

# The Indian Supreme Court acknowledges the Right to Food as a Human Right

*Life without liberty would result in some or the other form of slavery. Liberty cannot be there to a person having an empty stomach. The individual's right to life will have no meaning if the State fails to provide adequate food or food articles. The Indian Constitution provides «right to life» as a Fundamental Right. That right is given a wide interpretation by the Supreme Court so as to include «right to food» so that democracy and full freedom can be achieved and slavery in any form is avoided.*

Justice M.B. Shah  
President  
National Consumer Disputes Redressal  
Commission  
Janpath, New Delhi, India

Why should the right to food be considered a human right? The answer to this question is, human beings or animals cannot survive without food. In India, if a person attempts to commit suicide for lack of food, it is an offence; if he steals some food or other articles for getting food, it is an offence; begging is also an offence. All such acts for getting food are punishable under the law. If he is sentenced for committing such an offence, he is provided with the minimum basic necessities, i.e. food, shelter and clothes, in the prison. Should society encourage the commission of such offences or should it provide food as a concomitant to the right to life, which is a fundamental right? The obvious answer is «Yes» to the latter part of the question. The Supreme Court has interpreted the whole issue of the right to life and has made it a part of the basic structure of the Constitution. The State has also accepted this responsibility. Mahatma Gandhi, the Father of the Nation, once said: «Without food it is difficult to remember God» and he also stated that hunger eats into the ethos of culture. Furthermore, the doctrine of self-preservation has to be remembered in its entirety by the civilized society. Starvation deprives even a virtuous human being, let alone a common man, of his good sense and prevails upon him to adopt unethical or illegal means to keep away the hunger and to preserve his life and that of his family members. This ultimately raises the question of law and order. It is easy to say that such persons must be dealt with under the law and be punished; but it also has to be said that such acts are carried out under absolute compulsion. In all events, if the basic need for food is not satisfied, this can lead to slavery or exploitation no matter in whose name or in what form. That is unalterable human nature.

## Constitutional Provisions

This aspect is universally accepted and it is common view that society must ensure adequate food supply. India – a Sovereign Socialist Secular Democratic Republic –

has a written Constitution which provides for the Fundamental Rights of its citizens. Article 21 of the Constitution guarantees «Protection of life and personal liberty». It provides that «No person shall be deprived of his life or personal liberty except according to procedure established by law.» The phrases «Protection of Life» and «Personal Liberty» have called for interpretation several times since the Constitution came into force. Similarly, Article 23 gives protection against exploitation. It prohibits traffic in human beings and beggars and other similar forms of forced labour and makes any contravention to this an offence punishable in accordance with the law.

Apart from the Fundamental Rights enshrined in the Constitution, Part IV of the Constitution provides for Directive Principles of State Policy which are required to be issued by the State while evolving its policies. For that, Article 38 requires the State to secure a social order for the promotion of the welfare of the people, in which justice – social, economic and political – shall inform all the institutions of the national life.

Another important Article 39 provides that the State shall direct its policy towards securing that «the citizens – men and women equally – have the right to an adequate means of livelihood». (Undoubtedly, food is not only a means of livelihood but is a necessity for survival). Further, Article 43 provides that the State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers (agricultural, industrial or other) work, a *living wage*, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities («living wage» undoubtedly would mean more than a minimum wage).

Article 47 provides that the State shall regard raising the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.

The Indian Constitution has a federal structure and is in consonance with the Fundamental Rights and the Directive Principles of the State Policy, Entry 33 of

Schedule 7 of List III, inter alia, provides that with regard to the supply and distribution of foodstuffs including oils and oil seeds, legislation can be passed by the Union as well as by the State. Hence the Constitutional sources for the «right to food» are the «protection of life», «personal liberty», «right to work», «right to health», «freedom from starvation», «right to sustenance», «provision of adequate nutrition», «improvement of public health», «standard of living», «right to live with human dignity», «payment of minimum wages», etc., as provided in the aforesaid Articles.

These Articles in the Constitution leave no doubt that it is among the primary duties of the State to take proper steps to, and base its economic policies on ensuring that there is enough food for all citizens to satisfy their hunger, to raise the level of nutrition and the standard of living and the improvement of public health. Against this background, the Indian Supreme Court (hereinafter referred to as the «Court»), recognizes the «right to food» as a fundamental right.

A description of cases will illustrate the legal application of the «right to food»:

In **Kesavananda Bharati vs. State of Kerala** (1973; 4 SCC 225 at 875, pr.1700), a landmark judgment, the larger Bench discussed the concept of the inviolable basic structure of the Constitution which cannot be amended. In this case, Mathew J. observed that the object of the people in establishing the Constitution was to promote justice – social and economic –, liberty and equality. The modus operandi to achieve these objectives is set out in Parts III and IV of the Constitution. While discussing the other aspects he observed that «*freedom from starvation is as important as the right to life*».

Thereafter, in **Dena Nath vs. National Fertilizers Ltd.** (1992; 1 SCC 695) the Court observed that the enforcement of the provisions to establish a canteen in every establishment under Section 16 is to supply food to workmen at the subsidized rates as *the right to food is a basic human right*.

In **Francis Coralie Mullin vs. Administrator, Union Territory of Delhi** (1981, 1 SCC 608 at 618, pr.17) the Court held that right to life means the right to live with basic human dignity. In the case, the petitioner, a British national, who was detained in the Central Jail, Tihar, in India, contended that her five-year-old daughter and her sister were not allowed to have interview with her for more than five minutes in a month. In the context of the detention order under Article 22 and its effect on Article 21, the Court

One important article in the Indian Constitution provides that «Citizens – men and women equally – have the right to adequate means of livelihood».

Photo: Wilcke



posed the question: What is the true scope and ambit of the right to life guaranteed under this Article? The Court held that while arriving at the proper meaning and content of the right to life, we must remember that it is a constitutional right which we are expounding, and moreover it is a provision enacting a fundamental right and the attempt of the court should always be to expand the reach and ambit of the fundamental right rather than to attenuate its meaning and content.

The Court further held that the fundamental right to life *which is the most precious human right* and which forms the ark of all other rights must therefore be interpreted in a broad and expansive spirit so as to invest it with significance and vitality which may endure for years to come and enhance the dignity of the individual and the worth of the human person. The Court observed that the right to life enshrined in Article 21 cannot be restricted to mere animal existence. It means something much more than just physical survival, and held that the right to life includes the right to live with human dignity and all that goes along with it, namely, the *bare necessities of life* such as adequate nutrition, clothing, shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, free movement and commingling with fellow human beings are part of the right to live with human dignity and they are components of the right to life.

In **Olga Tellis & Ors. vs. Bombay Municipal Corporation & Ors** (1985; 3 SCC 545) the petitioners were living on pavement/slums in the vicinity of their place of work and they were forcibly evicted and their dwellings were demolished by officers of the Bombay Municipal Corporation. They challenged the act of the Corporation on

the ground of violation of their rights under Articles 19 and 21. In that context, the Court held that the sweep of the right to life conferred by Article 21 is wide and far reaching. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest way of depriving a person of his right to life would be to deprive him of his means of livelihood to the point of abrogation. The Court also observed that persons have to eat to live.

In **Shantistar Builders vs. Narayan Khimalal Totame** (1990; 1 SCC 520 at 527, pr.9) the Court held that basic needs of man have traditionally been accepted to be three – *food, clothing and shelter*. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to a decent environment and reasonable accommodation to live in.

Similarly, in **Peerless General Finance and Investment Co. Ltd. vs. Reserve Bank of India** (1992; 2 SCC 343 at 388) the Court quoted Article 25 of Universal Declaration of Human Rights and held that «*Right to life includes the right to live with basic human dignity with the necessities of life such as nutrition, clothing, food, shelter over the head, facilities for cultural and socio-economic well being of every individual*». Article 21 protects the «right to life». It guarantees and derives therefrom the minimum needs for existence, including a better tomorrow.

Thereafter, in **C.E.S.C. Ltd. vs. Subhash Chandra Bose** (1992; 1 SCC 441 at p.462, pr.30), the question decided was whether employees appointed by contractors whose wages were being paid through such contractors would fall within Section 2 of the 1948 Act. In that context, the

Court observed that the right to livelihood springs from the right to life guaranteed under Article 21. The Court referred to the Universal Declaration of Human Rights, the International Convention on Economic, Social and Cultural Rights which recognize certain needs, which include the right to food, clothing, housing, education, the right to work, leisure, fair wages, decent working conditions, social security, the right to physical or mental health, protection of their families, as an integral part of the right to life. The Court also held that the Preamble and Part IV reinforce them compendiously as socio-economic justice, bedrock to an egalitarian social order. The right to social and economic justice is thus a fundamental right.

In **P.G. Gupta vs. State of Gujarat** (1995; Supp 2 SCC 182 at 184, 1) the Court observed that the protection of life assured under Article 21 has given an expanded meaning of the right to life. It is settled law that all the related provisions under the Constitution must be read together and given the meaning of widest amplitude to cover the variety of rights which go to constitute the meaningful right to life. The Court also adverted to Article 11(1) of the International Covenant on Economic, Social and Cultural Rights which laid down that the States parties to the Covenant recognize the «*right of everyone to an adequate standard of living for himself and for his family, including food, clothing and housing, and to the continuous improvement of living conditions*». And held that to the poor, settlement with a fixed abode and right to residence guaranteed by Article 19(1)(e) remain more a teasing illusion unless the State provides them the means to have food, clothing and shelter so as to make their life meaningful and worth living with dignity. It is also observed that food, shelter and clothing are minimal human rights.

Thereafter, in **Chamoli Singh & Ors. vs. State of Uttar Pradesh & Anr.** (1996; 2 SCC 549 at) the Court, dealing with the challenge to acquisition proceedings, wherein one of the contentions was that on account of acquisition the owner would be deprived of his land which is his only source of livelihood under Article 21 of the Constitution, held that protection of life guaranteed by Article 21 encompasses within its ambit the right to shelter in order to enjoy the meaningful right to life. The Court further observed that in any organized society, the right to live as a human being is not ensured by meeting only the animal needs of man. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All

human rights are designed to achieve this object. The right to live guaranteed in any civilized society implies *the right to food, water, a decent environment, education, medical care and shelter*. These are basic human rights known to any civilized society. All civil, political, social, and cultural rights enshrined in the Universal Declaration of Human Rights and the Convention or under the Constitution of India cannot be exercised without these basic human rights.

In **People's Union for Civil Liberties vs. Union of India & Ors.** (2004; 12 SCC 108), Writ Petition (Civil) No. 196 of 2001 was filed as a Public Interest Litigation under Article 32 contending violation of Articles 21 and 47. Various interim orders were passed from time to time directing the authorities 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. While considering the ICDS scheme (Integrated Child Development Scheme) that intends to provide supplementary food to children of the age group 0–6 years and to the pregnant woman, the Court, by its order dated 17.9.2001, observed that *a lot more deserves to be done in the field to ensure that nutritious food reaches those who are undernourished or malnourished* or others covered under the scheme. The Court further directed that the Anganwadi Centres through which the ICDS is implemented, shall supply nutritious food/supplement to the children, adolescent girls and pregnant and lactating women under the Scheme for 300 days in a year.

In **Kapila Hingorani vs. State of Bihar** (2003; 6 SCC 1) hundreds of employees of state-owned corporations, public undertakings or other statutory bodies in the State of Bihar died due to starvation, or committed suicide owing to acute financial crises resulting from non-payment of remuneration for a long time. When this fact was brought to the notice of the Supreme Court, it held that the State cannot escape its liability when human rights problems of such a magnitude involve starvation deaths. While deciding the case, the Court referred to Article 11 of the International Covenant on Economic, Social and Cultural Rights, 1966 and the «12 Misconceptions About the Right to Food (FIAN)» and approved that human beings have *a right to food and that hunger is violation of human rights*. The Court held that lack of access to food is in violation of the human right to food, and

issued various directives to ensure that no starvation deaths occur. The government companies/public sector undertakings, being part of the «State», would be constitutionally liable to respect the life and liberty of all persons in terms of Article 21 of the Constitution of India. The State Government of Bihar, thus, had a constitutional obligation to protect the life and liberty of the employees of the government-owned companies/corporations who are the citizens of India. While carrying on trade or business the State must fulfill its constitutional obligations. It must oversee the protection and preservation of the rights as adumbrated in Articles 14, 19, 21 and 300-A. The Court also observed, The States of India are welfare States. Having regard to the constitutional provisions adumbrated in the Constitution of India, and in particular Part IV thereof laying down the Directive Principles of the State Policy, and Part IV-A laying down the Fundamental Duties, they are bound to preserve the practice of maintaining human dignity.

## Conclusion

It is abundantly clear that the Supreme Court of India is leaving no stone unturned in interpreting various provisions of the Constitution to protect the «right to food» a basic human right, by taking into account the changing conditions and purposes, so that democracy in real form is maintained. The Court, from time to time, injects flesh, blood and vitality into the skeleton of the words used in different Articles of the Constitution, and gives colour and content to the expressions made therein, and also provides it with the skin of living thought.

The phrase «right to life» is given a wider meaning so as to serve the needs of the society. Now, the right to food has become an inviolable part of the basic structure of the Constitution. This is in conformity with the culture of India. The Indian concept of Dharma (religion) lays extraordinary emphasis on growing and sharing food in abundance. Atharvaveda ensures: «All have equal rights in articles of food and water». Further, one of the prayers is: «*Saha Navavatu. Saha Nau Bhunaktu. Saha Viryam Karavavahai*» («May He (God) protect us both together; may He nourish us both together; may we work conjointly with great energy»). We have to try to achieve the said goal, because survival without food is not possible. Lack of food for human beings would undoubtedly generate problems of law and order and, in any case, the freedoms contemplated in the Constitution would be meaningless.