

The Justiciable Right to Food and Adequate Nutrition in the UK: A Feasible Proposition?

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This article looks at the right to food. Historically the idea of a right to food has a long pedigree in UK law. However, the way that human rights are currently protected makes it difficult to consider food and access to it as an actionable right. As this article argues, this is a reflection of a political and ideological choices about rights and the contents of rights. Countries such as India, with an actionable right to food, have seen tactical litigation which has improved people's access to food. This article explores how a right to food could be constructed in the UK.

Introduction

Food and adequate nutrition are basic human needs, without which one cannot survive, and should therefore be recognised as an essential basic human right. The first UN Special Rapporteur on the Right to Food, Jean Ziegler, defined this right as: “the right to have regular, permanent and free access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.”¹ Yet “the world's food systems perpetuate power asymmetry and inequality”,² as we live in

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¹ UN Commission on Human Rights, ‘Report by the Special Rapporteur on the right to food, Mr. Jean Ziegler, submitted in accordance with Commission on Human Rights resolution 2000/10’ (7 February 2001) UN Doc E/CN.4/2001/53, para 14.

² Nandini, Caivano and Abebe (n 1) 4.

a world which has an estimated 821 million people who still suffer from chronic hunger and malnutrition.³

If subsistence was to include unpolluted air and water, adequate food, clothing, and shelter, and minimal preventive health care, then there would be an estimated one billion people worldwide – most of them children – that live at a near the level of minimal subsistence.⁴ Many developing countries find themselves at this minimal, if any, level of subsistence. India, for instance, has an estimated 230 million people in rural areas who suffer from malnutrition.⁵ However, as this paper will demonstrate, India also stands at the forefront of countries which pursue a very progressive approach in tackling ongoing food poverty, by recognising the right to food, and implementing positive rights in legal, policy and institutional frameworks.⁶

One might assume that the problem of food insecurity and people living below the breadline is manifested only in developing countries. In the United Kingdom (“UK”) alone an estimated 8.4 million people live in food insecure homes.⁷ Unlike India, the UK is a developed country with the world’s fifth largest economy, but nonetheless, it ranks in the bottom half of countries in the European Union when comparing food insecurity.⁸ In 2008, the UK experienced a severe financial crisis. This led to an economic recession and new political policies put forwards by the government, commonly known as austerity measures.⁹ These dissimulating policies had an adverse impact on the most vulnerable individuals and communities around the country, as financial cuts have

³ World Food Programme (WFP), ‘Zero Hunger’ <<https://www1.wfp.org/zero-hunger>> accessed 4 September 2020.

⁴ Michael Payne, ‘Henry Shue on Basic Rights’ (2008) 9 *Essays in Philosophy* 220, 224.

⁵ UN Food and Agriculture Organization (FAO), *The State of Food Insecurity in the World* (May 2015) <<http://www.fao.org/3/a-i4646e.pdf>> accessed 4 September 2020, 15.

⁶ Hertel Shareen, ‘Hungry for justice: Social mobilization on the right to food in India’ (2015) 46 *Development and Change* 74.

⁷ Anna Taylor and Rachel Loopstra. *Too Poor to Eat: Food Insecurity in the UK* (May 2016) Food Foundation <<https://enuf.org.uk/sites/default/files/resources/foodinsecuritybriefing-may-2016-final.pdf>> accessed 4 September 2020.

⁸ *ibid.*

⁹ Just Fair, *Dignity and opportunity for all: Securing the rights of disabled people in the austerity era* (July 2014) <<http://justfair.org.uk/wp-content/uploads/2018/05/Dignity-and-Opportunity-for-All.pdf>> accessed 4 September 2020, 38.

been made to a system which people were dependent on.¹⁰ While the UK's richest 1000 people saw their wealth increased by 138 billion between 2009-2013,¹¹ there are now five times as many working families in the UK living below the poverty line than there were in the 1970s.¹² Since 2010, the UK has witnessed a critical increase in malnutrition, hunger and food bank usage.¹³ The interconnected relation between systemic food poverty and the palliative recourse to food banks is inevitably linked to a favoring of negative rights over socio-economic positive rights, in line with a neoliberal ideological discourse which suggests that people choices are to blame for their poverty.¹⁴

Unlike India, the UK has not created any initiative to make the right to food justiciable and, although needs and challenges differ in scope, it is still facing a serious food poverty crisis.¹⁵ It could be argued, from a human rights perspective, that the universality of the right to food should exist irrespective of the development of a country. But, as a product of its status, the UK conceals the food poverty it is facing, favoring neo-liberal policies that protect only negative rights and the liberties of those who can afford to feed themselves. As a result, poverty and socio-economic disadvantages are criminalized.¹⁶ This current situation has fueled a growing sense of frustration and anger amongst disadvantaged communities in poorer areas. The latter part of this paper will demonstrate this with a scoping project conducted within Tower

¹⁰ Rachel Loopstra, Aaron Reeves, David Taylor-Robinson, Ben Barr, Martin McKee and David Stuckler, 'Austerity, sanctions, and the rise of food banks in the UK' (2015) 350 *BMJ*, 2.

¹¹ BBC News, 'Budget 2012: George Osborne cuts 50p top tax rate' (21 March 2012) <<http://www.bbc.co.uk/news/uk-politics-17450719>> accessed 4 September 2020.

¹² Mary O'Hara, *Austerity bites: A journey to the sharp end of cuts in the UK* (Policy Press 2015) xiv-xvii.

¹³ Just Fair, *Going Hungry? The Human Right to Food in the UK* (April 2014) <<http://justfair.org.uk/wp-content/uploads/2018/05/Going-Hungry-The-Human-Right-to-Food-in-the-UK.pdf>> accessed 4 September 2020, 4.

¹⁴ Kayleigh Garthwaite, Peter Collins and Clare Bamba, 'Food for thought: An ethnographic study of negotiating ill health and food insecurity in a UK foodbank' (2015) 132 *Social Science & Medicine* 38, 43.

¹⁵ Kathleen Kerridge, 'There is a food poverty crisis in the UK. And the government is starved for ideas' (*The Guardian*, 31 March 2017) <<https://www.theguardian.com/commentisfree/2017/mar/31/food-poverty-crisis-government-cost-of-living>> accessed 9 September 2020.

¹⁶ Kingsley Purdam, Elizabeth Garratt and Aneez Esmail, 'Hungry? Food insecurity, social stigma and embarrassment in the UK' (2016) 50 *Sociology* 1072, 1074.

Hamlets.¹⁷ This provides evidence that the economic prosperity of a country does not necessarily reflect the lives of the disadvantaged population within that country, as social divides mask actual disparity.¹⁸

The International Covenant on Economic Social and Cultural Rights ("ICESCR") is a treaty which aims to ensure the protection of economic, social and cultural rights ("ESCR").¹⁹ It protects the right to food and adequate nutrition alongside housing, high standard of health, adequate standard of living, and education. However, although the UK has signed the Convention which places an obligation on the UK to ensure its policies comply with them ICESCR and to realize the rights contained with the Convention, the government has never enforced any of these rights within its domestic laws and there has never been an act of Parliament to make any of those rights justiciable. The lack of legal recognition of such basic rights means that disadvantaged people are not protected by law and can go hungry and starve, leaving them only dependent on relief and aid. As Indian economist and philosopher, Amartya Sen, famously wrote: "the law stands between food availability and food entitlement."²⁰

This paper will explore whether the right to food and adequate nutrition within the UK is a proposition which must be further explored and essentially implemented. It will do so by scrutinizing the concept of positive socio-economic rights and looking at examples of countries which have positively implemented these rights in their legal system. It will then look at the UK's obligations under international law. Further analysis of the current food insecurity the UK is facing will be followed by a scoping project conducted on poverty around the food banks in the borough of Tower Hamlets. The example of India will then be used as a case study for a country which positively implements the human right to food. Finally, this paper advances recommendations and illuminates productive examples from countries who have taken progressive steps towards enshrining the right to food. It argues that the right to food can be made a reality within the UK.

¹⁷ Nicole Lieberman and Geraldine Van Bueren, 'Basic Rights' (forthcoming 2020) Human Rights Collegium, Queen Mary, University of London.

¹⁸ Nandini, Caivano and Abebe (n 1).

¹⁹ Hereinafter 'ESCR'.

²⁰ Amartya Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation* (OUP 1987) 165-66.

1. Negative and Positive Rights

Negative rights are the only rights which are fully protected in UK Law. They respond to the neoliberal logic that individuals are responsible for their own lives and that the state cannot interfere with the self-determination of an individual in maintaining their bodily integrity, life, liberty and security.²¹ On the other hand, positive rights are those that support individual's basic human needs, also known as socio economic rights, such as housing, food, adequate standard of living, education, health.²² An example of a negative right would be that the state cannot forbid a person from getting access to food while a positive obligation would be the state's responsibility to ensure that everyone has access to food. Negative rights stop people from doing anything that could damage the liberty of another person while positive rights would be there to help confer basic means to people who are unable to provide for themselves.²³ The protection of negative rights demands restraint while the protection of positive rights demands action.²⁴

Neo-liberals would argue that negative rights are easier to maintain as they are cost free, much more controllable and enforceable. Positive rights, instead, do not depend on the economic development a country has achieved. Imposing positive rights on a country could also conflict and infringe with some of its negative freedoms associated with economic activities. Consequently, setting any universal standards for economic and social rights is likely to cause disagreements on the extent of the positive obligations of the state.²⁵ Yet, all rights can be seen as having correlative obligations that are both positive and negative. For example, the right to liberty does not only mean that the state must not deprive an individual of her liberty, but also that it must take steps to ensure that no one else brings about such a deprivation of liberty.²⁶ As Sen notes: "consequential reasoning can justify-indeed require-many positive actions in pursuit of

²¹ Tony Evans, *The Politics of Human Rights: A Global Perspective* (Pluto Press 2005) Chapter 4.

²² *ibid.*

²³ *ibid.*

²⁴ Matthias Klatt, 'Positive rights: Who decides? Judicial review in balance' (2015) 13 *ICON* 354.

²⁵ Robert Alexy, 'On constitutional rights to protection' (2009) 3 *Legisprudence* 3.

²⁶ Brice Dickson, 'Positive obligations and the European Court of Human Rights' (2010) 61 *NILQ* 203.

negative freedom."²⁷ By solely focusing on negative rights, one denies the "social, political and economic structures in which individual actions take place"²⁸. It is a state's responsibility to place its duties in a broader moral context and consider the human rights violations that can be inflicted if it stands passive²⁹ and ignores the importance of positive rights, like the right to food.³⁰

2. The Right to Food

The right to food is an inclusive right to all nutritional elements that a person needs to live a healthy and active life, and to the means to access them.³¹ It stands alongside the right to housing, high standard of health, education and adequate standard of living. The right to food, as a justiciable and legally enforceable right is a fairly new phenomenon.³² For over fifty years, following the adoption of the 1948 Universal Declaration of Human Rights ("UDHR")³³, the right to food was only mentioned without any actual direct obligations attached to it, and subsequently, victims of malnutrition were unable to exercise this right.³⁴ However, the 1996 World Food Summit³⁵ was a turning point which led to the publication of General Comment No.12 by the *Committee on Economic, Social and Cultural Rights (CESCR)*.³⁶ The World Food Summit which took place five

²⁷ Amartya Sen, *Resources, Values and Development* (Harvard University Press 1997) 313.

²⁸ Evans (n 22).

²⁹ Dickson (n 27) 204.

³⁰ Nicholas Barber, 'Constitutionalism: Negative and Positive' (2015) 38 *DULJ* 249.

³¹ Office of the UN High Commissioner for Human Rights (OHCHR), *The Right to Adequate Food* (April 2010)

<<http://www.ohchr.org/Documents/Publications/FactSheet34en.pdf>> accessed 4 September 2020.

³² International Development Law Organization (IDLO), *Realizing the Right to Food: Legal Strategies and Approaches* (September 2015)

<https://www.idlo.int/sites/default/files/pdfs/publications/Realizing%20the%20Right%20to%20Food_Legal%20Strategies%20and%20Approaches_full-report_0.pdf> accessed 4 September 2020, 13.

³³ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

³⁴ IDLO (n 33) 13.

³⁵ FAO, 'Home | Food and Agriculture Organization' <<http://www.fao.org/home/en/>> accessed 7 September 2020.

³⁶ OHCHR, 'OHCHR | Committee on Economic, Social and Cultural Rights', <<http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx>> accessed 7 September 2020.

years later³⁷ outlined various guidelines and suggestions towards the realisation of the right to national food security,³⁸ which were then adopted in 2004. The food crisis in 2008 raised the issue of the human right to food as an important public debate³⁹ and stimulated the implementation of national legal enforcement mechanisms as a way of successfully upholding that right with the aim of combating the crisis of global hunger.⁴⁰

Indeed, under international human rights law, it is the duty of the state to respect the right to food and not to interfere with individual efforts to provide for themselves. States also have a duty to protect the right to food from anyone who tries to infringe those rights, and an obligation to provide food to anyone who is unable to provide for himself.⁴¹ By dismissing positive rights it is paradoxically the state and its policies such as austerity measures that infringe on people's right to live in an environment that enables them to access food. Having a right become a justiciable right means that individuals within a state are empowered and protected against any violation of that right.

2.1 Justiciability

Justiciability is the ability of the judiciary or a quasi-judicial authority to sustain the law through effective judicial assertions.⁴² Or, according to Immanuel Kant, “the power to award to each person that which is due to him under law.”⁴³ Whenever a right is held as a justiciable right, an

³⁷ FAO, ‘World Food Summit: Five years later: 10-13 June 2002’ (2002)

<<http://www.fao.org/worldfoodsummit/english/index.html>> accessed 7 September 2020.

³⁸ FAO, *Voluntary guidelines to support the progressive realization of the right to adequate food in the context of national food security* (November 2004) <<http://www.fao.org/3/a-y7937e.pdf>> accessed 4 September 2020, 24.

³⁹ Carmen G Gonzalez, ‘The Global Food Crisis: Law, Policy, and the Elusive Quest for Justice’ (2010) 13 YHRDLJ 462.

⁴⁰ United Nations Committee on Economic, Social and Cultural Rights (CESCR), ‘General Comment No 12: The Right to Adequate Food (Art. 11)’ (12 May 1999) UN Doc E/C.12/1999/5.

⁴¹ Sandra Fredman, ‘New horizons: incorporating socio-economic rights in a British Bill of Rights’ (2010) PL 297, 297.

⁴² FAO, *The Right to Food Guidelines: Information Paper and Case Studies* (2006) <<http://www.fao.org/3/a-a0511e.pdf>> accessed 4 September 2020, 71.

⁴³ Gargi Dutta, ‘Justiciability of Right to Food’ (2015) 5 International Journal of Scientific and Research Publications 1.

adequate remedy can be decided in the case of violation.⁴⁴ When the law becomes a judicial right, the individual or victim whose rights have been violated is legally entitled to either rightful financial compensation or an acknowledgement of a violation and change of policy.⁴⁵ This paper would argue that it should be the government's responsibility to make sure that people do not go hungry and are protected by legal policies established through Parliament and other legislators, making the right to food a legislative act. When someone's right to food is violated, according to this act, the individual would be entitled to compensation by the state.⁴⁶

The right to food is determined by national courts whose duty it is to inspect the government's actions and see whether they are in line with international and national obligations. Though the courts might be useful at proscribing government actions that interfere with people's rights, they are less effective at pushing the government to apply those rights.⁴⁷ Therefore, it should not be left to the courts alone to monitor how policies are implemented and instead this should be done by independent bodies who promote human rights.⁴⁸ Nonetheless, once a violation has been found, it is the judiciary's role to provide the compensation to the victim or to instruct the government to find the appropriate solution. Having the right to food enforced through the courts would enable individuals who suffer from food insecurity or malnutrition to reclaim their right, "obtain ownership, and utilize the law to seek remedy and accountability."⁴⁹ For the courts to be able to act, it is crucial for states to strengthen institutions such as the judiciary by making sure courts are independent and hold the power to adjudicate claims related to the right to food. Although decisions on human rights could be less reliable when they come from unaccounted

⁴⁴ *ibid* 2.

⁴⁵ *ibid*.

⁴⁶ Christophe Golay and Melik Özden, *The Right To Food: A fundamental human right affirmed by the United Nations and recognized in regional treaties and numerous national constitutions* (2005) Europe-Third World Centre (CETIM) Geneva
<<https://www.cetim.ch/legacy/en/documents/Br-alim-A4-an.pdf>> accessed 9 September 2020, 23.

⁴⁷ Frank B Cross, 'The Error of Positive Rights' (2001) 48 UCLA L Rev 876.

⁴⁸ Christian Courtis, 'The right to food as a justiciable right: challenges and strategies' (2007) 11 Max Planck Yearbook of United Nations Law, 317, 319.

⁴⁹ Olivier De Schutter, 'Briefing note: Countries tackling hunger with a right to food approach' (OHCHR, May 2010)
<https://www2.ohchr.org/english/issues/food/docs/Briefing_Note_01_May_2010_EN.pdf>
accessed 4 September 2020, 6.

judges with value judgments, they can also not only be left for elected representatives. Furthermore, the enforcement of positive rights obligates governments to act in order to provide individuals with the fulfillment of rights and freedoms. But the question remains, how can the courts decide when a positive or negative right should prevail in a given case? Positive rights such as rights to food, housing, education, and minimal social assistance are not easily enforceable and it is therefore that the adjudication of such claims largely fall beyond the judicial role, which can more freely handle the enforcement of negative liberties.⁵⁰

According to Ernst-Wolfgang the real power in the state has shifted away from the political process and those democratically elected towards the courts. This resulted in transforming the parliamentary legislative state into what he called a “constitutional adjudicative state”⁵¹ also negatively known as judicial activism.⁵² Young defined it judicial usurpation which “occurs when the judiciary interprets and applies rights in such a manner that it assumes control of the political system . . . crowding out . . . the democratically elected branches.”⁵³ But, in reply to Young, the courts would not feel the need to interfere if there were no infringement of rights by the legislative system, and they would only take control if there was no other choice.

Although the courts represent the state, it is imperative that they act to protect the people. As no justice can be done without the judiciary, it is therefore the judiciary’s role to adapt or impose such rights thus making them effective⁵⁴. This paper will demonstrate how this can be achieved with the case study of India. Finally, the courts are aware that positive rights claims often arise from dissatisfaction with the legislative process or their inability or unwillingness to deal with contentious social issues.⁵⁵ For this reason, this paper advocates, it should be the courts’ duty to deal with such issues, paving the way for positive rights whilst

⁵⁰ Lawrence David, ‘A principled approach to the positive/negative rights debate in Canadian constitutional adjudication’ (2014) 23 *Constitutional Forum* 41, 42.

⁵¹ Ernst-Wolfgang Böckenförde, ‘Grundrechte als Grundsatznormen: Zur gegenwärtigen Lage der Grundrechtsdogmatik’ in Ernst-Wolfgang Böckenförde (ed) *Staat, Verfassung, Demokratie: Studien zur Verfassungstheorie und zum Verfassungsrecht* (Suhrkamp 1991) 159, 190.

⁵² Jeremy Waldron, *A Right-Based Critique of Constitutional Rights* (1993) 13 *OJLS* 18, 42.

⁵³ Katharine Galloway Young, *Constituting Economic and Social Rights* (OUP 2012) 134.

⁵⁴ Klatt (n 25) 357.

⁵⁵ David (n 51) 43.

protecting the people from being victims of the state's injustice⁵⁶ and violations.⁵⁷

2.2 Methods of Implementing the Justiciable Right to Food

Acknowledgement of the justiciable right to food is increasing on a domestic level⁵⁸ and there are different methods being used by countries in addressing the issue. These measures, identified as justice-based frameworks, are: (i) strengthening institutions; (ii) improving access to justice; (iii) empowering rights holders; and (iv) supporting food sovereignty. These frameworks also reflect the reasons countries are failing to eradicate hunger.⁵⁹ The right to food is seen as obligatory for states that have ratified international treaties. In 1948, the Universal Declaration of Human Rights (UDHR) was the first to recognize, in Article 25, that everyone has the right to an adequate standard of living, including food. The International Covenant on Economic, Social and Cultural Rights (ICESCR), in Article 11, recognises the right to an adequate standard of living, including adequate food, and the fundamental right to be free from hunger as a separate right. Article 12 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) grants the right of pregnant and lactating women to special protection with regard to adequate nutrition, while article 14 respects the right of rural women to equal access to land, water, credit and other services, social security and adequate living conditions. The Convention on the Rights of the Child (CRC) recognised, in Article 25, the right to the highest attainable standard of health, and, in Article 27, the right to an adequate standard of living, which, in both articles, includes food and nutrition. The General Comments No. 12⁶⁰ of the *CESCR*⁶¹ further elaborate and specifies on the right to adequate food as a right that is: "realized when every man, woman and child, alone or in community with others, has physical and economic

⁵⁶ Dutta (n 44) 2.

⁵⁷ Siri Gloppen, 'Public Interest Litigation, Social Rights and Social Policy' (New Frontiers of Social Policy conference, Arusha, Tanzania, December 2005) 25.

⁵⁸ Nandini, Caivano and Abebe (n 1) 3.

⁵⁹ *ibid* 5.

⁶⁰ CESCR, 'General Comment No 12' (n 41).

⁶¹ OHCHR, 'Committee on Economic, Social and Cultural Rights (CESCR)' <<http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx>> accessed 4 September 2020.

access at all times to adequate food or means for its procurement. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense, which equates it with a minimum package of calories, proteins and other specific nutrients. And even though the right to adequate food will have to be realized progressively states have a core obligation to take the necessary action to mitigate and alleviate hunger as provided for in paragraph 2 of article 11, even in times of natural or other disasters.”⁶² Furthermore, it summarises the essential elements such as: adequacy, accessibility, availability, and acceptability, which are core to the right to food. *Adequacy* refers to the quantity and quality of food within food safety and nutritional value and the specific health needs in determining which foods should be considered most adequate for each individual.⁶³ It also includes non-nutritional elements of *cultural or consumer acceptability* of informing where the food has come from.⁶⁴ *Accessibility* is interpreted as both economic and physical. Economic accessibility signifies that an individual or a household ought to have the appropriate economic means to acquire their food without having to give up other basic needs. Physical accessibility implies that adequate food needs to be accessible to all people including physically vulnerable individuals, such as: infants and young children, elderly people, the physically disabled, and persons with medical problems.⁶⁵ *Availability* refers to different ways of feeding oneself, which could be directly from the land one works on, from other natural resources, or simply from food bought in the market, all available through equal distribution.⁶⁶

In some countries, the right to food is also protected without being directly mentioned in the country’s constitution or legislation.⁶⁷ Such countries are: Ecuador, Bolivia, Costa Rica, Guatemala, Honduras, Mexico, Nepal, Nicaragua, Panama, Paraguay, Venezuela, South Africa, Democratic Republic of the Congo, Malawi, Iran, Ukraine, Hungary and Moldova. In most cases, national legislations reflect the rights already protected and

⁶² CESCR, ‘General Comment No 12’ (n 41) para 6.

⁶³ *ibid* paras 7, 9.

⁶⁴ *ibid* para 11.

⁶⁵ *ibid* paras 7, 13.

⁶⁶ *ibid* para 12.

⁶⁷ Lidija Knuth and Margret Vidar, *Constitutional and Legal Protection of the Right to Food around the World* (2011) FAO Right to Food Studies <<http://www.fao.org/right-to-food/resources/resources-detail/en/c/80544/>> accessed 7 September 2020, 10.

enforced in a national constitution through framework and sectoral laws.⁶⁸ Such rights are only effective for the individuals within a particular state. Indeed, as Oliver De Schutter, the former UN Rapporteur to food, states: “[a]ccountability, the rule of law, and the establishment of judicial mechanisms for people to claim their rights are fundamental in a rights-based approach towards food insecurity”.⁶⁹

2.3 Justiciable Right to Food in National Constitutions

When a constitution makes socio-economic rights, such as the right to food, justiciable, it should automatically allow for claims to be made when such rights are denied.⁷⁰ Since all laws must match its constitutional provisions, for the right to food to have a strong legal base and not be easily withdrawn, it should become a constitutional right.⁷¹ “The constitutionality of every law and act of government is one of the most important political principles of democracies and universally accepted rule of law norms.”⁷² According to the Food and Agriculture Organization of the United Nations there are four different constitutional recognitions on the right to food: (i) explicit and direct recognition, as a human right in itself or as part of another broader human right; (ii) implicit in a broader human right; (iii) explicit recognition of the right to food as a goal or directive principle within the constitutional order; and (iv) indirect recognition, through interpretation of other human rights by the judiciary.⁷³ Currently there are 56 constitutions which protect the right to food, either implicitly or explicitly, as a justiciable right, or more overtly in the form of a directive principle of a state.⁷⁴ Twenty-three countries have explicitly enshrined the right to food in their constitutions.⁷⁵

⁶⁸ FAO, *Guide on Legislating for the Right to Food* (2009) <<http://www.fao.org/right-to-food/resources/resources-detail/en/c/129278/>> accessed 7 September 2020.

⁶⁹ De Schutter, ‘Briefing note: Countries tackling hunger with a right to food approach’ (n 50) 11.

⁷⁰ Dutta (n 44) 1.

⁷¹ De Schutter, ‘Briefing note: Countries tackling hunger with a right to food approach’ (n 50) 11.

⁷² Knuth and Vidar (n 68) 13.

⁷³ Knuth and Vidar (n 68) 30.

⁷⁴ Knuth and Vidar (n 68) 22.

⁷⁵ Knuth and Vidar (n 68) 37.

Ecuador was one of the first countries to insert the right to food into its constitution,⁷⁶ as seen in Articles 13⁷⁷ and 281⁷⁸. Furthermore, this right is justiciable in the following countries: Bolivia, Costa Rica, Guatemala, Honduras, Mexico, Nepal, South Africa, Nicaragua, Panama, Paraguay, Venezuela, Democratic Republic of the Congo, Malawi, Iran, Ukraine, Hungary and Moldova.⁷⁹ In all the above countries, the government can be sued by individuals for failing to guarantee the economic and social rights promised/enshrined in the constitution. Some examples of such cases will be seen in the later part of this article. Other countries such as Colombia, Cuba, the Dominican Republic, Haiti, Ethiopia, Namibia, Nigeria, the Gambia, Uganda, Zambia, Bangladesh, North Korea, Pakistan, Sri Lanka and India⁸⁰ recognise the right to food in their constitutions, but as part of directive and aspirational rights. These are only intended to guide state policy but are not binding principles.⁸¹ Perceived justiciability may change over time and despite its original interpretation there is scope for improvement. These countries are mostly developing countries whose populations have suffered from food insecurity or malnutrition, prompting them to prioritise the right to food.⁸² Furthermore, some countries that have implemented constitutional provisions also have legal provisions and laws to further uphold these rights, making them more enforceable. Yet, the majority of these countries lack any case studies to demonstrate that the right to food, though present in their constitution, is also protected by the courts. It is only by building strong case law that you can successfully empower a language of rights. Susan Lawrence states that "throughout most of our history, few of the poor have been able to turn to the courts for redress of their grievances and participate in the judicial development of law and

⁷⁶ Karla Peña, *Institutionalizing Food Sovereignty in Ecuador* (January 2013) The Transnational Institute <https://www.tni.org/files/download/51_pena_2013-1_0.pdf> accessed 4 September 2020, 3.

⁷⁷ Constitution of the Republic of Ecuador 2008, art 13.

⁷⁸ *ibid* art 281.

⁷⁹ Courtney Jung and Evan Rosevear. 'Economic and Social Rights in Developing Country Constitutions: Preliminary Report on the TIESR Dataset' (2011) Toronto Initiative for Economic and Social Rights, 20.

⁸⁰ *ibid*.

⁸¹ *ibid* 1.

⁸² Knuth and Vidar (n 68) 46.

policy."⁸³ In a decent society, it is the role of the government or the judiciary to ensure that its citizens have food and shelter; guarantee medical care, good education, good jobs, and a clean environment.⁸⁴ Responsibility should therefore lie on a legal system which holds a concrete policy on the right to food.

2.4 Regional Systems on the Right to Food

Under regional systems, the right to food is recognised in the African Charter by The African Commission on Human and Peoples' Rights⁸⁵, as the right to life, health and development. The Inter-American system also contains three main human rights principles that protect the right to food and is the leading regional treaty on such right. It maintains *The American Declaration of the Rights and Duties of Man* that protects the right to food in Article XI.⁸⁶ It is followed by *The American Convention on Human Rights*⁸⁷, which protects the right to food⁸⁸ through its additional protocol, Protocol of San Salvador. This protocol was ratified by 16 states, and is the only regional treaty to date that explicitly provides for the right of all people to food.⁸⁹ Yet, in comparison, the right to food is completely absent from the fundamental EU treaties, the *European Convention of Human Rights*⁹⁰, and from the jurisprudence of national and regional courts in the

⁸³ Susan Lawrence, *The Poor in Court: The Legal Services Program and Supreme Court Decision Making* (Princeton University Press 2014) 106.

⁸⁴ Cass R Sunstein, 'Against positive rights' (1993) 2 E Eur Const Rev 35, 36.

⁸⁵ African Commission on Human and Peoples' Rights (ACHPR), 'African Commission on Human and Peoples' Rights' <<http://www.achpr.org/>> accessed 7 September 2020.

⁸⁶ American Declaration of the Rights and Duties of Man, OAS Res XXX adopted by the Ninth International Conference of American States (1948).

⁸⁷ American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 123.

⁸⁸ Christophe Golay, *The Right to Food and Access to Justice: Examples at the National, Regional and International levels* (2009) FAO Right to Food Studies <<http://www.fao.org/3/a-k7286e.pdf>> accessed 9 September 2020, 38.

⁸⁹ Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (entered into force 16 November 1999) OAS Treaty Series No 69 (1988) art 12.

⁹⁰ Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, as amended) (ECHR).

EU.⁹¹ It is even absent from the revised *European Social Charter*.⁹² On the other hand, the *ICESCR* requires all states who ratified it to fulfil their international obligations to respect and protect the right to food in each respective country. As an international treaty, it is binding on the UK only in International law and has limited impact on UK domestic law.⁹³

2.5 National Laws on the Right to Food

A legal framework is imperative when aiming towards a rights based approach to food security on a national level,⁹⁴ as seen in General Comment 12: “[s]tates should consider the adoption of a framework law as a major instrument in the implementation of the national strategy concerning the right to food”.⁹⁵ Such laws could recognise the justiciability of the right to food through different bodies; they could also include various monitoring mechanisms to check each institution’s progress in regards to the right to food.⁹⁶ Incorporating the right to food in domestic law empowers the victims, allowing him/her to use the law as a positive tool in seeking remedy for such violations. As well as creating such laws, it is also crucial that institutions and programmes operate under a national strategy and ensure that the real needs of the people affected are identified and efficiently looked at.

Guatemala and Brazil were among the first states to adopt a law on food and nutritional security that recognises the right to food and the correlative obligations of the state in combating hunger problems and empowering people living on the edge of survival.⁹⁷ In 2003, Brazil started

⁹¹ Jose Luis Vivero-Pol and Tomaso Ferrando, ‘Let’s talk about the right to food’ (*BMJ Opinion*, 10 January 2017) <<http://blogs.bmj.com/bmj/2017/01/10/jose-luis-vivero-pol-and-tomaso-ferrando-lets-talk-about-the-right-to-food/>> accessed 4 September 2020.

⁹² European Social Charter (revised) (adopted 3 May 1996, entered into force 1 July 1999) ETS 163.

⁹³ Knuth and Vidar (n 68) 8.

⁹⁴ De Schutter, ‘Briefing note: Countries tackling hunger with a right to food approach’ (n 50) 5.

⁹⁵ CESCR, ‘General Comment No 12’ (n 68) para 29.

⁹⁶ De Schutter, ‘Briefing note: Countries tackling hunger with a right to food approach’ (n 50).

⁹⁷ Knuth and Vidar (n 68) 21.

to incorporate various programmes to combat hunger⁹⁸ such as the [Fome Zero](#)⁹⁹ and the *Ley organic de seguridad alimentaria y nutricional*, assuring the human right to adequate food.¹⁰⁰ Finally, in 2010, the House of Representatives voted a Constitutional amendment on the right to food. The following countries have also adopted a framework law on food security or the right to food: Argentina, Bolivia, Ecuador, El Salvador, Indonesia, Nicaragua, Peru, Venezuela and India, among others. The right to food has also been directly applicable in 77 States through international and regional conventions or treaties under international law. This proves that it is possible for countries to first implement national laws before having them be constitutionally recognised if they choose to do so.¹⁰¹ The UK currently lacks any domestic legislation to protect the right to food. This paper will explore this conundrum in more detail.

3. The Right to Food under International Law

The concept of the right to food within English law has existed for 800 years and started in the 13th century (1216). It was known as the *Charter of the Forest*,¹⁰² a treaty that stood alongside the Magna Carta and was concerned with economic and social entitlement in medieval England, providing statutory rights to protect the commons and not just the Kings and Barons.¹⁰³ The Charter of the Forest re-established rights of access to

⁹⁸ José Graziano da Silva, Mauro Eduardo Del Grossi and Caio Galvão de França, *The Fome Zero (Zero Hunger) Program* (2011) FAO/Ministry of Agrarian Development Brazil <<http://www.fao.org/3/a-i3023e.pdf>> accessed 9 September 2020, 40.

⁹⁹ *ibid.*

¹⁰⁰ Working Group of the National Food Security and Nutrition (CONSEA) Brazil, *Building up the National Policy and System for Food and Nutrition Security: the Brazilian experience* (November 2009) <<http://www4.planalto.gov.br/consea/publicacoes/sistemas-alimentares/construcao-do-sistema-e-da-politica-nacional-de-seguranca-alimentar-e-nutricional-o-instituto-interamericano-de-cooperacao-para-a-agricultura/versao-ingles-1.pdf>> accessed 9 September 2020, 37.

¹⁰¹ De Schutter, 'Briefing note: Countries tackling hunger with a right to food approach' (n 50) 5.

¹⁰² Charter of the Forest 1225. See National Archives transcript: 'Charter of the Forest 1225' (*The National Archives*, 2015) <<http://www.nationalarchives.gov.uk/education/resources/magna-carta/charter-forest-1225-westminster/>> accessed 7 September 2020.

¹⁰³ Geraldine Van Bueren, 'Socio-Economic Rights and a Bill of Rights – An Overlooked British Tradition' (2013) Public Law 821, 1.

the forest for freemen and provided both entitlements and protections for a greater range of citizens of both genders.¹⁰⁴ When translating the Charter to 21st century terms, it is the equivalent of the rights of access to food, clothing and housing, as seen in the *ICESCR*.¹⁰⁵ Chapter one¹⁰⁶ of the charter can be found to protect adequate standards of living (Art 11 *ICESCR*), while chapters 7,¹⁰⁷ 9,¹⁰⁸ and 13,¹⁰⁹ are all the equivalent of the right to food (Article 11(1) *ICESCR*). This is demonstrated by references to foods such as honey, in relation to food rights. Although largely ignored, The Charter of the Forest provides an important historical link between rights that should be available and those that should be entitled. It asserts that the rights fundamental to human life could not be denied by political, private or royal discretion.¹¹⁰ It also proves that even in medieval days socio-economic rights served the people who needed those rights the most. Following the charter, the right to food was once again revived in the 20th century under the *ICESCR*.

3.1 International Covenant on Economic Social and Cultural Rights

The *ICESCR* was ratified by the UK in 1976,¹¹¹ with the principle obligation of: “achieving progressively the full realisation of the rights recognised”¹¹² therein. It acknowledges that such rights cannot be achieved by all states immediately, but requires them to move as quickly as possible towards realising the rights that are recognised.¹¹³ The human

¹⁰⁴ *ibid.*

¹⁰⁵ Van Bueren (n 104) 7.

¹⁰⁶ Protected common pasture for all those "accustomed to it".

¹⁰⁷ Beadles or foresters from seizing lambs, piglets, sheaves of corn or oats in lieu of scotale (a feudal tax).

¹⁰⁸ The right granted on common land or in the forest to allow pigs to forage for acorns etc.

¹⁰⁹ Established all freemen should have their honey.

¹¹⁰ Van Bueren (n 104) 7.

¹¹¹ Equality and Human Rights Commission, 'International Covenant on Economic and Social Rights' (28 October 2019) <https://www.equalityhumanrights.com/en/our-human-rights-work/monitoring-and-promoting-un-treaties/international-covenant-economic-social>> accessed 7 September 2020.

¹¹² International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (*ICESCR*), art 2(1).

¹¹³ CESCR, 'General Comment No 3: The nature of States parties' obligations (Art. 2, para. 1)' (14 December 1990) UN Doc E/1991/23, para 9.

right to adequate food is stated in Article 11(1),¹¹⁴ which recognises the right of everyone to an: adequate standard of living, including adequate food, clothing and housing, and the continuous improvement of living conditions. States must take all necessary steps to the maximum of their actual available resources, not just budgetary allocations, in order to realise the right to food.¹¹⁵ All individuals should be able to assess their complaints in the light of the obligations owed by states, under the Covenant.¹¹⁶

General Comment No. 12¹¹⁷ of the *CESCR*¹¹⁸ further elaborates and specifies that the right to adequate food is: “realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement. The right to adequate food shall therefore not be interpreted in a narrow or restrictive sense, which equates it with a minimum package of calories, proteins and other specific nutrients.”¹¹⁹ It refers to adequacy, availability, acceptability and accessibility, as imperative elements in realising the right to food. Adequacy refers to the quantity and quality of food regarding food safety, examining nutritional value and specific health needs when determining which foods should be considered most adequate for each individual.¹²⁰ It also includes non-nutritional criteria such as cultural and consumer acceptability regarding information concerning the origin of food.¹²¹ Though, a rights based approach on the right to food does not guarantee accessibility to it and it would further require a practical system put in place that will enable to provide accessibility to food both in economic and physical terms.¹²² Economic accessibility implies that individuals or households possess the appropriate economic means to acquire their food without having to give up other basic needs. Similarly, physical accessibility implies that adequate food needs to be accessible to all people, including physically vulnerable

¹¹⁴ ICESCR (n 113) art 11(1).

¹¹⁵ CESCR, ‘General Comment No 3’ (n 114) para 13.

¹¹⁶ *ibid.*

¹¹⁷ CESCR, ‘General Comment No 12’ (n 41).

¹¹⁸ OHCHR, ‘Committee on Economic, Social and Cultural Rights (CESCR)’ (n 62).

¹¹⁹ CESCR, ‘General Comment No 12’ (n 41).

¹²⁰ *ibid* paras 7, 9.

¹²¹ *ibid* para 11.

¹²² *ibid* para 7.

individuals.¹²³ Availability refers to different ways of feeding oneself and obtaining food, such as from the market, land or natural resources.¹²⁴

Article 11(2) guarantees the fundamental right of everyone to be free from hunger, yet hungry citizens are unable to sue their government under the *ICESCR*, except under their country's own domestic laws.¹²⁵ The fact that the UK has never passed any domestic legislation on the right to food has been criticised by the former UN Special Rapporteur, Olivier De Schutter.¹²⁶ Most recently, Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights, stated that: 'food banks cannot step in to do the government's job, and teachers—who very well may be relying on food banks themselves—shouldn't be responsible for ensuring their students have clean clothes and food to eat'.¹²⁷

3.2 De Schutter on the Optional Protocol

De Schutter argued that it is the duty of domestic courts to uphold social rights provisions under domestic legislations.¹²⁸ He stressed that the *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*,¹²⁹ which entered into force on 5th May 2013, would help secure the right to food. The Protocol would, firstly, help the *ICESCR* to assess individual complaints regarding the obligations owed by states under the Covenant. This would assist domestic courts to uphold social

¹²³ *ibid* paras 7 and 13.

¹²⁴ *ibid* para 12.

¹²⁵ FAO, 'What is the right to food? – World Food Summit: Five years later: 10-13 June 2002' (2002) <<http://www.fao.org/worldfoodsummit/english/newsroom/focus/focus6.htm>> accessed 7 September 2020.

¹²⁶ UN Special Rapporteur on the Right to Food, 'Homepage – Olivier De Schutter | UN Special Rapporteur 2008-2014' <<http://www.srfood.org/>> accessed 7 September 2020.

¹²⁷ Philip Alston, 'Statement on Visit to the United Kingdom, by Professor Philip Alston, United Nations Special Rapporteur on extreme poverty and human rights' (*OHCHR*, 16 November 2018) <https://www.ohchr.org/Documents/Issues/Poverty/EOM_GB_16Nov2018.pdf> accessed 7 September 2020, 15.

¹²⁸ Just Fair, *Freedom From Hunger: Realising the Right to Food in the UK* (February 2013) <https://www.equallyours.org.uk/wp-content/uploads/2013/03/Freedom-from-Hunger-Just-Fair-Report.FINAL_.pdf> accessed 7 September 2020, 9.

¹²⁹ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (adopted 10 December 2008, entered into force 5 May 2013) 2922 UNTS 29 (OP-ICESCR).

rights provisions under domestic legislation. Secondly, the Protocol would develop case law, enabling domestic monitoring bodies to acknowledge the equal value and justiciability of ESCR.¹³⁰ This would build on the 1998 Council of Europe Collective Complaints Mechanism,¹³¹ while bringing more attention to individual cases. Protocol case-law would also help clarify what governments need to do in order to progressively achieve the full realisation of ESCR with the maximum of their resources,¹³² while helping to empower victims who have experienced violations.¹³³ Even though the majority of governments favored the Optional Protocol,¹³⁴ the UK has yet to ratify it and has instead been very critical regarding its use.¹³⁵ Like all countries that have ratified the *ICESCR*, the UK is obliged to report to the *CESCR* every five years, with a periodic review to demonstrate the progress it has made.

3.3 Periodic Review on the UK's Obligation on The Right to Food

States should regularly review their legislations, strategies and policies to make sure they take ESCR from the covenant into account,¹³⁶ while also making sure no laws and policies which interfere with such rights are implemented.¹³⁷ The last periodic review in the UK took place in June 2014.¹³⁸ In the report, the Committee criticised the UK regarding the

¹³⁰ Economic, social and cultural rights (hereinafter referred to as ESCR).

¹³¹ Additional Protocol to the European Social Charter providing for a system of collective complaints (adopted 9 November 1995, entered into force 1 July 1998) ETS 158.

¹³² *ICESCR* (n 113) art 2(1).

¹³³ Irene Biglino and Christophe Golay, *The Optional Protocol to the International Covenant on economic, social and cultural rights* (July 2013) Geneva Academy of International Humanitarian Law and Human Rights
<<https://repository.graduateinstitute.ch/record/295225/files/The%20optional%20protocol%20In%20brief%20.pdf>> accessed 9 September 2020, 43.

¹³⁴ *ibid* 8.

¹³⁵ Arne Vandenbogaerde and Wouter Vandenhole. 'The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: An ex ante assessment of its effectiveness in light of the drafting process' (2010) 10 HRLR 207, 216.

¹³⁶ *CESCR*, 'General Comment No 19: The right to social security (Art. 9)' (4 February 2008) UN Doc E/C.12/GC/19, para 67.

¹³⁷ *CESCR*, 'General Comment No 12' (n 41) para 19.

¹³⁸ *CESCR*, 'Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland' (14 July 2016) UN Doc E/C.12/GBR/CO/6.

lack of appropriate policies concerning food security, malnutrition, obesity and the lack of adequate measures to reduce the dependency on food banks. Furthermore, it recommended that the UK should develop a comprehensive national strategy for the protection and promotion of the right to adequate food, addressing the issue of food insecurity and promoting a healthier diet. This is because the right to food cannot be implemented without incorporating legislation, and therefore, is not self-executing.¹³⁹

Similar to the food crisis, the UK is also facing a major housing crisis. The number of people using food banks is only growing as is homelessness which has seen a 4% rise every year and a total of 320,000 homeless people.¹⁴⁰ Though throughout history the UK has always forged the notion that the right to housing is associated with the concept of dignified life there has been a lot of criticism on how the UK has been handling the crisis.¹⁴¹ Raquel Rolnik, the UN special rapporteur on the Right to Adequate Housing until 2014, has strongly criticized the UK for its worsening inequalities, highly priced houses, limited social housing and long and impossible waiting lists which might never clear.¹⁴² As a result, most people are dependent on renting properties from private landlords (often under unsecured contracts and with ever increasing rents)¹⁴³ or are forced to live precariously as council housing is curtailed by privatization. Neo-liberal policies make the public sector dependent on private developers for revenue¹⁴⁴, whilst individuals can only count on themselves for access to basic human needs. This has left many people, most of them workers, having to decide whether to pay for food, rent or heating. Having to make that hard choice epitomizes the political, ideological and economic inequality of socio-economic rights in the UK today, which has driven many people to despair, hunger and homelessness.

¹³⁹ *ibid.*

¹⁴⁰ Shelter, '320,000 people in Britain are now homeless, as numbers keep rising' (22 November 2018)

<https://england.shelter.org.uk/media/press_releases/articles/320,000_people_in_britain_are_now_homeless_as_numbers_keep_rising> accessed 4 September 2020.

¹⁴¹ Raquel Rolnik, *Urban Warfare: Housing under the Empire of Finance* (Verso 2019) 36.

¹⁴² *ibid.* 31.

¹⁴³ *ibid.* 35.

¹⁴⁴ Samuel Stein, *Capital City: Gentrification and the Real Estate State* (Verso 2019) 66; Peter Marcuse and David Madden, *In Defense of Housing: The Politics of Crisis* (Verso 2016) 138–139.

3.4 British Case Law on ESCR

Recent British case law has shown some willingness by the judiciary to engage with what could be regarded as socio-economic rights, mostly through Article 3 of the European Convention of Human Rights (ECHR) by using the concept of human dignity.¹⁴⁵ One specific case is that of *Limbuella v Secretary of State for the Home Department*, and concerns the refusal to support asylum seekers on the grounds that asylum had not been claimed 'as soon as reasonably practicable', after arrival in the UK. Asylum seekers who were living in the UK without having been given official asylum meant that they were prevented from working or seeking help, and therefore left to live in difficult and inhuman conditions.¹⁴⁶ The court took a strong stance and subjected the UK legislation to a review, in accordance with the ECHR standards. It found that the UK government had breached its positive obligations under Article 3 ECHR, to not subject individuals to inhuman or degrading treatment. In this case socio-economic rights were not directly mentioned,¹⁴⁷ but the idea of inhuman and degrading treatment is closely related to adequate socio-economic standards of living. The criteria threshold for using Article 3 is stringent and though it is the closest gateway of protecting socio economic rights in UK it is rarely employed.

It is important to note that recently there have been some developments and improvements in reshaping Article 3, such as in *Paposhvili v Belgium*¹⁴⁸, a case law on the expulsion of a seriously ill migrants. In a unanimous judgment, the Court left behind the restrictive application of Article 3 threshold and pushed for a more rigorous assessment of the risk of ill-treatment.¹⁴⁹ This tells us that the Courts are

¹⁴⁵ Rosalind English, 'Article 3 and the minimum standard of social support' (*UK Human Rights Blog*, 18 November 2019) <<https://ukhumanrightsblog.com/2009/11/18/r-on-the-application-of-ew-v-secretary-of-state-for-the-home-department-2009-ewhc-2957-admin-18-november-2009/>> accessed 4 September 2020.

¹⁴⁶ *R (Adam and Limbuella) v Secretary of State for the Home Department* [2005] UKHL 66.

¹⁴⁷ Asha P James, 'The Forgotten Rights - The Case for the Legal Enforcement of Socio-Economic Rights in the UK National Law' (2007) 2 *Opticon* 1826, 6.

¹⁴⁸ *Paposhvili v. Belgium* [GC] App no 41738/10 (ECtHR, 13 December 2016).

¹⁴⁹ *Ibid.* paras 155, 225.

applying more flexibility and initiative in protecting socio economic rights through Article 3. Nonetheless, the UK courts have still refrained from adopting what Strasburg has recommended, as Article 3 cannot stand alone in securing all socio economic rights.¹⁵⁰ In order to protect ESCR rights the courts would need to change their narrow attitude and demonstrate more flexibility, looking beyond the specified letter of the law.¹⁵¹ Ultimately, the problem lies with the UK Government, which has demonstrated an unwillingness to give the right to food any domestic legal status. This further reflects its failures to recognise ESCR as a human rights issue, seeing it instead as mere declaratory principles and programmatic objectives.¹⁵² In order to better understand the importance of socio-economic rights, it is necessary to identify and understand the cultural and historical context around the social and economic situation that marginalizes and disadvantages certain individuals within the UK.¹⁵³

4. Food insecurity within the UK

In 2008, the UK experienced a severe financial crisis leading to a recession, which resulted in harsh new policies, commonly known as austerity measures.¹⁵⁴ It was estimated that in 2013/14, 1.75 million UK families experienced reductions in benefit entitlement,¹⁵⁵ due to these welfare reforms. This helped create a disproportionate effect and adverse

See also Adrienne Anderson, 'Comment on Paposhvili v Belgium and the Temporal Scope of Risk Assessment' (*EJIL Talk*, 21 February 2017) <<https://www.ejiltalk.org/comment-on-paposhvili-v-belgium-and-the-temporal-scope-of-risk-assessment/>> accessed 7 September 2020.

¹⁵⁰ JUSTICE, *A British Bill of Rights: Informing the debate* (November 2007) <<https://justice.org.uk/wp-content/uploads/2015/07/A-British-Bill-of-Rights.pdf>> accessed 4 September 2020, 46.

¹⁵¹ *ibid* 29.

¹⁵² CESCR, 'Concluding observations of the CESCR: United Kingdom of Great Britain and Northern Ireland' (12 June 2009) UN Doc E/C.12/GBR/CO/5, 3.

¹⁵³ James (n 148) 2.

¹⁵⁴ Just Fair, *Dignity and opportunity for all* (n 10) 38.

¹⁵⁵ Hannah Aldridge and Tom MacInnes, *Multiple cuts for the poorest families* (April 2014) Oxfam Research Reports <https://www.npi.org.uk/files/4613/9816/3093/Full_report_-_Multiple_cuts_for_the_poorest_families.pdf> accessed 7 September 2020, 24.

impact on vulnerable individuals and groups in society,¹⁵⁶ worsening social inequalities¹⁵⁷ and causing major repercussions that are still residual to date.¹⁵⁸ The post-recession years and the rise of austerity have seen an extreme increase in the level of poverty, with food insecurity¹⁵⁹ and homelessness across the country only worsening each year.¹⁶⁰ In his latest report, Philip Alston, UN Special Rapporteur on poverty, heavily criticized the UK of human rights breaches. He said: '[i]t thus seems patently unjust and contrary to British values that so many people are living in poverty. This is obvious to anyone who opens their eyes to see the immense growth in foodbanks and the queues waiting outside them, the people sleeping rough in the streets, the growth of homelessness, the sense of deep despair that leads even the Government to appoint a Minister for suicide prevention and civil society to report in depth on unheard of levels of loneliness and isolation. And local authorities, especially in England, which perform vital roles in providing a real social safety net have been gutted by a series of government policies.'¹⁶¹

Food poverty is a key aspect of food insecurity, and generally refers to limited or uncertain availability of nutritionally adequate and safe foods or limited or uncertain ability to acquire acceptable foods in socially acceptable ways.¹⁶² There are various degrees in which food insecurity is experienced. It usually begins with worrying whether there will be enough food, but extends to compromising on the quality, quantity and variety of the kind of food consumed. The worst effects mean going without food and experiencing hunger.¹⁶³ Food poverty in the UK is mostly a result of

¹⁵⁶ CESCR, 'Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland' (n 139) para 18.

¹⁵⁷ Vickie Cooper and David Whyte (eds), *The Violence of Austerity* (Pluto Press 2017) 16.

¹⁵⁸ Just Fair, *Dignity and opportunity for all* (n 10) 34.

¹⁵⁹ The Trussell Trust, 'Latest foodbank figures top 900,000' (16 April 2004)

<<https://www.trusselltrust.org/wp-content/uploads/sites/2/2015/06/FOODBANK-FIGURES-TOP-900000.pdf>> accessed 4 September 2020.

¹⁶⁰ Department for Work and Pensions, *Low Income and Material Deprivation in the UK*, 11/12 (June 2013)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/206850/first_release_1112.pdf> accessed 9 September 2020, 8.

¹⁶¹ Philip Alston (n 128) 16.

¹⁶² Food Standards Agency, 'Low Income Diet and Nutrition Survey' (10 January 2011) <<http://webarchive.nationalarchives.gov.uk/20110110172405/http://www.food.gov.uk/science/dietarysurveys/lidnsbranch/>> accessed 9 September 2020.

¹⁶³ Taylor and Loopstra (n 8) 3.

stagnant wages, benefit cuts, high rents, loss of employment, benefit changes and delays, longer-term financial insecurity and the increased cost of everyday life.¹⁶⁴ An estimated 60% of working people are living in poverty¹⁶⁵ and since 2010 the number of children defined as living in absolute poverty has risen by half a million.¹⁶⁶ Unplanned spending, lack of household income, and overspending on housing and health costs also affect household finances.¹⁶⁷ According to Save the Children: “The Poverty Premium is a notional extra cost that people on lower incomes can pay for goods and services, compared with the cost that is paid for some goods and services by higher-income families.”¹⁶⁸ Recent research shows that even though people have been buying less food over the past five years, they still end up spending much more of their household income on food as a result of soaring food prices.¹⁶⁹ Additionally, food is often more expensive in poorer areas which have limited access to bigger supermarkets, leaving people who live there with little choice, as many of them are unable to afford travel. Research by the parenting website Mumsnet and the Trussell Trust, in 2014, revealed that: 56% of working families had switched to buying cheaper, lower quality food, while 20% of parents had to make a choice between having to pay bills and buying

¹⁶⁴ Purdam, Garratt and Esmail (n 17) 1074.

¹⁶⁵ Patrick Butler, ‘Record 60% of Britons in poverty are in working families – study’ (*The Guardian*, 22 May 2017) <<https://www.theguardian.com/society/2017/may/22/record-britons-in-work-poverty-families-study-private-rented-housing>> accessed 9 September 2020.

¹⁶⁶ Department for Work and Pensions, ‘Households Below Average Income: An Analysis of the UK Income Distribution: 1994/95-2015/16’ (16 March 2017) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/600091/households-below-average-income-1994-1995-2015-2016.pdf> accessed 9 September 2020.

¹⁶⁷ Kenny McBride and Sarah Purcell, *Food, fuel, finance: Tackling the poverty premium* (December 2014) Church Action on Poverty <http://www.ekkleisia.co.uk/sites/ekkleisia.co.uk/files/poverty_premium_report.pdf> accessed 7 September 2020, 7.

¹⁶⁸ Save the Children UK, ‘The UK Poverty Rip-Off: The poverty premium’ (2010) <<https://resourcecentre.savethechildren.net/node/13400/pdf/uk-poverty-rip-off-poverty-premium.pdf>> accessed 7 September 2020, 3.

¹⁶⁹ McBride and Purcell (n 168) 8.

food.¹⁷⁰ What further corresponds to food insecurity is the lack of adequate nutrition.¹⁷¹

4.1 Adequate Nutrition

In human rights terms, 'adequacy' means that food must satisfy dietary needs, considering the individual's age, living conditions, health, occupation, sex, etc.¹⁷² Evidence indicates that food adequacy is under threat as healthier food is always more expensive¹⁷³ and it is simply easier and cheaper to buy unhealthy processed food in quantities rather than nutritional food, which leads to a rise in malnutrition rates.¹⁷⁴ The National Diet and Nutrition Survey reports a significant difference in nutrient intake between the poorest 20% and richest 20% of the population. It showed that the poorest people eat less fish, fruit and vegetables, fibre, protein and saturated fat than the richest, but consume more sugar.¹⁷⁵

Furthermore, studies show that household food insecurity leads to inadequate nutrient intake and micronutrient deficiencies that increase the risk of poor health and diet related disease.¹⁷⁶ This also affects mental health, as going without food or the anxiety of doing so can lead to mental illness. 29% of adults have been identified as affected by malnutrition on admission to hospital,¹⁷⁷ while it is estimated that £13 billion is spent on

¹⁷⁰ The Trussell Trust, 'Latest foodbank figures top 900,000' (n 160).

¹⁷¹ Food Foundation, *Household Food Insecurity: The Missing Data* (November 2016) <<http://foodfoundation.org.uk/wp-content/uploads/2016/11/FF-Food-insecurity-4pp-V3.pdf>> accessed 7 September 2020, 2.

¹⁷² Rachel Griffith, Martin O'Connell and Kate Smith, *Food expenditure and nutritional quality over the Great Recession* (November 2013) IFS Briefing Note BN143 <<https://www.ifs.org.uk/bns/bn143.pdf>> accessed 7 September 2020, 12.

¹⁷³ Office for National Statistics, 'Family Spending, 2015 Edition' (8 December 2015) <<http://www.ons.gov.uk/ons/rel/family-spending/family-spending/2015-edition/index.html>> accessed 7 September 2020.

¹⁷⁴ Hansard, HC Deb 12 Nov 2013, vol 570, written answers col 619W.

¹⁷⁵ Taylor and Loopstra (n 8) 8.

¹⁷⁶ *ibid* 5.

¹⁷⁷ Christine Russell and Marinos Elia, *Nutrition Screening Surveys in Hospitals in the UK, 2007–2011* (February 2014) British Association of Parenteral and Enteral Nutrition (BAPEN) <<https://www.bapen.org.uk/pdfs/nsw/bapen-nsw-uk.pdf>> accessed 9 September 2020.

disease-related malnutrition each year in the UK.¹⁷⁸ Furthermore, children who grow up in food insecure households have slower development and worse health in the long term.¹⁷⁹ Yet, even in light of all these facts, certain political commentators such as Baroness Jenkin, who was part of the 2014 All-Party Inquiry into Hunger and Food, have publicly reported that the reason disadvantaged people lack adequate nutrition and use food banks is because: “poor people can’t cook.”¹⁸⁰ In fact, the food provided in food banks is often not fresh, tinned or processed, which leaves poor people with little dietary choice. Finally, most of the food provided in food banks is also food that needs to be cooked thus leaving people who are homeless or those who cannot afford to pay for gas with no means of cooking it.

4.2 The Rise of Food Banks

Foodbanks are not a governmental initiative but are charity-based and depend on donations and good will. They are a response to the violence of austerity¹⁸¹ and provide “important “spaces of care, sustenance and survival”¹⁸² for its users. The Trussell Trust Foodbank Network, who have a 400-strong network of foodbanks,¹⁸³ has raised questions and concerns about the number of people who lack access to food, or even go without any food at all.¹⁸⁴ The latest figures show that between 2016/17 the Trussell Trust provided 1,182,954 three-day emergency food supplies to people in crisis¹⁸⁵ compared to 1,109,309 in

¹⁷⁸ Marinos Elia, *The cost of malnutrition in England and potential cost savings from nutritional interventions* (November 2015) National Institute for Health Research (NIHR) and BAPEN <<https://www.suht.nhs.uk/Media/Southampton-Clinical-Research/BRCdownloads/ECONOMIC-REPORT-SHORT-18.11.15.pdf>> accessed 9 September 2020, 9.

¹⁷⁹ Save the Children UK (n 169) 2.

¹⁸⁰ BBC News, ‘Baroness Jenkin: “Poor people don’t know how to cook”’ (8 December 2014) <<https://www.bbc.co.uk/news/av/uk-politics-30386108>> accessed 4 September 2020.

¹⁸¹ Sarah Marie Hall, ‘Everyday ethics of consumption in the austere city’ (2015) 9 *Geography Compass* 140, 149.

¹⁸² Christiana Miewald and Eugene McCann, ‘Foodscapes and the geographies of poverty: Sustenance, strategy, and politics in an urban neighbourhood’ (2014) 46 *Antipode* 537, 542.

¹⁸³ The Trussell Trust, ‘Our aim is to end hunger and poverty in the UK | The Trussell Trust’ <<https://www.trusselltrust.org/what-we-do/>> accessed 7 September 2020.

¹⁸⁴ Food Foundation, *Household Food Insecurity: The Missing Data* (n 172) 1.

¹⁸⁵ The Trussell Trust, ‘Our aim is to end hunger and poverty in the UK | The Trussell Trust’ (n 184).

2015-16, and with 436,938 going to children.¹⁸⁶ In its latest report in April 2019 the Trussell Trust recorded 1.6 million food bank parcels given to people. Yet, food bank data underestimates how many people are facing insecure food access in the UK. The number of people who need food aid may be anything between 1.6 and 2 million¹⁸⁷ but these figures are estimated because many people use non-Trussell Trust food banks. There are many other independent food banks which provide food aid for disadvantaged people but many of those estimates go unrecorded. Furthermore, many people do not access food assistance at all, and therefore results cannot be documented.¹⁸⁸ No systematic monitoring of data regarding food scarcity makes it even harder to measure and assess the UK's compliance with the right to food.¹⁸⁹ Another issue is that some people may associate having to go to a food bank with a sense of shame or social stigma which could lead to feeling detached and marginalised from society.¹⁹⁰ Finally, there is a real concern that they are becoming a surrogate for social reform and policy changes. As De Schutter states: "...food banks [...] should not be seen as a substitute for the robust social safety nets to which each individual has a right. Instead, social protection systems – including unemployment and child benefits – must be set at levels that take into account the real cost of living and ensure adequate food for all, without compromising on other essentials. And governments should not be allowed to escape their obligations because private charities make up for their failures."¹⁹¹

5. Scoping Project in Tower Hamlets

The experiences of food bank users were the subject of an ongoing two-part scoping project entitled "Basic Rights", conducted for the Human

¹⁸⁶ The Trussell Trust, 'Latest stats | The Trussell Trust' <<http://www.trusselltrust.org/stats>> accessed 7 September 2020.

¹⁸⁷ Niall Cooper, Sarah Purcell and Ruth Jackson, *Below the breadline: The relentless rise of food poverty in Britain* (June 2014) Oxfam Policy and Practice Research Reports <<https://oxfamlibrary.openrepository.com/bitstream/handle/10546/317730/rr-below-breadline-food-poverty-uk-090614-en.pdf>> accessed 7 September 2020, 4.

¹⁸⁸ Hannah Lambie-Mumford et al, *Household Food Security in the UK: A Review of Food Aid Final Report* (February 2014) Food Ethics Council and University of Warwick <http://randd.defra.gov.uk/Document.aspx?Document=11896_20140219HouseholdFoodSecurityintheUKFINALREPORT.pdf> accessed 7 September 2020, 5.

¹⁸⁹ Just Fair, *Going Hungry?* (n 14) 22.

¹⁹⁰ Just Fair, *Freedom from Hunger: Realising the Right to Food in the UK* (n 129) 7.

¹⁹¹ Just Fair, *Going Hungry?* (n 14) 28.

Rights Collegium (HRC) in Tower Hamlets, one of the most deprived areas in London.¹⁹² The first part of this project entailed visits to local food banks¹⁹³, women's shelters¹⁹⁴ and to the Salvation Army free café¹⁹⁵. These visits were ongoing for a period of a month and a half. The aim was for the Project Support & Research Officer of the HRC to create a rapport with the vulnerable and disadvantaged community of the area who regularly visit these sites.

Findings from talking to organisers demonstrated that these organisations are formed by volunteers and they heavily rely on donations and the support of supermarkets and food manufacturers, as no governmental funding is provided.¹⁹⁶ During the visits disadvantaged and vulnerable people were asked what their thoughts were on basic rights which are currently not included in English law. They were then invited to attend a workshop conducted on the 14th of March 2017 at Queen Mary University Law Department, where they could discuss if having these rights protected within English law would improve their daily lives. A common conversation revolved around the shame and a loss of dignity these people had felt in their lives as a result of using food banks and other centers. Findings demonstrated that having to use food banks or shelters, has a negative impact and effect on ones self-esteem and self-worth making them feel further marginalised in society.¹⁹⁷ Participants claimed to be ignored by the government and the councils whose role should be to help protect them instead of breaking them.¹⁹⁸ During the visits users welcomed the opportunity to describe the impacts that lack of food had upon their lives, and they engaged positively concerning the practicalities of how to actively ensure their right to food. Findings also reveal that some people experienced a general sense of relief when using food banks as

¹⁹² Human Rights Collegium, Queen Mary, University of London (hereinafter referred to as HRC). For details see Queen Mary, University of London, 'Human Rights Collegium' <<http://www.law.qmul.ac.uk/humanrights/>> accessed 7 September 2020.

¹⁹³ Bow Food Bank, 'Bow Food Bank' <<http://www.bowfoodbank.org/>> accessed 7 September 2020; First Love Foundation, 'About Tower Hamlets Foodbank' <<https://www.firstlovefoundation.org.uk/foodbank/>> accessed 7 September 2020.

¹⁹⁴ Arch 76, 'About Arch 76' <<http://www.arch76.co.uk/>> accessed 7 September 2020.

¹⁹⁵ The Salvation Army, 'Poplar | The Salvation Army' <<https://www.salvationarmy.org.uk/poplar>> accessed 7 September 2020.

¹⁹⁶ Purdam, Garratt and Esmail (n 17) 1084.

¹⁹⁷ Lieberman and Van Bueren (n 18).

¹⁹⁸ *ibid.*

they could meet others in the same situation making them feel less isolated and alone.¹⁹⁹

The second part of the scoping project entailed a workshop attended by the food bank users previously approached. There was a total of 20 participants of different age groups, 11 were male, 7 were female and 2 were children. All participants lived in social housing within Tower Hamlets, were experiencing the daily hardship of poverty and were using food banks to survive. During the workshop participants discussed all socio-economic rights, but a common conversation was that of all the basic rights, the right to food strikes them to be the most important one. A participant remarked that: '[i]f you do not have food, your situation deteriorates, which can become even more expensive for the NHS further down the line, as people can get mental health problems and all sorts'. Another participant spoke about the 'mountains' of food that is being wasted and suggested that there should be a system put in place that will control food wastage. Some said that if there was a basic amount of food systematically given to everyone that needs it, then this right could be efficiently utilised. The group agreed that not having food automatically excludes one from society. Finally, they said that without the right to food no other rights can be successfully sustained and therefore this makes the right to food the most important of all socio-economic rights.

These findings provided a wider understanding of individual experiences and their response to crisis, thus giving a sharper perception of a broader structural issues regarding food poverty. They demonstrate that the emotional and physical pains of austerity are real and that their effects are violent; people were fatigued, stressed, depressed and ill. Moreover, most of the food bank users were surviving from week to week, with some of them having travelled from distant locations to use the free facilities. The scoping project also highlighted the diverse range of people using food banks and other charitable organisations. These included families, older people and people in employment. It further revealed that prosperity in a country does not reflect the inequality within it.

None of the participants have previously been consulted about moving beyond food banks, but they all saw the value in having laws and policies to protect their right to food. The evidences suggest that while

¹⁹⁹ *ibid.*

food banks are invaluable, they cannot provide the fresh food that is essential for adequate nutrition. Nor can they provide for everyone. Furthermore, the research demonstrated that a considerable number of people in the UK are experiencing food insecurity and feel unprotected by the state.²⁰⁰ This demonstrates that there is an urgency for the right to food to be lobbied by Parliament and passed as an Act thus making it justiciable and protected by law in the UK.

Food poverty in the UK is a very real issue which affects vulnerable people on a daily basis. If it was not for the aid from charitable organisations it would be hard to say what would happen to victims of food poverty, as there are no official institutions or legislations to protect the vulnerable. India also suffers from food poverty, but unlike the UK, it has taken very progressive steps toward the fight against hunger by justiciability, realising the right to food as the latter part of this paper will demonstrate.

6. India: A Positive Example of a Justiciable Right to Food

Indian courts have been at the forefront of the protection of socio-economic rights for over three decades. Nonetheless, India is a country that has continuously suffered from endemic poverty, legacy of colonialism.²⁰¹ A study by the British economic historian Angus Maddison concluded: “[t]here can be no denial that there was a substantial outflow which lasted for 190 years. If these funds had been invested in India, they could have made a significant contribution to raising income levels” (cited in Tharoor, 2017:22).²⁰² Colonial rule in India led to the destruction of indigenous industries, drawing the country into the cycle of exploitation in the mid-18th century with high taxation, money mismanage, minimal agricultural productivity and the exploitation of the farmers by landlords and money lenders. This meant that the rural population in India was systematically exposed to extreme poverty.²⁰³ This contributed to India’s

²⁰⁰ Purdam, Garratt and Esmail (n 17) 1084.

²⁰¹ Kalim Siddiqui, ‘A century of India’s economic transformation: a critical review’ (2010) 6 *Jurnal Perspektif Pembiayaan Dan Pembangunan Daerah* 407, 411.

²⁰² *ibid* 411.

²⁰³ *ibid* 412.

worst and last famine that took place in 1943²⁰⁴, leaving over 3 million people dead from starvation and malnutrition.²⁰⁵ Since its independence in 1947, India has made immense progress in taking measures to prevent further occurrences of famine and severe food shortages, and has found itself a world leader in the protection of the right to food. The Indian government invested in agriculture and rural infrastructure, which quadrupled the country's production of rice and wheat.²⁰⁶ Even though India is a country that is often affected by natural disasters, there have also been steps taken in tackling the threat of famine. In 1950, India adopted a progressive constitution that includes a broad range of human rights protections, forbids discrimination, and recognises civil and political rights as justiciable. The right to food is defined as a directive principle of State policy Article 47 of the Indian constitution.²⁰⁷ Initially the right to food was a directive principle which had unenforceable guidelines. However, in 2001, the Supreme Court transformed them into constitutional enforceable rights.²⁰⁸ It is the role of the constitution to make the judiciary the guardian of the rights of the people, which explains why, the Indian judiciary is also viewed as the court of the poor and hungry.

India also has various schemes which help to protect the right to food. The Famine Zero is the oldest scheme. It was developed by colonial Britain in the 1800's and defines three levels of food insecurity: near-scarcity, scarcity, and famine. This was followed by the Public Food Distribution System (PDS),²⁰⁹ which was launched in 1947 and used as "a rationing mechanism that entitles households to specified quantities of selected commodities at subsidized prices."²¹⁰ It is one of the largest poverty alleviation programmes in the world.²¹¹ The National Rural

²⁰⁴ *ibid* 407.

²⁰⁵ WFP, *Enabling Development: Food Assistance in South Asia* (OUP 2001) 61.

²⁰⁶ Jean Ziegler et al, *The Fight for the Right to Food* (Palgrave Macmillan 2011) 258.

²⁰⁷ The Constitution of India 2015.

²⁰⁸ Knuth and Vidar (n 68) 18.

²⁰⁹ Madhura Swaminathan, 'Programmes to Protect the Hungry: Lessons from India' (October 2008) UN Department of Economic and Social Affairs (UN DESA) Working Paper No 70, UN Doc ST/ESA/2008/DWP/70 <<https://digitallibrary.un.org/record/640467>> accessed 7 September 2020, 2.

²¹⁰ *ibid*.

²¹¹ Tarozzi Alessandro, 'The Indian Public Distribution System as provider of food security: evidence from child anthropometry in Andhra Pradesh' (2002) Princeton University

Employment Guarantee Act (NREGA)²¹² implemented in 2005, indirectly supports the right to food by assisting with financial access to adequate food in times of economic insecurity.²¹³ Also, in 2013, the *National Food Security Act*²¹⁴ was enacted. This started the world's largest and most determined food safety program, providing for food and nutritional security as a legal entitlement by ensuring access to quantities of quality food at reasonable prices.²¹⁵

The right to food legislation in India demonstrates “a dynamic relationship between the Fundamental Rights and the Directive Principles of the Constitution, and an avenue to enforce the latter as individual rights.”²¹⁶ Furthermore, the fact that the right to food is enforced through the judiciary means that judges are able to apply international standards of human rights to national laws, thus allowing a more suitable compensation to be sought by the victim.²¹⁷ According to Jean Ziegler, India has been said to provide “one of the best examples in the world in terms of the justiciability of economic, social and cultural rights, with the right to life interpreted extensively by the Supreme Court to include the right to food.”²¹⁸

6.1 The Indian experience of the Right to Food

There have been various legal cases in India which have focused on hunger and malnutrition, helping to increase awareness and public debate. In *Francis Coralie v Administrator, Union Territory of Delhi and Others*²¹⁹ the Supreme Court made an important statements pertaining to the right to food when it stated: ‘we think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare

Woodrow Wilson School of Public and International Affairs Research Program in Development Studies Working Paper 185, 2.

²¹² National Rural Employment Guarantee Act 2005 (India).

²¹³ De Schutter, ‘Briefing note: Countries tackling hunger with a right to food approach’ (n 50) 9.

²¹⁴ National Food Security Act 2013 (India).

²¹⁵ *ibid.*

²¹⁶ Knuth and Vidar (n 68) 19.

²¹⁷ Dutta (n 44) 1-2.

²¹⁸ Ziegler (n 207) 265.

²¹⁹ *Francis Coralie Mullin vs The Administrator, Union* (1981) AIR 746, SCR (2) 516 (Supreme Court of India).

necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self.’²²⁰ Another example of the position of the Indian Supreme Court is in the case of *Shantistar Builders v Narayan Khimalal Totame*,²²¹ where the Supreme Court stated: ‘The right to life is guaranteed in any civilised society. That would take within its sweep the right to food...’ In the *Chameli Singh v State of U.P.*²²² the Supreme Court reinforced the same position by emphasising that right to life guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter.

In *Ekta Shakti Foundation v Government of NCT of Delhi*,²²³ the Supreme Court was called to help resolve a problem around the food distribution that was caused by bad practice of food distribution by the contractors. The benefits of the Integrated Child Development Services (ICDS) were not reaching the beneficiaries which are the children. Some contractors had received an NGO registered in the name of Ekta Sakti Foundation and with that tried to obtain the supply orders. The government of Delhi found the practices and refused to supply Supplementary Nutrition Products (SNP) to them. The final judgment resulted in the Supreme Court completely banning contractors for the supply of food and nutrition. These cases demonstrate the power which the Supreme Court has in respecting the socio-economic rights of the people.

One of the most famous and big cases on the right to food in India took place in 2001. The *People’s Union for Civil Liberties v. Union of India &*

²²⁰ S Radhakrishnan, ‘Development of human rights in an Indian context’ (2008) 36 IJLI 303, 308.

²²¹ (1990) 1 SCC 520 (Supreme Court of India).

²²² (1996) 2 SCC 549 (Supreme Court of India).

²²³ Writ Petition (Civil) 232 of 2006 (Supreme Court of India).

Others case came before India's Supreme Court,²²⁴ and looked at the excess of food grain in the State of Rajasthan. This was supposed to be distributed through the PDS, but instead was left unused, leaving many of the hungry population to die of starvation.²²⁵ As a result, *The Human Rights Organization People's Union for Civil Liberties* filed a public interest appeal with the Supreme Court²²⁶ for the enforcement of both the PDS and the Famine Code.²²⁷ They argued that grain stocks needed to be released in times of famine. The appeal looked at the breach of the right to life under Article 21 of the constitution, and the right to food under Article 47, for those families who could not afford two meals a day.²²⁸ In 2003, the court found that the government had imperiled the right to life due to the failure of the schemes to work effectively. The court acknowledged that there was a paradox that food was available in granaries while the poor were still starving. It refused to hear any arguments concerning the non-availability of resources and found that the right to food is guaranteed under the right to life. Furthermore, it held that to protect the right to life different schemes need to be implemented and monitored to be able to protect the vulnerable population from starvation. It ordered that the Famine Code should be implemented for three months; for grain allocation in the food for work scheme to be doubled, and that financial support for the schemes listed below should be increased. Those schemes are the: Targeted Public Distribution Scheme;²²⁹ Antyodaya Anna Yojana;²³⁰ Mid-Day Meal Scheme;²³¹ Old Age Pension scheme;²³²

²²⁴ *People's Union for Civil Liberties v Union of India* Writ Petition (Civil) [2001] 196 (Supreme Court of India).

²²⁵ *ibid* para 8.

²²⁶ IDLO (n 33).

²²⁷ Hareet Kumar Meena, 'Famine in late 19th Century India: Natural or man-made' (2015) 6 *Journal of Human and Social Science Research* 35, 41.

²²⁸ Interim Order of 2 May 2003 in the case of *People's Union for Civil Liberties v Union of India* Writ Petition (Civil) [2001] 196 (Supreme Court of India).

²²⁹ Department of Food and Public Distribution, Government of India, 'National Food Security Act (NFSA) 2013' <<http://dfpd.nic.in/nfsa-act.htm>> accessed 9 September 2020.

²³⁰ Press Information Bureau, Government of India, 'Antyodaya Anna Yojana' <<https://web.archive.org/web/20171124033604/http://pib.nic.in/feature/feyr2001/fmar2001/f280320011.html>> accessed 9 September 2020.

²³¹ Ministry of Education of India, 'Mid Day Meal Scheme' <<http://mdm.nic.in/>> accessed 7 September 2020.

²³² *ibid*.

Annapurna Scheme;²³³ Integrated Child Development Scheme;²³⁴ National Maternity Benefit Scheme;²³⁵ and the Family Benefit Scheme.²³⁶ Furthermore, the court also warned the government not to change or terminate any provisions of the above schemes, making them enforceable rights. It also ordered the government to monitor that food was being equally distributed.²³⁷

6.2 Implications

The Court questioned why people had died from famine when there was extra grain which should have been made available to them, but instead had been left unused and allowed to rot away. This was a landmark case. It brought the issue of hunger as a human rights violation back into the public eye and provoked a national debate. The Court ended up taking a strong stance against the government,²³⁸ protecting the poor and vulnerable from further starvation and unnecessary malnutrition. This case led to the creation of the *National Food Security Act* (NFSA),²³⁹ which is used as a transparent advocacy tool-set to examine the unequal distribution of food in the country.²⁴⁰ Furthermore, a Commissioner to the *Supreme Court in India* was appointed within the *Right to Food Act*, in order to independently monitor the different food schemes put in place.²⁴¹ The Commissioner is also responsible for bringing any instances of

²³³ Government of India, *Guidelines for Annapurna Scheme* (2000) <<http://nsap.nic.in/Guidelines/Annapurna%20scheme%20guidelines%202000.pdf>> accessed 7 September 2020.

²³⁴ Government of India, 'India – Integrated Child Development Services (ICDS)' <https://www.unicef.org/earlychildhood/files/india_icds.pdf> accessed 7 September 2020.

²³⁵ Government of India, 'National Maternity Benefit System (NMBS)' <<http://www.ilo.org/dyn/travail/docs/681/National%20Maternity%20Benefit%20Scheme%20-%20india.gov.in.pdf>> accessed 7 September 2020.

²³⁶ Government of Assam, 'National Family Benefit Scheme (NFBS)' <<https://web.archive.org/web/20180717221136/http://assam.gov.in/national-family-benefit-scheme-nfbs->>> accessed 9 September 2020.

²³⁷ *People's Union for Civil Liberties v Union of India* (n 225).

²³⁸ *ibid.*

²³⁹ National Food Security Act 2013 (India).

²⁴⁰ *People's Union for Civil Liberties v Union of India* (n 225).

²⁴¹ International Food Policy Research Institute, *Global Hunger Index* (2014) <<https://www.ifpri.org/publication/2014-global-hunger-index>> accessed 7 September 2020, 12.

violation upon the right to food before the judiciary, as human rights violations.²⁴²

The case study of India demonstrates that a justiciable right to food should not be denied even when there are less resources put in place, and that laws implemented can provide a progressive safety net as well as well as a discourse and a language that supports positive provisions for its poor and hungry citizens. India's citizens have been empowered with access to justice, and a legal policy has been put in place should a claim on food sovereignty issues arise.²⁴³ In contrast, and somewhat paradoxically, the UK has more than sufficient resources, but has failed to enforce such a right for its citizens. Unlike the courts in India, the UK Supreme Court, has to date, demonstrated no initiative on implementing new laws or programmes to protect the hungry and vulnerable. It could be argued that India serves as a positive model to other countries by demonstrating that it is possible to develop systems even before laws and that new dynamic improvements to legislations can be a continuous development. The Indian courts have developed rich jurisprudence to hold the government accountable for failing to realise the right to food of the people. In this, the courts have played key roles in ensuring the judicialization of the right to adequate food in India, whilst helping to shape a discursive framework in support of this right, even when the Indian Constitution had not expressively set it out.

6.3 India's ongoing battle with food insecurity

However, food insecurity in India remains a serious issue, as it struggles to ensure the right to food in actual practice. The vulnerable population in India is still ignored by their own government and political system, and because of economic instability, are unable to fully participate in Indian democracy. Their inability, due to their conditioning, to rectify violations of their rights, via democratic process, is a major concern.²⁴⁴ It is imperative to note that the right to food cannot stand alone and is inevitably connected to other problems a country is facing. In terms of productive capacity, India should be able to provide an equal supply of

²⁴² Protection of Human Rights Act 1993 (India), s 12(6).

²⁴³ Nandini, Caivano and Abebe (n 1) 28.

²⁴⁴ Jean Drèze, 'Democracy and right to food' (2004) 39 *Economic and Political Weekly* 1723, 1725.

food for the whole population, which is over one billion people.²⁴⁵ However, malnutrition and poverty have continued to rise since the 1990's.²⁴⁶ There is much debate between officials concerning the effectiveness of India's system of food distribution, and if there is a need for a whole new institution to be created.²⁴⁷ India has the second-highest estimated number of undernourished people in the world.²⁴⁸

In India, as well as in other countries, "the right to food needs to be linked to other economic and social rights relating to housing, education, work, health and information, which together hold the promise of radical change in public priorities and democratic politics."²⁴⁹ India demonstrates that even with a high level of food production, unless institutions effectively collaborate and work together, malnutrition will still remain high. The UK, unlike India, has much stronger institutions in place. People are more literate and informed, and it could be argued that if India's model was to be used in the UK, then the right to food would be more successfully realised. Nevertheless, India's approach provides proof that a movement away from a limited focus on food production can improve access to food, if structural and institutional issues are successfully addressed.²⁵⁰ Looking at the bigger picture, India serves as a positive example for the UK to follow. The courts took responsibility in the wake of the socio-economic challenges and took positive steps to protect its population through the active role of the judiciary. The UK courts can learn from their Indian counterparts and examples of the case law above could give rise to the argument that Article 3 should be enforced in Europe and the concept of "positive obligations" protected. If the Supreme Court of India was able to construct such a huge array of positive duties based on the small negative obligation relating to the right to life²⁵¹ in the Indian Constitution²⁵² so can other countries.

²⁴⁵ Nandini, Caivano and Abebe (n 1) 20.

²⁴⁶ Ziegler (n 207) 259.

²⁴⁷ WFP, *Enabling Development: Food Assistance in South Asia* (n 206) 30.

²⁴⁸ FAO, *The State of Food Insecurity in the World* (n 6) 15.

²⁴⁹ Drèze (n 246) 1723.

²⁵⁰ Nandini, Caivano and Abebe (n 1) 26.

²⁵¹ "No person shall be deprived of his life or personal liberty except according to procedure established by law."

²⁵² Arun Ray Mohapatra, *Public Interest Litigation and Human Rights in India* (Radha Publications 2003).

7. Adapting the right to food for the UK

Alongside the example of India, the UK could also look at South Africa, for ideas on how to implement the right to food. The South African Bill of Rights²⁵³ protects positive and negative rights of all people against the executive, legislative and judicial branches of the government of South Africa and includes important socio-economic rights. In 2005, a case was brought to the South African Equality Court that demanded protection for the livelihood of traditional fishers who had lost fishing rights²⁵⁴ following governmental fishery policy and legislation.²⁵⁵ A court order was subsequently given in 2007.²⁵⁶ This led the government to change policy and create a new law²⁵⁷ protecting the socio-economic rights of the fishers and demanding that the fishery policy comply with the right to food.²⁵⁸ The Court condemned the discrimination the claimants were facing regarding their access to adequate food. This case demonstrated the fair access to justice through the South African Equality Court.²⁵⁹ Many scholars, legal practitioners and human rights activists claim that bills of rights are necessary for the actual protection of concrete rights and liberties.²⁶⁰ It could therefore be suggested that incorporating ESCR in a proposed British bill of rights might be a “progressive, yet pragmatic development of human rights protection”.²⁶¹

²⁵³ Constitution of the Republic of South Africa 1996, Chapter 2 (Bill of Rights).

²⁵⁴ Naseegh Jaffer and Jackie Sunde, ‘Fishing rights vs. human rights?’ 44 International Collective in Support of Fishworkers SAMUDRA Report, 85.

²⁵⁵ Olivier De Schutter, ‘Briefing note: From charity to entitlement: Implementing the right to food in Southern and Eastern Africa’ (*OHCHR*, June 2012) <https://www.ohchr.org/Documents/Issues/Food/SRRTF%20BN%2005_SouthernEasternAfrica_en.pdf> accessed 7 September 2020, 8.

²⁵⁶ Minister of Environmental Affairs and Tourism v George and others [2006] ZASCA 57, paras 7-8.

²⁵⁷ De Schutter, ‘Briefing note: Countries tackling hunger with a right to food approach’ (n 50) 11.

²⁵⁸ *ibid* 24.

²⁵⁹ *ibid* 8.

²⁶⁰ Ran Hirschl, ‘“Negative” Rights vs. “Positive” Entitlements: A Comparative Study of Judicial Interpretations of Rights in an Emerging Neo-Liberal Economic Order’ (2000) 22 *Hum Rts Q* 1060, 1061.

²⁶¹ JUSTICE, ‘A British Bill of Rights: Informing the debate’ (n 151) 30.

Other positive examples and initiatives, promoting the right to food, come from Europe. The UK could learn from these. The most striking and recent development can be seen in the 2015 regional law, in Lombardia,²⁶² which recognises, protects and promotes the right to food. The region now protects the universal right of access to sufficient quantities of safe and nutritious food, as a fundamental human right to all its residents. The region aims to eliminate malnutrition in its territory and pursues policies to combat poverty and fight food wastage. This is a significant legal step in the right direction, which the UK, and many other countries and regions should follow as an example. Both Milan and Turin are seen as the leading cities in enacting the right to food as a law. In March 2016, the city council in Torino unanimously approved its mission to implement the right to adequate food.²⁶³ Also, Milan is known for an international protocol which engages the largest number of world cities in the development of food systems. These are based on the principles of sustainability and social justice, and it successfully coordinates international food policies.²⁶⁴

Following these developments, in May 2016, the Italian Appeal Court of Cassation also played a lead role in a landmark judgment which received visibility and attention.²⁶⁵ It raised the debate around the right to food when it overturned the conviction of Roman Ostriakov²⁶⁶. In 2011, Ostriakov had been caught stealing from a supermarket, taking two pieces of cheese and a sausage worth £4.07, because he was hungry.²⁶⁷ The court acknowledged that Mr. Ostriakov was “in the face of the immediate and

²⁶² Region of Lombardy, ‘Regional Law No 34 of 6 November 2015: Law on the recognition, protection and promotion of the right to food’ (6 November 2015) <<http://normelombardia.consiglio.regione.lombardia.it/normelombardia/Accessibile/main.aspx?view=showdoc&iddoc=lr002015110600034>> accessed 7 September 2020.

²⁶³ Milan Urban Food Policy Pact, ‘Turin – Food Smart Cities for Development’ <<http://www.milanurbanfoodpolicypact.org/turin/>> accessed 7 September 2020.

²⁶⁴ Milan Urban Food Policy Pact, ‘Home – Milan Urban Food Policy Pact’ <<http://www.milanurbanfoodpolicypact.org/>> accessed 7 September 2020.

²⁶⁵ De Schutter, ‘Briefing note: Countries tackling hunger with a right to food approach’ (n 50) 10.

²⁶⁶ *Case of Roman Ostriakov*, 7 January 2016, 18248 of 2016 (Court of Cassation, Italy) <<https://juriswiki.it/decision/sentenza-corte-di-cassazione-v-penale-18248-2016-it/>> accessed 9 September 2020.

²⁶⁷ Stephanie Kirchgaessner, ‘Theft of sausage and cheese by hungry homeless man “not a crime”’ (*The Guardian*, 3 May 2016) <<https://www.theguardian.com/world/2016/may/03/theft-sausage-cheese-hungry-homeless-man-not-crime-italy>> accessed 9 September 2020.

essential need for nourishment”²⁶⁸ and the judges in the case concluded that the “right to survival prevails over property.”²⁶⁹ The decision made headlines, and, one could say, history, when it stated that stealing small amounts of food “in the face of the immediate and essential need for nourishment”, was not a crime.²⁷⁰ The court claimed that “the condition of the defendant and the circumstances in which the seizure of merchandise took place prove that he took possession of that small amount of food in the face of an immediate and essential need for nourishment, acting therefore in a state of necessity”.²⁷¹ This judgment serves as a strong reminder that “in a civilised country not even the worst of men should starve”.²⁷² The courts progressive response could be an example for the courts in the UK to take more initiative on the right to food and other socio-economic rights.

Moreover, Belgium has also drafted a right to food bill, in its Parliament,²⁷³ which has yet to be approved, but could play a key role should it be brought in. Furthermore, in 2016, the French National Assembly unanimously voted through a new legislation by the lower house of the French parliament. It imposes a requirement on large supermarkets to donate unsold food to charity, or have it turned into animal feed, compost or energy.²⁷⁴ This law is part of French governmental efforts to

²⁶⁸ *Case of Roman Ostriakov* (n 268).

²⁶⁹ Massimo Gramellini, ‘Il diritto di avere fame’ (*La Stampa*, 3 May 2016) <<https://www.lastampa.it/opinioni/buongiorno/2016/05/03/news/il-diritto-di-avere-fame-1.34996997>> accessed 7 September 2020.

²⁷⁰ *ibid.*

²⁷¹ BBC News, ‘Italian court rules food theft “not a crime” if hungry’ (3 May 2016) <<https://www.bbc.co.uk/news/world-europe-36190557>> accessed 4 September 2020.

²⁷² *Case of Roman Ostriakov* (n 268).

²⁷³ Belgian Federal Parliament, ‘Proposal for a framework law establishing the obligation of Belgium’s effective implementation of the right to food’ (27 October 2014) <<http://www.lachambre.be/kvvcr/showpage.cfm?section=/none&leftmenu=no&language=fr&cfm=/site/wwwcfm/flwb/flwbn.cfm?lang=F&legislat=54&dossierID=0518>> accessed 7 September 2020.

²⁷⁴ Guillaume Garot, *Lutte contre le gaspillage alimentaire: Propositions pour une politique publique* (April 2015) <<https://www.vie-publique.fr/sites/default/files/rapport/pdf/154000257.pdf>> accessed 7 September 2020; Marie Mourad, *France Moves Toward A National Policy Against Food Waste* (September 2015) National Resources Defense Council <<https://www.nrdc.org/sites/default/files/france-food-waste-policy-report.pdf>> accessed 7 September 2020.

halve their food waste by 2025.²⁷⁵ Beyond physically diminishing food wastage, it also introduced a programme of education for both schools and businesses regarding food waste. This was a reaction to estimates that French people throw away between 20kg to 30kg of food per person, per year, costing an estimated €12bn to €20bn annually.²⁷⁶

Scotland has also prioritised the right to food, as it prepares a right to food bill for the future. In order to deliver this vision, the government will launch a consultation on a Good Food Nation Bill, during 2017,²⁷⁷ with the aim to understand the needs of the local community when implementing its good food policy and help tackle poverty. The working group was set up by Scottish ministers, in October 2015, to examine food insecurity and poverty.²⁷⁸ Equalities Secretary Angela Constance said: “[n]o-one should have to rely on emergency food provision in a country as prosperous as Scotland. We want to create a sustainable solution to tackling food poverty across Scotland, and therefore I am committed to exploring a range of options, including looking into potentially enshrining the right to food into Scots law.”²⁷⁹ Scotland could be a European leader in legally implementing the right to food. One can only hope that more advanced and applicable policies will be put in place within the UK, in order to help reduce poverty, fight hunger and food wastage, and by changing imbedded concepts on the right to food.²⁸⁰

7.1 UK’s need for new legislation

In order to best implement the right to food it would be necessary to explicitly recognise socio-economic rights as capable of judicial

²⁷⁵ Peter Rixon, ‘France passes food waste law’ (*IEG Policy*, 22 May 2015)

<<https://iegpolicy.agribusinessintelligence.informa.com/PL029765/France-passes-food-waste-law>> accessed 7 September 2020.

²⁷⁶ *ibid.*

²⁷⁷ Scottish Food Coalition, ‘The Right to Food’

<http://www.foodcoalition.scot/uploads/6/2/6/8/62689573/sfc_discussion_series_-_right_to_food.pdf> accessed 7 September 2020.

²⁷⁸ *ibid.*

²⁷⁹ Lynsey Bews, ‘Scotland considers legally enshrining the right to food’ (*The Independent*, 17 November 2016) <<https://www.independent.co.uk/news/uk/politics/scotland-considering-enshrining-right-food-its-own-laws-a7422631.html>> accessed 9 September 2020.

²⁸⁰ Malcolm Langford, ‘Domestic adjudication and economic, social and cultural rights: A socio-legal review’ (2009) 6 *Sur International Journal on Human Rights* 91, 98.

enforcement.²⁸¹ This could be done directly and substantially by implementing socio-economic rights into the *HRA* which would require an Act from Parliament. In the UK, the legislature can enact laws that incorporate/transform treaties or treaty norms into domestic law.²⁸² This has already been seen with the *HRA*, as this is a law which integrates a human rights treaty into national law. Not having the *ICESCR* incorporated into domestic law²⁸³ means that the UK lacks a stable legal framework that addresses and protects the right to food, with correct sectoral legislation.²⁸⁴ It is, therefore, necessary for an additional legislative act to be passed in order to give effect to the treaty norms on the right to food within domestic law.²⁸⁵

Though the UK does recognise individuals as rights holders and the public authority as duty bearers within the realm of the *HRA*²⁸⁶, it does not do the same under the *ECHR*²⁸⁷ which has been domestically incorporated in terms of the *HRA*.²⁸⁸ Nevertheless, there is no corresponding duty enforced on public authorities to respect, protect and fulfil the right to food, or other socio-economic rights, under the *ICESCR*. The fact that the UK does not have a written constitution means branches of government are not determined, leaving most changes in jurisdiction up to a political debate thus to Parliament.²⁸⁹ The *HRA* is essentially an Act of Parliament and Parliament has the flexibility and the capacity to repeal or amend it to include new rights which do not conflict with it.²⁹⁰ This means it is not unrealistic to assume that the right to food alongside other *ESCR* rights could fit within the structure of the existing rights protection framework, with no constitutional amendment impediments.²⁹¹ It is easier for the UK

²⁸¹ James (n 148) 1.

²⁸² Knuth and Vidar (n 68) 26.

²⁸³ FAO, *Guide on Legislating for the Right to Food* (n 69) 2.

²⁸⁴ Knuth and Vidar (n 68) 12.

²⁸⁵ *ibid* 26.

²⁸⁶ Just Fair, *Going Hungry?* (n 14) 19.

²⁸⁷ ECHR (n 91).

²⁸⁸ Human Rights Act 1998.

²⁸⁹ James (n 148) 4.

²⁹⁰ Colm O'Cinneide, 'The Human Rights Act and the Slow Transformation of the UK's Political Constitution' (2012) UCL Institute for Human Rights Working Papers, 10.

²⁹¹ James (n 148) 2.

to modify elements within the *HRA*, than it is for other national systems where such rights are excluded from the constitution.²⁹²

Indeed, De Schutter's report sets-out recommendations for the UK to follow, after he recognised the systemic failures of the UK Government to ensure the right to food. He criticised the fact that revenues have increased annually by 2.1% on average for the entire population and 2.5% for the richest ten percent, yet for the poorer part of the population they only grew by 0.9%. In his recommendations, he requested for social benefits to be defined in terms of rights which the government owes to the people, and to stop food banks from being seen as an alternative to social protection.²⁹³ The UK should follow the ICESCR requirements and prevent food poverty from affecting the most vulnerable amongst the population. Food should be available from both natural resources and from the supermarkets and shops.²⁹⁴ It should be the government's duty, not only to realise the right to food, but also to adequately supply nutrition based on healthy foods such as vegetables, fish and fruit. Such a supply could be built by improving local sustainable production, local food systems and supply chains.²⁹⁵ Most importantly, he noted that the right to food should be legally enforced by the courts. This would allow people to demand their rights and make official complaints when their right to food has been violated.

It is also vital that an action plan is formulated by the government based around detailed analysis. This should look at the causes and gaps which prevent the fulfilment of the right to food.²⁹⁶ Alongside that analysis, there is a need to establish an institution for the monitoring of the right to food, as figures remain unclear, and there is no governmental mechanism which collects and compares data.²⁹⁷ This aspect prevents UK policymakers, campaigners and others, from measuring the problem they are trying to tackle, as the evidence that exists is not always accurate.²⁹⁸

²⁹² *ibid.*

²⁹³ Just Fair, *Freedom from Hunger: Realising the Right to Food in the UK* (n 129) 4.

²⁹⁴ See ICESCR (n 113) art 11; see also CESCR, 'General Comment No 12' (n 41) para 12.

²⁹⁵ UN General Assembly, 'Prevention and control of non-communicable diseases: Report of the Secretary-General' (19 May 2011) 66th Session UN Doc A/66/83, para. 60.

²⁹⁶ Food Foundation, *Household Food Insecurity: The Missing Data* (n 172).

²⁹⁷ *ibid.*

²⁹⁸ Food Foundation, *Time to count the hungry: The case for a standard measure of household food insecurity in the UK* (April 2016) <<https://foodfoundation.org.uk/wp->

It is, therefore, crucial that government authorities in the UK initiate regular, robust and comprehensive monitoring, so that food insecurity can be better understood and assessed in detail by all relevant government departments.²⁹⁹ These findings would help address why the right to food has not been actualised and where it is failing. New legislation will also need to be studied, in order to make sure it serves its purpose and is properly executed. The case study of India proved the necessity to monitor state compliance and new policies. Finally, targets need to be set in order to best fulfil this right and change the face of food insecurity in the UK.³⁰⁰

Conclusion

The central cause of the food poverty that exists in the UK is the austerity policies and welfare cuts which the current government imposes on vulnerable people. Therefore, arguably, the same government should be held responsible for implementing new policies and measures to help protect those they hurt, rather than leaving food banks and charities to repair the damage. The fact that the right to food was protected in the 13th century, but that people still find themselves having to fight for it in the 21st century, demonstrates a regression of human rights, and a failure by the state, instead of progress. Ultimately, this paper attempts to establish that in order to prevent a further increase of food insecurity, which leads to a fragmented, frustrated, unhappy and unhealthy society, the right to food needs to be made a justiciable right. It is imperative that, through the law, the government is held accountable to respect, protect and fulfil its legal obligations, helping to empower those who need help.³⁰¹ Furthermore, this study demonstrates that making the right to food justiciable is possible. The example of the Indian model demonstrates the power of their Supreme Court, which transformed a right that began as a directive unenforceable guideline, into a strong constitutional right. The courts in the UK should no longer refuse to address individual challenges to public authority decisions. Nor should they look at socio-economic

<content/uploads/2016/07/Food-Poverty-workshop-report-1-05-04-16.pdf> > accessed 7 September 2020, 2.

²⁹⁹ Taylor and Loopstra (n 8) 10.

³⁰⁰ Just Fair, *Going Hungry?* (n 14) 23.

³⁰¹ *ibid* 59.

benefits as something which only affects the wider public, as opposed to individual cases of poverty.³⁰²

The case study of India also proves that simply implementing a justiciable right to food is not enough. It is important that stakeholders, courts, civil society, the government and institutions all work together in an effective way, to educate and teach people about this right, and how to best execute effective policies, against the grain of our neo liberal times. Judges and lawyers also need to be fully aware of the right to food in order to successfully deal with cases, and to deliver the best protection to individuals. Furthermore, even after implementation, these rights need to be regularly updated and adapted to the socio-economic climate of the time. As Justice Albie Sachs of the South African Supreme Court eloquently said when he spoke at the law society, “socio-economic rights do not impose immediate substantive obligations but instead require progressive realisation year on year securing higher standard for more and more people.”³⁰³

Finally, not implementing socio economic rights into domestic legislation decreases the real value of human rights, as the HRA only treats a partial framework of rights and does not touch on other fundamental ones, which we all require for survival. Human rights should above all concern human dignity, which one cannot obtain without adequate food, housing, adequate standard of living and high standard of health. Together, all these rights become “inspirational, making part of the holistic framework of human flourishing”.³⁰⁴ The UK should not overlook its history and long found foundation of protecting socio-economic rights³⁰⁵ especially when there is such a strong need to do so.

It is only by putting more pressure on the government, with those who are suffering coming together with those who represent them, alongside policy makers, that a strong and growing socio-economic rights

³⁰² James (n 148) 4.

³⁰³ Jamie Burton, ‘It’s time to enshrine socio economic rights in law’ (*The Guardian*, 28 October 2011)

<<https://www.theguardian.com/commentisfree/libertycentral/2011/oct/28/socioeconomic-rights-law>> accessed 4 September 2020.

³⁰⁴ *ibid.*

³⁰⁵ Geraldine Van Bueren, ‘Should we have an enforceable right to food?’ (*UK Human Rights Blog*, 18 October 2013) <<https://ukhumanrightsblog.com/2013/10/18/should-we-have-an-enforceable-right-to-food-professor-geraldine-van-bueren/>> accessed 4 September 2020.

movement can be created and this current state of affairs can be challenged.³⁰⁶ Not having a constitution that protects socio economic rights should not be an excuse for the government to not implement positive rights, rather the reason and inspiration to create new legislation. As illuminated by Learned Hand, '[w]hen liberty lives in the hearts of men, no constitution is needed to preserve it; when it dies there, no constitution can save it'.³⁰⁷

The scoping project held in food banks in East London is a local example of the daily hardships people are experiencing all over the country. It might appear like a small victory having participants of the "Basic Rights" workshop unanimously vote to have the right to food legally implemented in the UK, but in reality, this could be reflective of a bigger consensus felt by the millions of food bank users from large communities all across the country³⁰⁸. Huguccio's statement, although made in the 13th century, is still relevant in today's world: "by natural law all things are common, which means in times of necessity they must be shared with those who need them." ³⁰⁹

³⁰⁶ Burton (n 304).

³⁰⁷ David P Currie, 'Positive and Negative Constitutional Rights' (1986) 53 U Chi L Rev 864, 890.

³⁰⁸ Purdam, Garratt and Esmail (n 17) 1084.

³⁰⁹ Siegfried Van Duffel and Dennis Yap, 'Distributive Justice before the Eighteenth Century: The Right of Necessity' (2011) 32 History of Political Thought 449, 452.