
Fight for the Right to Safe Food in Bangladesh—Viewed Through the Prisms of International and Indian Laws: Mice Will Play While the Cat Stays Away

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Food safety has been a global concern as recognized by the World Health Organization (WHO), which finds that unsafe food causes illness of an estimated 600 million people (nearly 1 in 10) worldwide, resulting in 420,000 deaths each year. However, some countries are more affected than others. One of those gravely impacted countries is Bangladesh, where the country's President has publicly compared the prevalence and magnitude of the effects of adulterated food with 'genocide'. Food Minister terms the adulterants the 'enemies of society' and he compares the malicious act as the 'crime against humanity'. The Supreme Court of Bangladesh consistently observes that 'if necessary, the state may declare an emergency for preventing food adulteration' and urges the government to wage war on food adulteration, whilst the Prime Minister has directed the authorities concerned to take stern punitive actions against persons involved in this criminal conduct. Bangladesh is striving to attain the United Nations Sustainable Development Goals (SDGs) by 2030, and the lack of food safety is impeding the progress towards achieving Goal 3 and Goal 12. The country has certainly taken a few steps over the past years to prevent this evil, but nothing works. An essential deficiency in the regulation of food safety in Bangladesh is the absence of explicit recognition of the right to safe food as a constitutionally guaranteed fundamental right. However, the government has both constitutional and international obligations to protect this critical entitlement, which is inherently linked to the right to life. This Article examines the state obligation under the international human rights instruments ratified by Bangladesh and the national constitution that protect the right to life. The analysis relies on the corresponding laws of India (the nearest neighbor) and several international instruments to pin down the people's right to have safe food and pertinent state obligations to ensure food safety. It recommends a set of actions that the government needs to undertake aiming to implement the right to safe food in Bangladesh. Findings in this Article are expected to benefit Bangladesh in particular as well as other countries having similar problems.

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I. INTRODUCTION

Food safety is indispensable for everyone living anywhere in the world because food is necessary for sustaining life. This makes the right to food (RTF) a universal right of every human being, one that prevails over all economic, social, and political rights.¹ Professor Hilal Elver, the third UN Special Rapporteur on the Right to Food, comments that the RTF should be regarded as “an indivisible human right.”² The term food within the RTF must be qualified by “adequacy,” which relates to “safety.” Adulterated food frustrates the whole purpose of having food and makes consumer life harder and shorter because contaminated foods cause illness of an estimated 600 million people (nearly 1 in 10) worldwide and results in 420,000 deaths each year.³ Food is considered adulterated or contaminated when it contains something—whether chemical, physical or biological—that makes it harmful.⁴ The WHO states that “certainly everyone has to die of something, but death does not need to be slow, painful, or premature,” caused by unsafe foods.⁵ WHO therefore emphasizes enhancing food safety at both the national and international levels.⁶

Food adulteration is said to be as old as commerce itself, despite its devastating impact on public health and life.⁷ Producing and presenting safe, sufficient, and nutritious food for human consumption is one of the

1. Ying Chen, *The Right to Food*, 12(3-4) EUR J. LAW REFORM 158, 182-200 (2010).

2. Hilal Elver, *The Challenges and Developments of the Right to Food in the 21st Century: Reflections of the United Nations Special Rapporteur on the Right to Food*, 20(1) UCLA J. INT’L L. & FOREIGN AFF. 1, 42 (2016).

3. Though technically different terms, adulteration and contamination are used synonymously in this Article. *Health Topics—Food Safety*, WORLD HEALTH ORG. (June 26, 2023), <https://www.who.int/bangladesh/healthtopics/food-safety>.

4. Susan M. Leaman, *How Safe is Our Food?*, DIRT TO DINNER (Sept. 7, 2016), <https://www.dirt-to-dinner.com/how-safe-is-our-food>.

5. *Preventing Chronic Diseases—A Vital Investment*, WORLD HEALTH ORG. (2005).

6. WORLD HEALTH ORG., *supra* note 3.

7. F. Leslie Hart, *A History of the Adulteration of Food Before 1906*, 7(1) FOOD DRUG COSM. L.J. 5(1952).

serious challenges the world is currently encountering.⁸ The situation is even worse in developing countries where dishonest businesses indiscriminately adulterate almost all foodstuffs in one way or another. Those foods are then consumed by people who have little choice but to eat them owing to either their lack of ability to buy better food or the perceived unavailability of safe substitutes in a given market.⁹ It is argued that choosing what foods we want to eat is called “liberty of palate,” which is a fundamental right.¹⁰ It is violated when we choose contaminated food unknowingly, resulting in consumer’s death or physical impairment immediately or slowly (sometimes imperceptibly).¹¹ Obviously, this happens very often in Bangladesh.¹²

The national economy of Bangladesh has been steadily and appreciably growing for over a decade, and the government is now striving to attain the United Nations Sustainable Development Goals (SDGs) by 2030.¹³ However, attaining Goal 3—ensuring healthy lives and promoting well-being for all at all ages—and Goal 12—ensuring sustainable consumption and production patterns—are inherently linked to the quality and safety of food as defined by the Food and Agriculture Organization of the United Nations (FAO).¹⁴ Therefore, it has been an extremely difficult task because the country has been confronting rampant food adulteration for decades in “gross violation of various human rights.”¹⁵

8. Ying Chen, *Improving Sustainability and Promoting the Right to Holistic Food: The Role of Agribusiness*, 31 FLA. J. INT’L L. 143, 177 (2019).

9. Abu Noman M. A. Ali & S. M. Solaiman, *Food Safety Offenses in New South Wales, Australia: A Critical Appreciation of Their Complexities*, 13(1) COMPR. REV. FOOD SCI. FOOD SAF. 91, 91 (2013).

10. Samuel R. Wiseman, *The Dangerous Right to Food Choice*, 38(4) SEATTLE UNIV. L. REV. 1299, 1300 (2015); see also Samuel R. Wiseman, *Liberty of Palate*, 65 ME. L. REV. 737 (2013).

11. *Id.*

12. See for example, News Desk, *Date Palm Sap Behind Eight Deaths in Bangladesh*, FOOD SAFETY NEWS (Feb. 22, 2023), <https://www.foodsafetynews.com/2023/02/date-palm-sap-behind-eight-deaths-in-bangladesh/> (Nov. 5, 2023); Star Digital Report, *2 Siblings Die Of ‘Food Poisoning’ in Gazipur*, DAILY STAR, Bangladesh (Jan. 29, 2023), at Bangladesh; Mir Mahmudul Haque Chowdhury, *Food Safety Scenario in the Context of Bangladesh*, DAILY OBSERVER, Bangladesh (June 07, 2023), at Op-Ed.

13. For links between sustainable development and the RTF, see Ana Garcia Juanatey, *Reconciling Human Rights and the Environment: A Proposal to Integrate the Right to Food with Sustainable Development in the 2030 Development Agenda*, 9 J. SUSTAIN. DEV. LAW POL. 1 (2018).

14. *Sustainable Development Goals*, FOOD AGRIC. ORG. UNITED NATIONS (June 28, 2021), <http://www.fao.org/sustainable-developmentgoals/goals/goal-3/en/>.

15. Nayla Basma, *Addressing the Human Rights Violation of Food Adulteration in Bangladesh*, 7 J. GLOB. HEALTH 54 (2017).

The magnitude of the food safety problem in Bangladesh, which is now on track for graduating from the least developed country status to a developing economy by 2026, is inexplicable, as evidenced by the recent reactive comments of the nation's highest responsible officeholders including the President, Prime Minister, Food Minister, and the Supreme Court of Bangladesh. For example, the erstwhile President of Bangladesh compared food adulteration and its deadly effects with "genocide" in a public speech,¹⁶ whilst the Food Minister calls these adulterants the "enemies of society," and adds that food adulteration is a "crime against humanity."¹⁷ Consistently, the country's supreme court observes that "if necessary, the state may declare an emergency for preventing food adulteration," and it also urges the government to wage war on food adulteration.¹⁸ In view of the continued incidents of inexcusable food adulteration, the Prime Minister lately directed the authorities concerned to take stern punitive actions against persons involved in this wrongdoing.¹⁹ Likewise, commentators based on perilous experiences made an alarming comparison in 2010 when they remarked that the early demise of numerous people caused by unsafe foods was one kind of "silent genocide."²⁰ Nevertheless, no real improvement is visible, as evident from the aforesaid recent comments of the chiefs in the country. As recently as February 2023, a study finds that the current laws have failed to ensure food safety.²¹ The study claims, referring to the admission

16. Bangla Tribune Desk, *Use of Formalin will Paralyse Nation: President*, BANGLA TRIB. (online, Bangla.) (Jan. 8, 2020), <https://en.banglatribune.com/country/news/88898/Use-of-formalin-will-paralyses-nation-President> (accessed May 20, 2023); see also SUST Correspondent, *Applying Formalin to Food is Committing 'Genocide,' says President Hamid*, BDNEWS24.COM (May 30, 2023), <https://bdnews24.com/health/2020/01/08/applying-formalin-to-food-is-committing-genocide-says-president-hamid>.

17. Pearly Neo, *'Enemies of the Nation': Bangladesh Considers Death Penalty, Life Imprisonment for Food Adulterators*, FOOD NAVIGATOR-ASIA (June 11, 2019), <https://www.foodnavigator-asia.com/Article/2019/06/11/Enemies-of-the-nation-Bangladesh-considers-death-penalty-life-imprisonment-for-food-adulterators>.

18. Staff Correspondent, *Wage War on Food Adulteration*, DAILY STAR (May 13, 2019), <https://www.thedailystar.net/frontpage/news/wage-war-food-adulteration-1742656>.

19. Bangladesh Sangbad Sangstha, *PM Orders Stern Action Against Food Adulteration*, THE NEW AGE (Feb. 18, 2021), <https://www.newagebd.net/article/130531/pm-orders-stern-action-against-food-adulteration>.

20. For details of the severity of unsafe food in Bangladesh, See *Speakers Liken Food Adulteration to Genocide*, THE FIN. EXPRESS (Aug. 5, 2010), <https://thefinancialexpress.com.bd/views/columns/dealing-with-food-adulteration-menace-1558368885>.

21. Rokon Uddin, *Two Dozen Laws Fail to Ensure Food Safety*, BUS. POST (Feb. 21, 2023), <https://businesspostbd.com/front/2023-02-21/two-dozen-laws-fail-to-ensure-food-safety-2023-02-21#:~:text=Existing%20two%20dozen%20laws%20and,%20nutrition%20of%20common%20people>.

of the Bangladesh Food Safety Authority (BFSA), that “more than 12 per cent of food in the country contains harmful substances for the human body,” whereas private research finds the extent of unsafe food exceeds sixty percent.²²

The RTF is a universally recognized critical human right, and it fundamentally denotes the right to safe food (RTSF, hence the RTF and RTSF used interchangeably),²³ which is ingrained in the right to life,²⁴ a constitutionally mandated fundamental right in Bangladesh under Article 32 of its national Constitution.²⁵ The right to life is regarded as the nucleus of all human rights, whilst no socio-economic rights can be successfully enjoyed without ensuring the RTF.²⁶ Generally, governments are more concerned about food security than food safety.²⁷ Interpretations of the RTF aim to protect both food security and food safety,²⁸ and the WHO finds a close bond between food safety, nutrition, and food security.²⁹ In other words, food safety is the common requirement of the RTF and food security.³⁰ This Article is explicitly concerned with food safety, which is implicitly connected with nutrition and food security.

This endeavor seeks to analyze the connection between the RTF and the right to life from the perspective of food safety and corresponding state obligations to ensure safe food for its citizens³¹ with the ultimate aim of eliminating or at least reducing unsafe foods in Bangladesh. Discussions that ensue are split into seven interrelated sections. Part II, explains the RTSF as an international human right that the state must protect, whilst Part III elucidates the RTSF as a constitutionally guaranteed fundamental right in Bangladesh. Part IV illustrates the

22. *Id.*

23. OFF. HIGH COMM’R HUM. RTS., *Fact Sheet No 34—the Right to Adequate Food*, (2010), <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet34en.pdf>.

24. See Eve E. Garrow & Jack Day, *Strengthening the Human Right to Food*, 7 U.C. IRVINE L. REV. 275, 285 (2017).

25. BANGL. CONST., translation at <http://bdlaws.minlaw.gov.bd/act-367.html> at Article 32.

26. Nicole Lieberman, *The Justiciable Right to Food and Adequate Nutrition in the UK: A Feasible Proposition?*, 7 BIRKBECK L. REV. 75, 104 (2020).

27. The present Agriculture Minister says in public meeting that “[t]here has to be a transition from food security to its next level of food safety” indicating the government’s priority for food security: Nilratan Halder, *From Food Security to Food Safety*, THE FINANCIAL EXPRESS, Bangladesh (Mar. 3, 2022), at Views.

28. Chen, *supra* note 8, at 149.

29. WORLD HEALTH ORG., *supra* note 33.

30. Juanjuan Sun, *On Right to Adequate Food and Relevant Concepts from the Legal Perspective*, 16(3) J. HUM. RTS 256, 262 (2017).

31. See *Farooque v. Government of Bangladesh*, (1996) 48 DLR 438, The Supreme Court of Bangladesh (HCD).

interplay between the right to life and the RTF as enshrined in the Constitution of the People's Republic of Bangladesh, and Part V examines the judicial interpretations of the RTF and the right to life in India³² in order to defend the existence of the RTSF in Bangladesh, which has similar constitutional provisions concerning these rights.³³ Notably, the right to life is a common fundamental right recognized in the constitutions of both Bangladesh and India.³⁴ Part VI concentrates on the actions need to be taken to actualize the RTSF in Bangladesh. Part VII comprises concluding remarks.

II. INTERNATIONAL OBLIGATION TO PROTECT THE RIGHT TO SAFE FOOD AS AN INTERNATIONAL HUMAN RIGHT—ITS APPLICABILITY IN BANGLADESH

As a generally accepted view, human rights denote those rights that are natural, universal, inalienable, and inherent entitlements of all human beings regardless of their nationality, race, sex, color, culture, religion, ethnicity, and social status.³⁵ Clapham describes human rights as being those that need to be taken care of for one's safety, dignity, and human value.³⁶ The United Nations Organization (UNO) has set out the basic characteristics of human rights stipulating that they are "all interrelated, interdependent and indivisible" entitlements.³⁷ Hence, as a human right, the right to life is inseparably connected with the RTF, which is evidenced

32. In the absence of adequate interpretations of the relevant Articles by the Judiciary in Bangladesh, this Article trusts in the Indian higher judiciary whose decisions have generally persuasive impacts on the judicial decisions in Bangladesh, which came into being as an independent country in 1971 following a war against the then West Pakistan now called Pakistan. Also, Bangladesh has considerably followed India in drafting its own Constitution including the list of fundamental rights. FOOD AND AGRIC. ORG. U.N., *Guide on Legislating For the Right to Food*, https://www.fao.org/fileadmin/templates/righttofood/documents/RTF_publications/EN/1_toolbox_Guide_on_Legislating.pdf (2009).

33. The Constitution of Bangladesh, Article 32 (Protection of right to life and personal liberty, Article 18 (Public health and morality). Corresponding Articles of the Constitution of India, Article 21 (Protection of life and personal liberty), Article 47 (Duty of the State to raise the level of nutrition and the standard of living and to improve public health).

34. Muhammad Mahbubur Rahman, *Right to Life as a Fundamental Right In the Constitutional Framework of India, Bangladesh and Pakistan: An Appraisal*, 17 DHAKA UNIV. STUD. 143 (2006).

35. G.A. Res. 47/75, at 47 (Dec. 14, 1992); see also LYNN HUNT, *THE PARADOXICAL ORIGINS OF HUMAN RIGHTS* 3-4, (Rowman & Littlefield Publishers, 2000).

36. ANDREW CLAPHAM, *HUMAN RIGHTS: A VERY SHORT INTRODUCTION* 2 (Oxford University Press, 2007).

37. *What Are Human Rights?*, U.N. HUM. RTS. OFFICE OF HIGH COMM'R, (Mar. 20, 2021), www.ohchr.org/en/issues/Pages/WhatareHumanRights.aspx.

by the fact that contaminated foods can cause premature demise and thereby deprivation of life.

Although the RTF is a universally accepted human right, the RTSF lacks such universality when the word food is interpreted, giving no consideration to its intrinsic meaning. Food safety means ensuring that the food produced, prepared, and supplied can meet the minimum needs of dietary safety.³⁸ Food safety entails all actions designed to meet the needs of confirming that foods are as safe as practicable.³⁹ As its legal underpinning, it is widely argued that the RTF springs from the right to life being recognized as an international human right,⁴⁰ and thereby RTF is inherently attached to a safe diet.⁴¹ The human right to “adequate” food has become prominent at the international level through a steady and prolonged process.⁴² The right to adequate food includes the RTSF. Hence, a food law shall seek to ensure that food is safe and of good quality to satisfy consumer needs.⁴³ The right to adequate food surpasses the requirement of nutritional values and absence of starvation, and it embraces within its scope “the full range of qualities associated with food, including safety, variety and dignity, in short all elements needed to enable an active and healthy life.”⁴⁴

Given the distinctive significance of the RTF, in 2000 the United Nations Commission on Human Rights established the Office of UN Special Rapporteur on the Right to Food (Special Rapporteur).⁴⁵ Special Rapporteurs are appointed by the UN Human Rights Council,⁴⁶ granting

38. Sun, *supra* note 30,30 at 261.

39. Ana Ayala & Benjamin Mason Meier, *A Human Rights Approach to The Health Implications of Food and Nutrition Insecurity*, 38 PUB. HEALTH REV. 1, 3 (2017).

40. G.A. Res. 2200A (XXI) (Dec. 16, 1966) (“Every human being has the inherent right to life. This right shall be protected by law . . .”).

41. U.N. SCOR, 20-21 Sess., para. 8, U.N. Doc. E/2000/22 (May 14, 1999).

42. For details, see George Kent, *The Human Right to Food and Dignity*, 37 HUM. RTS. MAG. 2, 3 (2010).

43. Peter Barton Hutt, *Food Law & Policy: An Essay*, 1 J. FOOD L. & POL'Y.2 (2005).

44. Ebenezer Durojaye & Enoch MacDonnell Chilemba, *The Judicialisation of the Right to Adequate Food: A Comparative Study of India and South Africa*, 43 COMMONWEALTH L. BULL. 255, 258 (2017) (citing Rajasthan State Human Rights Commission, JAIPUR, India).

45. United Nations Office of the High Commissioner, *Special Rapporteur on the Right to Food*, available at <https://www.ohchr.org/en/special-procedures/sr-food> (accessed Jan. 3, 2024).

46. The mandate of the Special Rapporteur on the right to food was originally established by the Commission on Human Rights in April 2000 by resolution 2000/10. Following the replacement of the Commission by the Human Rights Council in June 2006, the mandate was endorsed and extended by the Human Rights Council by its resolution 6/2 of 27 September 2007: United Nations Office of the High Commission, *Special Rapporteur on the Right to Food*. The current Rapporteur commencing in May 2020 is Professor Michael Fakhri and his predecessors are: Professor Hilal Elver (Turkey) 2014-2020, Professor Olivier De Schutter (Belgium) 2008-

the mandate to promote the full realization of the RTF and to examine ways and means of overcoming the impediments to its full realization.⁴⁷ Special Rapporteurs have been instrumental in promoting the RTF.⁴⁸ The definition of the RTF used by Professor Jean Ziegler, the first Special Rapporteur, outlines the legal basis of the RTF in international human rights law.⁴⁹ His definition reads:

The right to food is the right to have regular, permanent and unobstructed 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 from anxiety.⁵⁰

Professor Jean Ziegler's successors further explains the definition that he formulated.⁵¹ Taking a holistic approach to food, Professor Olivier De Schutter, the second Special Rapporteur, stipulates that food "must satisfy dietary needs, taking into account the individual's age, living conditions, health, occupation [which is] . . . safe for human consumption and free from adverse substances, such as contaminants from industrial or agricultural processes, including residues from pesticides, hormones or veterinary drugs."⁵²

The United Nations Human Rights Office of the High Commissioner (OHCHR) clearly and consistently asserts that foodstuffs "must satisfy dietary needs, taking into account a person's age, living conditions, health, occupation, sex, etc. Food should be safe for human

2014, Professor Jean Ziegler (Switzerland) 2000-2008 <https://www.ohchr.org/en/issues/food/pages/foodindex.aspx> (accessed June 4, 2023).

47. See e.g., Human Rights Council, *Mandate of the Special Rapporteur on the Right to Food*, (2007) United Nations Document A/HRC/6/L.5/Rev.1, para. 2.

48. Nadia Lambek & Priscilla Claeys, *Institutionalizing a Fully Realized Right to Food: Progress, Limitations, and Lessons Learned from Emerging Alternative Policy Models*, 40 VT. L. REV. 743, 750 (2016).

49. Jean Ziegler, The right to food—CHR Special Rapporteur (Ziegler) preliminary report under CHR/RES/2001/25, para 15-36, (2001), available at <https://www.un.org/unispal/document/auto-insert-187548/> (accessed Jan. 4, 2024).

50. U.N., *The Right to Food—CHR Special Rapporteur (Ziegler) Preliminary Report*, CHR/RES/2001/25, para. 22 (June 29, 2023).

51. Annamaria La Chimia, *Food Security and the Right to Food: Finding Balance in the 2012 Food Assistance Convention*, 65 INT'L. COMPARA. L. Q. 99 (2016).

52. *Id.*

consumption and free from adverse substances.”⁵³ The WHO, in its 2002 publication entitled *Safe Food for Better Health*, neatly recognizes that the availability of safe food is a basic human right.⁵⁴

Accordingly, the RTF is well protected under several international human rights instruments as follows. The *Universal Declaration of Human Rights 1948* (UDHR)⁵⁵ is the first document to recognize the RTF in its Art 25(1) as a component of the right to an adequate standard of living.⁵⁶ Thus, the UDHR establishes a baseline standard of living and access to adequate food as a human right.⁵⁷ Olivier De Schutter states, referring to the interpretation by CESCR General Comment 12,⁵⁸ that the first element of the RTF is “adequacy,” which highlights food safety.⁵⁹ Adding legal force to this provision of the UDHR, Article 6 of the *International Covenant on Civil and Political Rights 1966* enunciates the inherent right to life of every human being, and the RTF can be legally, philosophically, and physiologically considered as a component of the right to life.⁶⁰ Further, the *International Covenant on Economic, Social and Cultural Rights 1966* is the most important document from the

53. OHCHR, *OHCHR and the Right to Food*, <https://www.ohchr.org/En/Issues/ESCR/Pages/food.aspx> (accessed June 20, 2023).

54. Brihanmumbai Mahanagarpalika v. Willingdon Sports Club, Sup. Ct. India, 16 (2013), <https://main.sci.gov.in/jonew/judis/40987.pdf>.

55. As noted by the United Nations,

The Universal Declaration of Human Rights (UDHR) is a milestone document in the history of human rights. Drafted by representatives with different legal and cultural backgrounds from all regions of the world, the Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations.

United Nations, Universal Declaration of Human Rights, <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

56. Husen Ahmed Tura, *The Right to Food and Its Justiciability in Developing Countries*, 7 HARAMAYA L. REV. 48, 49 (2018).

57. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 25 (Dec. 10, 1948).

58. U.N. SCOR, 20-21 Sess., para. 8, U.N. Doc. E/2000/22 (May 14, 1999). 41

59. *Realizing the Right to Food Legal Strategies and Approaches*, INT'L DEV. L. ORG. 19 (2014), https://www.idlo.int/sites/default/files/pdfs/publications/Realizing%20the%20Right%20to%20Food_Legal%20Strategies%20and%20Approaches_full-report_0.pdf.

60. See generally PHILIP ALSTON, INT'L. L. AND THE HUM. RIGHT TO FOOD, THE RIGHT TO FOOD (Katarina Tomaševski and Philip Alston eds., 1984).

perspective of food safety.⁶¹ State parties under Article 11 of the ICESCR reaffirm “the right of everyone to an adequate standard of living for himself and his family, including adequate food”⁶² The Committee on Economic, Social, and Cultural Rights (CESCR) subsequently clarified Article 11 in CESCR General Comment 12 by providing a precise meaning of adequate food, which implies “the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture.”⁶³ Olivier De Schutter further clarifies that under Article 11 of the ICESCR, the RTF stands for two distinct constituents—the right to adequate food and the fundamental right of every human being to be free from hunger.⁶⁴ Some commentators suggest that the RTF under the ICESCR also means that everyone should have sustainable access to adequate quality foods.⁶⁵ The term adequate food, as contained in various international instruments such as the UDHR, the ICESCR, and other international human rights documents⁶⁶ has been clarified by the OHCHR as well.⁶⁷ In providing this clarification, the OHCHR notes that “adequacy” refers to the food that must satisfy “dietary needs,” taking into account, among other things, an individual’s age, living conditions, health, occupation, and sex.⁶⁸

Linking the two concepts of food safety and food security, the World Food Summit 1996 (WFS) convened by FAO formally adopted the concept of the “right to adequate food” in recognizing the ethical and human rights dimensions of food security.⁶⁹ The WFS focused on the

61. Bernd M J Van der Meulen, *The System of Food Law in the European Union*, 14 DEAKIN L. REV. 305, 312 (2009).

62. Article 11 of the ICESCR 1966.

63. U.N. SCOR, 20-21 Sess., para. 8, U.N. Doc. E/2000/22 (May 14, 1999); Asbjørn Eide, *The Human Right to Adequate Food and Freedom from Hunger*, FOOD AND AGRIC. ORG. U.N. (1998), <https://www.fao.org/3/w9990e/w9990e00.htm#TopOfPage>. 41

64. *Realizing the Right to Food Legal Strategies and Approaches*, INT’L DEV. L. ORG. 19 (2014), https://www.idlo.int/sites/default/files/pdfs/publications/Realizing%20the%20Right%20to%20Food_Legal%20Strategies%20and%20Approaches_full-report_0.pdf.

65. Smita Narula, *The Right to Food: Holding Global Actors Accountable Under International Law*, 44 COLUM. J. TRANSNAT’L L. 691, 694 (2006).

66. For example, CONVENTION OF THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN, pmbl., adopted Dec. 18, 1979, 1249 U.N.T.S. 1; CONVENTION ON THE RTS. OF THE CHILD, art. 24(2)(c), adopted Nov. 20, 1989, 1577 U.N.T.S. 3.

67. Office of the High Commissioner for Human Rights (OHCHR), *Fact Sheet No 34—the Right to Adequate Food* (2010) at 3.

68. WORLD HEALTH ORG., *supra* note 3, at 4.23

69. Elver, *supra* note 22, at 8-9.

need for both safety and nutrition of food as a basis of health.⁷⁰ The WFS reinforced that every person has the right to safe food, and added that the Rome Declaration on World Food Security 1996 (one of the two documents adopted by the WFS, another being the World Food Summit Plan of Action) underscores that “food security can only be achieved if the food, amongst other things, is safe to meet healthy dietary needs of consumers.”⁷¹ The WFS further emphasized the need for proper elucidation of the normative contents of the RTF and related state obligations.⁷²

FAO defines the RTF as a basic human right of every human being to have sustainable access to adequate food, to mitigate hunger, and ensure both their livelihood and well-being.⁷³ FAO provides further interpretation of this right by stipulating that any government itself must not deprive or abuse the RTF of its own people—it must protect every individual from being deprived of this right.⁷⁴ FAO also adds that in the event that one does not have adequate food, the government is obligated to provide sufficient support within its resources and ability so as to ensure its people’s full enjoyment of the right.⁷⁵ The significance of food safety is further reinforced by the UN Food Assistance Convention 2012, which requires even donated foodstuffs to be safe when it pronounces that the food should be adequate to meet beneficiaries’ needs and that food should be safe, efficient, effective, and supplied based on needs.⁷⁶

The RTF creates a legal responsibility, and all member states of the ICESCR have assumed an obligation to recognize, respect, and fulfill the RTF.⁷⁷ All states have a legally binding obligation to fully implement the RTF at the international, national, regional, and house-hold levels.⁷⁸ Some commentators add that this obligation originally stems from customary

70. FOOD AGRIC. ORG. U.N., *Report of the World Food Summit*, at annex III, U.N. Doc. WFS 96/REP (1996).

71. Sun, *supra* note 3030, at 261-62.

72. Tura, *supra* note 56, at 49.

73. *What is the Right to Food?*, FOOD AND AGRIC. ORG. U.N. (2007), <https://www.fao.org/3/i0094e/i0094e.pdf>.

74. *The Right to Food in Practice: Implimentation at the National LEVEL*, FOOD & AGRIC. ORG. U.N., 2 (2006), <https://www.fao.org/3/ah189e/ah189e.pdf>.

75. *Id.*

76. Chimia, *supra* note 51, at 107.

77. Narula, *supra* note 65, at 694.

78. Anthony Paul Kearns, III, *The Right to Food Exists via Customary International Law* 22 SUFFOLK TRANSNAT'L L. REV. 223 (1998).

international law.⁷⁹ The RTF entitles a person to demand legally adequate, safe, and nutritious food.⁸⁰

Alongside the movement for the RTSF, food sovereignty and food democracy⁸¹ are two relatively new concepts that are sometimes argued to be alternatives to a human rights based approach to food safety.⁸² Explaining the meaning of this approach, the Scottish Human Rights Commission describes that “[a] human rights based approach is about empowering people to know and claim their rights and increase the ability and accountability of individuals and institutions who are responsible for respecting, protecting and fulfilling rights.”⁸³ Expressing a similar view, Professor Hilal Elver notes that such an approach empowers rights-holders to assert their claims and imposes an obligation on state authorities to respect and fulfil the rights.⁸⁴ She further clarifies that although sometimes differentiated, the concepts of food sovereignty and food democracy are well aligned with the rights-based approach. Therefore, they all can be implemented simultaneously.⁸⁵

The importance of this approach lies in the recognition that the holders of a human right are entitled to make a claim for an act that the governmental authorities and others must do, or refrain from doing, to promote human dignity.⁸⁶ Human rights are chiefly, though not exclusively, concerned with state obligations to the people living under their jurisdictions, as laid down in international human rights law.⁸⁷ The RTF as a human right is so immensely respected that it is enshrined in over one-hundred international documents. Nonetheless, it remains challenging and difficult to materialize at the domestic level.⁸⁸

Professor Jean Ziegler notes in his report that any specific breaches of obligations of Bangladesh under the international instruments ratified by the country should be treated as violations of human rights.⁸⁹ He

79. Michelle M. Kundmueller, *The Application of Customary International Law in US Courts: Custom, Convention, or Pseudo-Legislation?* 28 J. LEGIS. 359, 362 (2002).

80. Chen, *supra* note 1, at 181.

81. For details of these two concepts, see Elver, *supra* note 22, at 9-11.

82. *Id.*

83. *What is a Human Right Based Approach?*, SCOTTISH HUM. RTS. COMM’N, <https://careaboutrights.scottishhumanrights.com/whatisahumanrightsbasedapproach.html> (last visited Sept. 13, 2023).

84. Elver, *supra* note 22, at 7.

85. *Id.* at 10-11.

86. Kent, *supra* note 42, at 2.

87. *Id.*

88. Penny Overby, *The Right to Food* 54 SASK. L. REV. 19 (1990).

89. ECON. SOC. COUNCIL COMM’N ON HUM. RTS., *The Right to Food: Report of the Special Rapporteur, Jean Ziegler Addendum*, at ¶ 42, E/CN.4/2004/10/Add.1 (2003).

highlights that the commitment of Bangladesh to human rights should be taken into consideration in any analysis of the RTF.⁹⁰ The OHCHR resonates with Ziegler's view in asserting that the state is obligated to ensure that none of its institutions or any third parties violate its people's RTSF, and it should take necessary measures to ensure their enjoyment of this right.⁹¹ Ziegler adds that Bangladesh has international obligations to respect, protect, and fulfil the RTF, as implied in the commitment to the RTF.⁹² As further supplemented by the OHCHR, the state "obligation to protect also includes ensuring that food put on the market is safe and nutritious. States must therefore establish and enforce food quality and safety standards."⁹³ The OHCHR is supported by the ICESCR, which proclaims that every state party has an obligation to ensure the minimal satisfaction of each right.⁹⁴ As an underpinning of these obligations, the OHCHR appropriately mentions that Bangladesh must be proactive in strengthening access to an adequate standard of life and safe food.⁹⁵ Reinforcing state obligations, Elver asserts that the RTF calls for states to provide an enabling environment permitting people to produce or purchase adequate food for themselves and their dependents.⁹⁶ All this strongly reinforces that Bangladesh has accepted an international obligation to ensure food safety in the country. This international obligation is reinvigorated by Article 25 of the Constitution of Bangladesh, which requires the state to respect international law and principles. Hence, Bangladesh has assumed a binding obligation to respect and fulfil its people's RTSF. A rights-based approach needs to be adopted in order to make both sides alert of their obligations and entitlements. In addition to these international instruments, the RTF has also been guaranteed in the national Constitution of Bangladesh as discussed below.

90. *Id.* at ¶15.

91. OFF. HIGH COMM'R HUM. RTS., *Fact Sheet No 34—the Right to Adequate Food*, 18 (2010), <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet34en.pdf>. 23

92. *See also* Hilal Elver, *Know Your Right to Food*, THE RIGHT TO FOOD, <https://hilalerver.org/righttofoodmandate/know-your-right-to-food/> (2022).

93. OFF. HIGH COMM'R HUM. RTS., *Fact Sheet No 34—the Right to Adequate Food*, 18 (2010), <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet34en.pdf>. 23

94. U.N. SCOR, 20-21 Sess., para. 2, U.N. Doc. E/2000/22 (May 14, 1999).41

95. OFF. HIGH COMM'R HUM. RTS., *Fact Sheet No 34—the Right to Adequate Food*, 18 (2010), <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet34en.pdf>.

96. Elver, *supra* note 22, at 7.

III. RIGHT TO SAFE FOOD AS A CONSTITUTIONALLY GUARANTEED FUNDAMENTAL RIGHT ENFORCEABLE IN BANGLADESH

The RTF is a fundamental human right under several international instruments, as explained above.⁹⁷ The word “right” connotes a person’s different legal entitlements and relationships, such as privilege, safety, immunity, and even power.⁹⁸ A salient feature of fundamental rights is that they are, by definition, protected and guaranteed by the national constitution, which is the supreme law of the land. Therefore, they are often called fundamental constitutional rights.⁹⁹ Similarly, underpinning this view, Professor Goodpaster opines that the reason for these rights to be so called is that they are “fundamental essentially because they have important structural implications for the regulation of governmental power which other rights do not have; and that these rights may not be burdened except to protect against real and serious threats to the polity itself.”¹⁰⁰ Recognizing the high status of these rights, the High Court Division of the Supreme Court of Bangladesh (HCD) pronounced in *State v. Deputy Commissioner Satkhira* that the court has the constitutional responsibility to ensure that the fundamental rights of citizens are preserved and well protected in the country.¹⁰¹ The foundation of this view was laid down by the Supreme Court of the United States in *Boyd v. United States* in 1886 when it held that “[i]t is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon,”¹⁰² which confirmed the superiority of these rights. In relation to the right to life in particular, the HCD in *Ain O Salish Kendra (ASK) v. Government of Bangladesh* declares that the state bears a constitutional obligation to make effective provisions for securing the right to life, living, and livelihood within its economic capacity.¹⁰³ Commentators argue that the most important feature of fundamental

97. Elver, *supra* note 92.

98. Wesley Newcomb Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 23 YALE L. J. 16, 30 (1913); Wesley Newcomb Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 26 YALE L.J. 710, 717 (1917).

99. For example, see Michael C. Dorf, *Incidental Burdens on Fundamental Rights*, 109 HARV. L. REV. 1176 (1996); see generally Laurence H. Tribe & Michael C. Dorf, *Levels of Generality in the Definition of Rights*, 57 U. CHI. L. REV. 1057(1990). The Constitution of Bangladesh is the supreme law of the land under Article 7.

100. Gary S. Goodpaster, *The Constitution and Fundamental Rights*, 15 ARIZ. L. REV. 479, 519 (1973).

101. 14 BLD (HCD) 266 (1994).

102. 116 US 616, 635 (1886); William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV.

103. *Ain-o-Salish Kendra v. Bangladesh*, 63 DLR 95, 114 (Bangl. 2011).

rights (e.g., the right to life) is their inviolability in that they cannot be taken away by an ordinary piece of legislation.¹⁰⁴ The supremacy of the Constitution of Bangladesh is intrinsically entrenched as the constitution itself declares it to be the supreme law of the land under Article 7.¹⁰⁵

We admit that the constitution does not explicitly or directly include the RTF in the list of guaranteed fundamental rights,¹⁰⁶ which does include, however, the right to life.¹⁰⁷ This omission of not mentioning the RTF separately should not be regarded as a fatal flaw with respect to the constitutional recognition of the RTF in Bangladesh.¹⁰⁸ When one adopts the purposive approach to the interpretation of the right to life and the RTF defined in the international instruments, it is logically found that the RTSF is well embedded in both of these rights.¹⁰⁹ This insinuates that the literal view of legal interpretation may not protect the fundamental right to life and the human right to food from life threatening contaminated foodstuffs, even though this is such a critical protection without which neither of these two rights (the right to life and RTF) can be meaningful. Notably, human rights and fundamental rights are mutually inclusive. It is now widely accepted that the RTF means that the food must be safe, amongst other things, as explained previously.¹¹⁰ The foregoing discussion demonstrates that the RTF is embedded in the Constitution of Bangladesh as part of the right to life. We now turn to examine the inherent link between the right to life and the RTSF, which further strengthens my argument that both of these rights currently coexist in the constitution.

104. DAVID A.J. RICHARDS, *THE MORAL CRITICISM OF LAW* 42 (1977); *see also* Paul Brest, *The Fundamental Rights Controversy: The Essential Contradictions of Normative Constitutional Scholarship*, 90 *YALE L.J.* 1063, 1075 (1981).

105. Article 7(2) of the Constitution of Bangladesh reads as follows: "This Constitution is, as the solemn expression of the will of the people, the supreme law of the Republic, and if any other law is inconsistent with this Constitution that other law shall, to the extent of the inconsistency, be void."

106. A complete list of fundamental rights is incorporated into the Constitution of Bangladesh in Part III (Articles 26-47A). *THE CONST. OF THE PEOPLE'S REPUBLIC OF BANGL.*, pt. III.

107. *Id.* at § 32.

108. The recognition has been substantiated above referring to the interpretations of the relevant Articles of the Constitution of Bangladesh by the Supreme Court. Also further evidence is provided below in Part IV.

109. This inference has been substantiated in the foregoing discussion relying upon several provisions of different international instruments and their authoritative explanation by competent individuals and UN bodies.

110. Also, *see* United Nations Human Rights—Office of the High Commissioner for Human Rights, *The Right to Adequate Food* (Fact Sheet No. 34, Apr. 2010).

IV. THE RIGHT TO LIFE AND THE RIGHT TO SAFE FOOD AS
SAFEGUARDED BY THE CONSTITUTION OF BANGLADESH

The right to life and the RTSF are both arguably well entrenched in the constitution. The guarantee of life is provided in Article 32, which pronounces that “[n]o person shall be deprived of life or personal liberty save in accordance with law.”¹¹¹ Despite this guarantee, contaminated foods are randomly and silently killing people across the country.¹¹² The right to life has been further fortified by Article 31 of the constitution, which entitles every citizen to have legal protection and “to be treated in accordance with law, and only in accordance with law” which is the inalienable right of every citizen. Imposing an obligation on the state, Article 31 adds that “no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.”¹¹³ The HCD in *Gias Uddin v. Dhaka Municipal Corporation* explained the meaning of the protection of life provided under Article 31 and held that no one’s life can be imperiled by any unlawful action of anyone.¹¹⁴ The court interpreted that the right to life includes all needful things “without which human life cannot be protected.”¹¹⁵ The HCD also held that the “protection of life means that one’s life cannot be endangered by any action which is illegal.”¹¹⁶ Obviously, human life cannot be protected without food, whilst food adulteration is illegal and adulterated food can undeniably cause termination of life.¹¹⁷ Further, the HCD interpreted the meaning of the right to life under Article 31 from the health and safety perspective in *Nurul Islam v. Government of Bangladesh* and held that the right to life under Article 31 denotes everyone’s right to have a sound mind and health.¹¹⁸ Whenever the right to life relates to health, it

111. Constitution of Bangladesh, Article 32.

112. See S.M. Solaiman, *Laws Governing Manslaughter by Food Safety Crimes in the United Kingdom, Australia, Bangladesh and India: A Critical Review*, 47 N.C. J. INT’L L. 75, 79 (2021).

113. Constitution of Bangladesh, Article 31.

114. 17 BLD (HCD) 577 (1997).

115. *Gias Uddin v. Dhaka Municipal Corporation*, 49 DLR 199, 200.

116. *Id.*

117. See S.M. Solaiman & Abu Noman M. Atahar Ali, *The Most Serious Offenses and Penalties concerning Unsafe Foods under the Food Safety Laws in Bangladesh, India, and Australia: A Critical Analysis*, 70 FOOD & DRUG L. J. 409 (2015).

118. *Nurul Islam v. Government of Bangladesh*, ENV’T L. ALL. (2015), <https://www.elaw.org/content/bangladesh-nurul-islam-v-government-bangladesh-wp-1825-1999-20000207-tobacco-advertising-cas>.

perceptibly connotes the need for safe food (amongst other things).¹¹⁹ Hence, I argue that the state has a constitutional responsibility to ensure food safety and prevent food adulteration, and that food adulteration constitutes violation of Articles 32 and 31 when an adulterated food causes death of a person, representing the failure of the State in upholding people's fundamental right to life.¹²⁰

Apart from Articles 31 and 32, the constitution contains further provision in Articles 15 and 18(1) that arguably protects the RTSF and reinforces my arguments. Article 15(1)(a) provides that it shall be a fundamental responsibility of the state to attain, with a view to securing to its citizens, the provision of the necessities of life including food. Consistently, Article 18(1) reads:

The State shall regard the raising of the level of nutrition and the improvement of public health as moving its primary duties, and in particular shall adopt effective measures to prevent the consumption, except for medical purposes or for such other purposes as may be prescribed by law, of alcoholic and other intoxicating drinks and drugs which are injurious to health.

Unlike Articles 31 and 32, which have the legal force as fundamental rights, Articles 15(1) and 18(1) are incorporated into the constitution as two of the fundamental principles of state policy that are not directly enforceable in law.¹²¹ These principles are guidance for governance activities including judicial interpretation of statutes. As Article 8(2) spells out, they are:

fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws, shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh, and shall

119. See B. S. Reddy & R. Ramya, *The Right to Food as a Human Right: An Overview of Public Understanding of the Right to Safe and Nutritious Food*, 4 CMR UNIV. J. CONTEMP. LEGAL AFF. 245, 246 (2022).

120. Dr. Mohiuddin Farooque vs. Bangladesh and others 48 DLR (HCD) (1996) 438; Dr. Mohiuddin Farooque vs. Bangladesh and others 16 BLD (HCD) (1996) 490; Muhammad Mahbubur Rahman, *Right to Life as a Fundamental Right in the Constitutional Framework of India, Bangladesh and Pakistan: An Appraisal*, 17 DHAKA UNIV. STUD. PART F 143, 158 (2006).

121. Fundamental Principle of State Policy are contained in Articles 8-25. These are not directly enforceable, as Article 8(2) declares that "(2) The principles set out in this Part shall be fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws, shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh, and shall form the basis of the work of the State and of its citizens, but shall not be judicially enforceable."

form the basis of the work of the State and of its citizens, but shall not be judicially enforceable.

Hence, the fundamental principles are guidance for state actions and judicial interpretation of the national constitution and legislation.

Although their direct enforceability has been explicitly negated, the judiciary has arguably mandated the indirect enforceability of these principles.¹²² For example, the Supreme Court of Bangladesh (Appellate Division—AD) in 1989 in a leading case, *Anwar Hossain v. Bangladesh*, pronounced that:

Though the directive principles are not enforceable by any court, the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws. It is a protected Article [Article 8] in our Constitution and the legislature cannot amend this Article without referendum. This alone shows that the executive cannot flout the directive principles. The endeavor of the Government must be to realize these aims and not to whittle them down.¹²³

However, two years later in *Kudrat-E-Elahi Panir v. Bangladesh*, popularly known as a Fundamental Principles of State Policy case, the Supreme Court of Bangladesh (AD) took a pessimistic view of the judicial enforceability of fundamental principles by adopting a literal approach.¹²⁴ In this case, Shahabuddin Ahmed CJ observed, referring to Article 8(2), that fundamental principles are not enforceable, and the court cannot compel the state to implement them where it is unable to do so.¹²⁵ Notably, his Honour viewed that the state cannot be forced to do something “if it is unable to do so,” and we have no reason to believe that prevention or at least reduction of food adulteration to a tolerable level is impossible for the state. Another justice in this case, Mustafa Kamal J, concurred and mentioned that fundamental principles and laws are different. The constitution itself confirms in Article 8(2) that the fundamental principles are not law, and any equalization of these two

122. See *Anwar Hossain v. Bangladesh* (1989) BLD (Spl) 1, 61, per Badrul Haider Chowdhury J. See also Md. Rafiqul Islam Hossaini & Md. Sazzad Hossain, *Judiciary's Hands are Tied by Fundamental Principles of State Policy for Protecting Human Rights: An Analysis of Bangladesh Constitution*, 22(2)IOSR J. OF HUMANITIES & SOC. SCI. 100,(2017).

123. *Anwar Hossain Chowdhury vs. Bangladesh*, CHANCERY L. CHRON., ¶ 61 (Jan. 20, 2010), <https://betterjustice.files.wordpress.com/2013/03/1989-bld-spl-1-8th-amendment-judgment.pdf>.

124. *Kudrat-E-Elahi Panir v. Bangladesh*, 44 DLR (AD) 321, 330-31 (Bangl. App. Div. Civ. 1992).

125. *Id.* at 330.

would be unconstitutional. Additionally, principles should be applied in making legislation.¹²⁶ Hence, according to Mustafa Kamal J, the fundamental “principles should be applied in making legislation.”¹²⁷ This is an important point to note as I recommend enactment of new legislation directly recognizing the RTSF.

Most relevantly, in 1996, the HCD in *Farooque v. Government of Bangladesh* interpreted Article 18(1) pertaining to food safety and the right to life.¹²⁸ It was a public interest litigation concerned with the importation of allegedly radioactively contaminated milk powder where the petitioner argued, in reliance on the public health facet of Article 18(1), that it had violated the constitutionally guaranteed and protected right to life. Kazi Ebadul Hoque J accepted both the relevance of Art 18(1) and infringement of the right to life and the RTF. His Honour held that:

Though [Article 18(1)] cannot be enforced by the Court, it can be . . . [applied in] interpreting the meaning of the right to life under Articles 31 and 32 of the Constitution. A man has a natural right to the enjoyment of healthy life and a longevity up to normal expectation of life in an ordinary human being. Enjoyment of a healthy life and normal expectation of longevity is threatened by disease, natural calamities and human actions. *When a person is grievously hurt or injured by another, his life and longevity are threatened. Similarly, when a man consumes food, drink, etc., injurious to health, he suffers ailments and his life and normal expectation of longevity are threatened. The natural right of man to live free from all the man made hazards of life has been guaranteed under the aforesaid Articles 31 and 32 subject to the law of the land [italics added].*¹²⁹

Further, the HCD in *Dr. Mohiuddin Farooque v. Bangladesh*, a food safety case,¹³⁰ held that:

It is the primary obligation of the State to raise the level of nutrition and the improvement of public health by preventing use of contaminated food, drink, etc. Though that obligation under Article 18(1) of the Constitution cannot be enforced state is bound to protect the health and longevity of the people living in the country as right to life guaranteed under Articles 31 and 32 of the Constitution

126. *Id.* at 346.

127. *Kudrat-E-Elahi Panir v. Bangladesh* (1992) 44 DLR (AD) 319.

128. *Dr. Mohiuddin Farooque v. Bangladesh*, 48 DLR 438 (Bangl. 1996).

129. *Id.*

130. *Id.*

includes protection of health and normal longevity of a man free from threats of man-made hazards unless that threat is justified by law. Right to life under the aforesaid Articles of the Constitution being a fundamental right it can be enforced by this Court to remove any unjustified threat to the health and longevity of the people as the same are included in the right to life.¹³¹

The above constitutional and judicial propositions provide convincing evidence that the right to life and the RTF implicitly represent the RTSF and presently exist within the constitutional framework of Bangladesh, though the latter (RTSF) is not connately explained and legally enforced as such in practice. I accept the purposive interpretations of the fundamental principles in favor of the people's RTSF, having due regard for the historic pronouncement of the Supreme Court of the United States in *Marbury v. Madison* that “[i]t is emphatically the province and duty of the judicial department to say what the law is.”¹³²

Further, it is worth mentioning that the national constitutions of at least 102 countries prescribe an obligation of the state to facilitate access to food under provisions akin to directive principles of state policy.¹³³ At least fifty-six of them either implicitly or explicitly provide for protection of the RTF as a justiciable right,¹³⁴ and twenty-three countries have expressly incorporated the RTF into their constitutions.¹³⁵ Nicole Lieberman explains the RTF is a justiciable right and therefore a legally enforceable right, where a justiciable right denotes that individuals are empowered to claim remedy against a violation of that right.¹³⁶ Ecuador, a country comparable with Bangladesh in terms of economic development, was one of the first countries to include the RTF in its constitution.¹³⁷ Subsequently, the RTF has been made justiciable in many countries; for example, India, Bolivia, Costa Rica, Guatemala, Honduras, Mexico, Nepal, South Africa, Nicaragua, Panama, Paraguay, Venezuela,

131. *Id.*

132. *Marbury v. Madison*, 5 US 137, 177 (1803).

133. Tura, *supra* note 56, at 61, 63.56

134. Lieberman, *supra* note 26, at 80-81 (noting that a “justiciable right” means individuals right-holders are legally protected and entitled to seek adequate remedy against any violations of that right.)²⁶

135. Lidija Knuth & Margaret Vider, *Constitutional and Legal Protection of the Right to Food Around the World*, FOOD & AGRIC. ORG. U.N., 21 (2011), <http://www.fao.org/right-to-food/resources/resources-detail/en/c/80544/>; Lieberman, *supra* note 26, at 86.

136. Lieberman, *supra* note 26, at 80-81.

137. *Id.* at 87. 26

Democratic Republic of the Congo, Malawi, Iran, Ukraine, Hungary and Moldova.¹³⁸

The Constitution of Bangladesh was drafted in 1972, borrowing the tone of the Constitution of India.¹³⁹ Hence, a great similarity exists between the contents of both the fundamental principles of state policy and fundamental rights of these two constitutions (including the right to life and the fundamental principles/directive principles regarding the public health and morality).¹⁴⁰ However, fundamental principles are called Directive Principles of State Policy (Articles 36-51) in India,¹⁴¹ and they are placed immediately after the list of fundamental rights; whereas in the Constitution of Bangladesh, the fundamental principles come first followed by fundamental rights.¹⁴² Fundamental rights are listed in Articles 12-35 of the Indian Constitution.¹⁴³ Professor Anirud comments that although the fundamental rights (Part III) and Directive Principles (Part IV) are placed in two separate parts in the Indian Constitution (and in Bangladesh as well), there has been a dynamic interplay between the two parts.¹⁴⁴ Hence, Indian jurisprudence in relation to the interpretations of corresponding directive principles and fundamental rights would be useful in clarifying the enforceability and juristic status of these two cornerstones of the Constitution of Bangladesh, especially the provisions of the right to life and the principle of public health.¹⁴⁵

138. *Id.* For a list of constitutions establishing a national legal basis for ensuring the RTF, see Chen, *supra* note 1, at 177-80.1

139. This is so because both Bangladesh and India follow the Westminster system of parliamentary democracy, and the “Fundamental Principles of State Policy” and constitutionally guaranteed “Fundamental Rights” are two significant parts of the constitutions of both countries. Apart from commonalities in other provisions, the texts of these two parts are considerably similar between these two national documents. More specifically, “Fundamental Principles of State Policy” contained in Part II comprising Articles 8-25 of the Constitution of Bangladesh are largely similar to those of Part IV made up of Articles 36-51 of the Constitution of India which calls them the “Directive Principles of State Policy.” Likewise, the list of “Fundamental Rights” embodied in Part III consisting of Articles 26-47A of the Constitution of Bangladesh significantly correspond to those in Part III composed of Articles 12-36 of the Indian Constitution.

140. BSEHR v. Government of Bangladesh, 53 DLR 1, 10-11 (Bangl. High Ct. Div. 2001).

141. Constitution of India, Part IV: “Directive Principles of State Policy”.

142. Constitution of Bangladesh, the headings Part II: “FUNDAMENTAL PRINCIPLES OF STATE POLICY” and Part III: “Fundamental Rights.”

143. Constitution of India, heading of Part III (Articles 12-35): “Fundamental Rights”

144. Anirud Prasad, *Human Rights and Socio-Economic Justice: A Study with Special Reference to India*, 12 CIV. & MIL. L.J. 84, 85 (1976).

145. See Muhammad Mahbubur Rahman, *Right to Life as a Fundamental Right in the Constitutional Framework of India, Bangladesh and Pakistan: An Appraisal*, 17 DHAKA UNIV. STUD. PART F 143 (2006).

V. JUDICIAL INTERPRETATIONS OF THE RIGHT TO LIFE AND THE RIGHT TO FOOD IN INDIA

The directive principles enshrined in the Indian Constitution are not judicially enforceable per se. However, courts are allowed to use them as tools of interpretation of other legal provisions defining fundamental rights.¹⁴⁶ Regarding the enforceability of directive principles, the Supreme Court of India (SCI) in *Kesavananda Bharati v State of Kerala* in 1973 held that:

[w]hat is fundamental in the governance of the country cannot surely be less significant than what is fundamental in the life of an individual. That one is justiciable and the other not may show the intrinsic difficulties in making the latter enforceable through legal processes but that distinction does not bear on their relative importance.”¹⁴⁷ The Indian legislature afterwards amended the Constitution of India in 1976 (the 42nd amendment) by adding the word ‘socialist’ in its Preamble and altering Article 31C (saving of laws giving effect to certain directive principles) that fastens the connection between ‘directive principles’ and ‘fundamental rights’ and affirms the primacy of a directive principle over fundamental rights.¹⁴⁸

Accordingly, the SCI—while interpreting the directive principle particularly about raising the nutrition level, standard of living, and public health in their Constitution (Article 47 which is equivalent to Article 18 of the Constitution of Bangladesh)—in *Olga Tellis v. Bombay Municipal Corporation* ruled that “the Directive Principles, though not enforceable by any court, are nevertheless fundamental in the governance of the country.”¹⁴⁹ The court applied this rule in interpreting the right to life under Article 21 of the Indian Constitution (comparable with Article 32 of the Constitution of Bangladesh).¹⁵⁰ The Constitution of India proffers a very strong framework for the protection of human rights, within which Article 47 enunciates as a directive principle that the “[s]tate shall regard the raising of the level of nutrition and the standard of living of its people

146. *Realizing the Right to Food Legal Strategies and Approaches*, INT’L DEV. L. ORG. 19, 25 (2014), https://www.idlo.int/sites/default/files/pdfs/publications/Realizing%20the%20Right%20to%20Food_Legal%20Strategies%20and%20Approaches_full-report_0.pdf.

147. *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461, para. 2219 (India 1970).

148. M. Jashim Ali Chowdhury, *Does Inconsistency with ‘Fundamental Principles of State Policy’ Invalidate a Law?*, 5 BRAC UNIV. J.71, 74 (2008).

149. *Olga Tellis and Others v. Bombay Mun. Corp.*, 1985 SCR Supl. 51, 80 (India 1985).

150. Tura, *supra* note 56, at 61.

and the improvement of public health as among its primary duties.” It implies the people’s RTF was originally recognized as a directive principle in Article 47 by imposing a positive duty on the state. However, the SCI transformed them into constitutional enforceable rights through judicial interpretations.¹⁵¹

The SCI by interpreting Article 47 in *Francis Coralie Mullin v. The Administrator* enforced the RTF as part of the right to life (Article 21),¹⁵² and thereby the court has transformed directive principles into justiciable human rights.¹⁵³ Cementing the right to life and the RTF together, the SCI in *Shantistar Builders v. Narayan Khimalal Totame* stated that “[t]he right to life is guaranteed in any civilised society. That would take within its sweep the right to food.”¹⁵⁴ The court reiterated the same view in *Chameli Singh v. State of UP* while pronouncing that the right to life implies the RTF.¹⁵⁵ In *People’s Union for Civil Liberties v. Union of India*, the court reaffirmed that the RTF is guaranteed under the right to life.¹⁵⁶ In 2013, the SCI in *Brihanmumbai Mahanagarpalika v. Willingdon Sports Club* pronounced giving emphasis to the quality of food that “[n]o article of food which is adulterated, unwholesome or unfit for human consumption can be kept or sold or exposed for sale in the eating house.”¹⁵⁷ Professor Jean Zeigler appreciably comments that India is “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.”¹⁵⁸

151. Lieberman, *supra* note 26,26 at 106. Article 47 reads “Duty of the State to raise the level of nutrition and the standard of living and to improve public health.—The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

152. *Francis Coralie Mullin v. Administrator*, 2 SCR 516, 529 (India 1981); *see also* Tura, *supra* note 56, at 61;56 Michael J. McDermott, *Constitutionalizing an Enforceable Right to Food: A New Tool for Combating Hunger*, 1 B.C. INT’L & COMP. L. REV. 1, 11-12 (2012).

153. Tura, *supra* note 56, at 73.

154. 1 SCC 520 (1990).

155. 2 SCC 549 (1996).

156. *People’s Union for Civil Liberties v. Union of India*, Civil Petition No. 196/2001, paras. 1-3, 5-8 (India 2001); Lambek & Claeys, *supra* note 48, at 754; *see also* Lauren Birchfield & Jessica Corsi, *The Right to Life Is the Right to Food: People’s Union for Civil Liberties v. Union of India & Others* 17 HUM. RTS. BRIEF 15, 15-18 (2010). 4826

157. *Brihanmumbai Mahanagarpalika v. Willingdon Sports Club*, Sup. Ct. India, 7 (2013), <https://main.sci.gov.in/jonew/judis/40987.pdf>.

158. Lieberman, *supra* note 26, at 107. 26

The RTF is thus an enforceable right in India,¹⁵⁹ and the SCI has been enforcing the RTF as part of the right to life since 2001.¹⁶⁰ Professor Shareen highlights that India has played a pivotal role in recognizing the RTF and attempts to implement the right as a positive right in legal policy and institutional frameworks.¹⁶¹ A distinction is drawn between positive and negative rights with respect to the state responsibility that the protection of a positive right requires. Whereas; the protection of a negative right requires the state to restrain from action.¹⁶² When India recognized the RTF as a positive right, it assumed an obligation to do something to protect it.¹⁶³ By contrast, a negative right concerning food would be that the state cannot forbid a person from getting lawful access to food.¹⁶⁴

Further legislative development took place in India in 2013. India deserves much appreciation for enacting the *National Food Security Act 2013*. The act is aimed at providing subsidized food grains to approximately two thirds of its population to reduce malnutrition and improve food security,¹⁶⁵ which makes it the largest food security program in the world.¹⁶⁶ It implies the improvement of food safety alongside food security, and as I have argued before, the former is inherent in the latter, which is our perspective to be supportive of the Indian legislation of 2013.¹⁶⁷ In addition, I have shown earlier that even

159. *Id.* at 75.

160. Tura, *supra* note 56, at 65.

161. See Hertel Shereen, *Hungry for Justice: Social Mobilization on the Right to Food in India*, 46 DEV. & CHANGE 72, 83 (2014).

162. Matthias Klatt, *Positive Rights: Who Decides? Judicial Review in Balance*, 13 ICON 354, 354-55 (2015).

163. Following the ongoing case in India, “the Supreme Court on various occasions has directed the state (central as well as state governments) to implement various schemes which ensure the right to food.” Amit Bhatt, *Right to Food in India*, 5 INT’L J. L. MGMT. & HUMAN. 153, 155 (2022).

164. *Id.*

165. See *The National Food Security Act: A Long Road Towards the Realization of the Right to Food*, 8 RIGHT TO FOOD J. 1, 8 (2013); Hilal Elver, *Special Rapporteur on the Right to Food—Access to Justice and the Right to Food: The Way Forward*, United Nations Document no A/HRC/28/65 (Jan. 12, 2014) para. 22.

166. Hilal Elver, *Special Rapporteur on the Right to Food—Access to Justice and the Right to Food: The Way Forward*, United Nations Document no A/HRC/28/65 (Jan. 12, 2014) para. 22.

167. The National Food Security Act 2013 (Ind.) enacted on July 5, 2013, “marks a paradigm shift in the approach to food security from *welfare to rights based approach*. The Act legally entitles up to 75% of the rural population and 50% of the urban population to receive subsidized foodgrains under Targeted Public Distribution System. About two thirds of the population therefore is covered under the Act to receive highly subsidized foodgrains. As a step towards women empowerment, the eldest woman of the household of age 18 years or above is

donated foodstuffs are required to be safe.¹⁶⁸ It is thus argued that the *National Food Security Act 2013* testifies India's exemplary steps taken to enforce the RTF.¹⁶⁹

It is heartening to see that current judicial trend towards the enforceability of the RTF is positive, as evident in an international survey of case law over the past two decades concerning economic, social and cultural rights in national and regional courts.¹⁷⁰ The survey strongly supports the view that the RTF is indeed a justiciable positive right.¹⁷¹ To make it more realistic, the interpretations of the RTF allow some leeway to vary between countries in order to adjust the right to local circumstances.¹⁷² India has played a leading role in enforcing the RTF,¹⁷³ and numerous other countries have now adopted that positive view.¹⁷⁴ This constitutional and legal embodiment of the RTF defines its normative contents and thereby creates a legal basis for its judicial enforcement at domestic levels.¹⁷⁵ All this demonstrates the widespread acceptability and justiciability of the RTSF as a positive right. From the perspective of socio-economic and cultural background, the Indian example is greatly relevant to Bangladesh.

I already persuasively argued that Bangladesh is obligated to ensure safe food for its people under both international instruments and national constitution. Further, the ICESCR clearly requires each state party "to ensure that every person under its jurisdiction has access to the minimum essential food which is sufficient, nutritionally adequate and safe, to

mandated to be the head of the household for the purpose of issuing of ration cards under the Act": National Food Security Portal, Department of Food and Public Distribution, Government of India, *National Food Security Act, (NFSA) 2013*, available at <https://nfsa.gov.in/portal/nfsa-act>. The National Food Security Act 2013, is popularly known as "Right to Food Bill": Food and Agriculture Organization of the United Nations, *FAOLEX Database—India*, available at <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC132586/>. I have previously argued referring to consistent judicial interpretations that the term "food security" includes "food safety", and the legislation is greatly appreciated from the perspectives of food safety and food security: Gargi Dutta, *Justiciability of Right to Food*, 5 INT'L. J. SCI. RES. PUBL'N 1, 1 (2015). I am thus supportive of this statute.

168. Annamaria La Chimia, *Food Security and the Right to Food: Finding Balance in the 2012 Food Assistance Convention*, 65(1) INT'L. COMP. L. Q. 99, 107 (2016).

169. Tura, *supra* note 56, at 65.

170. See Elver, *supra* note 2, at 25; Hilal Elver, *Special Rapporteur on the Right to Food—Access to Justice and the Right to Food: The Way Forward*, United Nations Document no A/HRC/28/65 (Jan. 12, 2014) para. 17-25.2166

171. See Elver, *supra* note 22, at 25.

172. Kent, *supra* note 42, at 2.

173. Tura, *supra* note 56, at 65.

174. *Id.* at 61, 63.

175. *Id.* at 73.

ensure their freedom from hunger.”¹⁷⁶ Professor Olivier De Schutter states, referring to the interpretation by CESCR General Comment 12, that the first element of the RTF is “adequacy,” which requires food safety.¹⁷⁷ Likewise, Professor Hilal Elver asserts that “states should ensure that food in the market is safe and nutritious by establishing and enforcing food regulations.”¹⁷⁸ I now reasonably conclude that Bangladesh has both national and international obligations to ensure food safety in the country.

I appreciate that the Government of Bangladesh has already taken a few steps to discharge its obligations. Nevertheless, the extent of adulteration remains mostly unchanged.¹⁷⁹ It points out that something has been done, but a lot more remains to be done to ensure production and supply of safe foods in the country.¹⁸⁰ I submit below a few specific recommendations to facilitate enforcement of food safety requirements in Bangladesh.

VI. ACTIONS NEEDED TO IMPLEMENT THE RIGHT TO SAFE FOOD IN BANGLADESH

Before drawing up an action plan, it is important to identify the major concerns surrounding the enforcement of food safety as part of human rights or fundamental rights in Bangladesh.

While I have argued that the RTSF is entrenched in Articles 31 and 32 and read with Article 18(2) of the Constitution of Bangladesh, it has currently no implication in practice for the enforcement of this right. Five major reasons can be attributed to the difficulties in enforcing the RTSF. *First*, a serious lack of adequate judicial interpretations in favor of the existence of the RTF; *second*, Article 44 of the Constitution empowers the HCD as the court of first instance, and an appeal can be lodged with the Appellate Division of the Supreme Court situated in the capital city that may seem to be cost prohibitive to litigants; *third*, a lack of categorical constitutional or statutory recognition of the RTSF; *fourth*, public unawareness of the availability of the rights, remedies, and penalties in relation to the breach of the RTSF; and *fifth*, the passivity of public and

176. U.N. SCOR, 20-21 Sess., para. 36, U.N. Doc. E/2000/22 (May 14, 1999). 41

177. *Realizing the Right to Food Legal Strategies and Approaches*, INT’L DEV. L. ORG. 19 (2014), https://www.idlo.int/sites/default/files/pdfs/publications/Realizing%20the%20Right%20to%20Food_Legal%20Strategies%20and%20Approaches_full-report_0.pdf. 59

178. Elver, *supra* note 22, at 14.

179. Uddin, *supra* note 21.21

180. See Emran Hossain, *Toxins in Food Chain in Bangladesh Keep Taking Toll on Human*, New Age, Bangladesh (Nov. 23, 2023), at Bangladesh.

private organizations in promoting and protecting the RTSF. Discussions that ensue concentrate on these difficulties, adding an additional point of consumer right to sue.

A. *Stimulating Judicial Activism in View of the Paucity of Judicial Interpretations and the Significance of the Roles of Courts*

Unlike the Indian experience alluded to earlier, Bangladesh lacks sufficient proactive judicial interpretations of the fundamental rights and principles at hand. In the 1803 landmark case of *Marbury v. Madison*, Chief Justice Marshal of the Supreme Court of the United States¹⁸¹ laid down the foundation of judicial activism. He ruled that the judiciary has the supreme authority to determine the meaning of a certain law.¹⁸² Courts thus have a significant role to play in protecting and promoting the RTF as a fundamental human right by its purposive interpretation and application.¹⁸³ Accordingly, as shown above, the judiciary in many countries including India has established the RTF as a fundamental and justiciable right.¹⁸⁴ Since Bangladesh is a state party to the relevant human rights covenants, the country's courts can refer to those international treaties in interpreting the constitutional and other statutory provisions in favor of the right to life and the RTF.¹⁸⁵ Professor Jordan Paust writes about the usefulness of international law in interpreting national constitution and statutes in the context of the United States. He postulates that "most of the Supreme Court Justices throughout the United States constitutional history have recognized that human rights can provide useful content for the identification, clarification and supplementation of constitutional or statutory norms."¹⁸⁶ The interpretive use of international human rights law can be gradually employed by domestic courts to improve territorial laws, but it situationally depends upon propriety and congeniality.¹⁸⁷ Such a direct application of international norms at a domestic level can be achieved by this calculative lawyering.¹⁸⁸ Indian courts have been very creative in fastening the right to life with the RTF

181. *Marbury*, 5 U.S. at 137.

182. Awal Hossain Mollah, *Judicial Activism and Human Rights in Bangladesh: A Critique*, 56(6) INT'L. J. L. MGMT. 475, 477 (2014).

183. M. Shah Alam, *Enforcement of International Human Rights Law by Domestic Courts in the United States*, 10 ANN. SURV. INT'L & COMP. L. 27, 31 (2004).

184. Gargi Dutta, *Justiciability of Right to Food*, 5 INT'L. J. SCI. RES. PUBL'N 1, 4 (2015).

185. See Alam, *supra* note 183, at 48.

186. *Id.* at 49.

187. *Id.* at 51.

188. *Id.*

to hold the government accountable for its failure to protect the RTF.¹⁸⁹ They have thus played a vital and inspirational role in firmly promoting “the judicialization of the right to adequate food, whilst helping to shape a discursive framework in support of this right, even when the Indian Constitution had not expressively set it out.”¹⁹⁰

Courts need to manifestly adopt a purposive approach in interpreting food safety requirements to ensure they have due regard for safe foods that shall be free from maleficent substances.¹⁹¹ To do so, the judiciary of Bangladesh will have to come forward by employing the purposive approach to the interpretation of the relevant constitutional and statutory provisions in support of the RTSF. It is to be borne in mind that while the courts generally represent the state, they stand ultimately for the delivery of justice. It is therefore essential that they act to protect the people’s rights, and they can become effective by adapting and confirming such rights.¹⁹² The judiciary of Bangladesh needs to follow the footsteps of its Indian counterpart so as to develop the food safety jurisprudence by properly addressing the RTSF in the best interest of the people. To make the recommended judicial activism a success, the current exclusivity of the original jurisdiction of the HCD on the breach of the RTF as fundamental right warrants an overhaul.

B. Decentralizing Trial Jurisdiction—Reforming the Exclusive Jurisdiction of the High Court Division of the Supreme Court of Bangladesh and Reconstituting the Pure Food Courts

It is conceivable that fundamental rights are to be interpreted by the higher or superior courts of the country. However, existing food courts can be empowered with the original jurisdiction to try the civil cases arising from breaches of the RTSF. Of course, these trial courts must follow the common law doctrine of precedent in adjudicating these cases alongside enacted provisions, and for this purpose, the Supreme Court of Bangladesh can provide some guideline judgments to follow. Currently, there are a total of seventy-one courts, called Pure Food Courts, set up at district and metropolitan city levels. They are mandated under the *Food Safety Act 2013* (and came into effect on February 1, 2015).¹⁹³ Although the name of the courts begins with ‘pure,’ paradoxically, it seems that the

189. Durojaye & Chilemba, *supra* note 44, at 275.

190. Lieberman, *supra* note 2626, at 111.

191. Overby, *supra* note 88, at 29.

192. See Lieberman, *supra* note 2626, at 83.

193. Md. Zakir Hossain, *The Pure Food Court for Food Safety, Dhaka Courier, Bangladesh* (Sept. 25, 2020).

courts themselves lack the purity they need. This is so because instead of establishing new courts, the government has designated a Senior Judicial Magistrate to try criminal cases under the *Food Safety Act 2013* simply as an additional charge for them.¹⁹⁴ These pre-existing magistrates are already very busy with their regular activities.¹⁹⁵ These courts are required to be reconstituted with judges ranked as District and Sessions Judge (as with other special courts, such as Women and Children Repression Prevention Tribunals,¹⁹⁶ and Speedy Trial Tribunals,¹⁹⁷ Special Tribunal for the Capital Market)¹⁹⁸ in Bangladesh. Interestingly, the Pure Food Courts have only criminal jurisdictions, and no such cases have been filed by either the government regulatory body (BFSA, to be discussed below) entrusted with this responsibility or any individual victims.¹⁹⁹ The *Food Safety Act 2013* provides for civil suits to be instituted by consumers. However, the litigation has to be lodged with competent civil courts,²⁰⁰ which are already inundated with serious case backlog. This is so because as of May 2023, a total of 4.2 million cases are pending across the country, 3.6 million of which are in the lower courts.²⁰¹

If the Pure Food Courts are composed of District and Sessions Judges, they can try both civil and criminal cases. Simultaneously, these courts can be empowered with the jurisdiction of the HCD granted under Article 44(1) of the Constitution of Bangladesh in relation to the fundamental right concerning the RTSF. Such a conferral of power to lower courts has been permitted by Article 44(2), which enables Parliament to make legislation conferring the power of trial of allegations of breaches of the fundamental rights to any other courts. Within the local limits of their jurisdictions, those courts may exercise all or any powers

194. Zakir Hossain, *The Pure Food Court for Food Safety*, THE DHAKA TRIBUNE (Sept. 25, 2020).

195. *Id.*

196. Women and Child Repression Prevention Tribunal Act, 2000 (Bangl.) § 26; Md. Emran Parvez Khan1 & Md. Abdul Karim, *The Prevention of Women & Children Repression Act 2000: A Study of Implementation Process from 2003 to 2013*, 22(7) IOSR Journal Of Humanities And Social Science 34, 35 (2017).

197. Speedy Trial Tribunal Act 2002 (Bangl.) § 4; M Rafiqul Islam & S.M. Solaiman (2004) 'The New Speedy Trial Law to Maintain Order in Bangladesh: Its Constitutional and Human Rights Implications' 46(1) *Journal of the Indian Law Institute* 79 (2004).

198. Securities and Exchange Ordinance 1969, § 25B.

199. *Id.*

200. THE FOOD SAFETY ACT, § 76 (Bangl. 2013).

201. Alamgir Hossain, *About 0.6 Million Cases Pending in the Supreme Court—A Mountain of 4.2 Million Cases Countrywide*, DAILY JUGANTOR (May 29, 2023), Last page; Emran Hossain Sheikh, *Bangladesh Has One Judge for 95,000 People*, Dhaka Tribune, Bangladesh (Aug. 30, 2023), at Bangladesh.

given to the HCD.²⁰² So far as we are aware of, the Parliament has not yet exercised this power with respect to any fundamental rights, let alone the RTF. Consequently, the HCD remains the sole forum to try the allegations arising from breaches of any fundamental right.²⁰³ The difficulty lies in the fact that the HCD is situated in the capital city only, and most of the people are unable to run any litigation through this superior court because of physical distance and financial constraints.²⁰⁴ Such a circumstance is argued to be a breach of paragraphs 32 and 34 (remedies against and accountability for a violation of the right to adequate food) of the CESCR General Comment 12.²⁰⁵ Paragraph 32 of the CESCR General Comment 12 provides that victims of violations of the right to adequate food should have access to effective judicial or other appropriate remedies at both national and international levels, and they all are entitled to adequate reparation, which may take the form of restitution, compensation, satisfaction, or guarantees of non-repetition.²⁰⁶ Paragraph 34 of the CESCR General Comment 12 requires judges and other members of the legal profession to pay greater attention to violations of the RTF in the exercise of their functions.²⁰⁷ These requirements imply that both the law and enforcement mechanism should be favorable to the fruitful enjoyment

202. THE CONST. OF THE PEOPLE'S REPUBLIC OF BANGL., art. 44.

203. See Jobair Alam & Ali Mashraf, *Fifty Years of Human Rights Enforcement in Legal and Political Systems in Bangladesh: Past Controversies and Future Challenges*, 24 HUM. RTS. R. 121, 126, 137(2023).

204. The High Court Division (HCD) has been established under Constitution of Bangladesh, Article 94: "(1) There shall be a Supreme Court for Bangladesh (to be known as the Supreme Court of Bangladesh) comprising the Appellate Division and the High Court Division." Article 100 of the Constitution declares the location of the Supreme Court: "The permanent seat of the Supreme Court shall be in the capital, but sessions of the High Court Division may be held at such other place or places as the Chief Justice may, with the approval of the President, from time to time appoint." Once the HCD was decentralised by amending Article 100 of the Constitution (the eighth amendment) in 1988, it established six permanent Benches of High Court for Chittagong, Sylhet, Comilla, Jossore, Rangpur and Barishal. But the Appellate Division of the Supreme Court of Bangladesh in *Anwar Hussain Chowdhury v. Bangladesh* 1989 B.L.D. (SPL) 1, 41 D.L.R. (AD) 165 (1989) declared that amendment unconstitutional. The Court held that "[t]here is no provision for permanent decentralisation of High Court in the Constitution of Bangladesh. Even it is beyond the power of Parliament to amend the Constitution to decentralize the High Court permanently as the Appellate Division imposed limitation on its amending power." Muhammad Mamunur Rashid, *Judgment Analysis—Road to Decentralisation of the High Court Blocked*, DAILY STAR, Bangladesh (Aug. 04, 2012), at Law & Our Rights. See also Md. Morshedul Islam, *Decentralization of Judiciary and the Role of Lawyers in Bangladesh: An Analysis*, 20 J. OF L., POL'Y & GLOBALIZATION 74, 78 (2013).

205. Dutta, *supra* note 184, at 4.

206. U.N. SCOR, 20-21 Sess., para. 32, U.N. Doc. E/2000/22 (May 14, 1999). 41

207. U.N. SCOR, 20-21 Sess., para. 34, U.N. Doc. E/2000/22 (May 14, 1999).

of the right to adequate food. Both are equally important because even if the legal structure entitles the victim to receive remedies, an unfavorable enforcement mechanism may constitute a structural denial in the justiciability of the RTF.²⁰⁸ I therefore recommend that full-fledged Pure Food Courts be established at district and metropolitan city levels and that they be empowered by legislation to enforce the RTSF as Article 44(2) of the Constitution of Bangladesh.

It is to be conceded that the judiciary alone cannot fully help to realize the RTSF. A constitutional or at least a statutory explicit recognition of this right is necessary—along with several other things as identified earlier. The discussion ensued further clarifies the need for such recognition.

C. *According Constitutional or Statutory Recognition of the Right to Safe Food*

Because Bangladesh ratified non-self-executing treaties, the state has assumed an obligation to enact legislation to implement those international instruments.²⁰⁹ The ICESCR1966 and ICCPR1966 are the two major covenants that encourage Bangladesh to make laws giving effect to the human rights contained therein. Another significant instrument is *Convention on the Rights of the Child 1989*. Article 24 clearly requires the state government to provide adequate nutritious foods to children. An implicit recognition of the RTSF by the constitution does not seem to be sufficient to fight against this menace. As alluded to earlier, India has almost identical constitutional provisions on the issues at hand, nevertheless they have enacted the *National Food Security Act 2013*, which has facilitated the enforcement of the RTF and has been highly commended at both national and international levels.²¹⁰ The Indian *National Food Security Act 2013* “marks a paradigm shift in the approach to food security from welfare to rights based approach.”²¹¹ Defining this approach, Elver explains that

[a] rights-based approach to food security is paramount to ensure that the fundamental right to be free from hunger is upheld, with

208. Dutta, *supra* note 184, at 4.

209. For a detailed discussion of self-executing and non-self-executive treaties, see Alam, *supra* note 183, at 27.

210. See Dutta, *supra* note 184, at 1.

211. DEP'T FOOD & PUB. DISTRIB., NAT'L. FOOD SEC. ACT, (India 2013), <https://dfpd.gov.in/Introduction.htm#:~:text=The%20enactment%20of%20the%20National,welfare%20to%20rights%20based%20approach>.

States obliged to do everything in their power to guarantee that everyone has access at all times to adequate, safe and nutrient-rich food in order to lead healthy lives.²¹²

As Professor George Kent explains in respect of the RTF, rights denote entitlements, which represent claims to specific things, and they are to be enforceable in law, for which there must be a sort of institutional authority to which aggrieved persons deprived of the right can seek a remedy.²¹³ The remedy may include restitution, compensation, declaration for non-repetition, or at least a declaration of violation, which can be awarded by a judicial or quasi-judicial body.²¹⁴ Kent adds that enforceability “means that the duty bearers must be obligated to fulfill the entitlements, and they must be held accountable for their performance.”²¹⁵ The RTF is a justiciable right and therefore a legally enforceable right as analyzed earlier,²¹⁶ and currently there is a growing trend towards acknowledging the justiciability of this right at the domestic level.²¹⁷ The justiciability of a right endows the judiciary or the quasi-judicial bodies with the authority to uphold the law through effective pronouncements, and doing so becomes possible or convenient when legislation makes the right enforceable.²¹⁸ Consistently, FAO describes that justiciability is the ability of the judiciary or a quasi-judicial authority to sustain the law through effective judicial assertions.²¹⁹ Elver, a UN Special Rapporteur, strongly recommends ensuring recognition of the justiciability of the RTF by judicial and quasi-judicial bodies at the national, regional, and international levels.²²⁰ Notably, the justiciability of the RTF has been established through cases litigated in many countries—for example in Brazil, India, and Nepal.²²¹ This proves that a country can make the RTF

212. Hilal Elver, *Special Rapporteur on the Right to Food—Access to Justice and the Right to Food: The Way Forward*, United Nations Document no A/HRC/28/65 (Jan. 12, 2014) para. 22. 166

213. Kent, *supra* note 42, at 2.

214. Dutta, *supra* note 184, at 2.

215. Kent, *supra* note 42, at 2.

216. Lieberman, *supra* note 2626, at 80-81.

217. *Id.* at 84.

218. Dutta, *supra* note 184, at 2.

219. *The Right to Food Guidelines: Information Paper and Case Studies*, THE RIGHT TO FOOD, 72-73 (2006), <https://www.fao.org/3/a0511e/a0511e.pdf>.

220. Hilal Elver, *Special Rapporteur on the Right to Food—Access to Justice and the Right to Food: The Way Forward*, United Nations Document no A/HRC/28/65 (Jan. 12, 2014) para. 72. 166

221. Tura, *supra* note 56, at 61.

enforceable under ordinary legislation even before incorporating it into the national constitution.²²²

I recommend that Bangladesh add the RTSF to the exiting list of fundamental rights in the national constitution; I corroborate this by referring to twenty-three other countries that have already done this.²²³ It can be expediently done by adding a clause to the right to life in Article 32.²²⁴ If it appears difficult for any reason, my alternative suggestion (though less preferred) is to enact new legislation making the RTSF a justiciable right. The proposed legislation can borrow some concepts from the *National Food Security Act 2013 (India)* as well as from other nations that have done so;²²⁵ however, the inclusion of an explicit declaration of the RTSF as an enforceable right is strongly recommended. Adding emphasis to the need for enabling legislation at the domestic level for realization of international human rights, Professor Olivier De Schutter defines the RTF as “the right, for all, to have legal frameworks and strategies in place that further the realization of the right to adequate food as a human right recognized under international law.”²²⁶ Professor Zeigler reports that the RTF as a human right is based on the state’s responsibility to protect its people, and it requires that “the State pass laws to make sure that the right to food is respected, protected and fulfilled. When the law is just, it can protect the weak.”²²⁷ Bangladesh thus needs to make law to implement its national and obligations to enforce the RTSF. Such a law can benefit the people optimally only when they are aware of it.

D. *Creating Public Awareness of the RTSF and Discharging State Responsibilities Surrounding Food Adulteration*

Proper enjoyment of a legal right necessitates awareness of the right-holders. Laws are generally made for the people, who must know their rights, duties, and corresponding state responsibilities. Public awareness is profoundly important in Bangladesh where people at large seem to have accepted the reality that adulterated foods are normal for them to eat.²²⁸

222. Lieberman, *supra* note 2626, at 90.

223. *Id.* Knuth & Vider, *supra* note 135, at 37.26

224. The current version of Article 32 of the Constitution of Bangladesh reads: “No person shall be deprived of life or personal liberty save in accordance with law.”

225. Lieberman, *supra* note 2626, at 80-81.

226. Lambek & Claeys, *supra* note 48, at 451.

227. Jean Ziegler, *Preliminary Report of the Special Rapporteur of the Commission on Human Rights on the Right to Food*, para. 113 (2001), <https://www.un.org/unispal/document/auto-insert-187548/>.

228. See Nazrul Islam, *Lack of Manpower Limits Food Safety Authority’s Capacity*, DAILY MESSENGER, Bangladesh (July 22, 2023); Rokon Uddin, *Two Dozen Laws Fail to Ensure Food*

Stressing the need for such awareness, Elver notes that the lack of awareness of legal rights and related entitlements together with corresponding state duties to protect them is regarded as an obstacle to achieving enjoyment of the RTF.²²⁹ With respect to food safety, Nicole Lieberman suggests that all stakeholders (courts, civil society, the government and other relevant institutions) should work jointly to educate consumers on their rights.²³⁰ She further adds that judges and lawyers must be well informed of the people's RTSF in order to effectively deal with food safety disputes and deliver the best protection to consumers.²³¹ Improving public awareness of the problem is critical to achieving an enduring success in food safety regulation,²³² and it also helps create a resilient market for sustainable food products.²³³ Given the development of technology, it is now easier to make the public conscious of the danger caused or threatened by the abundance of unsafe foods across the country. Mobile phones,²³⁴ internet,²³⁵ and television channels²³⁶ ought to be used

Safety, BUS. POST, Bangladesh (Feb. 21, 2023), at Front Page, Wasi Ahmed, *The Long Road to Safe Food*, FIN. EXPRESS, Bangladesh (Jan. 16, 2019).

229. Hilal Elver, *Special Rapporteur on the Right to Food—Access to Justice and the Right to Food: The Way Forward*, United Nations Document no A/HRC/28/65 (Jan. 12, 2014) para. 72. 166

230. Lieberman, *supra* note 26,26 at 120.

231. *Id.*

232. See Margot J. Pollans, *Farming and Eating*, 13 J. FOOD L. & POL'Y 99, 109-10 (2017).

233. Chen, *supra* note 8, at 178; *Sustainable Agriculture vs. Industrial Agriculture*, FOOD PRINT (Nov. 6, 2023), <https://foodprint.org/issues/sustainable-agriculture-vs-industrial-agriculture/?cid=246>.

234. The total population of Bangladesh—as reported on November 29, 2023 referring to the national report of the country's maiden full-fledged digital population and housing census—reached 16,98,28,911 (approximately 170 million). Bangladesh Sangbad Sangstha (BSS), *Bangladesh Population Stands at 16.98 Crore: BBS*, New Age, Bangladesh (Nov. 29, 2023), at Bangladesh. As disclosed by the Finance Minister of Bangladesh on June 1, 2023 while presenting national budget for the fiscal year 2023-24 at the Parliament, the number of mobile SIM users and the number of internet users are more than 180 million and 130 million respectively: Prothom Alo English Desk, *180 Million People Using Mobile SIM, Internet Users 130 Million*, The Prothom Alo, Bangladesh (June 2, 2023), at Local. The figure of mobile SIM users outnumbers the total population probably because many people have more than one SIM.

235. Total Internet users in Bangladesh are reportedly 130 million: Prothom Alo English Desk, *180 Million People Using Mobile Sim, Internet Users 130 Million*, The Prothom Alo, Bangladesh (June 2, 2023), at Local.

236. “According to Bangladesh NGOs Network for Radio and Communication (BNNRC, 2019), there are currently 44 television channels, 28 FM and 32 community radio stations, 1,187 daily newspapers, and more than 100 online news portals approved by the Ministry of Information Bangladesh.” Syed Saad Andaleeb, Raihan Jamil & Mehdi Rajeb, *Demographic Effects on TV News Credibility: Perceptions in Bangladesh*, 13(1) Media Watch 49, 49-50 (2022).

to create public awareness of the harm of unsafe foods and their prevalence in the market.

Joint initiatives of both public and private agencies are needed to succeed in educating the general public on the harmful consequences of adulterated foods, their rights, duties, and penalties concerning food adulteration. The content of the proposed learning modules for the public can be drawn from scientific research, medical findings, the relevant law of the land, etc. I am mindful that the regulator BFSA conducts a good number of seminars/workshops/caravan roadshows to educate people,²³⁷ which is certainly appreciable though obviously inadequate. The inadequacy is evidenced by the fact that consumers have lodged no cases under the *Food Safety Act 2013* despite the continuation of widespread food adulteration with no indication of reduction in this evil repetition,²³⁸ which recently has triggered the Prime Minister's warning of stern action against adulterators.²³⁹ In running such educational programs by any agency, prominence should be accorded to the available popular public media, such as televisions; mobile phones; cinema halls; publicity at the market places; local and national newspapers; institutional websites; mentions in the sermons of Friday prayers; etc. The government can add a small book chapter on food safety at secondary and higher secondary levels. For a long-term benefit of having food safety law experts, all law school curricula should incorporate a separate course of food safety law to produce future judges and lawyers with adequate knowledge in the area. In addition to the activities of certain agencies, numerous private television channels, mobile phone companies, and newspapers can make such a publicity voluntarily on their own initiatives as part of their corporate social responsibility. Whilst it could and should be a common responsibility of all to share food adulteration concerns informally with one another, thereby facilitating a social movement against this mischievous practice, certain organizations must play their due roles.

E. Strengthening the Role of the Bangladesh Food Safety Authority (BFSA)

Established under the *Food Safety Act 2013*, the BFSA has demonstrated a little success thus far.²⁴⁰ Its main visible activities are

237. Ministry of Finance-Government of Bangladesh, *Agriculture*, in BANGL. ECON. REV. 2021-CHAPTER SEVEN, 91, 94 (2021).

238. Hossain, *supra* note 201194.

239. Neo, *supra* note 17.

240. The BFSA was established in February 2015 under the Food Safety Act 2013. In February 2023, the BFSA itself admits that "more than 12 percent of food in the country contains

holding seminars/workshops/road shows and running some mobile courts.²⁴¹ It is disheartening to learn, based on the publicly available information, that they did not lodge any regular case with the Pure Food Courts until February 2020.²⁴² No information on regular litigation, except mobile court cases, was found on their official website either as of June 27, 2023.²⁴³ It is obvious that wrongdoers will take advantage of the regulatory silence. They need to be proactive as the principal watchdog for food safety. Even if they increase vigilance, the BFSA will still have to rely on reports by the public. For easy and swift communications, they can set up a hotline/helpline phone number and email address at the national level so that members of the public can report incidents and the BFSA or their representatives can respond quickly. They need to increase their engagement in public education and enforcement of violations. As a preventative measure, they should remain vigilant to address any threatened violations *ex ante* where possible. They also can play a coordinating role in getting other organizations involved in confronting this human-made deadly enemy. Below is the discussion of two of the other organizations that can add fortitude to the drive against food adulteration.

*F. Bolstering the Role of the National Human Rights Commission—
Bangladesh*

As prescribed in CESCR General Comment 12, the National Ombudsmen and Human Rights Commissions should play a pivotal role in addressing violations of the RTF.²⁴⁴ Appreciably, Bangladesh has its National Human Rights Commission (Commission) in place as established under the *National Human Rights Commission Act 2009* (NHRCA 2009).²⁴⁵ Unfortunately, its activities are publicly invisible to a

harmful substances for the human body,” whilst private research unearths a much higher figure of unsafe food which is “above 60 percent” in Bangladesh: Rokon Uddin, *Two Dozen Laws Fail to Ensure Food Safety*, The Business Post, Bangladesh (Feb. 21, 2023), at Front Page.

241. See Islam, *supra* note 228.

242. Hossain, *supra* note 201.194

243. BANGL. FOOD SAFETY AUTH., <http://www.bfsa.gov.bd/> (accessed June 27, 2023).

244. U.N. SCOR, 20-21 Sess., para. 32, U.N. Doc. E/2000/22 (May 14, 1999). 41

245. Provisions for establishing the commission is contained in § 3 of the NHRCA 2009 which reads: “Establishment of the National Human Rights Commission: (1) After the Act comes into force, a Commission to be called as the National Human Rights Commission shall, as soon as possible, be established for carrying out the purposes of this Act and in accordance with the provisions of this Act. (2) The Commission shall be a statutory independent body having perpetual succession and the power, among others, to acquire, hold, manage, dispose of property, both

great extent. Its existence, in fact, became known to the public under the proactive leadership of Professor Mizanur Rahman as its chairman (2010-2016).²⁴⁶ He had at least tried to address several gross violations of human rights by employing its limited powers and resources, as personally observed by the present author. The Commission appears to have become less active since he stepped down from the chairmanship in 2016. Pointing out weak roles of the Commission in relation to various aspects of human rights in the country, a recent study called “Technical Report—December 2018” conduct by Ain o Salish Kendra (ASK), a human rights NGO operating in Bangladesh, has submitted a long list of recommendations to the Commission to play a more active role for the promotion and protection of human rights in Bangladesh.²⁴⁷ The Report 2018, which has been originally prepared by Tamanna Hoq Riti and Raihan Rahman for ASK, concludes that

[o]n the whole, Civil Society organizations do not expect that the Commission will be able to work on each and every human rights issue. However, they do expect that it will play a very strong role in addressing issues that deal with protecting human rights in society and ensuring the government’s accountability, that convey a greater message about the basic principles of human rights, and above all, that other human rights organizations cannot contribute much to resolving.²⁴⁸

The RTSF is a business-related human rights issue, and the Commission has specific mandate under Section 12 of the NHRCA to deal with complaints regarding human rights violations, which obviously include

moveable and immovable, and shall by the said name sue and be sued.” Its composition is stipulated in § 5

Formation of the Commission: (1) The Commission shall consist of a Chairman and Members not exceeding six. (2) Chairman and one Member of the Commission shall be full time and other Members shall be honorary. (3) Among the Members at least one shall be woman and one shall be from the ethnic group. (4) Chairman shall be the Chief Executive of the Commission.

246. Professor Dr. Mizanur Rahman had been the Chairman of the NHRC from June 23, 2010 to June 23, 2016: NHRC, *Former Chairpersons of the Commission*, available at <http://www.nhrc.org.bd/site/page/21379272-8033-421c-ac44-804f9244ccb4/> (in Bengali).

247. Tamanna Hoq Riti & Raihan Rahman, National Human Rights Commission, Bangladesh Existing Challenges and Expectations of Civil Society—Technical Report, 42-44 (Ain o Salish Kendra/ASK, December 2018), available at file:///C:/Users/sheikh/Downloads/NHRC-Report_English.pdf.

248. Tamanna Hoq Riti & Raihan Rahman, National Human Rights Commission, Bangladesh Existing Challenges and Expectations of Civil Society—Technical Report, 44 (Ain o Salish Kendra/ASK, Dec. 2018) (on file with author).

business activities.²⁴⁹ The Commission is entitled to conduct investigation into complaints concerning alleged business-related human rights violations; and while inquiring, it can seek assistance from the government or any other organizations as may be necessary. Section 12 of the NHRCA empowers the Commission to take steps to resolve it through mediation and conciliation.²⁵⁰ Hence, the national human rights watchdog has a lot to do in relation to the RTSF.

The Commission needs to play its due role in protecting and promoting human rights in the country by acting effectively against violations of these rights including the RTSF. Although the government appoints the Commission, it must proactively play its fair role as a genuine advocate for the actual and potential victims of human rights violations. Otherwise, its existence spending taxpayers' money would carry little or no value. Its activities could be focused on educating the public, investigating reported allegations, and securing remedies from competent authorities for victims of violations. It can motivate private organizations to work in the area of human rights, including the RTSF. Amongst the private organizations, nongovernmental organizations (NGOs) should play a vigorous role in promoting and protecting the RTSF.

G. *Revitalizing the Role of NGOs*

There are more than one thousand NGOs operating in Bangladesh with varying missions. Many of those NGOs' publicly professed undertaking is to protect and promote human rights in the country.²⁵¹ Some of them—such as Bangladesh Legal Aid and Services Trust (BLAST), Ain O Salish Kendro, Bangladesh Environmental Lawyers Association (BELA)—have so far fought against human rights violations in some instances.²⁵² They need to be more active, and other NGOs should come forward to protect people's rights. Their actions should be dedicated to furthering public awareness of the RTSF, seeking remedies against food adulteration, preventing violation through educating potential

249. See NAT'L. HUM. RTS. COMM'N.—BANGL., www.nhrc.org.bd (accessed June 28, 2023).

250. Section 12(1)(l) of the NHRCA 2009 provides as one of its functions: "To enquire and investigate into complaint related to the violation or probability of violation of human rights and resolve the issue through mediation and conciliation."

251. Mollah, *supra* note 182, at 485.

252. See e.g. Dr. Mohiuddin Farooque v. Bangladesh, 48 DLR 438; *Ain O Shalish Kendra*, 19 BLD 488 (1999); Bangladesh v. Prof. Nurul Islam, 9 SCOB AD 46, 48 (App. Div. Bangl. 2017).

adulterators, and initiating public interest litigation to compel governmental authorities to prevent and effectively address food adulteration.

H. *Enabling Consumers to Initiate Legal Actions*

Consumers should be empowered to seek enforcement of the proposed provisions of the RTSF. It would be difficult to initiate a legal action if the victims are to rely on certain government officials for either approval for registering a suit or asking the public authorities to sue on their behalf. There is no reason to believe that the country's bureaucracy would be helpful in this regard. As Professor Mizanur Rahman said, "officials as well as political leaders are often 'unapproachable' or more interested in caring for the interests of business."²⁵³ He added that "even in those rare cases when a consumer decides to bring a violation of his legal rights to the notice of the competent government authority, he is likely to find that the concerned official is almost 'unapproachable.'"²⁵⁴ Hence, he recommended that ordinary consumers alongside designated government official should be legally permitted to initiate legal proceedings.²⁵⁵ If more than one suit is instituted on the same cause of action on any occasion, then the trial court may combine the suits to avoid multiplicity. The practice of legal action in relation to the RTSF should be facilitated, bearing in mind that government agencies would not be able to protect the helpless consumers from the tyranny of the market of the tradesman.²⁵⁶

VII. CONCLUDING REMARKS

Food adulteration has been a serious concern in Bangladesh for decades, which is well known to the public as well as to successive governments. The magnitude of adulteration is gradually going from bad to worse. Although the continued public outcry has fallen largely on deaf ears, the current government (which has remained in power for longer than a decade) has tried to address the issue, though unsuccessfully. In doing so, the government has enacted pieces of legislation, such as the *Consumer Rights Protection Act 2009* the *Food Safety Act 2013*, the *Formalin Control Act 2015*; introduced Pure Food Courts; formed the

253. Miznaur Rahman, *Consumer Protection in Bangladesh: Law and Practice*, 17 J. CONSUM. POL'Y 349, 349 (1994).

254. *Id.* at 360.

255. *Id.* at 359-60.

256. *Id.* at 356.

BFSA; and activated mobile courts.²⁵⁷ However, nothing seems to have contributed to deterring the egregious farmers and unscrupulous traders from adulterating food.²⁵⁸ The main reason behind this menace lies in the gullibility of consumers and the culpability of producers and suppliers. Hence, the law should address both supply and demand sides. I have argued that the RTSF shall be clearly pronounced to be a fundamental and justiciable right to prevent further deterioration of food adulteration, which has already created a fragmented, frustrated, unhappy, and unhealthy society inflicting terrible impacts on human health and life and the national economy. If the RTSF is made judicially enforceable, both sides of the problem (consumers and producers/suppliers) will be effectively forewarned that food adulteration will not go unpunished and conferring such an enforceable right on consumers will enable the victims to “stand up like men.”²⁵⁹

It has been argued that the RTSF is inherent in the RTF as a human right entrenched in the right to life, a constitutionally guaranteed fundamental right in both Bangladesh and India.²⁶⁰ The states have obligations under both the international human right instruments and the national constitutions to protect these rights and prevent any violations thereof. Emphasis should be given to holding the state accountable through positive law for its failure “to respect, protect and fulfil its legal obligations, helping to empower those who need help.”²⁶¹ Appreciably, India has already done so, but unfortunately Bangladesh lags behind.

In the foregoing discussions, I have identified the major issues concerning the RTSF and furnished specific eight recommendations for enabling the people to realize their right and holding the state accountable for failure in assisting with such realization by making positive law and empowering regulatory bodies to be proactive in redressing the prevalence of unsafe food. My central recommendations include adopting a rights-based approach and making the RTSF a justiciable right. Numerous developing and least developed countries alike have already

257. Rokon Uddin, *Two Dozen Laws Fail to Ensure Food Safety*, BUS. POST, Bangladesh (Feb. 21, 2023), at Front Page.

258. See Abu Noman Mohammad Atahar & S.M. Solaiman, *Dishonest and Excessive Use of Antibiotics in Meat Producing Animals in Bangladesh: A Regulatory Review*, 15 EUR. FOOD & FEED L. REV. 449, 451 (2020).

259. Kent, *supra* note 42, at 5.

260. This has been convincingly argued above in Part II: International Obligation to Protect the Right to Safe Food as an International Human Right—Its Applicability in Bangladesh, and Part III: Right to Safe Food as a Constitutionally Guaranteed Fundamental Right Enforceable in Bangladesh.

261. Lieberman, *supra* note 26, at 119.

done this. Therefore, Bangladesh should follow suit whilst it is working towards graduating to the full-fledged developing nation status. I am conscious that national laws generally attach importance mostly to food security and ignore the fact that such a security cannot be truly attained unless it is ensured that “the secured food is safe which is indispensable for and inseparable from the right to food.”²⁶² My specific recommendations are summarized below.

A. Promoting Judicial Activism

Like the judiciary in India, courts in Bangladesh need to be more productively proactive in interpreting the fundamental rights, the fundamental principles of state policies, and international human rights with respect to the right to life and the RTF by employing the purposive approach to legal interpretation.²⁶³ The interpretative use of international law of human rights could be frequently invoked in improving the enjoyment of both fundamental and human rights (largely mutually inclusive) in Bangladesh.

B. Facilitating Trial Procedures by Decentralizing the Original Jurisdiction of the HCD

The original jurisdiction of the HCD should be decentralized by enabling the Pure Food Courts to try the RTF related cases, and those courts should be reconstituted by replacing the judicial magistrates with the judicial officers of the rank of District and Sessions Judge, the highest position in the subordinate courts.²⁶⁴

C. Recognizing the Right to Safe Food as a Fundamental Right of the People

Most preferably, constitutional, or at least statutory, recognition of the RTSF has been strongly recommended. Such recognition will form the legal basis for actions against tampering food. The fundamental rights are the strongest entitlements an individual can legally enforce. Hence, the RTSF should be constitutionally recognized as a fundamental right. If doing so appears to be cumbersome, at least the right should be ensured by a statute.

262. Chen, *supra* note 88, at 150.

263. See Durojaye & Chilemba, *supra* note 44, at 275.

264. THE CONST. OF THE PEOPLE'S REPUBLIC OF BANGL., art. 114 (noting all other courts are subordinate to the Supreme Court of Bangladesh).

D. Creating Public Awareness of the RTSF

The movement for food safety is unlikely to succeed without public awareness of their rights and remedies. The lack of public unawareness of their rights and corresponding state obligations are crucial factors contributing to the rampant violation of the RTSF. The members of the public should be educated on the harm that the adulterated food can cause to them, their right to have safe food, the state obligation to ensure food safety, and penalties available against the wrongdoers. Both governmental agencies and non-governmental organizations can play an effective role in creating this awareness via public media and mobile phone massaging systems (SMS).²⁶⁵

E. Strengthening the Authorities, Surveillance and Enforcement Roles of Regulatory Agencies

There are a total of twenty-three regulatory agencies in Bangladesh for food safety regulation as listed on the official website of the BFSA.²⁶⁶ The BFSA is responsible for coordinating the functions of all those agencies and providing assistance in discharging their responsibilities.²⁶⁷ Hence, the BFSA can play a vital role in regulating food safety by closely watching the watchers in an effective manner. It can also contribute to educating consumers on food safety and its dangers through those agencies and at its own initiatives by using the press and electronic media. Although the BFSA has been established under the *Food Safety Act 2013*, the body remains largely inactive to date.²⁶⁸

F. Revitalizing the NHRC

The NHRC is yet another body whose existence is hard to be publicly noticed. They have statutory mandates to deal with the violations of fundamental human rights, but their actions can be hardly seen, although frequent allegations of violations of such rights are reported.²⁶⁹

265. See *supra* notes 42-44.

266. *Food Regulation Agencies*, BANGL. FOOD SAFETY AUTH., <https://bfsa.gov.bd/site/page/71a47989-0c97-414e-9b00-67f3c7184140/> (translated from Bengali) (last visited July 1, 2023).

267. *Id.*

268. See Aditto Rimon, *Food Safety Authority Only Issues Circulars, Inactive at Field Level*, DHAKA TRIBUNE, Bangladesh (Dec. 29, 2017), at Bangladesh.

269. For references to several violations of specific human rights corresponding roles of the NHRC, see Tamanna Hoq Riti & Raihan Rahman, National Human Rights Commission, Bangladesh Existing Challenges and Expectations of Civil Society—Technical Report (Ain o Salish Kendra/ASK, December 2018) (on file with author).

The right to safe food is argued to be one of the most violated rights in Bangladesh, but the publicly known initiatives of the human rights watchdog to protect human rights seem to be far less than ideal. They need to play their due roles to guard against violations of human rights and fundamental rights including the RTSF.

G. Stimulating the Activism of NGOs

Alongside the governmental agencies, human rights NGOs have an important role to play in promoting and protecting people's right to have safe food, and they should be doing their part in the fight against harmful food. They can do so by undertaking legal actions against the violation of the RTSF and launching educational programs for consumers alongside the initiatives of governmental agencies.

H. Empowering Individuals to Seek Remedies

Last, but not least, individuals should be empowered with the right to initiate legal action to enforce their RTSF. The legislation should prescribe remedies—including restitution, compensation, declaration for non-repetition, or at least a declaration of violation—be made by a judicial or quasi-judicial body (e.g., BFSA) depending on the nature of contravention, as recommended in CESCR General Comment 12.²⁷⁰

The right to life is the most critical right of a human being anywhere at any time. I have highlighted the unassailable tie between the right to life and the RTSF, and I pay due regard to the assertion of Professor Mizanur Rahman, a former Chairman of the NHRC, that “[l]et us not forget that ‘injustice anywhere is a threat to justice everywhere.’”²⁷¹ Scholars sometimes equate the right to life to the RTF meaning safe food.²⁷² Indeed, Bangladesh has the bones to promote the RTF, however, it needs more muscle to flex as a means to prevent traders and farmers from tainting food, otherwise mice will play while the cat is away.

270. U.N. SCOR, 20-21 Sess., para. 32, U.N. Doc. E/2000/22 (May 14, 1999). 41

271. Mizanur Rahman, *The 1971 Bangladesh Genocide: Need For International Recognition*, DHAKA UNIV. L. & POL. REV. 103, 125 (2020) (quoting Martin Luther King Jr.'s Letter from Birmingham Jail).

272. Birchfield & Corsi, *supra* note 156.