JURISPRUDENCE ON THE RIGHT TO FOOD
Justiciability: Cases on Switzerland, India and South Africa

Switzerland

An important case on the right to food and minimum subsistence comes from Switzerland. In 1996 the Swiss Federal Court, which is the highest court in Switzerland, recognized the right to minimum basic conditions, including “the guarantee of all basic human needs, such as food, clothing and housing” to prevent a situation where people “are reduced to beggars, a condition unworthy of being called human”. The case was brought by three brothers, state-less Czech refugees, who found themselves in Switzerland with no food and no money. They could not work, because they could not get a permit, and without papers they could not leave the country. Their request for assistance to the cantonal authorities in Bern was refused.

The Court in this case deemed that it lacked the legal competence to set priorities for the allocation of resources necessary to realize the right to minimum conditions of existence, including food. However, it determined that it could set aside legislation if the outcome of this legislative framework failed to meet the minimum claim required by constitutional rights. In this case, the exclusion of three non-nationals from social welfare legislation was found to be a violation of their right to food, despite the fact that they were illegal immigrants. The Swiss Federal Court decision determined that the right to food in this sense could be the foundation of a justiciable claim for official assistance.

Transforming the hitherto unwritten constitutional right, the 1999 Swiss Constitution contains an explicit Constitutional provision on the right to assistance in situations of distress, as set out in the box above.

India

The Indian Constitution recognizes the right to life, and contains a specific provisions related to food, as shown in the box below.
The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the state shall endeavour to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and of drugs which are injurious to health.

According to the “Right to Food Campaign”, the year 2001 witnessed a time of widespread drought across the country. In many states, it was the second or third successive year of drought. In this time of crisis, state governments often failed to meet their responsibilities towards drought affected citizens, as spelt out in their respective “famine codes” or “scarcity manuals”. This failure was all the more shocking in view of the country’s gigantic food stocks (approximately 50 million tonnes at that time).

In response to this situation, the People’s Union for Civil Liberties (Rajasthan) filed a writ petition in the Supreme Court in April 2001, demanding the immediate utilization of the country’s food stocks for drought relief and prevention of hunger. The scope of the petition was not restricted to drought situations alone. It also focused on the general need to uphold the “right to food”. The respondents to the lawsuit were the Union of India, all the state/UT governments, and the Food Corporation of India.

The Supreme Court held its first hearing on 9 May 2001 and has held regular hearings in the case since then. The case is still ongoing, but a number of interim orders have been issued. In its Interim Order of 2 May 2003 the Court stated:

“Article 21 of the Constitution of India protects for every citizen a right to live with human dignity. Would the very existence of life of those families which are below poverty line not come under danger for want of appropriate schemes and implementation thereof, to provide requisite aid to such families? Reference can also be made to Article 47 which inter alia provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.”

The Supreme Court has thus formally recognized the right to food, and has ordered the central and State governments to take a number of measures to improve the situation. The justiciability of this right is therefore confirmed, and the Court has issued a number of orders to government, entailing expenditure of resources. Among the decisions of the court case to date are:

- Benefits of eight nutrition-related schemes (PDS, Antyodaya, mid-day meals, ICDS, Annapurna, old-age pensions, NMBS and NFBS) have become legal entitlements;
- All state governments have been directed to begin cooked mid-day meals for all children in government and government-assisted schools;
- State and central governments have been ordered to adopt specific measures to ensure public awareness and transparency of assistance programmes;
- Government of India must develop a system to ensure that all poor families are identified as Below Poverty Line;
- Licences of ration shop dealers to be cancelled if they (i) do not open on time, (ii) overcharge, (iii) retain ration cards, (iv) make false entries in BPL cards, or (v) engage in black marketing;
- Especially vulnerable groups have been identified amongst the poor, including widows, the elderly, infirm, disabled, pregnant and lactating women without assured means of subsistence, as well as “primitive tribes”;
- All State Governments have been ordered to implement food for work schemes in scarcity areas.

In its Interim Orders of 2 and 8 May 2002, the Supreme Court appointed two Commissioners of the
Court “for the purpose of monitoring the implementation of all orders relating to the right to food”. The Commissioners are empowered to enquire about any violations of these orders and to demand redress, with the full authority of the Supreme Court. They may enlist the assistance of NGOs and individuals. Resident Commissioners have also been appointed in each state, to assist the Commissioners of the Court. At the time of writing the Commissioners have submitted four reports to the Supreme Court, making a number of observations and recommendations.29

South Africa

The South African Constitution adopted in 1994 after the abolition of apartheid, is in many ways very progressive.

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA - CHAPTER 2

Bill of Rights
Section 27: Health care, food, water and social security
1. Everyone has the right to have access to –
   ...(b) sufficient food and water, and
   (c) social security, including, if they are unable to support themselves and their dependants, appropriate social assistance.
2. The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization of each of these rights.

Section 28: Children
1. Every child has the right –
   ...(c) to basic nutrition, shelter, basic health care services and social services;

Section 35: Arrested, detained and accused persons
2. Everyone who is detained, including every sentenced prisoner, has the right –
   ...(e) to conditions of detention that are consistent with human dignity, including at least exercise and the provision, at state expense, of adequate accommodation, nutrition, reading material and medical treatment;

The way in which the social, economic and cultural rights are drafted leaves no doubt as to the justiciability of those rights. In section 7 (2) of the Constitution the State is required to respect, protect, promote and fulfil the rights in the Bill of Rights. Section 38 of the Constitution states that a class, group or individual can “approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights”.

The justiciability of social, economic and cultural rights in South Africa has been confirmed in a Supreme Court judgment, in the Grootboom case, which concerned the right to adequate housing. The judgment developed a test of “reasonableness” against which to measure the performance of the government in dealing with the right to adequate housing, and established that priority must be given to those in desperate need.

The right to food is protected in three different articles of the Constitution, shown in the box above. While the general right to food is subject to available resources, no such limitation is listed on the nutrition rights of the child and of prisoners. In addition to the right to food being justiciable in South Africa, the Constitution also established a Human Rights Commission, with the mandate to monitor all human rights. The Commission has developed a set of questionnaires sent to relevant government departments at central and state levels, soliciting information about actions taken to implement the right to food.