The Right to Food in India: From “Parchment Victories” to Legal Enforcement

Utilizing the Judicial System to Gain Social and Economic Rights

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- The Right to Food in India -
The following essay examines how a right to food has arisen from *People’s Union for Civil Liberties v. Union of India & Others*, an ongoing public interest litigation trial (PIL) in India. Examining the relative success of the “right to food case” in India enables an understanding of the conditions under which the judiciary serves as a viable pathway through which the poor may gain their right to food. I find that the differential success of the current Indian RTF case is due to a highly organized, broad-based social movement initiated by the RTF Campaign. This movement capitalized on and organized around legal opportunities for social and economic rights that arose in the late 1990s in India. Through its varied tactics and its dynamic relationship with the Supreme Court, it has ensured a constant stream of court orders and their implementation at the regional level. I predict that the *People’s Union for Civil Liberties v. Union of India & Others* case has altered the judicial terrain and opened an even wider legal opportunity structure for the adjudication and realization of other social and economic rights in India. The case also signals the great influence that social movements may have on adjudication. Finally, the case points to new avenues for the “legalization of policy” and rights-based development.
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Chapter One: Litigating Food Rights for India’s Poor

In April 2001, the People’s Union for Civil Liberties (PUCL) filed a writ petition in the Supreme Court of India against the government of Rajasthan, India for its abdication of responsibility in withholding grain surpluses during a time of malnutrition and starvation. From this initial legal skirmish grew the People’s Union for Civil Liberties v. Union of India & Others, an ongoing public interest litigation trial (PIL) of national scope which demands that the endemic hunger and malnutrition plaguing much of the Indian population be acknowledged and addressed by the state. Backing and propelling the PUCL and the case is the Right to Food Campaign, a network of Indian NGOs, citizens, and activists. This body has been highly influential with the Indian Supreme Court and with the Supreme Court Commission. As a result of this national trial, still active a decade later, the Supreme Court has transformed previous government food schemes into legal entitlements through a series of interim orders, and has provided detailed instructions for the state’s implementation of these newly established legal rights. Although the Supreme Court is still in the process of defining the contours of what constitutes the right to food (RTF), and has not yet rendered a final ruling, it is clear that the Supreme Court has decreed the right to food to be a justiciable, constitutional, and enforceable right which the state has the responsibility of implementing and monitoring.

The Indian RTF case and its outcomes signal the potential for framing social and economic grievances, such as hunger and malnutrition, as issues of legal rights and entitlements. This is especially important for several reasons. First, there is a paucity of empirical studies concerning adjudication and enforcement of a state-conferred right to food. Second, since the third wave of democratization, there has been a significant trend toward social and economic

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1 Under Indian law, A PIL is a case that alleges government injury to the public interest.
rights being enshrined in the national constitutions of developing countries. Whether judicial systems are capable of enforcing such rights is critical in determining whether these constitutional provisions are meaningful in their guarantees. Third, the characteristics of the Indian case and its focus on food rights highlight the tensions that can be associated with the practical fulfillment of aspirational social and economic rights. In addition to its prominence in theoretical debates over rights, the right to food perhaps best exhibits the sheer difficulty of enforcing social and economic (or positive) rights, especially within a democratic and capitalist state such as India. Fifty percent of the world’s hungry live in India, and 35% of India’s population is classified as “food insecure,” meaning that they consume less than 80% of their minimum energy requirements. Over half of all Indian children under five are malnourished. Thus, the emergence of a right to food movement in India seems entirely understandable due to the considerable grievances of the poor; yet at the same time the movement is confounding due to the seeming impossibility of ensuring that each of a billion individuals actually receives the food to which they are nominally entitled. In short, the expectations of a right to food by the Right to Food Campaign stand in stark contrast with the reality of the situation of hunger in India.

A recent *Economist* article states that while many Indians are in dire poverty and are poor in assets, they have recently “grown rich with legal rights.” The same article ponders whether Indians’ newfound social and economic rights, while rhetorically useful, remain only aspirational and utopian goals, or truly represent real progress and possess practical implications for policy and human development. While skepticism is justified regarding the utility of a right to food in

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alleviating hunger, there are also reasons to be hopeful. For example, the Mid-Day Meal Program, one of the pre-existing food schemes converted to a legal entitlement, is now reaching 55 percent of Indian Children. This is a dramatic improvement since judicial intervention to ensure more adequate implementation.

In short, the right to food has “emerged as a powerful and growing force for social mobilization, empowerment, and reform.” Studying the current right to food case in India enables an understanding of several hot-button topics in politics today, including but not limited to: rights-based approaches to development and food insecurity; factors affecting the adjudication of social and economic rights; and the role of social movements in influencing litigation to achieve rights. In the words of Bilchitz, the RTF case provides “a ringing endorsement of allowing courts to adjudicate socio-economic rights claims.”

Roadmap

This thesis seeks to understand what caused adjudication of the RTF to be viewed as a feasible vehicle for alleviating hunger in India, and seeks to identify the factors that have contributed to the adjudication being successful. How and why has the judicial system in India functioned as a viable pathway through which the poor gained their right to food, while it has not in the past? I argue that a broad-based social movement created by the RTF Campaign has

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6 The Mid-Day Meal Program has since changed its name to the “School=Lunch” program.
7 Ibid., 243.
10 Following Gauri and Brinks (2008), I refer to “formal” or “legal” rights when discussing the poor “gaining a right to food.” Formal rights may be understood as “written statements in which a normative claim regarding what one is due has been incorporated into the state’s legal framework.” In the case of India, the formal/legal RTF was gained when the court made its judicial decision regarding RTF in People’s Union for Civil Liberties v. Union of India & Others. Yet, turning a RTF into a reality refers to implementation and enforcement of a formal right to food. Both obtaining a formal RTF and succeeding in having that right implemented may be understood as gains.
been advantageous, if not critical, in ensuring successful adjudication of the legal right to food and in ensuring the right’s implementation.

In chapter two, I illustrate some of the tensions and complications associated with adjudication of the right to food by examining scholarly debates over what the right to food entails, how the right to food should be implemented, and the legitimacy of litigating social and economic rights. These questions and concerns are the subject of considerable debate in the India case.

With an understanding of scholarship associated with RTF, in chapter three I search for factors that have affected RTF adjudication attempts in India. I discuss a previous RTF case (Kishen Pattnayak vs. State of Orissa, 1989) as well as several factors that I view as influencing the success of social and economic rights litigation attempts, namely, legal opportunity structure and public rights rhetoric. An inadequate legal opportunity structure and a lack of public rights rhetoric surrounding RTF existed at the time of the previous case in 1989, and did not allow for the creation of broad support for RTF in the public or in the Supreme Court. However, I posit that a new legal opportunity structure that presented itself in the 1990s allowed for an opening through which the RTF Campaign and the RTF social movement arose.

The RTF Campaign has increased rights discourse and public action and has made the litigation and enforcement of social and economic rights a reality in India. In chapter four, I argue that the existence of the well-organized RTF Campaign is the most significant factor explaining the difference in result between the previous right to food case and the current RTF case, People’s Union for Civil Liberties v. Union of India & Others. I survey the tactics of the RTF Campaign and the effects of its practices on RTF adjudication and implementation. I also demonstrate that the RTF Campaign and the broad public support it has sown is precisely what is
necessary for achieving, implementing, and monitoring a right to food in India. Finally, I address limits of the RTF Campaign’s effects on RTF. In chapter five, I will draw several conclusions about the direction of food rights’ adjudication and rights-based development, and point to avenues for further research. Before delving into the topics listed above, the following provides a brief outline of the possible legal tools for arguing in favor of a right to food in the courts, and also summarizes the Indian RTF Case and the relevant actors involved.

The Right to Food: Mechanisms for Legal Enforcement

References to the obligation to respect, protect, and fulfill a right to food are laid out in both India’s constitution and within international global governance documents. While judicial decisions in India relating to the RTF rely on India’s national constitution (mainly Article 21), an understanding of the international legal tools that Indian citizens have further utilized as a basis for their legal demands is also significant. In addition, international law is connected to global trends and rhetoric that influence India’s national politics, the judicial system, and the RTF Campaign.

While India has neither signed nor ratified a bevy of international human rights treaties, it is a party to the primary international treaties which refer to RTF, notably, the Universal Declaration of Human Rights (UDHR), The International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR). The ICCPR states that a people may not be “deprived of its own means of subsistence,” while Article 25 of the UDHR states more specifically that “everyone has the right to a standard of living adequate for the health and well-being of himself and of his family,

including *food*, clothing, housing and medical care and necessary social services.” Article 11 of ICESCR further calls for the “right of everyone to…*adequate food,*” in addition to “recognizing the fundamental right of everyone to be *free from hunger.*” Increased international attention to RTF was also exhibited through the first World Food Summit, the adoption of the Rome Declaration on World Food in 1996, and the creation of a Special Rapporteur on the Right to Food by the UN Commission on Human Rights. Although India is only bound to these treaties by soft law, the documents display mounting international concern for the right to food. This, in turn, has proved a factor in relation to justifications for the RTF in India.

Finally, in 1999, General Comment 12 was issued by the Committee on Economic, Social, and Cultural Rights, which more concretely defined RTF entailing “physical and economic access at all times to food…not interpreted in a narrow or restrictive sense which equates it with a minimum package of calories.” Further, General Comment 12 directly refers to the duty of national judicial systems in enforcing RTF, adding that “any person or group who is a victim of the violation of the right to food should have access to…judicial or other appropriate remedies at national levels,” and that the “incorporation in the domestic legal order of international instruments recognizing the right to food, or recognition of their applicability, can significantly enhance the scope and effectiveness of remedial measures and should be encouraged in all cases.” In short, international law heavily points toward the state as the

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12 Emphases added by author.
14 I refer to soft law in contrast to hard law. There is substantial disagreement in the literature over the definition of hard/soft law. Soft law can be simply defined as law that is not legally and formally binding. Soft law can further include an agreement with vague content which, according to Schaffer and Pollack (2010), “leaves almost complete discretion to the parties as to its implementation…finally, if an agreement does not delegate any authority to a third party to monitor its implementation or to interpret and enforce it, then the agreement again can be soft.” For an outline of the debate, see: Gregory Shaffer & Mark Pollack, “Hard Law vs. Soft Law: Alternatives, Complements, and Antagonists in International Governance,” *Minnesota Law Review*, 94 (2010): 706-799.
16 Ibid., 135.
17 Ibid.
primary implementer with regards to RTF. With this in mind, how has India incorporated RTF into its domestic legal order?

Until the recent RTF Supreme Court case, RTF was only mentioned within the Indian Constitution’s “Directive Principles.” Directive Principles are goals and principles to be referenced while creating state policies that are not legally enforceable. For example, Article 47 (a Directive Principle) of the Indian Constitution reads, “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.” Thus, since 1949, the Indian constitution has supported RTF as a duty, albeit non-binding, of the Indian state. It is only through People’s Union for Civil Liberties v. Union of India & Others that the right to food has become binding and legally enforceable. The process by which RTF has come to be viewed as legally enforceable is described below.

**Background: The Indian Right to Food Case (2001-Present)**

As stated, the current RTF case grew out of the People’s Union for Civil Liberties v. Union of India & Others, brought before the Indian Supreme Court in 2001. By the year 2000, India had accumulated nearly seventeen million tons of food grain stocks. These stocks often lay rotting while Indian citizens remained hungry and even starved due to a lack of purchasing power. Soon, demonstrations formed against “hunger amidst plenty” and against the central and state governments for “sitting over food mountains.”

The precise origins behind the PUCL petition to the Supreme Court are difficult to pinpoint. However, authors Srinivasan and Narayanan point to a lawyer, Colin Gonsalvez,

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18 The idea for Directive Principles was borrowed from the Irish Constitution.
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approaching civil society groups in Rajasthan that were organized around the People’s Union for Civil Liberties (PUCL), and encouraging them to submit a writ petition to the Supreme Court of India. These civil society groups formed the base of the RTF Campaign. The initial petition submitted by the PUCL in Rajasthan aimed to mitigate hunger and starvation by focusing on the failure and negligence of national and state government authorities to provide minimum food requirements in Rajasthan and in other Indian states. This petition primarily focused on the government’s failing food public distribution system (PDS) and failing public works employment programs. In addition, the petition provided data backing up its charges of negligence. For example, it cited surveys conducted during 2001 in Rajasthan that showed that despite a food surplus in other regions of India, only one-third of the Rajasthan villages surveyed had a regular PDS system in place, while one-sixth of villages had no PDS system at all. Further, under the Famine Relief Codes in India, public works programs are mandatory in cases of drought and famine. Yet, these Codes were also nowhere close to being met in Rajasthan and other states afflicted by drought.

The petition was initially brought against the central Government of India, the Food Corporation of India (FCI), and the state governments of Rajasthan, Orissa, Chattisgarh, Gujarat, Himachal Pradesh, and Maharashtra. Its claims were largely based on Article 21 of the Indian Constitution, which makes no mention of a right to food but instead provides that, “No person shall be deprived of his life or personal liberty except according to procedure established by law.” The petition argued that the right not to be “deprived of life” included a right to food,

20 Ibid.
22 Ibid.
23 In total, there are twenty-eight states and seven “union territories,” which are areas without regional government that are ruled by the federal government.
basing this argument on a previous ruling by the Supreme Court\textsuperscript{24} 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.”\textsuperscript{25}

At first, the Supreme Court issued several orders related to PDS reform. To petitioners, this seemed like a minimal response considering the enormity of the problem. However, on November 28, 2001, the Supreme Court of India expanded the case, ruling that a series of government food programs were in fact legal \textit{entitlements} and guarantees for all Indian citizens. The Supreme Court declared in its ruling that the right to food is “one of the prime responsibilities of the Government - whether Central or State.”\textsuperscript{26} The Court proceeded to drastically expand the litigation, applying its constitutional ruling to \textit{all} state governments and affecting much more than the public distribution system and employment programs.\textsuperscript{27} Several of the most noteworthy interim orders handed down by the Court have been:

- The institution of the Midday Meal Scheme Program, under which all government primary schools must distribute a minimum of 300 calories and 8-12 grams of protein a day for a minimum of 200 days a year.\textsuperscript{28}
- The extension of food security benefits through expansion of the BPL (Below Poverty Line) card.
- Recognition that eight food security programs operated by the government constituted legal entitlements, and ordering their nationwide implementation. The eight programs included the Targeted Public Distribution System, National Old Age Pension Scheme, the Mid-Day Meal Scheme, Integrated Child Development Services, National Maternity Benefits Scheme, National Fertility Benefit Scheme, and Family Benefit Scheme.
- The institutionalization of two independent Supreme Court Commissioners responsible for monitoring the implementation of court orders by states.\textsuperscript{29}

\textsuperscript{24} Francis Coralie Mullin v. Adm’r, (1981).
\textsuperscript{28} Birchfield and Corsi, “Between Starvation and Globalization: Realizing the Right to food in India,” 696.

An extensive description of interim orders may be found at the Right to Food Campaign home page and in chapter three.
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- A requirement that all relevant orders be translated into regional languages to be displayed in public places, government buildings, and fair price shops, and which list the beneficiaries of all food schemes.

As of this writing, a final judgment has yet to be rendered, and interim orders will remain legally enforceable until the final judgment is passed down. Over fifty interim orders have been passed under the umbrella of the Right to Food Case, the most recent being an interim order (January 7, 2011) related to the inadequate construction of night-shelters for the homeless. This order indicates that the scope of the case is now expanding beyond the accessibility and availability of food to other social and economic rights (shelter, health) that relate to RTF.

In short, People’s Union for Civil Liberties v. Union of India & Others has become a “massive” litigation addressing a range of fundamental societal issues. According to the Right to Food Campaign, interim orders may run into thousands of pages and it is “very difficult for anyone, even the lawyers and judges, to keep track of all this material.” Importantly, the Supreme Court does not simply hand down intricate legal orders, but also closely monitors their implementation. The Indian Supreme Court has given legal obligations “teeth” by concretely describing what RTF entails and ensuring methods to oversee its enforcement. Further, the Court has appointed two independent “Commissioners” whose duty it is to collect objective data and ensure the enforcement of court orders. When interim orders have not been followed, the commissioners make sure that further court orders are issued to ensure that this is accomplished. As Birchfield and Corsi explain, the Supreme Court has not only declared a right to food, but also what the right entails, who enjoys it, and exactly how the state must ensure it:

30 Birchfield and Corsi, “Between Starvation and Globalization: Realizing the Right to food in India,” 697.
32 Birchfield and Corsi, “Between Starvation and Globalization: Realizing the Right to food in India,” 718.
33 Ibid., 245.
By engaging in something strikingly close to lawmaking, the Supreme Court has, through its series of interim orders, gradually defined the right to food in terms of what policies are required of the state and central governments in order for them to adequately fulfill their constitutional obligation under Article 21… reflecting an interesting display of judicial activism regarding food policy.\textsuperscript{34}

The Supreme Court’s pursuit of this activist path, and its transformation of an aspirational right to food into a legally enforceable right, has set India apart and makes it a “leader amongst nations seeking to legally enforce the human right to food.”\textsuperscript{35} However, the case has also sparked questions regarding the limits of judicial activism with regards to social and economic rights.

The above description of the development of a right to food in India has focused primarily on \textit{People’s Union for Civil Liberties v. Union of India & Others (PUCL)} and the direct ramifications of the writ petition brought before the Supreme Court. Yet, the legal proceedings are only a portion of the story. A wide array of influences caused the case to arise and have affected the case since its origin. For example, the organization of civil society groups around RTF has greatly impacted the trajectory of the case and its outcomes. In addition, there are a number of other ways in which the case has been influential on state politics, such as through altering the perception of the state’s role in socioeconomic affairs and the rights of the poor. These topics will be further addressed below.

\textsuperscript{34} Ibid.
\textsuperscript{35} Ibid., 718.
Chapter II: Social and Economic Rights: Tensions, Definitions, and Litigation

Before addressing the particularities of the Indian RTF case and attempting to understand the reasons for its success, it is useful to review previous scholarship regarding the right to food and the adjudication of social and economic rights. Addressing the literature can help to identify factors that explain the outcomes of the Indian case. This can be accomplished through examining literature that addresses social and economic rights, the right to food as an exemplar of a social and economic right, and debates over the justiciability of social and economic rights. In recognizing the complexities of these topics, one can better understand why a social movement would target the judiciary as a venue through which to gain food rights, and why the judiciary has served as a successful arena for social and economic rights in the Indian case.

Social and economic rights are often viewed as “inherently different” from civil and political rights. Exploring this distinction may help one to understand why the judiciary may remain cautious or idle in legally enshrining a right to food. For early rights theorists such as Locke, the purpose of rights was to preserve individual autonomy and to protect this freedom from government infringement. This conception of rights is the basis of those civil and political rights codified in many constitutions and international treaties today. When these first generation rights entered into the relationship between the sovereign state and the individual around the 17th century, individuals were considered, for legal and other purposes, as rational actors. Slowly, civil and political rights became considered inalienable and perceived as natural or god given rights. The locus of rights revolved around a right to retain those rights one was “born with,” including a right to one’s life and a right to “natural” freedom.

36 First generation rights are often associated with “negative rights.” However, some first generation rights are exceptions and are considered positive rights; for instance, the right to fair treatment of prisoners.
In the 20th century, governments and global institutions assumed larger duties in relation to this expanded view of rights, with the adoption of the *Universal Declaration of Human Rights* and later, *Covenant on Economic, Social, and Cultural Rights*. The universal rights declared by these documents reached far beyond the state-bound civil and political purposes that had originally framed the work of the early rights theorists. As an acceptance of second-generation (social and economic) rights spread on a global level, individuals began to reconceive the role of government and call upon governments to fulfill what they believed to be their individual entitlements: work, food, leisure, and anything else that allowed for an adequate, dignified, and basic standard of living. Moreover, with this change in the relationship between the sovereign state and the individual, and a budding conversation surrounding socioeconomic rights, individuals began to view the foundational right to life – the very essence of what one “born with” – as encompassing a wide range of entitlements that government should ensure, including the right to food.

In short, with a wider range of entitlements came a wider range of corresponding duties that required fulfillment by some actor(s). But while respecting civil and political (negative) rights often requires little more than inaction by the duty bearer(s), ensuring social and economic rights frequently requires considerable affirmative action by the duty bearer(s). This difference in the scope of government obligations, and disputes about the practical ability of governments to fulfill these obligations, has prompted a vigorous debate as to the status and legitimacy of social and economic rights. Prominent rights theorist Maurice Cranston views the distinction between the steps necessary to effectuate civil and political rights, and those necessary to effectuate social and economic rights, as critical, and argues that the two sets of rights possess correspondingly distinct “moral dimensions.” In that regard, he labels economic and social rights as ideals and
aspirations rather than practical goals.\textsuperscript{37} He explains that while civil and political rights can be secured fairly easily by the state, the same does not apply for social and economic rights because there is no uniform or simple way to transform the rights into clear legal and political duties and actions.\textsuperscript{38} In fact, Cranston uses India as an example to back his claim. He states that the government of India “simply cannot” orchestrate the resources necessary to guarantee each citizen an adequate standard of living.\textsuperscript{39} Others counter that undermining a right’s legitimacy by pointing its feasibility is erroneous.\textsuperscript{40} Scholars such as Henry Shue take this position, arguing that subsistence rights are also basic rights because other rights cannot be secured until subsistence is secured. For instance, a person cannot exercise his or her right to vote if he or she is too weak or sick from hunger to reach the polling station.\textsuperscript{41} Shue understands human rights as inextricably linked and argues that a false dichotomy is drawn between social and economic and civic and political rights.\textsuperscript{42}

The differences in views between Cranston and Shue reflect, in part, a debate about prioritization and the relative merits of first and second-generation rights.\textsuperscript{43} While the degree of polarization between these competing conceptions can be exaggerated, the key insight underlying the debate is that different rights require the fulfillment of different corresponding duties. For some scholars, the corresponding duties associated with social and economic rights negate the legitimacy of the rights themselves.

\textsuperscript{38} Ibid.
\textsuperscript{39} Ibid., 51.
\textsuperscript{41} Ibid.
\textsuperscript{42} Ibid., 7.
\textsuperscript{43} For more information concerning the debate between social/economic rights and civil/political rights, see: Sen (1999, 2005); Sen & Dreze (1989); Donnelly (2003); Eide (2002); Waldron (1984); Rawls (1971,1999); Nickel (2006); Talbott (2005); Dershowitz (2004); Hart (1955); Beetham (1995); Howard (1987); Orend (2002); Hodgson (1998); and Dworkin (1978).
In the case of the right to food, how are these duties fulfilled, and by whom? In India, RTF implementation is viewed as the responsibility of the state. However, what if there is a shortage of food to give to those in need, or the government lacks the financial means to fulfill its duty? Is a right to food only legitimate when there is an “adequate supply or excess,” such as currently exists in India? Moreover, does the government have the authority to equalize food distribution amongst the citizenry- or does this take away others right to property? What if a person who is fully able to provide for him or herself simply does not do so- does he or she have a right to food when they go hungry? Further, what “agents of accountability” will be in place to ensure that the duty bearers fulfill their obligations to the individual?\textsuperscript{44} The following sections will address some of these tensions associated specifically with the right to food.

The Right to Food as a Social and Economic Right: Emerging Discourses and Strategies

The right to food can be viewed as representative of other social and economic rights in that, like others, its legitimacy and the feasibility of its implementation are both points of contention. Prior to examining the judicial system as one area where RTF can be enforced, addressing scholarship on the right to food more closely may illustrate some of the tensions associated with defining, measuring, and implementing RTF and other social and economic rights. This section will explore two areas of scholarship on the right to food that various actors, including the RTF Campaign, are invoking: first, scholarly debates over what the right entails, and, second, scholarship on the right to food’s implementation. I will survey competing literature in these areas, pointing to divergences, similarities, and general trends. I will also point to gaps in the literature where scholarship is lacking and necessary. By scrutinizing the issues, I hope to

draw conclusions about the current direction of literature that discusses RTF, and demonstrate why the unusual outcome of the RTF litigation is India is an area that insufficient attention has been paid to and that needs to be explored further.

**What Constitutes a Right to Food?**

Debates in scholarship over what constitutes a right to food can be viewed at the highest level as divided into two categories that interpret the question “What Constitutes a Right to Food?” differently. I will refer to one category of the scholarship on this matter as “literalist” and the other understanding as “comparativist.” Within the literalist group, subgroups of authors understand RTF through the lens of the international governance framework and debate word-for-word what the right indicates and what may be derived from it. These authors are focused on quantitative and qualitative definitions of RTF. Within the “comparativist” group, authors perceive the right to food as encompassing and overlapping with other approaches to mitigating hunger, notably food security\(^{45}\) and food sovereignty\(^{46}\) approaches. Rather than addressing the RTF as an absolute solution to hunger, they attempt to define RTF within and in relation to other approaches. As this paper focuses solely on RTF as a goal in India, I will only address “comparativist” framings insofar as they relate to the adjudication and implementation of RTF.

With this in mind, I proceed to address “literalist” framings.

\(^{45}\) Definitions of food security and food sovereignty may be just as contested as definitions of RTF. Mechlem (2004, p. 633) cites food security as having an estimated two hundred definitions and four hundred fifty indicators. For the purpose of this essay, I will follow the Food and Agricultural Organization (FAO and define food security as “when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food” (The Right to Adequate Food: Fact Sheet Number Thirty-Four. http://www.ohchr.org/Documents/Publications/FactSheet34en.pdf). Indeed, food security sounds closely related if not identical to RTF. For many, food security is the end goal of possessing a RTF, while for others RTF is a goal in itself.

\(^{46}\) Food sovereignty may be understood as “the right of individuals, communities, peoples, and countries to define their own agricultural, labor, fishing, food and land policies, which are ecologically, socially, economically, and culturally appropriate to their unique circumstances. It includes the true right to food and to produce food, which means that all people have the right to safe, nutritious, and culturally appropriate food and to food-producing resources and the ability to sustain themselves and their societies” (International Planning Committee for Food Sovereignty, Definition of Food Sovereignty, http://www.foodsovereignty.org/FOOTER/Highlights.aspx). Food sovereignty is viewed as encompassing RTF, but may also be viewed as emphasizing the “right to produce” more so than RTF.
“Fulfillment of a right to food” may initially imply the guarantee by some actor of enough food for a person’s basic sustenance, or what a person requires to stay alive from day to day. However, meanings of a “right to food” and even the word “sustenance” are contested within literalist scholarship. The United Nations and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) utilize the language of a “right to adequate food,” which literalist authors commonly refer to when speaking of RTF. Under international human rights norms, “the right to adequate food is realized when every man, woman and child, alone or in the community with others, has physical and economic access at all times to adequate food or means for its procurement.”47 Within ICESCR, states are required to provide an overview of the degree to which the right to adequate food has been realized in their nation through tools such as nutritional surveys.

While some authors agree with this definition and its aims, and agree with the rights approach, they protest explaining what defines a right to food in international law with an equally contested adjective, “adequate.” Craven views the definition of “adequacy” as contingent on other factors and contested terms, and thus nearly impossible to define. For instance, Craven points out that adequate food can be dictated by determining at what point it gives the person eating adequate health- yet adequate health is equally contested, and differs across individuals.48 Symonides discusses “adequacy” by splitting the term into various elements, and contends that adequacy can only be met if all components are addressed. Among them is cultural acceptability, fulfillment of nutritional needs, food’s quality for one’s health, and even its “taste and texture.”49

Through discussing the intricate potential meanings of adequacy, Craven and Symonides display

how dependent meanings of adequacy are on a variety of factors, and thus how difficult defining and implementing RTF is.

For Symonides, nutritional needs are an essential component of the right to adequate food. Yet for authors such as Dreze, the very problem with RTF is that it does not address nutritional needs. Dreze views RTF as implying “freedom from hunger,” which places importance on caloric intake and quantitative factors. He believes that a “right to nutrition,” by contrast, addresses clean water, basic health care, good hygiene, and other inputs that are essential to healthy consumption.  

Hence, Dreze’s definition of a “right to nutrition” in fact matches Symonides’, Craven’s, and Kent’s ideas regarding a component of RTF. Michael Craven agrees with Dreze and the other authors that RTF should be related to adequate nutrition and not simply caloric intake, yet he opposes Dreze’s idea that RTF implies “freedom from hunger.” He views the right to “freedom from hunger” as a “sub-norm,” implying only freedom from starvation and nothing more, while he views RTF as requiring a level of food that is “consonant with human dignity.”

Kent also utilizes the term “dignity” in order to draw a contrast between a “need for food” (or a “freedom from hunger”) and what he terms a human “right to food.” He justifies this distinction by describing a hypothetical scenario involving chained prisoners. While the chained prisoners may be provided the amount of food they need for their physical survival, Kent argues that fulfilling a biological need for food is separate from fulfilling a right to food. He claims that one’s right to adequate food is not being met “if [the prisoners] are fed prepackaged rations or are fed from a trough” because human rights are “about upholding human dignity, not

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52 Ibid., 306.
53 Kent, *Freedom from Want: The Human Right to Adequate Food*, 46.
only about meeting physiological needs.”

Mechlem also employs the idea of “human dignity” that Kent uses to compare RTF to “freedom from hunger,” but she uses it to compare food security to RTF. She also presents a scenario: “people living off garbage dumps can be food secure…yet their right to food is still not fulfilled, as picking rubbish is incompatible with their human dignity.”

The idea of “human dignity,” used to differentiate a right from a need, certainly complicates arguments about RTF adequacy and, more broadly, about what constitutes adequate fulfillment of a social or economic right. In that regard, some authors point to the universality of ideas of human dignity as giving value to all human rights. Donnelly states that “human dignity is the foundational concept of the global human rights regime” which gives coherence to rights.

However, a conflation of dignity and rights is no less problematic than a simple dichotomy between needs and rights. Are those notions important complements or potential obstacles to implementing immediate solutions to pressing life-and-death problems, and to the willingness of judicial or other authorities to assume such responsibilities? While space constraints prevent me from fully analyzing these questions here, what is important for current purposes is the recognition that some authors view RTF as going far beyond the assurance of “adequate” food levels and into qualitative debates about in what fashion food should reach the poor.

While there seems to be no consensus as to what RTF entails, there are nonetheless broader levels of consensus that can be identified amongst the authors who have written on these definitional questions. First, there is a consensus regarding the very difficulty of defining the right to food. This difficulty is manifest in the multiple layers of disagreement over each term.

54 Ibid., 47.
associated with RTF. What is “adequate” food or health? What is “culturally acceptable?” What is “clean”? The questions posed by authors are the very same questions that the Indian judicial system has struggled with throughout the RTF case. Second, despite their inability to agree on precisely what the definitional components of a RTF should be, it is clear that most authors view RTF as going beyond a minimum assurance of enough food for basic survival.

**Enforcement and Implementation of the Right to Food**

While one can advocate for a right, the advocacy remains nothing but an abstraction in the absence of some concrete corresponding obligation. The obligation for fulfilling that right must be eventually placed on some actor(s), such as the Supreme Court and the executive branch in the India case. Thus, while debates over whether the right to food is a viable and feasible right are significant, for the remainder of this section I will assume that RTF is a viable and enforceable right. I will analyze scholarship that deals with the right to food’s potential and actual implementation. I ask what roles existing scholarship sees various actors playing in ensuring the right to food for the poor. What can be learned from this scholarship about trends in implementation efforts of RTF?
Assuming the existence of a RTF, should such a right be imposed and fulfilled at the local, regional, national, or international level? Should such a right be created and/or enforced by the private sector, NGOs, or government? The diagram above, created by Kent, has been labeled a “ring of responsibilities,” a “responsibility hierarchy,” and “the metaphor of concentric circles morality.” It suggests that those that are “closest” to the individual in need have the greatest responsibility in providing for him or her. When a level of society fails to meet its duty, a higher level should be there to take its place. As illustrated, when a child fails to get sustenance from his or her family, sections of the local community should become involved, and if the community cannot provide for the child, local and/or non-local NGOs and the government then step in. Kent utilizes this diagram to display that while an individual has the responsibility to provide for him or herself, the responsibilities of others are magnified when an individual’s capacity to do this is limited, often by structural forces. However, Kent omits actors that other scholars view as central in implementation efforts, such as the private sector and broader civil society. In addition, Kent views each ring as stepping in only when the one below it fails, ignoring the possibility that all levels could work in tandem to implement RTF. Most scholarship that discusses the right to food’s implementation does so from the following perspectives: a global governance perspective; a state perspective; a civil society perspective, and a market-oriented perspective. In addressing these perspectives, is important to note that when an author discusses RTF implementation from a civil society perspective, for instance, he or she is not necessarily implying that civil society should be the sole implementer of RTF. Instead, the authors are speaking about the roles that various institutions, groups, or individuals can play in implementation, which may or may not indicate them being the principal actor responsible for enforcement.

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58 Ibid., 8.
As mentioned, Kent leaves both international and domestic private sector institutions out of his diagram. Few authors address the role of the private sector in RTF implementation. However, those authors that do address the private sector typically claim that private sector international economic institutions must play an important role if there is eventually to be successful implementation of a right to food. Weissbrodt and Kruger cite the UN Sub-Commission on the Promotion and Protection of Human Rights’ adoption of the “Norms of Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights” as a significant step in that regard toward the RTF’s implementation. Narula points out, though, that the international human rights legal framework is not prepared to deal with violations committed by those transnational corporations or international financial institutions (IFIs) that oppose actions designed to implement RTF because the actions are contrary to their corporate financial interests. In response, Skogly frames human rights as an “opportunity” for IFIs to develop more policies toward human development. Yet, neither Narula nor Skoggly offer concrete ways that IFIs or other private institutions should assume greater responsibility for fulfilling a right to food.

While scholarship may be fairly silent when it comes to the private sector’s role in RTF, it is dominated by literature that views international governance mechanisms as key in assisting RTF implementation. When authors such as Kent, Craven, or Symonides address a right to food, they assume implementation as laid out in the CESC. They explain the various international mechanisms through which actors may demand their RTF or through which states may implement RTF. International institutions also contribute to this literature by providing

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resources, such as the “Toolbox on the Right to Food.” This guide helps nations to legislate policies that will increase food security. This literature is more directional than analytical or critical.

“State-oriented” authors view the state as the ultimate duty-bearer of implementation. However, most do not elaborate on how the state is to form policies to meet these requirements. Gaiha views the right to food as a right to policies (“a right to a right”) enacted by the state, and objects to frequently cited claims that implementing RTF is too costly, impossible to enforce, or would undemocratically redistribute resources.\textsuperscript{61} For Gaiha, state implementation of RTF is not about giving people food. Rather, state implementation should enable people to produce or procure minimum food requirements through policies, such as those that increase employment opportunities. Gaiha also discusses state implementation through legal adjudication of the RTF. She notes that “despite considerable resistance” the right is being proved legally enforceable in the cases of South Africa and India. Further, she refers to these cases as helping to undermine the assumption that civil and political rights are justiciable while social and economic rights are only aspirational.\textsuperscript{62}

Vidar concurs with Gaiha in her paper “State Recognition of the Right to Food at the National Level,” in which she addresses Gaiha’s discussion of the need for concrete state enforcement mechanisms. Vidar analyzes 203 state constitutions and classifies them in various ways. She claims to find support for the view that social and economic rights are enforceable by identifying twenty-two constitutions that make direct mention of a right to food, forty-six which protect a broader right such as a standard of living, and thirty-seven which contain provisions on a minimum wage. However, Vidar’s review of constitutional protections of RTF is problematic

\textsuperscript{62} Ibid., 4270.
because it does not differentiate between justiciable\textsuperscript{63} and non-justiciable provisions.\textsuperscript{64} She does, however, identify several countries as clearly having justiciable provisions, such as Switzerland (since 1996), India (ongoing), and South Africa (1994).\textsuperscript{65} Vidar ends in a similar fashion as Gaiha, pointing to the fact that there have been few cases “adjudicated on the basis of provisions related to food rights…As more cases build up, the ways and means by which effective remedies for violations of the right to food can be provided will become increasingly clear.”\textsuperscript{66}

Gaiha, Vidar, Rana, Birchfield and Corsi, and Gauri and Brinks also discuss the role of domestic courts in RTF. Gauri and Brinks have written one of the only books on the justiciability of social and economic rights, \textit{Courting Social Justice}, in which they discuss litigation efforts with respect to social and economic rights in Brazil, South Africa, Nigeria, India, and Indonesia. They view the “legalization of policy” as dependent on a country’s structures, politics, and other contingent factors, and conclude that there is a new policy landscape in the developing world for legalizing social and economic rights. Birchfield and Corsi discuss the RTF litigation in India as indicative of this “new landscape.” They point to new policies developed in India as a result of this litigation, such as the current development of a National Food Security Act to solidify various policies aimed at bettering food distribution and means for the procurement of food. Finally, they end by pointing to an interesting relationship between the Indian courts (acting through the Supreme Court Commission on the Right to Food) and civil society (represented by the Right to Food Campaign). Gaiha also discusses the place of NGOs in advocacy for RTF, as

\begin{footnotesize}
\textsuperscript{63} Justiciability refers to the kinds of matters that courts can or are willing to adjudicate, or make formal judgments about. If a case is non-justiciable, a court cannot or will not hear it. In some countries, certain constitutional provisions are merely aspirations and are not in fact justiciable. See, for instance, the directive principles in India. The RTF or any right is made justiciable when a formal judgment and acknowledgement of the right is made.
\textsuperscript{65} Ibid.
\textsuperscript{66} Ibid., 14.
\end{footnotesize}
well as acting as “watchdogs,” but primarily through participation in CESCR at the international level.\textsuperscript{67}

Michael Windfuhr of FoodFirst and Action Network (FIAN) views the activities of international and national NGOs as one of the most important reasons that RTF is now granted more attention at both the national and international levels. Windfuhr points to various strategies utilized by national NGOs, such as monitoring budgets to pinpoint inaction, rallying for national legislation, or using the national judicial system.\textsuperscript{68} He notes that an increasing number of local NGOs, social movements, and community-based organizations are calling for their food rights by utilizing social and economic rights rhetoric in a way that has not occurred previously. However, he states that comparatively, few non-governmental organizations that address hunger are explicitly labeling their work as “rights” work.\textsuperscript{69}

\textbf{Conclusions Regarding RTF}

The above literature review explored issues regarding RTF, including what the right entails and the potential responsibilities of various actors in implementation. Given this scholarship, what conclusions can be drawn about the current state of RTF in politics, and how can this be related to the RTF Case in India? RTF is a concept that can simultaneously be spoken of as an end goal, an approach to eradicating hunger, a mobilizing discourse, and a political strategy. While this can be spun positively to allow RTF to be viewed as a dynamic and flexible concept that can be appropriated in many contexts and by many actors, it is also representative of definitional inconsistency that can inhibit scholarship and implementation. Further, because there

\textsuperscript{67} Gaiha, “Does the Right to Food Matter?” 4269.
\textsuperscript{69} Ibid., 3.
are no neatly drawn lines when it comes to discussing RTF in relation to other goals, discourses, and strategies related to food grievances, scholars are at times inhibited from relating to each other due to the wide range of conflicting definitions and understandings of nearly every term they are using. What contemporary authors are not agonizing over in scholarship about RTF is whether a right to food is valid at a more conceptual level. Rather, scholars have begun to focus on examining RTF’s feasibility through examining implementation efforts.

There are numerous gaps and trends throughout the literature that allow one to realize why it is important to examine RTF’s implementation in India more closely. While descriptive research of RTF implementation efforts exists, normative accounts by scholars (as opposed to activists) are largely absent. When implementation is addressed descriptively, the literature points towards the right to food being most successfully enforced at the national level through legislation and through the judicial system. Authors also point to a newfound understanding of social and economic rights, and particularly RTF, as a “justiciable, reviewable, expandable, enforceable, constitutional, inviolable, right.” India’s RTF case serves as a case study of implementation at the national level through the judicial system within a literature that lacks case studies of implementation and which points to adjudication as a promising yet under-researched vehicle for the RTF.

**Litigating Social and Economic Rights: Questions of Legitimacy**

As noted, the judicial system is one arena for potential enforcement of RTF, and it is the arena through which the RTF is being granted and monitored in the Indian case. However, because of some of the difficulties associated with defining and implementing social and economic rights, discussed in the preceding sections, litigating social and economic rights is still

70 Birchfield and Corsi, “Between Starvation and Globalization: Realizing the Right to Food in India,” 762.
controversial. Thus, a discussion of the legitimacy of utilizing the courts to address social and economic rights is necessary to inform an analysis of the Indian RTF case.

Arguments that address the legitimacy of courts in granting social and economic rights arrive at the topic from various angles. Some of these arguments are familiar, positing social and economic rights as illegitimate, unenforceable, and inherently vague. For instance, arguing against the right to food constituting a “legal right,” Vierdag states that “in order to be a legal right, a right must be legally definable; only then can it be legally enforced.” This is a reprise of objections regarding the difficulty of defining social and economic rights discussed earlier.

Authors such as Langford, Nolan, and Van Hoof seek to dispel the “myth” that social and economic rights are “inherently vague,” claiming that this concern is intellectually dishonest. Pointing to the equivalent “vagueness” of civil and political rights, such as the right to freedom of speech or the right to vote, Langford and Nolan claim that it is only a matter of time before an increase in litigation related to social and economic rights will result in a broader consensus regarding the scope of these entitlements. The authors insist that the broad consensus that has emerged with regards to the entitlements of civil and political rights is only due to the expansive case law that emerged with relation to civil and political rights in the 20th century. In fact, the authors point to India as an exemplar of their hypothesis, stating that the increasing litigation relating to social and economic rights is giving “significant substance” to rights. Langford postulates that the burgeoning case law may in fact resolve the debate over whether economic

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Ibid.
and social rights can be denied entitlement because of their “vagueness” and supposedly unfeasible adjudication.\(^{74}\)

However, one cannot simply call on several examples of successful litigation to prove that the adjudication of social and economic rights is legitimate. Indeed, Langford fails to take into account or mention qualitative differences between civil and political rights and social and economic rights. In particular, Langford neither acknowledges nor addresses the distinction, mentioned earlier, that vindication of social and economic rights requires significant \textit{action} (i.e. social policies), while preservation of civil and political rights typically requires \textit{inaction}. Other authors arrive at the debate from precisely this angle, concerned about the legitimacy (and competency) of adjudication due to the qualitatively different types of entitlements derived from the adjudication and implementation of social and economic rights. These entitlements often refer to public policies that may be dauntingly complex, entail redistribution of resources, and cost the government significantly more money than required to preserve civil and political rights. Thus, authors such as Smith pose the question of whether judicial power includes the authority to shape public policy, rather than only to review policy. A major line of reasoning against the adjudication of social economic rights is that public policies created through litigation are created in an undemocratic fashion, without citizen participation or citizen accountability.\(^{75}\) This argument views courts as infringing on an area reserved for \textit{elected} branches of government by making decisions that result in policy changes, and most importantly, resource allocation. Further, Langford points to a “snowball effect” that may occur if courts set a precedent of granting social and economic rights to the poor.\(^{76}\) If social and economic rights continue to be


established through adjudication, this will encourage the adjudication of more social and economic rights. Eventually, the argument states, it will be difficult to separate policy making from judicial decision-making.

But these arguments, in turn, have been subject to challenge. First, some authors question the “romantic” notion that public policies instituted by elected officials are themselves truly the result of democratic processes. They note that powerful lobbying groups, or wealthy and elite interests, often effectively control policy-making regardless of the preferences of the citizenry at large.77 Second, if one’s conception of democracy is expanded from resting solely on electoral accountability to also protecting individuals’ rights – as a predicate measure essential to ensuring meaningful democratic participation -- the adjudication of social and economic rights, viewed as “judicial policy-making,” may be framed as sustaining democracy, and therefore perhaps as legitimate.78 Smith points to the importance of rights in democratic systems and the duty of the judicial system to make decisions in the name of the public good, even if these decisions conflict with the popular will. For example, in the case of Switzerland, the Swiss Federal Court has justified the right to minimum subsistence as an “indispensable component of a constitutional, democratic polity.”79 However, it bears noting that this argument for the legitimacy of adjudicating social and economic rights depends on a justification that is indirect and instrumental in nature (e.g., these rights should be recognized in order to sustain democracy) rather than allowing the rights an intrinsic value which justifies judicial involvement.80

77 Smith, Courts and Public Policy, 24.
78 Ibid., 23.
80 Ibid.
As described above, positive rights can result in heavy financial costs on society that civil and political rights usually do not. Further, Usher points out that social and economic rights are more “polycentric” than civil and political rights, involving more actors and more government schemes for their fulfillment. However, some authors view the contentiousness of or legitimacy of social and economic rights litigation as dependent on multiple factors. Usher views the adjudication approach taken by a given court and its perceived legitimacy by the population as resting on various factors, namely, the country’s level of available resources, the political consensus on wealth redistribution, and the people’s level of trust in the judicial system versus typical policy-making branches. For instance, if a country’s resource levels are not capable of meeting the populations’ needs, litigating social and economic rights and altering food distribution through the judicial system may be viewed as illegitimate. However, if citizens have lost trust in typical policy-making bodies (e.g., because they are viewed as corrupt or the captive of special interests), the judicial system may be viewed as a legitimate means of gaining social and economic entitlements. Hence, it becomes clear that the legitimacy of the adjudication of social and economic rights in a particular circumstance may be less a matter of philosophical considerations than a function of specific circumstances that influence perceptions of the legitimacy of actors (for example, the courts and elected officials) in a given context.

Other scholars, such as Pierterse, conclude that the legitimacy of social and economic rights adjudication may rest on the political climate of a given nation. Pierterse states that “it is often argued that judges should stray onto ‘political terrain’ only if they proceed on a moral premise shared by society…the clearer the shared articulation of justice…the less problematic

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82 Ibid., 158.
83 Ibid., 154.
84 Ibid.
becomes judicial review in the social terrain.” Gauri and Brinks agree that the courts are never free of political pressures, and can advance social and economic rights only under certain conditions that preserve the perception of their own legitimacy. Going further, they state that judges are less likely to take positions that will arouse “strong opposition from important political actors,” and that, generally, “courts are more effective when working within, rather than against, the dominant currents in the political and policy environments.” If this is the case, it seems that when social and economic rights litigation does arise, it may be much more likely to be successful and to be viewed as legitimate if it is reflective of existing public sentiments rather than an attempt to act against the grain of public opinion.

Thus, it seems that the same theorist may view the litigation of social and economic rights as legitimate in some scenarios and illegitimate in others, depending on these context-specific considerations. The perception of the legitimacy of the legalization of social and economic rights in any country, and depending on the right in question, is then closely tied to an “intricate interplay” of factors. Langford also points to factors such as the level of social organization at the society level and the peoples’ satisfaction with their legislature as factors that affect the perceived legitimacy of litigating social and economic rights. In addition, he points to a “culture of litigation for human rights,” and a culture that legitimizes human rights generally. This broader acceptance of human rights can affect the success of litigation attempting to establish social and economic rights.

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85 Ibid., 157.
87 Ibid., 6; 26.
Conclusions on Litigating Social and Economic Rights

The debates discussed above illustrate the controversial nature of using the courts as a pathway for gaining social and economic entitlements. There are tensions and controversies associated with the adjudication of social and economic rights that exist at a theoretical level, irrespective of the country or right involved. However, at a practical level, the literature points to perceptions of adjudicative legitimacy as being contingent on an array of variables. Adjudication seems to be neither an “unambiguous pathway to social equity” nor an “illegitimate betrayal” of more common democratic processes that usurps the role of elected institutions. Rather, there seems to be leeway with regards to when adjudication is accepted or rejected by scholars, judges, citizens, and other actors. The question, then, is how and when the judicial system may be viewed as a legitimate pathway for gaining social and economic rights with reference to India. As Gauri and Brinks mention, courts can only advance social and economic rights under certain conditions. What are the conditions in India that have permitted this to happen? It is apparent at the outset that people’s trust in the judicial system in India is higher than their trust in policy-making branches, a condition that Usher identifies as important for the courts’ “workability.”

Following Gauri and Brinks, we can divide the litigation of social and economic rights into four stages that will prove useful in contextualizing developments with respect to the India case. These are (1) legal mobilization, (2) the judicial decision, (3) the political response, and (4) follow up litigation.89 The remainder of this thesis will focus primarily on steps one and two in the litigation life cycle in an attempt to assess how the right to food has been enabled as a justiciable right, and how strategic actors have enabled this legalization process to move forward.

I will now turn to the Indian case to examine why and how the judicial system in India has served as a viable pathway through which the poor have gained their right to food. The

89 Ibid., 4.
successes and failures of the Indian RTF case and the movement surrounding RTF enable a more comprehensive understanding of when a judicial system should and should not be strategically utilized to petition for redress of social and economic grievances.
Chapter III: Addressing the Right to Food in the Indian Supreme Court

What are the factors that affect the success of attempts to address food grievances through the judiciary? Why have past attempts at adjudicating RTF been less successful than the current RTF case before the Indian Supreme Court? In attempting to answer these questions, I will briefly explore a previous right to food case together with several factors that I view as influencing the success of social and economic rights litigation attempts. There are many factors that influence litigation. For instance, the quality of lawyers, judges, plaintiffs, and defendants are all variables that help determine the outcome of any case, in addition to more structural variables such as the constitution or current political structure. I focus here on legal opportunity structure and public rights rhetoric, two variables that impact the reality of broad public and judicial support of the right to food. I hypothesize that an insufficient legal opportunity structure and a lack of public rights rhetoric aimed at a “right to food” existed at the time of the previous case, Kishen Pattnayak vs. State of Orissa, and thus did not allow for the creation of broad support for RTF in the public or in the Court. In the next chapter, I will illustrate that this broad public support, in the form of a social movement, is precisely what has been necessary for achieving, implementing, and monitoring a right to food in India.

Conducive Legal Structure

In many cases, the poor view the law as an obstacle rather than an aid. Onerous and lengthy procedures, financial costs, and living in isolated, rural settings all disable the poor from petitioning their grievances before the courts. Judicial procedures are viewed as possessing a “tendency to exclude and alienate” rather than welcome disadvantaged and marginalized.

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91 Ibid.
Nora Graham

citizens.\textsuperscript{92} In addition, authors point to the alienation of the poor from the legal system as being greater in developing countries.\textsuperscript{93} Legal frameworks in developing countries have seldom enabled “and in some cases even hindered, the poor to seek ways of escaping poverty.”\textsuperscript{94} Thus, in order for the poor to be able and willing to frame their grievances as legal infringements and bring them before the courts, an increased access to justice \textit{and} a receptive judicial system are necessary. In fact, judicial reform and increased judicial accessibility have been understood as directly correlated with the promotion of economic and social development in developing nations.\textsuperscript{95} Increased “access to justice,” “legal empowerment,” or “legal opportunity” may include both formal and informal mechanisms that allow the poor greater access to the courts. Examples of increased legal opportunity may be the institution of legal aid services or public interest law organizations. There are also obstacles other than obstructive legal structures that inhibit the poor from accessing the courts. For instance, the marginalization of groups in society due to ethnicity, caste, race, or religion presents blockages to the justice system that may not always be reconciled.\textsuperscript{96} However, the law can be utilized and leveraged to not only rescind previous obstacles but also more progressively to reverse marginalization or other social issues.\textsuperscript{97}

Indeed, the Indian judiciary reformed the judicial system in the early 1980s to allow for Public Interest Litigation (PIL), the purpose of which was to increase access to justice for those citizens whom, for whatever reason (i.e., illiteracy, poverty), are unable to reach and petition the courts. The system is designed to enable access to justice to the “poorest of the poor, the deprived, the illiterate, the urban and rural unorganized labor sector, the women, the children,”

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\textsuperscript{92} Ibid., 23.
\textsuperscript{93} Ibid.
\textsuperscript{94} Ibid., 16.
\textsuperscript{95} Ibid., 12.
\textsuperscript{96} Banik, \textit{Starvation and India’s Democracy}, 16.
\textsuperscript{97} Ibid.
\end{flushright}
and other marginalized groups. In reality, this has meant that a social activist group or NGO can bring a case on behalf of the socially and economically disadvantaged. Furthermore, since the institution of public interest litigation, judges have been very accepting of PIL cases. Several postcards with complaints sent to the Court have even been converted into public interest litigation writ petitions by judges. PIL has been labeled the “single most important instrument for people to access justice through the higher courts.” It has allowed the poor in India an arena for participation and a means to redress their grievances. While other countries, notably the United States, have histories of social action litigation, India has been noted as “far surpassing” the U.S. in its acceptance of PIL. Of course, there are possible downsides to PIL.

Biebesheimer and Mejia discuss how the number of PIL cases that the Supreme Court addresses has risen exponentially, and that the cost of litigation can be “socially and economically wasteful.” While this may be true, the public interest litigation system in India is widely understood as “absolutely essential” for the meaningful advancement of the poor’s rights.

Hence, when it comes to the right to food in India, public interest litigation is undoubtedly a unique factor that affects any attempt at addressing food grievances through the judiciary. However, the mere existence of public interest litigation is not the sole determiner of an accessible legal structure. The legal system may be more receptive to litigating certain rights at some times and other rights at others. For instance, in 1988, when the Indian Supreme Court issued a notification regarding what issues would be classified as PIL, it included a catalog of matters such as petitions regarding the treatment of prisoners, environmental issues, neglected

99 Christina Biebesheimer & Francisco Mejia, Justice beyond our borders: judicial reforms for Latin America and the Caribbean (Baltimore: Johns Hopkins University Press, 2000), 23.
100 Upadhyay, Public Interest Litigation in India: Concept, Cases, Concerns, 5.
101 Ibid.
102 Cohen and Brown, Legal Empowerment and the Right to Food, 131.
children, or treatment of castes, but did not discuss the topic of grievances related to topics such as food, water, or education. Thus, in examining *Kishen Pattanayak vs. State of Orissa*, determining the conduciveness of a legal structure when it comes to food rights should not be limited to evaluating whether public interest litigation was in place at the given moment.

**Public Rights Rhetoric**

What is the utility of a broad, public rights discourse when addressing food grievances through the judiciary? As stated above, legal mobilization is the first stage of the social and economic rights litigation “life-cycle.” This step may also be understood as when “I want” becomes an assertion of “I’m entitled to.” Thus, the existence of public discourse about rights and entitlements must exist before a legal petition occurs. But how is a public rights consciousness a factor that influences the outcomes of adjudication of social and economic rights?

Rights discourses can have enormous power to mobilize or “activate” citizenry. Rights make needs political, and a rights-based approach to development “create claims” rather than charity. By making others aware of their entitlement claims and by allowing others to view their injustices as legal infringements, common identities are created amongst diverse citizens “by or against the law.” Consequently, when citizens are suddenly made aware of or inspired by rights discourse, there is a greater tendency, according to McCann, for these individuals to mobilize and join movements. The relevant question then, is what effects

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105 Ibid.
these movements have on adjudication. This question is partly answered in the following pages as I analyze the impact of a social movement with considerable rights framing and its effects on the adjudication of food rights. For now, it is important to realize that the rhetoric of rights constitutes an important tool of mobilization that frames and couches grievances in legal terms.

**Kishen Pattnayak vs. State of Orissa**

In 1989, two social workers addressed a letter to the Supreme Court concerning the extreme poverty and hunger in Kalahandi in the State of Orissa. They spoke of disease, famine, and starvation deaths, and identified situations in which the people of Kalahandi were even forced to sell their children. The letter demanded that the state of Orissa take immediate action to mitigate the suffering in Kalahandi. When the Court received the letter, it chose to treat it as a writ petition, and launched an investigation into the letter’s claims. The District Judge charged with undertaking the investigation found, however, that the state of Orissa had implemented sufficient social welfare measures and that there was “hardly any case of starvation death.”

In turn, the initial petitioners submitted another petition, and suggested that a group of social organizations be formed to supervise future relief work. The court then claimed that these forms of supervision already existed, as did sufficient policies, pointing to feeding programs, irrigation projects, and minimum purchase prices. In its final judgment the Court ruled, “it is not disputed that the people of Kalahandi and Koraput are very poor and most of them have been living below the poverty line.” In spite of this, the court stood by its initial claim that existing legislation “made ample provision for taking steps in case of starvation deaths.” In doing so, the Supreme Court acknowledged the suffering of Indian citizens, but labeled this suffering as the legislature’s

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responsibility. Further, it claimed the “situation was being tackled effectively” despite alarming evidence to the contrary.

Clearly, the response of the Court in *Kishen Pattnayak vs. State of Orissa* was dramatically different than the response of the Court in 2001, despite similar claims of hunger, famine, and starvation deaths. In 1989, the Supreme Court took a cautious and conventional role, pointing to legislative and macro level policy solutions that were already in place rather than “litigating policy.” The Court saw a right to food as beyond its judicial reach, indicated by its deference to the legislature’s policies. In addition, it took no action to prevent death from hunger in the short-term, and made no mention of citizens’ entitlement to a right to food. Why did the Court respond so differently in 2001 to the RTF case if public interest litigation, a progressive judiciary, and high levels of hunger and starvation were already present in 1989? What was different between the two cases, and how did this affect the outcome of litigation?

First, in my research I have observed the apparent absence of nearly any scholarly discourse or media attention paid to the case. This suggests that the case was relatively unrecognized by the public. This may not be surprising. Whereas the most successful PIL cases are often brought to the courts by citizens with organizational backing and/or popular support, the 1989 case was brought to the Court by two social workers with hardly any organizational and/or popular support. In addition, in 1989, a “right to food” or a “right not to be hungry” was not at the height of public discourse, much less spoken of at all as a valid human right.

Second, as discussed in the next section, it was not until the 1990s that the Supreme Court began to litigate a string of cases related to social and economic rights. By contrast, in 1989 precedents in this arena were virtually nonexistent. Third, considering the importance of a public rights

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110 Ibid., 9.
discourse discussed above, it would seem that the Court did not feel a large amount of pressure by citizens to adjudicate on the situation in Orissa. Already, one may cautiously point to the importance of public pressure placed on the judiciary by citizens. And a cycle thus emerges. Public discourse places pressure on the judiciary to more favorably adjudicate social and economic rights, and more favorable adjudication reinforces the importance of -- and even incites -- future public discourse. The existence of this cycle is supposition, and will be explored methodically below.

How does this public pressure suddenly arise, especially when past experiences with the courts have been unsuccessful? Given the failure of past attempts, why would the RTF Campaign choose the judiciary as the arena through which to secure food rights in 2001? Below, I will discuss how shifts in legal opportunity allowed for an opening through which a social movement arose, which in turn increased rights discourse and public action, thereby allowing for a right to food to emerge through the RTF case. I posit that this RTF Campaign, a broad-based social movement, was to be the most significant difference between the failure of the 1989 right to food case described above and the success of the current RTF case.

**Social Movements: Why Now?**

The question of how and why social movements (SM) arise at a given moment is an overarching puzzle in SM theory. For example, deprivation theory claims that people decide to form social movements when they become deprived of resources. However, hunger and poverty have afflicted Indian citizens for as long as the state has existed. Thus, material deprivation can be a precondition or correlate but not the sole explanation for the RTF Campaign’s origin. Further, deprivation theory does not explain why those actors who are not deprived, such as the
wealthy elite, choose to risk their legitimacy and/or safety by supporting a movement that calls for food rights. A related but more nuanced theory, relative deprivation theory, focuses on deprivation as psychological and perceived. When peoples’ beliefs as to what they deserve (their value expectations) differ from what they in reality have or can achieve (their value capabilities), grievances accrue and individuals are more inclined to form a social movement. However, if this were the case, then social movements should arise whenever a group of actors perceives a significant deprivation.\textsuperscript{111}

Still, other theories focus on the availability of resources in determining whether a social movement will arise. Resource mobilization theories, which arose in the 1980s, emphasize internal resources, such as funds, social capital, or means of communication, as the primary factors that determine whether a successful movement will arise.\textsuperscript{112} Political opportunity theories focus on the various types of resources external to social movements, and how changes in external factors, such as the political environment, allow social movements to perceive openings and capitalize on these opportunities. Finally, other theories focus on how individuals are persuaded to join a social movement. A “framing approach” focuses on the way that movements frame injustices and how this motivates individuals to participate. Olson’s collective action framework views individuals as taking risks in acting for the collective, and posits that those who participate will only do so if they receive “selective incentives.”\textsuperscript{113} Yet, again, this does not explain why there have been many individuals participating in the RTF movement whose personal interests are not obviously at risk (they are not hungry, starving or malnourished), and who have received no obvious “selective incentive.”

\textsuperscript{112} Ibid., 16.
The Right to Food in India

Of course, this is by no means an exhaustive list of SM origin theory. Other theorists explain a social movement’s origins and the strength of participation as rooted in other factors, such as successful leadership. In any given circumstance there are a variety of theories that may prove equally able to provide a plausible explanation of why a particular social movement may have arisen. Thus, despite theorists’ frequent attempts to given prominence to a single model, these theories should not be seen in isolation from one another. In addition, social movements are not monolithic entities- they are made up of diverse participants with various special interests and incentives for participating. While it is impossible to pinpoint the origin of the RTF movement within the framework of just one of the above theories, and potentially counterproductive and distorting to do so, one can find several compelling reasons for the movement’s occurrence by utilizing the insights gained from multiple SM frameworks. While I will illustrate that the movement surrounding the RTF Campaign does indeed constitute a social movement in the next section of this chapter, for now this characterization should be assumed. Though the term is contested, for the purpose of this paper and the remainder of this section I will define a social movement as follows:

A sustained series of interactions between power holders and persons successfully claiming to speak on behalf of a constituency lacking formal representation, in the course of which those persons make publicly visible demands for changes in the distribution or exercise or power, and back those demands with public demonstrations of support.”

The above definition of an SM, articulated by Charles Tilly, is widely known and suffices for purposes of my inquiry here. Put simply, a social movement can be considered informal or

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114 See Barker (2001).
116 Scholars find Tilly’s definition problematic for numerous reasons. Mainly, it does not differentiate a social movement from other forms of collective action, such as interest groups or political parties (McCann 2004, p. 509). However, the definition suffices for the classification of RTF Campaign as a social movement organization (SMO) and its following as a social movement (SM), because these definitional nuisances do not come into play here.
formal group action in which individuals or organizations push for, or push to reverse, social change.

Legal Opportunity and the Rise of the RTF Campaign

There are several SM theories that together account for the rise of the RTF movement and the RTF Campaign in India in the 2001 timeframe, as well as for the decision made at that time to use litigation as an avenue for advocacy. These include: an incremental shift in legal opportunity structure; increased perceptions of deprivation, and a collective action framing of rights violations. These factors, which are discussed below, are also closely related to the success of the RTF litigation.

As explained in the previous chapter, the rise of PIL in the 1980s greatly increased the access of Indian citizens to the courts. This change in legal opportunity structure made it relatively easy to file cases on behalf of others and for marginalized groups and individuals to reach the courts. This, combined with the lack of legislative political opportunity of the poor -- in Dreze’s words, “the [Indian] poor do not count for much in public policy” -- helps explain why movements in India have often turned to the judicial system to advance their policy agendas. By legal opportunity (LO), I am referring to a concept closely related to and/or under the umbrella of political opportunity (PO) or political opportunity structure (POS). Political opportunities may be defined as the “consistent- but not necessarily formal or permanent- dimensions of the political environment that provide incentives for collective action by affecting people’s expectations for success or failure.”117 Thus, political opportunities are external factors that, when arising, cause actors to perceive a greater likelihood of the success of their movement. In addition, some political opportunities, such as lessened state repression, limit the costs of

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117 Tarrow, Power in Movement: Social Movements and Contentious Politics, 77.
participating in a social movement. Thus, within political opportunity theory, “resource-poor actors” participate in collective action when opportunities change and openings occur that limit the costs of participating and make participation in a social movement more attractive. These “openings” may include any number of occurrences, for example, a new political alliance or rift, increased institutional access, a change in public opinion, or lessened state repression. Further, once actors seize opportunities and become involved in a movement, the movement may create more opportunities and widen “cycles of contention,” thereby gaining more concessions and thus more opportunities to continue participation.118

Using this framework of political opportunity, legal opportunity can be understood as altered external opportunities in the legal and judicial realm that make a social movement more likely to originate and to succeed. Importantly, legal opportunity consists of both “structural and contingent features.”119 While structural features might consist of access to justice or state legal funding, contingent features might include the composition of the current judicial bench and judges’ receptivity to various issues. Viewing legal opportunity in this way, as made up of both structure and receptivity, how receptive was the judiciary to food rights in the 1980s in comparison to the present? Was there a discernible shift in the legal opportunity structure that enabled the RTF Campaign to come forth in 2001?

In fact, the Indian case exhibits changes in both LO and PO that have enabled the RTF Campaign to arise. First, within the posited framework of LO, PIL can be classified as a “structural” legal opportunity that increased access to the judicial system and encouraged citizens to see their demands as reasonable. However, PIL existed as a legal opportunity during the 1980s, when the previous RTF case was brought to the courts. Therefore, it cannot explain why

118 Ibid., 199.
RTF has only been a success as of late. Importantly, legal opportunity structures exist in numerous ways. While a potential structural LO may have existed for food rights in the 1980s, a public and judiciary that were unreceptive to RTF blocked this legal opportunity. However, as receptivity to food rights increased, both structural and receptive legal opportunities were in place for a RTF movement to arise using the courts.

Shortly after India’s internal emergency between 1975 and 1977, the judiciary’s place in politics transitioned to its current role as “the protector” of the public’s rights. Prior to this moment, the extent of the Court’s activism had been limited to several cases related to property in the 1950s and 1960s. Sathe describes the transformation of the Court’s role in Indian politics as historically “synchronized” with political change and with the most relevant political issues in India over the last half-century. Thus, the anti-emergency discourse of the early 1980s did not coincidentally parallel the initiation of PIL by Supreme Court justices; both focused on potential infringements of individual liberties and recognized that the courts played a special role in defining and enforcing rights with respect to the government.

In accordance with this synchronization, the history of PIL can be divided into “phases” which pair relevant political issues with the most current issues being adjudicated. For instance, in the 1980s, following the violation of civil and political rights during the emergency, the court adjudicated topics such as the rights of prisoners, death sentencing, the right to privacy, the right to speedy trial, the right to honest governance, and the right to an independent judiciary. The second phase, however, focused on governance issues, including cases that set guidelines for

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120 Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits*, 52.
121 Ibid., 6.
122 See, for example, the case *Maneka Gandhi v. India* involving freedom of movement. Sathe signals this case as cementing the 1980s shift in judicial policy (Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits*, 53).
blood transfusion and instituted mandates to protect the Taj Mahal from erosion. Finally beginning in the 1990s, case law shifted to a focus on the environmental justice and protection. The court began to adopt more affirmative measures that it actively oversaw. For instance, in *Vellore Citizens' Welfare Forum vs. Union of India (1996)*, the Court ruled against tanneries discharging chemicals into the Palar River due to the health risks posed to nearby residents.

This third phase constituted an increased active judicial involvement in and supervision of complex policy determinations, thereby signaling a potentially increased judicial receptivity and legal opportunity to actors (such as the RTF Campaign) concerned with social and economic rights. Significantly, while the realization of RTF and other social and economic rights in India is “inextricably linked” to PIL, these rights were not immediately affected by PIL at its outset. In the 1990s, however, the court began to consistently adjudicate directive principles (the aforementioned “aspirational” constitutional goals) as legal entitlements guaranteed by Article 21, the fundamental right to life. When viewing cases broadly from the early 1990s to the late 1990s, there is a visible shift in the social and economic rights litigation brought before the courts and adjudicated. While shelter and housing rights cases had come before the courts by the mid 1980s, by the 1990s the Court was stretching its judicial rulings even further into those areas typically considered policy arenas, something it had hesitated to do in the 1989 right to food case. In a famous shelter and housing rights case, *Olga Tellis v. Bombay Municipal Corporation AIR (1986)*, the court first referred to the right to life as including the “means of

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124 Ibid.
livelihood.” This ruling, despite its seemingly narrow focus, greatly influenced the legal opportunity structure and the types of grievances with which citizens felt they could approach the courts. By the 1990s, citizens were petitioning the courts regarding other “means of livelihood,” such as the right to adequate water. In *Gautam Uzir & Anor v Gauhati Municipal Corporation (1993)*, the court ruled that water is essential for life and thus a right. This ruling came despite protests by the municipal corporation regarding financial constraints. Setting a considerable precedent, the court even scolded the municipal corporation for its “all or nothing” approach to water provision issues: “Before making huge projects of hundreds of crores of rupees…some genuine efforts should have been made by the corporation itself and the state government to mitigate the malady.” In 1993, the court also declared the right to education to be a legal entitlement in *Unni Krishnan v. State of A.P.* And in *M.C. Mehta v. India (1996)* the Court gave direct orders for the protection of the environment from pollution of vehicles. Thus, despite the constant existence of PIL, the Court transitioned from viewing social conditions as a fact largely beyond its control in the 1980s, to aggressively taking steps to order and implement ameliorative measures in litigation of the 1990s.

While a full discussion of the case law and development of Indian jurisprudence is beyond the scope of this essay, it has been generally accepted that there was a significant shift in the willingness of the judiciary to incorporate social and economic rights into the Indian constitution as enforceable rights. The case law, which is admittedly much more expansive than shown here, illustrates that social and economic rights were not the main focus of the court

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131 Ibid.
and of the public’s grievances until the mid-1990s. In addition, according to Sathe, the 1990s is when PIL first became utilized as a distinct social movement strategy. Actors began to turn to litigation when other mobilizing tactics such as lobbying were not producing desired results. \(^{132}\) Thus, the cases of the 1990s exhibit an incremental yet perceptible change in the judiciary’s receptivity to citizens’ positive rights, especially those of the poor. In addition, these cases allowed the judicial system to be perceived as an alternative venue around which actors could mobilize and redress their grievances.

That social and economic rights were not widely accepted in the courts previously, and that social movements had not previously mobilized around the courts, is significant. This indicates that although one important aspect of a structural legal opportunity structure had existed in the 1980s (PIL), the legal opportunity structure at that time was not perceived as an opening for advocates of food rights until long after its institution. This allows one to understand more clearly why there was neither broad public support nor judicial support surrounding legal claims of food rights in 1989. However, legislation adopted in the late 1980s created even more legal opportunities that eventually, and leading up to 2001, fostered a greater legal consciousness of PIL among the poor. In 1987, the Legal Services Authorities Act expanded the categories of people entitled to legal aid, and created the National Legal Services Authority (NALSA) as well as a network of legal aid organizations at the local, district, and state levels. \(^{133}\) According to NALSA, its purpose was to take steps “by way of social justice litigation with regard to consumer protection, environmental protection or any other matter of special concern to the weaker sections of the society and for this purpose give training to social workers in legal

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skills.”\textsuperscript{134} It took time, though, for this expanded mission to penetrate public consciousness as a realistic potential path for achieving change in fundamental areas of social and economic policy.

In short, while certain legal mechanisms were in place at the time of the 1989 RTF case, absent changes in public perception regarding the potential efficacy of those mechanisms, and absent repeated, manifested signs of an increased judicial receptivity to such litigation inhibited a social movement from developing around the case at that time. While Indian citizens were obviously experiencing deprivation, I postulate that the legal opportunity structure did not signal that organizing around the issue would produce results at that moment. In addition, when movements, organizations, and individuals capitalize on legal opportunities, onlookers perceive these successes as new opportunities for their own movement’s success. Legal and political opportunities that result in successes create, in effect, new legal opportunities themselves by strengthening or altering perceptions of the possibility of recourse within the legal sphere. Within the framework of LO theory, it seems that the legal opportunities of the early 1990s in India spawned and ushered in a \textit{fourth phase} of PIL that continues today. This phase has focused on social and economic rights and developed a perception of food rights as attainable and worthy of citizens’ time, energy, and mobilization.\textsuperscript{135}

Again, these various shifts in LO are difficult to pinpoint in this paper due to the vast amount of case law that exists since the onset of PIL. However, multiple scholars point to a gradual increase in judges’ willingness to litigate social and economic rights claims in the 1990s.\textsuperscript{136} It should also be noted, however, that the change in judicial receptivity to RTF claims is potentially closely related to increased public opinion regarding food as a right – a

\textsuperscript{134} Ibid., 108.
\textsuperscript{135} As stated earlier in this paper, the third phase of PIL in the early 1990s shifted to a focus on the environment and on pollution control, making way for the litigation of more second and third generation rights.
phenomenon which also occurred during the 1990s, as other social and economic rights were increasingly recognized. As with the “chicken and the egg,” it is difficult to say whether judicial activism results in increased public opinion on an issue (such as the right to food), or whether increased public opinion and outrage influenced the judiciary to reach adjudicative outcomes that it would have been unwilling to reach before. Despite uncertainty over their respective origins, we can conclude that a dialectic of public pressure and judicial activism both affected the reality of RTF.

I postulate that a dynamic and almost cyclical relationship exists between the actions of the Indian Supreme Court and the existence of public opinion sufficient to give rise to social movements. The demands of citizens influence the court’s activism, and the activism of the Court in turn triggers new demands from citizens. The idea of dynamism between citizens and the courts is by no means revolutionary. In discussing American politics, Scheingold also points to a similar cyclical effect in the civil rights movement; civil rights legal strategy sparked massive mobilization, which in turn led to new legal claims and strategies, and increased social change. Thus, as the Indian courts responded positively to social and economic rights, and citizens began to confront the courts with more social and economic rights claims, judicial activism evolved and citizens felt that approaching the courts with a right to food claim was viable and potentially advantageous. We come to understand this new legal opportunity as closely linked to increased rhetoric and broad public support, which greatly affects the success of a litigation strategy. Structural mechanisms are by themselves insufficient, which is why the existence of PIL did not prove enough for RTF litigation to be successful in the 1980s. As the poor make more demands after realizing a legal opportunity, there are more likely to be

concessions that are in turn viewed as legal opportunities by the same or other actors. I postulate that this process has enabled Indian citizens to view RTF adjudication as feasible and a social movement surrounding RTF to be worthy of their time and energy.

As stated, legal opportunity theories account for the rise of social movements at a given time or place due to the opportunities that people experience and perceive. But while LO theory helps to explain the rise of the RTF Campaign around food rights, supplementing LO theory with other explanations may also help to explain the rise of a campaign around food in particular. By 2002, India was holding seventeen million tons of extra food grain stocks that were rotting as Indian citizens stayed hungry. The large grain stocks “rendered arguments concerning the lack of resources impossible to sustain.” Yet, even as this occurred, hunger and malnutrition was rather ignored in debate and politics. In 2000, The Hindu, one of India’s leading newspapers, went six months without running even a single article on nutrition and hunger. I posit that the rising level of hunger juxtaposed with excessive food grains and government neglect also contributed to the rise of the social movement surrounding RTF. First, as stated previously, relative deprivation theory views the potential for collective action as “varying strongly with the intensity and scope of relative deprivation among members of a collectivity.”

The rising level of hunger juxtaposed with excessive food grains and government neglect also likely contributed to the rise of the social movement surrounding RTF. First, as noted previously, relative deprivation theory views the potential for collective action as “varying strongly with the intensity and scope of relative deprivation among members of a collectivity.”

Due to the surplus of food grains, Indian citizens may have felt that they deserved much more

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139 Bilchitz, Poverty and Fundamental Rights: The Justification and Enforcement of Socio-Economic Rights, 243.
140 Ibid., 241.
141 Ibid.
142 Ted Gurr, Why Men Rebel, 24.
143 Ted Gurr, Why Men Rebel, 24.
than the reality that they were facing, hunger and starvation. According to Gurr (1968), Merton (1938), and other relative deprivation theorists, this discrepancy between expectations and reality causes frustration, which is directed at the frustrating agent.\(^{144}\) In the case of the RTF movement and RTF case, the frustrating agent has been the state, which the petitioners have aggressively prosecuted in court.\(^{145}\) Indeed, the Indian case has been referred to as a “revolution of rising frustrations” against the state.\(^{146}\) Second, the food surplus has perhaps also contributed to the success of the case by making it extremely difficult for the judiciary to turn away from the poor with arguments regarding the undersupply of resources.

Finally, connected with the incremental shift in legal opportunity is the framing of food grievances in terms of rights. In the 1990s, SM theory came to focus on cultural explanations and identity politics, and the ways in which movements “convince participants that their cause is just and important.”\(^{147}\) Scholars such as McCann discuss “rights consciousness raising” at the outset of a social movement as the most integral moment for law’s place within a social movement.\(^{148}\) By making others aware of their entitlements claims, and by allowing others to view their injustices as legal infringements or as legal claims, common identities are created amongst diverse citizens “by or against the law.”\(^{149}\) In the next section, I will further address “injustice framing” as a mobilization strategy used by the RTF Campaign.

Why did a social movement in the form of the RTF Campaign arise, causing individuals to seek to vindicate their rights claims through the courts? As the above discussion indicates,

\(^{144}\) Ibid., 253.
\(^{145}\) Importantly, relative deprivation concerns what actors perceive. If, for instance, surplus food grains existed that Indian citizens did not know of, then relative deprivation and thus frustration may be lowered. Edelman states, “perception of deprivation, then, like all perception, is a function of social cues regarding what is to be expected…it does not correlate…with objective conditions or with any particular measure of them” (Scheingold, The Politics of Rights: Lawyers, Public Policy, and Political Change (New Haven: Yale University Press, 1974), 134).
\(^{146}\) Hardgrave & Kochanek, India: Government and Politics in a Developing Nation, 23.
\(^{147}\) Tarrow, Power in Movement: Social Movements and Contentious Politics, 17.
\(^{149}\) Ibid., 511.
there is no single answer. Instead, there has been an array of converging factors that, in turn, reflect the varied attempts by social movement theories to explain why social movements arise.

In India, incremental changes in the outcomes of social and economic rights litigation in the 1990s increased legal opportunities. These legal opportunities allowed for a social movement based around food rights to arise and also made the Court a viable location for achieving food rights. In 1989, when the previously described RTF case came about, this usage of PIL in relation to food rights was not developed enough to allow for broad public support to arise or for a favorable judicial ruling. I have illustrated thus far that the RTF Campaign was able to arise in 2001 due to shifts in legal opportunity structure and a greater sense of relative deprivation by citizens. Next, I will examine how the RTF Campaign has influenced the success of current RTF adjudication.
Chapter IV: The Right to Food Campaign in enabling RTF

With the above knowledge of why a campaign based around food rights emerged in 2001, we are one step closer to understanding why the courts have served as a viable arena for alleviating hunger and malnutrition in India. By examining the Right to Food campaign and its strategies and organizational structure, we can 1) demonstrate that the campaign has, in fact, organized a broad-based, wide-reaching social movement, and 2) understand how this movement and the campaign’s strategies have had and are likely to continue to have an impact on the realization of RTF in India. To reach these conclusions, I must first describe strategies of the campaign and its organizational structure. What is the RTF Campaign and how is it best classified (i.e., an NGO, a social movement, a leader in civil society)? Who makes up the RTF Campaign? Is the RTF Campaign broadly representative of civil society, or is it a smaller and more elite-based actor? Most importantly, how does the campaign directly and indirectly influence RTF litigation and the reality of RTF.

The Right to Food Campaign: Background and Organization

The Right to Food Campaign describes itself as an “informal network of organizations and individuals committed to the realization of the right to food in India.” It is comprised of a group of “food security-oriented” organizations, and is centralized through a steering group made up of leaders of local and national food campaigns.\(^{150}\) As noted in the introduction of this paper, the Campaign originated in the north Indian state of Rajasthan shortly after a writ petition was submitted to the Indian Supreme Court in April 2001 by the People’s Union for Civil

\(^{150}\) Birchfield and Corsi, “Between Starvation and Globalization: Realizing the Right to Food in India,” 719.
The Campaign started to build a larger, public movement advocating for RTF when it became apparent that RTF would not be recognized as a legally enforceable right or adequately implemented by the courts and the state without pressure, often in the form of monitoring, by civil society. The RTF case has resulted in interim orders not only focused on altering food systems in India, but also on implementing the right to work and land reform and social security programs, all of which greatly affect RTF and/or food security. The Campaign’s long-term demands relate to, among other things, legislation and schemes such as a National Employment Guarantee Act, social security for all unable to work, equitable land and forest rights, mid-day meals in all primary schools, a universalizing of the Integrated Child Development Services, and a reform and revival of the public distribution system. As described previously, some of these demands have been met through interim orders issued by the Supreme Court in the RTF case.

The Campaign, based out of a Secretariat in New Delhi, views its mission and the success of ensuring RTF as resting on “effective popular organization [of the Indian people]… through democratic means.” Briefly, the Campaign’s organizational structure is laid out as follows, as described by the Campaign itself:

**Secretariat:** The secretariat fulfills practical functions such as organizing an annual convention, maintaining the website, circulating information, and organizing trainings.

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151 The PUCL, or the People’s Union for Civil Liberties and Democratic Rights, based in Delhi, is a national civil society organization founded in 1976. It was formed as an organization “free from political ideologies” to defend civil liberties and human rights. It is comparable to the American Civil Liberties Union, with more focus on social and economic rights (Peoples Union for Civil Liberties, http://www.pucl.org/).


153 Ibid.

**Advisory board:** The advisory board is made up of organizations and individuals who “run” the Campaign, and deals with the political functions of the Campaign, such as lobbying, issuing statements, or organizing demonstrations or conventions. The advisory board is subject to change at each annual RTF Convention.155

**State Level Networks:** The RTF Campaign encourages the formation of state level coalitions/networks that mirror the national RTF Campaign’s structure.

**Thematic Groups:** In relation to particular demands of the Campaign, thematic groups are formed with members outside of and within the Campaign relating to judicial action and legislation connected to RTF. For instance, two of these “thematic groups” are the People’s Action on Employment Guarantee and the Citizen’s Initiative for the Rights of Children under Six.

Importantly, the Campaign labels itself “a movement, not an organization,” explicitly stating that the purpose of this self-definition is to indicate that the Campaign possesses “no responsibility for the actions of organizations that may claim to act or speak on behalf of the campaign.”156 Dreze, a scholar and member of the Campaign, labels it a “broad-based popular

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155 Presented here is a list of the advisory board members and italicized is the organization they represent (for those organization names in Hindi, I have done my best to explain what they are in English):
- Annie Raja - National Federation of Indian Women
- Anup Srivastava- Human Rights Law Network
- Anuradha Talwar- an independent trade union in West Bengal (Paschim Banga Khet Mazdoor Samiti)
- Arundhati Dhuru-National Alliance of Peoples’ Movements
- Asha Mishra- Indian Organization for Learning and Science (Bharat Gyan Vigyan Samiti)
- Ashok Bharti- National Conference of Dalit Organizations
- Gautom Modi-New Trade Union Initiative
- Jean Drèze-Delhi School of Economics
- Kavita Srivastava- People’s Union for Civil Liberties
- Pramod Kumar- Vidya Sagar Samajik Suraksha Seva Evam Sodh Sansthan
- Sachin Jain- Media advocacy group in Madhya Pradesh (Vikas Samvad)
- Subhash Bhatnagar-National Campaign Committee for Unorganized Sector Workers
- Suchi Pande-National Campaign for People’s Right to Information
- Tanveer- National Campaign on Dalit Human Rights
- V B Rawat-Social Development Foundation

movement. The Campaign further emphasizes its “movement” status by pointing to its lack of centralized resources.

**Tactics of the RTF Campaign**

Previously, I have shown that the responsibility for guaranteeing social and economic entitlements can be conceptualized as a “ring of responsibilities,” potentially operating at multiple levels within various public and private sectors. However, the RTF Campaign explicitly states that the primary actor responsible for ensuring food entitlements is the state, and focuses its mobilization efforts on placing pressure on the judiciary and policy-making branches in India. The campaign organizes and mobilizes citizens, providing them with materials and resources to demand RTF. To understand the effect of the RTF Campaign on the RTF litigation in India, it is important to examine the tactics it uses in mobilizing Indian citizenry and distributing information. Although the RTF Campaign’s work is quite expansive, I will point to several examples of these tactics. Examining its actions as a social movement allows one to garner what type of movement the Campaign is attempting to create. Is it an expansive and “bottom-up,” citizen-driven movement, or a “top-down,” elite-driven movement?

As interim orders continue to be issued and the litigation continues, the RTF Campaign pressures state officials and policymakers to implement the legislation required of them by the Supreme Court. In addition, the RTF Campaign may call upon the Court for more interim orders to be issued if implementation is not occurring. The RTF Campaign accomplishes these goals through a variety of activities such as rallies, public hearings, peaceful demonstrations,

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158 For instance, “The secretariat does not own any investments or property beyond two old computers, and a few chairs and tables that have been donated.” Also, the Campaign lists its entire 2007-08 budget as coming out to approximately 16,000 American dollars (Right to Food Campaign, About the Campaign: Finance and Accounts, http://www.righttofoodindia.org/fin/fin_intro.html.)
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conventions, media advocacy, and lobbying around RTF. Most importantly, it disseminates information concerning RTF via its website. The website documents updates on the Campaign and its work, in addition to providing extensive explanations of the RTF court orders and interim orders. Further, it provides access to campaign materials, pamphlets, relevant news, research reports, and links to sign petitions for RTF.

The RTF Campaign’s website and its contents reflect its aim to make information easily accessible to the masses. For instance, campaign materials include posters, pamphlets, booklets, leaflets, primers, plays, and songs in various Indian languages. All materials state, “feel free to download, print, edit, cut, paste, translate, whatever - there is no copyright.” Campaign materials range from intricate accounts of court orders to primers written in simple language intended to “address a wide audience: activists, teachers, journalists, and the general public…. which can be printed for just a few rupees per copy, and distributed widely- alerting people of their rights.” In fact, many of the materials the campaign provides are aimed at mobilizing the poor. This is also evidenced by the scripted “street plays” it provides about food rights. Street plays are an approach commonly used throughout India to convey social and political messages even to the illiterate, thereby promoting an understanding of politics and rights by all citizens. In addition, posters such as the two below are offered on the website in Telugu, Punjabi, Assamese, Gujarati, Tamil, Kannada, and Bengali. The first poster makes citizens aware of their entitlement to a BPL (Below Poverty Line) ration card, while the second describes Supreme Court orders regarding the Mid-day Meal Program.

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159 For example, in 2002 the campaign organized a countrywide “mid-day meals day,” which was essential in persuading state governments to provide mid-day meals in schools. In May 2005, the campaign organized a fifty-day tour of India’s poorest, rural locations to pressure the Employment Guarantee Act (Right to Food Campaign, http://www.righttofoodindia.org/orders/interimorders.html).
As shown, the Campaign’s activities range far and wide. It simultaneously documents the RTF case, alerts the public of its right to food, and attempts to persuade citizens to demand their entitlements. Further, the Campaign emphasizes the importance of locally monitoring interim orders handed down in the RTF case. It provides intricate field surveys that enable grassroots organizations to “assess the situation of food security in different parts of the country,” quickly collect and convey information, and monitor implementation of Supreme Court orders.\(^\text{160}\) This information is then collected by the RTF Campaign headquarters and used in interlocutory applications to the court. The following image is an example of a survey the campaign provides to grassroots organizations at the state level:

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Finally, the Campaign reaches out through social media. The Campaign maintains a “Facebook” page with links to events held in support for RTF and over 200 articles related to RTF. In addition, the Facebook page features images of protests for “the Right to Food and Work” by large numbers of Indian citizens in places like Rourkella, Orissa, as well as advocacy posters such as those shown above. Utilizing social media reaches out to an international population as well as an Indian one, as evidenced by the RTF Campaign’s “followers” on the Facebook page.

Considering Tilly’s SM definition that I posited above, can the citizen movement that the

RTF Campaign has built up be classified as a social movement? Returning to Tilly’s definition, a social movement is a “sustained series of interactions between power holders and persons claiming to speak on behalf of a constituency lacking formal representation,” and which “backs those demands with public demonstrations of support.”\(^\text{162}\) The RTF Campaign’s following seems to meet this definition, due to their ongoing demands and efforts to change the status quo through public action. But what is the Campaign itself? Despite labeling itself as a movement, the Campaign seems to waver between being the social movement and being classified as a social movement organization, or an SMO. An SMO is an organization which identifies with the demands of a social movement and which plays an active role in the movement.\(^\text{163}\) Thus, multiple SMOs can play a role in any SM. However, the RTF Campaign’s classification as an SMO is complicated because the RTF Campaign emphasizes its own “non-organization” status. Indeed, rather than being an SMO, the RTF Campaign almost stands as the peak of the RTF social movement. I will refer to the RTF Campaign as an actor that has helped to create the RTF social movement and has represented the social movement at multiple levels of society. I will refer to this social movement as a whole as the “RTF movement.”

**RTF Campaign: Analysis**

What about the RTF movement and the RTF Campaign described above makes them of utmost importance in the success of RTF litigation? As stated, in 1989 no social movement arose surrounding the right to food, and the right to food case that was brought before the Court was not nearly as great a success as the ongoing case today. I have earlier attributed the previous failure to recognize an enforceable RTF in part to the absence of a sustained social movement or

\(^\text{162}\) Tilly, “*Social Movements and National Politics,*” 306.

sustained activism surrounding the right to food, which did not arise due to a lack of certain legal opportunity structures. I will now discuss how the current RTF movement and RTF Campaign play an integral role in the prolonged success of the Indian RTF adjudication. This is primarily due to (1) the RTF Campaign’s mobilization and organizing techniques of Indian civil society, which have also served as an essential monitoring mechanism throughout litigation efforts; (2) the centralizing role the RTF Campaign plays for civil society demands in a decentralized democracy; and (3) the unique relationship of the RTF Campaign to the Indian Supreme Court and RTF Commissioners.

As stated, the social movement based around the right to food was able to arise in 2001 due in part to shifts in legal opportunity. This caused the prospect of addressing social and economic rights in the judiciary to be viewed as much more desirable. Why then, can’t one say that shifts in legal opportunity are the primary cause for Indian’s newly acquired right to food? Importantly, while shifts in legal opportunity are significant, they do not act on themselves. In other words, legal opportunities for recognition and enforcement of food rights do not have an influence unless such openings are realized and acted upon by agents of change. The RTF Campaign is this agent of change that capitalized on and organized around these legal opportunities beginning in 2000. Indeed, if the mere existence of a new legal opportunity structure were the primary cause for Indian citizens’ RTF, then RTF would have arisen before 2000, with the initial shift in LO for social and economic rights that occurred in the 1990s. Further, it should be noted that a social movement regarding the RTF did not necessarily have to focus on the judiciary. If political opportunities had emerged in the policy-making sphere, then the RTF Campaign may have followed another path to acquiring RTF.
That being said, how has the RTF Campaign capitalized on the new legal opening for social and economic rights? What tactics has the RTF Campaign utilized, and how have these tactics enabled it to become a powerful social movement that affects food rights litigation and thus Indian’s right to food? In brief, the Campaign has been an influential actor in the success and implementation of RTF litigation due to its mobilizing efforts of elites and non-elites, its centralizing role, and its unique and mutually beneficial relationship with the Indian Supreme Court and RTF Commissioners.

**Creating a Social Movement**

The RTF Campaign’s success has in no small measure been due to the breadth of its following and activities. The Campaign has created a particularly pluralistic social movement, which consists of both the educated elite and the rural and urban poor. It is active at the local, regional and state levels, and utilizes both institutionalized and non-institutionalized movement strategies. There are multiple effects of such a broad-based social moment on the realization of RTF through the Court.

One of the Campaign’s greatest insights has been to recognize the importance of combining “institutionalized” and “non-institutionalized” actions. While institutionalized actions include activities such as voting, petitioning, or fighting legal battles, non-institutionalized actions consist of activities such as strikes, protests, or riots.\(^{164}\) Authors such as Hilson posit categorizations of social movement organizations (SMO) as either “instrumental” or “cross cultural.”\(^{165}\) While instrumental SMOs use conventional or institutionalized strategies to achieve their goals, cross-cultural SMOs define their identities in opposition to the state and thus follow


non-institutionalized strategies. Yet, the RTF Campaign defies polarized categorizations of an SMO/SM. While the RTF Campaign arose in connection with litigation, it has also organized around a wide variety of non-judicial activities, including sponsoring statewide and nationwide rallies, public hearings, demonstrations, and sit-downs. These “cross-cultural” activities are launched particularly when the Campaign is not content with government implementation of court orders. For instance, from April 15-19, 2010, the Campaign held a dharna (a peaceful, prolonged protest) against the National Food Security Act, which it feels does not give adequate subsidies to the hungry. At the dharna, the protesters formed a human chain to stop traffic, burned an effigy of the Prime Minister, and recited speeches, songs, and plays.\textsuperscript{166}

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{dharna.jpg}
\caption{Above is a rally that took place on April 18\textsuperscript{th} 2010 as part of the dharna. The people shown are from Gujarat, and are displaying a banner that reads, “Universalize PDS, stop the division of APL-BPL and make ration cards in the name of women.”\textsuperscript{167}}
\end{figure}

These protests against sluggish implementation have allowed the RTF Campaign to acquire significant international media attention.\textsuperscript{168} Moreover, the protests appear to constantly

rejuvenate the Campaign and to remind the Indian Supreme Court to continue to release interim orders and of its duty to carefully monitor the implementation of its orders. Furthermore, the protests, rallies, and tools such as street plays enable any member of society to take part in the movement. Yet at the same time that non-institutional strategies are promoted by the RTF Campaign, it also follows more institutionalized pathways to address food grievances and the right to food. For instance, the steering committee of the Campaign conducts field surveys and write-ups that monitor the implementation of court orders and account for the effects of court orders on food security in various states.\(^{169}\) This information is then relayed to the Supreme Court Commissioners and used as evidence in the courts, or is utilized in lobbying efforts at the legislature in Delhi. In addition, while institutionalized methods of opposition are at times more “safe,” there is a risk that these methods could remove issues from the public domain and place them at a more elite and removed level. However, with regards to the RTF case, empirical research claims that the Campaign has succeeded in doing the opposite. In fact, its methods have placed the RTF issue “firmly on the political agenda” and into the lives of ordinary citizens.\(^{170}\) These institutionalized strategies will be elaborated on in the next section.

The non-institutionalized and institutionalized methods of the RTF Campaign allow it to convey its message and argue for food rights in a multitude of ways and from many perspectives. If, for instance, the Campaign were simply submitting research and evidence to the Court, court orders might not result in implementation due to a lack of public pressure. Jean Dreze, one of the movement’s organizers, calls it “naïve” to think that orders will ever be implemented without

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\(^{168}\) See description of protests and numerous pictures and primary newspaper clippings about the protests at:


non-institutionalized public pressure. He speaks of the essential role of complementary local actions to judicial activism and lobbying at the state level. Indeed, public hearings in India have been referred to as a “wake-up call” for state-government officials who have been ignoring orders and exploiting local citizens. In addition to threatening state officials into compliance, public hearings also serve to alert citizens (especially the isolated and rural poor) of individual rights and entitlements as to which they may not have been previously aware.\textsuperscript{171}

The organization of people at the local, regional, state, and national levels is considered essential for dramatic change to occur. Democratic theorists such as Putnam (1993) emphasize the necessity of a dynamic and strong civil society, with high levels of civic engagement at local and national levels, for there to be success in holding a government accountable for fulfilling its citizens’ demands and entitlements. In accordance with Putnam, the participation of an active local citizenry at all levels of society in India has been essential in ensuring RTF. It has also served to “counter balance the arbitrary use of power” by states, which in India are fairly independent of national government.\textsuperscript{172} An active local citizenry is arguably even more important when there is a greater tendency of state governments to ignore the national government’s orders, which is true in a decentralized democracy such as India. This may seem counterintuitive at first. It might seem that a decentralized state would allow more local democratic accountability and efficiency. At times, this may be true. However, with regards to the RTF in India, decentralization has often allowed for more negligence, corruption and “cooptation” at the state level. Indeed, the negative impact of India’s decentralization on poverty reduction is consistently noted in the literature on Indian decentralization.\textsuperscript{173} The work of

\textsuperscript{171} Jean Dreze, “Democracy and The Right to Food,” 1729.
\textsuperscript{173} Ibid.
authors such as Crook and Sverrisson support this claim, finding that the link between
decentralization and increased attention to the poor “lacks any convincing evidence.”

The RTF Campaign has successfully recognized the disconnect between court orders and
their local implementation, and the RTF Campaign’s role as a centralized citizen and
informational body in a large country has been integral to bridging local and national action and
ensuring that commitments to RTF are met. The methods that the RTF Campaign has utilized in
grabbing citizen attention have also contributed to its expansive citizen base. By supplying
uniform materials to NGOs and citizens at the state level in their regional languages, and
organizing similar rallies and protests at the local level across states, the RTF Campaign is
creating a national movement with consistent content, but one which local citizens take control
and ownership of. In addition, the RTF Campaign translates complicated legal orders into
understandable language, or “layman’s terms.” Further, the RTF Campaign has often
packaged its call for RTF with other rights and has strategically collaborated with other national
movements based around rights, notably the right to work, the right to health, and the right to
education. In addition, the RTF Campaign is closely connected to the National Campaign for
the People’s Right to Information, which resulted in the Right to Information Act of 2005. The Right to Information Act has enabled the release of important documents related to the
achievement of other social and economic entitlements. By utilizing a rights framing to address
food grievances and connecting the RTF to other social and economic rights that also affect the
lives of the poor, the RTF Campaign has been able to broaden its active citizen base. In addition,

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174 Ibid.
175 Birchfield and Corsi, “Between Starvation and Globalization: Realizing the Right to food in India,” 723.
176 Gauri and Brinks, Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing
World, 14.
177 Birchfield and Corsi, “Between Starvation and Globalization: Realizing the Right to food in India,” 724.
a rights framing has given citizens a language through which to hold their government accountable, rather than simply protesting hunger and malnutrition.

This creation of a rights agenda is especially significant in India. In 1998, Epp wrote of India, “the efforts of leading rights advocates [in India] have been heroic, but the structure of their organizations limits those efforts to relatively ad hoc pressure on the Supreme Court.”178 He concluded that, at the time, the rights revolution in India had failed due to “a lack of a sustained rights agenda.”179 I believe that the RTF Campaign has since structured a movement that has enabled a sustained food rights agenda to become widespread. The fact that food rights have been widely discussed in India since the origin of the RTF case and RTF Campaign in 2001 is proof enough of this proposition. Indeed, local and national social activism campaigns launched by the RTF Campaign have resulted in nearly a ten-year stream of ongoing collective action that has been connected to the achievement of other social and economic rights.

**RTF Campaign’s Relation with the Courts**

Appointed by the Supreme Court through an interim order on May 8, 2002, the RTF Supreme Court Commissioners, Dr. N.C. Saxena and Mr. S.R. Shankar, are responsible for monitoring the implementation of RTF case court orders and reporting their findings to the Supreme Court.180 Each year, the Commissioners assemble data from state appointed advisors and submit a report to the Court that is made publicly available. These reports provide summaries of all schemes converted into entitlements, and outline the progress of

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179 Ibid.
implementation and issues related to compliance. Finally, each report provides an array of recommendations for the coming year.

At an institutionalized, macro level, the RTF Campaign works with the Supreme Court Commissioners, providing them with expertise, data, and policy advice. For instance, the RTF Campaign has considerable influence on the annual RTF report, and, in turn, considerable influence on the RTF litigation. According to Birchfield and Corsi, the annual report is consistently referenced in Supreme Court interim orders, which are often formed based on the Commissioners’ recommendations.\footnote{Birchfield and Corsi, “Between Starvation and Globalization: Realizing the Right to food in India,” 729.} A strong relationship with the Supreme Court Commissioners allows the RTF Campaign considerable political clout and institutionalized access to the Supreme Court, and allows the RTF Campaign to affect the RTF case at the national judicial level. The fact that this strong relationship exists at this level supports my previous statement that the RTF Campaign has simultaneously created a bottom up movement that pressures the courts and government \textit{and} a top down and elite component at the national level. At the national level, the movement is made up of experts in areas of food security and hunger who interact directly with Supreme Court commissioners and policy makers.

Yet, how can members of a social movement that regularly protests and rallies against the state simultaneously be viewed as an ally by the Court and by commissioners? Further, why have the RTF Campaign’s recommendations been taken seriously if it is associated with non-institutionalized action? It seems that the RTF Campaign has been able to achieve its current position by proving itself as an admittedly biased but reliable source for credible data. Its data has been continuously legitimized by the constant flow of interim orders that often come as a direct result of the campaign’s interlocutory applications. These interlocutory applications, which are provisional decrees over the course of legal action, ask for greater specificity or for the
expansion of preexisting court orders. To date, the RTF Campaign has filed nearly one hundred of these interlocutory applications.\textsuperscript{182} Examples of interlocutory applications are requests for more detail with regards to minimum caloric amounts, or demands that greater legal action be taken against government officials that have not yet implemented mandated schemes.\textsuperscript{183} These requests frequently arise following RTF Campaign surveys and “fact-finding reports” throughout India.

Rather than ignoring these interlocutory applications, the Supreme Court and RTF Commissioners take them into careful consideration. Consequently, a cyclical and mutually beneficial relationship has been born. Cyclical, because the stream of interlocutory applications results in interim orders, which result in more applications; and mutually beneficial, because the RTF Campaign is in many ways carrying out tedious duties for the commissioners by performing surveys and other forms of data collection which monitor implementation. In addition, the RTF Campaign has been labeled an “advisor” to RTF litigation. Although the RTF Campaign is only informally connected to the Commissioners’ work, it is viewed as a body that “considerably shapes Supreme Court orders.”\textsuperscript{184} Birchfield and Corsi discuss the RTF Campaign as central in “defining a specific and enforceable right” by providing the Supreme Court and Supreme Court Commissioners with data that has been “critical to setting a legal floor for nutrition and food-related entitlements.”\textsuperscript{185} Further, various members of the RTF Campaign’s steering group have worked with or been consulted by federal planning commissions, which are responsible for creating food scheme budgets. A fairly uncommon relationship has emerged between the RTF Campaign and the Supreme Court Commissioners, who are directly connected to the Supreme

\textsuperscript{182} Ibid., 720.
\textsuperscript{183} Ibid.
\textsuperscript{184} Ibid., 723.
\textsuperscript{185} Ibid., 721.
Court. This “symbiotic” relationship is, I believe, a major reason for the influence of the RTF movement and the success of the RTF case in India. Unlike most rights litigation, the case has resulted in a continuous flow of detailed interim orders that has served to expand and specify the meaning of the right to food and what implementation entails. Thus, through its communication with the Supreme Court and RTF Commissioners, the RTF Campaign has aided in giving the right to food meanings that are both more expanded over time as well as more concrete in their indicators. This is extremely important, as gaining a “right to food” may be merely rhetorical if what it entails is not made specific.

**RTF Campaign Effects**

As shown, the RTF Campaign has emerged as an influential actor not only by pushing for a right to food, but also by ensuring this right is reality on the ground. It has accomplished these goals by using both institutionalized and non-institutionalized movement strategies. Its non-institutionalized strategies are primarily driven from the bottom-up and are comprised of non-elites, while its institutionalized strategies work from the top-down on litigation and policy and are comprised of mostly educated elite. This multidimensional approach has had several benefits. First, where one of these forms of opposition has a limitation, the other compensates. For instance, court orders, despite their “parchment” pronouncements, are not equipped to force implementation on the state level. Thus, “loud” social activism in the form of public hearings, rallies, protests, and other forms of collective action is necessary to force negligent officials to monitor and implement the right to food on the state level. Or, where local organizing cannot influential court proceedings, elite actors on the steering committee of RTF step in to submit interlocutory applications, submit petitions, or to consult with RTF Commissioners. Another

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186 Ibid., 718.
benefit is that if one aspect of the movement (institutionalized or non-institutionalized) is for some reason slowed or shut down, the Campaign may be sustained through the other outlet. In fact, members of the RTF Campaign have emphasized their “pluralistic strategies” and multi-tiered work as contributing to the RTF Campaign’s great success.\(^{187}\)

By breeding social activism from the bottom up to ensure government accountability with respect to implementation, and influencing the Supreme Court from the top-down, the RTF Campaign is directly forming and altering court orders. In doing so, it is helping to make the right to food a reality in India. In India, the courts have legally adjudicated the right, the commission and the courts have issued detailed interim orders with policy implications, and the Campaign and Commissioners have helped to monitor the fulfillment of these interim orders. Could this triangular relationship provide a rough paradigm for how social and economic rights may be realized and ensured in other cases? I will explore this question in the conclusion.

There are obvious limitations to the Campaign’s strength and its effects on the judiciary. Members of the Campaign and Supreme Court Commission, for example, have discussed the importance of speaking with a unified voice. However, the diversity of opinion can sometimes inhibit the Campaign from making definite statements.\(^{188}\) In addition, what will happen to the RTF Campaign once a final Court ruling is made? Will the Campaign redirect its energy away from the Court, or will it continue to submit writ petitions? Further, the fate of RTF implementation is closely tied to the RTF Commission, and whether it will continue to monitor court order implementation. According to Birchfield and Corsi, no official statements have been

\(^{187}\) Ibid., 725.
\(^{188}\) Ibid., 726.
made as to what may happen after the final judgment.\textsuperscript{189} Finally, if the Campaign does direct its energy away from the Court and toward the legislature, it may have to acquire more resources.

\textsuperscript{189} Ibid., 731.
Chapter V: Conclusions and Limitations from the RTF Case in India

How and why has the Indian judiciary functioned as a viable pathway through which the poor have gained their right to food while it has not in the past? Under what conditions is adjudication an attractive option for addressing food grievances? I have argued in the preceding sections that the RTF Campaign is the agent of change that capitalized on and organized around incremental shifts in legal opportunities that arose in the 1990s with an increase in the litigation of positive rights claims. While certain legal mechanisms were in place at the time of the 1989 RTF case, absent changes in public perception regarding the potential efficacy of those mechanisms, and insufficient signs of an increased judicial receptivity to such litigation inhibited a social movement from developing around the case at that time. An effective social movement working through increased legal opportunities was necessary for RTF adjudication to arise. Since 2001, the RTF Campaign has created a multidimensional social movement that has been highly influential on the realization of the right to food. In addition to ensuring a constant stream of court orders, the RTF Campaign has pushed for the ongoing implementation of and surveillance of these interim orders. The RTF Campaign’s role as an “agent of accountability” has ensured that newly acquired food rights are not simply rhetorical promises, but that they result in perceptible change.

However, the RTF Campaign is not alone in demanding and monitoring implementation. The Supreme Court Commissioners have been an integral connector of the Campaign and the Court. The Court ensures that orders are implemented through the Commissioners, while the Commissioners relay information and complaints to the Court. The Campaign provides the Commissioners with data and guidance on RTF, and the Commissioners ensure that the Campaign’s demands are met. Through this, the Court and the Campaign have been able to
develop a reciprocal relationship. I have also described a cyclical relationship between the Indian Supreme Court and the RTF Campaign. Public discourse and citizen demands places pressure on the judiciary to more favorably adjudicate social and economic rights, and more favorable adjudication reinforces the importance of -- and even incites -- future public discourse through the perception of legal opportunities. Following this cycle, I postulate that the current RTF case has altered the judicial terrain and opened an even wider legal opportunity structure for the adjudication and realization of other social and economic rights in India.

One must be cautious in drawing broader conclusions or advancing sweeping paradigms based upon a single case of RTF adjudication in India. However, the above diagram and observances signal several broader ideas that may be gleaned from the Indian case. Scholars may look to the cycle shown above to predict what may occur when other social movements demand social and economic rights in court. Or, judiciaries may realize the importance of instituting an
independent body such as the RTF Commission to serve as a link between citizens and the Court. In addition, the case has the potential of impacting other actors’ approaches to addressing food grievances. Citizens may look to the Indian case to gain insight about how to demand a right to food and under what conditions to do so. Governments and judiciaries may use the India case to better encourage or deter environments conducive for social and economic rights to arise in their own nation. Generally, the successes and failures of the RTF case and the movement surrounding RTF enable an understanding of when the judicial system should and should not be strategically utilized to redress food grievances.

Significantly, the Indian RTF case points to the impact of varied tools and policies that increase the legal empowerment of the poor. Public interest litigation enables any Indian citizen to petition the courts for the protection of the public interest. However, as I have shown, structural legal opportunities may be blocked by conditional factors such as an unreceptive judiciary. Thus, increased access to justice cannot be replicated or constructed through any one approach. Rather, legal opportunities may take different forms across settings. The case also signals a pathway through which the poor can petition grievances, especially when “conventional” policy-making bodies are not meeting the demands of citizens. The Court is more likely to be approached for food rights when citizens feel as though typical policy making bodies are negligent, corrupt, or unconcerned with their grievances. In India, for instance, politicians are viewed as corrupt or as co-opted by elite interests. Judges, however, are viewed as “protectors of the poor.” Therefore, it has been advantageous for Indian citizens to petition the judiciary for their food rights. It becomes apparent that the opportunities and openings of state institutions have a direct impact on whether actors choose to utilize these institutions in demanding rights. For litigation to seem like a potentially advantageous strategy for the poor, a court must be
viewed as legitimate, unbiased, and independent. Following this line of reasoning, what occurs when there are no political or legal openings in institutions for citizens to voice their demands? This may be when citizens turn to non-institutionalized tactics, such as forms of public protest.

However, even though the RTF Campaign has utilized the judiciary to demand RTF, it has also realized the importance of non-institutionalized social movement tactics. Other movements within and outside of India should look to the Indian RTF movement as an example of a highly organized movement whose varied tactics have had considerable impact on court orders. Finally, the case confirms the consensus in the literature, that adjudication’s legitimacy is contingent on various factors within a given time or place. The Indian case also contributes to literature that seeks to define RTF and its implementation. In India, RTF is viewed as being met through public policies that reform welfare and public distribution and which raise the purchasing power of the poor.

Rights Based Development

Gauri and Brinks point to the “legalization of policy,” or social and economic rights’ adjudication, as a new legal and political landscape that holds great promise for increased human development. Jean Dreze writes that in India, the rights approach to development “seems to be taking shape within significant domains.” Are these characterizations overly optimistic?

It is true that social and economic rights’ adjudication is indicative of a broader trend in the developing world. In other nations such as Brazil, Nigeria, and South Africa, the judicial system is also being used as a vehicle to ensure the implementation of “second generation” rights.

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such as health care, education, shelter, and basic sustenance. Further, twenty-two state constitutions directly mention the right to food. Nearly all of these constitutions are found within developing nations where hunger and malnutrition are widespread. While the presence of a single RTF case in India does not in itself indicate great promise for human development or food rights, it may be indicative of a broader global trend. An increase in constitutional provisions and increased litigation do indicate that there is some increased level of legal opportunity that exists for actors demanding RTF.

However, it is important to note that the adjudication of food rights and a framing of food grievances through a right to food is only one pathway to alleviating hunger and malnutrition. Utilizing a rights discourse to address food grievances is not always a logical leap, but rather a calculated strategy for addressing a problem. In other locations, there may be frameworks that address food grievances more effectively. For instance, in a nation with a weak, conservative, or co-opted judiciary, a rights framing and adjudication may not be the most effective pathway to mitigating hunger and malnutrition. Indeed, scholars such as Dreze and Sen understand the type of public action utilized as contingent on the given political system. They note that the same strategies and legal tools used in the India case may be advantageous in, for instance, China or Somalia.

The question of why a rights framing of food grievances is successful in some countries and unsuccessful in others is a jumping off point for further scholarship. Further, more comparative and cross-country case studies should be performed to understand the differentiated strategies being used for the same social and economic aims. This will require methodologies that measure the effectiveness of utilizing the judiciary against other approaches. In relation to

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the RTF Case in India, a much more thorough evaluation needs to be accomplished with respect to legal enforcement. As the final court ruling draws near, knowledge of the efficacy of those interim orders in place is more important than ever. Are the schemes in place having a measurable impact on hunger and malnutrition?

Each day, 840 million people suffer from hunger despite a fifty percent increase per capita in global food production in the last half of the twentieth century.193 1.1 billion people in the world to not have access to clean water.194 Dreze and Sen write that hunger is less acceptable than it has ever been, not because it is more extreme but because it is “unnecessary and unwarranted” when we live in world that in fact has enough food for all.195 Whether adjudication is the most effective method by which to address hunger, malnutrition, and starvation is beyond the scope of this paper. However, through the RTF case in India, adjudication emerges as a feasible and viable option for addressing food grievances. Overall, the judiciary becomes apparent as an overlooked and under-researched avenue through which the poor can realize their food rights when organized effectively and strategically.

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193 Kent, Freedom from Want: The Human Right to Adequate Food, xv.
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