and now await feedback as regard to the plan of action adopted to amend ascertained inadequacies from their part to prevent similar incidence to happen, respectively.

*The Commissioners* is now giving full attention to a complaint from a local organization about an alarming situation of starvation in four (4) villages namely Parva I, Parva II, Parva III and Kamtuli in Chakma Autonomous District Council (CADC) of Lawngtlai District, State of Mizoram. Around 800 Chakma tribal families comprising 4,000 members residing in these localities have been starving for several weeks. From October 2010, PDS is not functioning here; eventually no food-grain has been distributed to AAY and BPL card holders' families. The nearest go-down in Longpuighar has no stock of rice where several PDS ration shops including Parva draw their food grain quota. *The Commissioners* already directed the government of Mizoram to initiate necessary action. It recommended to the Mizoram government the following: a) direct concerned officials to immediately ensure adequate food grain supply to Longpuighat Godown; b) ensure that all BPL and AAY card holder families received food-grain-supply in quota for the present and month of October 2010; c) ensure that those who have applied for the ration cards are provided at earliest.

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<sup>15</sup> The conduct of JCE is done not to establish whether reported deaths happened due to hunger and starvation but to examine the circumstances surrounding deaths.

In an exercise of vigilance, *The Commissioners* (considering the fact that each social category has varying denials and vulnerabilities), during the exceptionally cold winter in Delhi in 2009, brought the plight of the homeless to the attention of the Supreme Court. Its petition dated 13 January 2010 conveyed the difficulty of the homeless in the streets of Delhi. The Delhi High Court promptly responded to this petition and right away ordered the Delhi government to immediately increase the number of night shelters equipped with basic amenities. Two nights after the issuance of the order, the government opened more homeless shelters, doubling the existing number after 60 years since Independence. Consequently, the cause of homeless people is now in the ambit of *The Commissioners*.

*The Commissioners* in its successive petition letter dated 25 January 2010, resounding the need to protect and fulfill the entitlements of homeless people across the country, implored that the same directions have to be issued to all states' government and concerned government agencies. Corollary, urgent establishment of night shelters in all major cities having a population of more than five lakh in the ratio of at least one shelter per lakh of population is directed by the SC. Also, it instructs that these shelters have to offer 24 hours accommodation in all seasons; provide all the basic amenities and facilities such as beddings, toilets, drinking water facilities, first aid kits, and recreation facilities; and allot security provisions. States and Union Territories filed affidavits in response to this order, detailing that they are taking a detailed survey on the homeless and promised to respond to homeless people entitlements accordingly.

In the onset of winter season this year, *The Commissioners* wrote constant reminders reiterating to all States' and Union Territories' governments the above order, and sought details of the status of their compliance on the same. Moreover, *The Commissioners* in cooperation with other agencies conducted a national consultation among concerned sectors, to derive a plan and measures that will advance their entitlements. A manual in establishing and keeping homeless shelters have also been drafted and soon will be distributed to high-level concerned officials as reference for implementation purposes. Further, in coordination with non-government organizations (NGO's) and local agencies in Delhi, *The Commissioners*, works for the homeless hands-on by monitoring the operation of night shelters in several aspects focusing on its amenities, and keeping an eye on their condition.

Ultimately, *The Commissioners* is closely looking into the passage of a bill on food entitlements. After a long wait, its plight on persuading the government to crop up a comprehensive law is now taking a course. Way back, *The Commissioners* initiated the drafting of a policy proposal on the right to food which outlines the explicit more detailed measures including agricultural policy, access to water, employment and safety nets, environmental policy, education on nutrition, and regulation on food, production, quality and safety, which led to drawing up of its versions that served as bases in shaping a bill on food entitlements. The current version of the bill, “The National Food Entitlement Bill 2010”, is viewed to underscore the importance of food entitlement of the needy sectors of society; give direction to measures relevant to its respect and fulfillment; define specific entitlements, recourse and monitoring mechanisms; and clarify roles and responsibilities of agencies. In a vacuum, *The Commissioners* is pushing for the entitlement of the general public under the provision on PDS of 35kg food-grain at subsidized price of three rupees (Rs. 3) per kilogram of rice, two rupees (Rs. 2) for a kilogram of wheat, and a rupee for a kilogram of millet.

Overall, in years ahead, *The Commissioners* will be in full activity preparing its reports to the SC, monitoring governments’ compliance to interim orders, taking actions to complaints brought to its attention, and monitoring the passage into law of the food entitlement bill. Moreover, it will unfalteringly push for the recognition of the entitlements of the vulnerable, the marginalized, and the disadvantaged sectors of the Indian society.

## Glossary of terms

AAY	Antyodaya Anna Yojana
APL	Above Poverty Line
BMI	Body Mass Index
BPL	Below Poverty Line
CACP	Commission for Agricultural Costs and Prices
DDA	Delhi Development Authority
EAS	Employment Assurance Scheme
FAO	Food and Agriculture Organisation of the United Nations
FCI	Food Corporation of India
GDP	Gross Domestic Product
HYVs	High Yielding Varieties
ICDS	Integrated Child Development Scheme
IMR	Infant Mortality Rate
ITDP	Integrated Tribal Development project
MDM	Mid-day Meal Scheme
MSRF	MS Swaminathan Research Foundation
NCU	National Commission on Urbanisation
NFBS	National Family Benefit Scheme
NFFW	National Food for Work Scheme
NFHS	National Family Health Survey
NGOs	Non Governmental Organisation
NIUA	National Institute of Urban Affairs
NMBS	National Benefit Maternity Scheme
NOAPS	National Old Age Pension Scheme
NSSO	National Sample Survey Organisation
PDS	Public Distribution Scheme
PESA	Panchayat Extension to Scheduled Areas Act
PTGs	Primitive tribal Groups
PUCL	People's Union for Civil Liberty
SAARC	South Asian Association for Regional Cooperation
SARHC	South African Human Rights Commission
SC	Scheduled Caste
SGRY	Sampurna Gramin Rozgar Yojana
SHGs	Self Help Group
ST	Scheduled Tribes
TB	Tuberculosis
Unicef	United Nations Children's Fund
UoI	Union of India
WFP	World Food Programme
WTO	World Trade Organisation