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Help

Following the filing of the public interest litigation Petition (Civil) No. 196/2001, *People's Union for Civil Liberties v. Union of India & Others (PUCL)*, the Indian Supreme Court derived from the right to life mentioned in Article 21 of the Constitution a series of requirements articulating how various social programmes should be expanded and implemented in order to ensure that the population is guaranteed a basic nutritional floor.

This is to this date the most spectacular case of a court protecting the right to food. The Court built on eight schemes that included in particular feeding programmes for infants, pregnant and nursing mothers, and adolescent girls (the Integrated Child Development Services Scheme (ICDS)); mid-day school-meal programmes for school-age children; subsidized cereals through a nationwide network of fair price shops (the Targeted Public Distribution Scheme (TPDS)); pensions for the aged; and a cash-for-work programme for the able-bodied, under the 2005 Mahatma Gandhi Rural Employment Guarantee Act (MNREGA). The Court ordered that the benefits provided under such schemes could not be withdrawn: in effect, this meant "converting food, livelihood and social security schemes which are vital to food security of vulnerable citizens, into entitlements or rights" (Harsh Mander, "Food from the Courts: The Indian Experience", *IDS-Bull.*, vol. 43 (July 2012), pp. 15-24, at p. 18).

The Court also established two independent Commissioners to monitor the implementation of programmes fulfilling the right to food throughout the country: with the support of the large network of members of the Right to Food Campaign (a broad coalition of anti-poverty and human rights NGOs), the Commissioners submitted reports and recommendations allowing the Court to supervise implementation of its orders and taking further steps in supporting the right to food.

Third, the Court expanded on, and strengthened, existing schemes, to ensure that they provide an effective protection against hunger: for instance, it ordered that school meals be locally produced and cooked and hot, when in the past children were fed with dry snacks or grain, and that preference be given, in the hiring of cooks, to *Dahlit* women; it raised the level of old age pensions; and, consistent with the idea that the schemes implement a constitutional right, it ordered their universalization, dramatically expanding the number of beneficiaries.

Consider the following list of factors that may have supported the role played by the Supreme Court of India in this case (which is still ongoing more than twelve years after it was initially launched):

1. The Judiciary in India is a highly respected authority, discharging its functions with independence and impartiality, which allows the Supreme Court to make bold decisions even on highly contentious issues.
2. The "public interest" form of litigation allowed non-governmental organizations to file claims on behalf of unnamed individuals, and without any formalities being required, significantly improving access to courts for victims.
3. The right to food (as an element of the right to life where famine is threatening) was already partly protected by a range of schemes that provide support to some groups of the population, such as the elderly, children, or pregnant women; this made it easier for the Supreme Court to intervene, by requiring that such schemes be transformed into legal

4. The Court could ensure adequate follow-up of its orders by appointing two Commissioners of the Court in charge of reporting back to the court about cases of infringement.
5. Civil society organizations joined efforts by forming a broad "Right to food campaign" supporting the Court's involvement and building support for the case in public opinion.
6. The Supreme Court could seek inspiration from what was achieved in the States of the Union of India (which is a federation of 28 States) that were most progressive with regard to the implementation of the right to food, to encourage the other States to follow their example; in that sense the federal organization of the Indian Union facilitated the work of the Court.

How would you rate the respective importance of these factors? Compare the role of the Supreme Court of India in protecting the right to food with the role domestic courts play in your country in support of social rights, whether these social rights are listed in the Constitution or in an international treaty in force vis-à-vis the State. What are the obstacles to the domestic courts doing more? If the courts are not providing an effective protection of social rights, is it because one of the elements listed above is lacking?

INSTRUCTIONS: In responding to the above questions, **DO NOT click on 'New Post'**. Click on '**Show discussion**', and then, in the first discussion thread, called '**[7.2.4] The role of courts in protecting social rights**', click on '**View discussion**' and then on '**Add a response**' to propose your views to the community. If you want to comment on a peer's opinions in that thread then click on '**Add a comment**' in his response. You can also watch the tutorial (<http://youtu.be/SINSJKdez6g>) (see also, the updated (<http://youtu.be/TNoOB8q19kQ>) version) in order to make the best use of the interface.

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