

Policy WATCH

Volume X, Issue 8
August 2021, New Delhi

Constitutional Values and Democratic Institutions

In this issue

**The National Food
Security Act, 2013**

**Right to Fair
Compensation and
Transparency in Land
Acquisition, Rehabilitation
and Resettlement Act,
2013**

**A Review of the
Prohibition of
Employment as Manual
Scavengers and their
Rehabilitation Act, 2013**

**Street Vendors (Protection
of Livelihood and
Regulation of Street
Vending) Act, 2014**

**The Rights of Persons with
Disabilities Act 2016**





POLICY WATCH

Volume X, Issue 8
August 2021, New Delhi

5 **The National Food Security Act, 2013**

16 **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013**

23 **A Review of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013**

38 **Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014**

48 **The Rights of Persons with Disabilities Act 2016**

Editorial

The Rajiv Gandhi Institute for Contemporary Studies (RGICS) is the knowledge affiliate of the Rajiv Gandhi Foundation. RGICS carries out research and analysis as well as policy advocacy on contemporary challenges facing India. RGICS currently undertakes research studies on the following five themes of general public utility including:

- Constitutional Values and Democratic Institutions
- Growth with Employment
- Governance and Development
- Environment, Natural Resources and Sustainability
- India's Place in the World

The RGICS, under the theme Constitutional Values and Democratic Institutions, undertook a study of the rights based legislations that were enacted during the UPA-1 and UPA-2 period, that is, from 2004 to 2014. These Acts are listed below:

- 1 Right to Information Act, 2005
- 2 Mahatma Gandhi National Rural Employment Guarantee Act, 2005
- 3 The Forest Rights Act, 2006
- 4 The Unorganised Workers' Social Security Act, 2008
- 5 The Right to Education Act, 2009
- 6 The Land Acquisition Act, 2013
- 7 National Food Security Act, 2013
- 8 Manual Scavenging Prohibition Act, 2014
- 9 Street Vendors Livelihood Act, 2014 and
- 10 Rights of Persons with Disability Act, which was passed in 2016

Taken together, these laws constitute an entire new "Bill of Rights" for India's citizens, particularly, the disadvantaged ones. Many of these rights were implied or subsumed under the various rights provided in the Constitution, particularly under Article 19 (c) – the right to livelihoods and under Article 21 – the right to life. Others were mentioned under the Directive Principles chapter of the Constitution. Some like the Employment Guarantee Program and free school education was being provided by governments, but not as a justiciable right – the citizen not getting those, could not take the Government to court. All that was changed by the enactment of these Acts. In that sense, collectively, they represent a huge constitutional step forward for achieving the values and vision laid down in the Preamble of the Constitution - justice, liberty, equality and fraternity.

The February 2021 issue of Policy Watch began with a brief introduction of the period 2000-2014, and the social, political and economic exigencies of the period. We are repeating that in this August 2021 issue for the sake of continuity. It elaborates the process by which most of these Acts were deliberated upon well before they were tabled in Parliament. With the exception of the Unorganised Workers' Social Security Act, 2008, which was proposed by the National Commission on Employment in the Unorganised Sector (NCEUS), headed by Dr Arjun Sengupta, almost all the other laws were deliberated in detail at the National Advisory Committee (NAC), a body constituted by the UPA Chairperson Smt Sonia Gandhi. The NAC had some of the most eminent activists and civil society leaders as its members. Thereafter, of course, most Bills followed the normal process of vetting

before being tabled. The February 2021 issues carried an introduction chapter and a review of four of the laws – The Right to Information Act, 2005, the Mahatma Gandhi National Rural Employment Guarantee Act, 2005, the Right to Education Act 2006 and the Unorganised Workers' Social Security Act, 2008

The rest of the document deals with the status in 2020-21 of the implementation of the main provisions of each Act. This meant some fifteen years after notification of some Acts, a decade for the others and seven to eight years even for the newest Acts. The overall summary on this account is that though the Acts have been duly passed, adopted by State Governments in most cases, and were translated into government programs and schemes, assigned budgets and specified executing ministries/departments, the progress on the implementation of the main provisions leave a lot to be desired. Perhaps the greatest progress has been made in MGNREGA, which in 2020-21 had a budgetary allocation of over Rs 120,000 crore and a nationwide machinery for execution and monitoring, followed by the RTE, although many activists would disagree. For the others, while there is no doubt that the institutional juggernaut is moving, as is obvious from the reviews of the RTI or the FRA, the result in terms of the Preamble values – “justice, liberty, equality and fraternity – has been limited.

Each chapter, describes the key provisions of the respective Act and how these were mostly preserved or in some cases diluted while being adopted by the State Government (as in the case of the Land Acquisition Act) and also by the Central Government after the present government came to power in 2014 (as in the case of the Right to Information Act). It shares some concerns that emerged related to the provisions as they were tried to be implemented. Thereafter each chapter focuses on the performance vis-à-vis the provisions and bottlenecks faced in implementation and ends with suggestions for the way forward.

The RGICS commissioned Mr Arnab Bose, a public policy graduate from the National Law School University of India, Bangalore, to undertake a detailed study of the various Acts in 2020-21. He worked under the guidance of the Director RGICS, Mr Vijay Mahajan. The original plan was for these chapters to be discussion drafts, around which we would convene separate consultations of the key stakeholders of each Act. However, with the COVID Pandemic, that intent could not be implemented. Thus the work represent desk research supplemented with a few telephonic conversations. Nevertheless, it is a huge task that Mr Bose completed creditably under the most trying circumstances in 2020 and 2021 and the undersigned, would like put this on record his appreciation for the diligence, perseverance and objectivity of Mr Bose.

We hope this review is found useful by stakeholders in various Rights based Legislations.

**Vijay Mahajan, Director,
Rajiv Gandhi Institute for Contemporary Studies**



Photo by Graphic Node on Unsplash

The National Food Security Act, 2013

Background

The National Food Security Act, 2013 was notified on 10th September, 2013 with the objective to provide food and nutritional security through the human life cycle approach¹, by ensuring access to adequate quantity of food at affordable prices. The Act provides coverage of up to 75% of the rural population and up to 50% of the urban population for receiving subsidized foodgrains under Targeted Public Distribution System (TPDS), thus covering about two-thirds of the population. Besides the entitlement to food grains under the TPDS,

The Act also has a special focus on the nutritional support to women and children. This includes meals to pregnant women and lactating mothers during pregnancy and six months after the child birth. Such women are also entitled to receive maternity benefit of not less than Rs. 6,000².

Children up to 14 years of age are entitled to nutritious meals as per the prescribed nutritional standards under the integrated child development services (ICDS) and mid-day meal (MDM) schemes. In case of non-supply of entitled foodgrains or meals, the beneficiaries are supposed to receive a food security allowance. The Act also contains provisions for setting up of grievance redressal mechanism at the District and State levels. Separate provisions have also been made in The Act for ensuring transparency and accountability.

Based on population coverage and the distribution commitment, TPDS forms the largest component of the NFSA. There are two types of TPDS beneficiaries under NFSA – namely Antyodaya (AAY or the poorest-of-poor) and priority – who are entitled to 35 kg/family/month and to 5 kg/person/month of grain respectively³. Rice, wheat and coarse cereals are to be distributed at the central issue prices (CIPs) of Rs 3/2/1 per kg respectively. State-wise number of NFSA beneficiaries are determined and communicated to states by the Centre.

The Act is considered the biggest experiment in the world for food-based welfare schemes by any government⁴. By ensuring that a majority of the Indian population has access to adequate quantity of food at affordable prices, The Act is seen as a vital instrument to address the persistent problems of food and nutritional security of the country's population. However, in spite of its ground breaking nature, over the years the many implementation bottlenecks have persisted.

¹ NFSA 2013

^{2,3} Ibid

⁴ https://www.zef.de/fileadmin/webfiles/downloads/projects/volatility/downloads/Chap_13_Gulati_Saini_National_Food_Security_Act__2_.pdf

Key Issues

Integrated Child Development Services

- i. **Poor Infrastructure of Anganwadi Centers:** The infrastructure of ICDS centers is very poor, which prevents them from delivering essential services. A 2016 study⁵ of 36 AWCs in the state of Odisha found that more than 85% did not have a designated building for daily functioning. The centers also had a severe lack of water, toilet, and electricity facilities, as well as very little play materials. Consequently, there was a lack of faith among about its benefits in the rural community.
- ii. **Low Pay for Anganwadi Workers:** Anganwadi workers have been fighting for better pay for many years. They are given a fixed amount as honorarium per month under the scheme, which varies in each state. Many states have seen an increase in the honorarium in recent years following protests. Currently, in Madhya Pradesh the workers and helpers earn Rs 10,000 and Rs 5,000 a month respectively, Karnataka gives Rs 8,000 to the workers and Rs 4,000 to the helpers, Telangana gives its workers and helpers Rs 10,500 and Rs 7,000 respectively and Haryana gives Rs 11,429 to its workers, twice the amount that is given to helpers⁶. However, AWWs feel this is inadequate and are demanding 18,000 per month⁷.
- iii. **Poor Work Conditions:** Under the ICDS scheme, anganwadi workers are seen as voluntary social workers and not government employees⁸. Consequently, their work not being regularised and deprives them of essential benefits like Provident Fund, pension and ESI (Employees' State Insurance) cards. Most of the anganwadi workers also complain about being overburdened with other tasks such as BLO (Booth Level Officer) duties, surveys etc⁹.
- iv. **Inadequate Budget:** Under the umbrella Integrated Child Development Services (ICDS) scheme, in 2019-20, the government allotted Rs 23,234 crore which was 2,283 crore more than the budgetary expenditure in FY 2018-19 (Rs 20,951)¹⁰. The latest 2020-21 budget has allocated Rs. 27,057 crore which is a 3.7% increase over the previous year¹¹. However, the overall share of ICDS has continued to decline as a proportion of total budgetary expenditure since 2014 and remains well under 1%¹².

Mid Day Meal Scheme

- i. **Poor Quality of Food:** According to the 2015 CAG report¹³, the quality of food served in schools under the Mid Day Meal Scheme was of poor quality across the country. The report highlighted cases of cooking poor quality meals in unhygienic conditions, inadequate and poor quality infrastructure in kitchen sheds etc., which was exposing children to health hazards. According to the report, the prescribed nutrition was not provided in schools of at least nine states, including the national capital. In Delhi, samples of cooked food of the 37 service providers during the period 2010-14 were tested by the Sri Ram Institute of Industrial Research. Out

⁵ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5296463/>

⁶ <https://thewire.in/labour/anganwadi-icds-child-development-ministry>

⁷ https://www.business-standard.com/article/pti-stories/federation-of-anganwadi-workers-and-helpers-demands-monthly-wage-of-rs-18000-118091101061_1.html

⁸ <https://thewire.in/labour/anganwadi-icds-child-development-ministry>

⁹ *ibid*

¹⁰ <https://www.newsclick.in/budget-2019-20-govt-schemes-poor-neglected-again>

¹¹ <http://www.cbgaindia.org/blog/malnutrition-rages-nutrition-related-schemes-get-19-less-funding/>

¹² <https://www.newsclick.in/budget-2019-20-govt-schemes-poor-neglected-again>

¹³ https://cag.gov.in/sites/default/files/audit_report_files/Union_Performance_Civil_Mid_Day_Meal_Report_36_2015_2.pdf

of the 2,102 samples, 1,876 (89 percent) failed to meet the prescribed nutrition standard. The media has also reported several cases of death due to poor quality meals¹⁴. In August 2018 in Jharkhand an upper primary student had died and more than 60 were hospitalized allegedly after having the school meal. In July 2018, 30 students suffered food poisoning after having the mid-day meal in Delhi. In October 2018, 45 children in Goa were hospitalized after having the mid-day meal. At least, 23 children had died in Bihar in 2013 after consuming contaminated mid-day meal.

ii. **Lack of Monitoring:** The scheme has provisions for regular social audit, field visits and inspections but these are rarely carried out¹⁵. Field visit reports not available after FY14 and monitoring institutions' reports not available after FY15. Studies used to be conducted by institutions such as the IITs and TISS every year in several schools in every district. But, contracts with these institutes not renewed after 2015. The 2015 CAG report¹⁶ had also observed that the checks to ensure quality of meals and adequacy of nutritional value remained only on paper. The inadequate monitoring of the scheme by the human resource ministry and the states was a major concern. The funds earmarked for monitoring and evaluation had also been grossly underutilized.

iii. **Caste Discrimination:** A 2014 study by the Indian Institute of Dalit Studies (IIDS) in Uttar Pradesh, Bihar, West Bengal, Jharkhand, Odisha, Chhattisgarh and Madhya Pradesh found that Dalit children were being given less food compared to upper caste children¹⁷. In 2015, a Dalit student of a government secondary high school in Jodhpur was beaten for touching plates used to serve midday meals to upper caste children¹⁸. In some schools, Dalit children were asked to bring their own plates from home, were served last and were not allowed to drink from the tap used by upper caste children. There have also been instances of upper caste teachers and cooks throwing food into the plates of Dalit children from a distance to avoid touching them. In 2013, Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes released a report, condemning the practice of untouchability under the scheme. Following this, the Union government created task forces to investigate the matter. The MHRD identified 144 poorly performing districts with regards to the practice of untouchability and caste-based discrimination¹⁹.

iv. **Corruption:** The 2015 CAG²⁰ report discovered states having indulged in diversion of funds to the tune of Rs. 123.29 crore meant for the Mid Day Meal scheme. The report also highlighted the case of ISKCON in Bellary district Karnataka, which supplied Mid Day meals to children of 304 schools and used 1.04 lakh kg less rice than the prescribed norms in preparing MDM. As per the report under this scheme food supplies are being diverted, supplies are being halved and there is also a lot of wastage. According to a 2019 MHRD report, in the last three years the government has received 52 complaints on corruption in the mid-day meal scheme²¹. Amongst the states UP has recorded the maximum number of complaints at 14, followed by Bihar at 7.

¹⁴ <https://www.livemint.com/politics/policy/govt-set-to-review-mid-day-meal-scheme-amid-row-over-food-quality-1568055948575.html>

¹⁵ <https://economictimes.indiatimes.com/news/politics-and-nation/whats-ailing-indias-midday-meal-scheme/articleshow/72918265.cms>

¹⁶ https://cag.gov.in/sites/default/files/audit_report_files/Union_Performance_Civil_Mid_Day_Meal_Report_36_2015_2.pdf

¹⁷ <https://www.downtoearth.org.in/news/governance/how-caste-is-marring-mid-day-meals-60898>

¹⁸ *ibid*

¹⁹ *ibid*

²⁰ https://cag.gov.in/sites/default/files/audit_report_files/Union_Performance_Civil_Mid_Day_Meal_Report_36_2015_2.pdf

²¹ <https://www.news18.com/news/india/the-dal-roti-way-hrd-ministry-confirms-up-has-highest-number-of-corruption-cases-in-midday-meal-scheme-2399811.html>

v. **Inadequate Funding:** The MDM scheme has been suffering from inadequate funding since 2014²². The share of MDM against total expenditure has come down to 0.39% (Rs 11,000 crore allotted) in FY2019-20 from 0.63% in FY2014-15. The Budgetary Estimate for 2020-21 remains the same as last year at Rs. 11,000 crore²³.

Maternity Entitlements

i. **Exclusions in Pradhan Mantri Matru Vandana Yojana (PMMVY):** The PMMVY was announced on December 31, 2016, in accordance with NFSA 2013. The NFSA had made it mandatory for the government to provide Rs 6,000 to every pregnant and lactating mother to ensure nutritional support. But the PMMVY has arbitrarily changed this to Rs. 5000. Even the form of PMMVY has many aspects which are contrary to the spirit of NFSA and results in the exclusion of many pregnant women.

- **Exclusion Due to Limitation of Scheme to First Birth:** The scheme has been limited only to the first live birth. As per the Sample Registration System (SRS) 2014, 43 per cent of children born every year in India are firstborns. This limitation therefore excludes 57% of cases²⁴. Also, according to SRS 2015, the fertility rate in rural India is 2.5 and the figure for urban India is 1.8. Therefore, the scheme also excludes more women from rural areas. The National Family Health Survey (NFHS) 2015-16, states that women in the lowest wealth quintile have 1.6 more children than women in the highest quintile. Consequently, the poor also face greater exclusion.
- **Exclusion of Under Age Mothers:** Only women over 19 years are eligible under this scheme. This is a problem because a large number of women in India have no control over when they get married. According to Census 2011, 30 per cent of women are married before they turn 18²⁵. These women would be excluded from the scheme if they became pregnant before turning 19.
- **Exclusion of Non Institutional Births:** The scheme is only applicable to institutional deliveries. As per NFHS 2015-16 data, 80 per cent deliveries in the country do not take place in hospitals²⁶. These women, who do not come to hospitals, do so for monetary reasons. But the scheme excludes such women who are most in need of monetary help.

ii. **Payment Not Received and Payment Delays:** A June 2019 survey in Jharkhand revealed that 76% of eligible women had not received any benefit under the PMMVY²⁷. Further, only around 20% had received just the 1st installment of Rs. 1000. The scheme also suffers from frequent payment delays, and due to the centralised payment architecture the local functionaries are unable to understand the reasons for delay²⁸. The non-payment of benefits and frequent delays is resulting in a disincentive to register future beneficiaries and furthering exclusion.

²² <https://www.newsclick.in/budget-2019-20-govt-schemes-poor-neglected-again>

²³ <https://www.newsclick.in/Budget-Fails-Indian-Children-Again>

²⁴ <https://www.downtoearth.org.in/news/health/mothers-of-57-newborns-not-entitled-to-maternity-benefits-61737>

^{25,26} *ibid*

²⁷ <https://timesofindia.indiatimes.com/india/government-violates-nfsa-thousands-of-women-deprived-of-maternity-benefits-reveals-survey/articleshow/70982184.cms>

²⁸ <https://thewire.in/women/pmmvy-maternity-benefits-budget-allocation>

iii. **Inadequate Budget:** In December 2018, experts had written to the then Finance Minister Mr. Arun Jaitley, suggesting a figure of Rs. 8000 crore for PMMVY to ensure the right to maternity benefits of all women defined as per the NFSA²⁹. This estimate was based on the crude birth rate of 19 per thousand and the 60:40 PMMVY fund share ratio between the Central and state government. However, the 2019-20 budget allocated only Rs 2,500 crore for the PMMVY. This is an increase over the previous year but remains inadequate. In 2018-19 the budgetary estimate for PMMVY was Rs. 2400 crore, but this was revised downwards to Rs. 1200 crore due to underutilization.

Targeted Public Distribution System

i. **Leakages in TPDS:** Leakages continue to impact the system efficiency. As per 2004-05 data leakages at all India level was at 55%³⁰. This came down by 2007-08 to 44% and in 2011 it was at 46.7%³¹. The 2015 CAG report had noted both inclusion and exclusion errors in the beneficiary list³². Targeting has not resulted in reduction of leakages and some have suggested that it has become worse³³. The dual pricing through TPDS has created an incentive to divert grains to the open market.

ii. **Problems in Targeting:** Under targeted PDS BPL and APL households were differentiated. BPL households were identified via household income, but households with any assets (such as televisions, fans, two or four wheeled vehicles, or land) were considered APL. These APL households despite having ownership of assets were food insecure, and the removal of rations added to their insecurity³⁴. The problem of targeting is also compounded by the lack of reliable data. There are no official estimates of the actual income of households and many BPL households are excluded from BPL cards³⁵. Targeting has also exacerbated the existence of illegal cards³⁶. In 2015 the CAG noted that many states had not completed the process of identifying beneficiaries, and 49% of the beneficiaries were yet to be identified³⁷. In February 2017, under NFSA, the use of Aadhar as proof of identification became mandatory. The goal was to remove bogus ration cards, check leakages and ensure better delivery of food grains. As of January 2017, 100% ration cards had been digitized and the seeding of cards with Aadhaar was at 73%³⁸.

iii. **Problems in One Nation One Ration:** The ONOR scheme aims to enable portability of ration cards by linking it with Aadhar. But linking Aadhaar with the ration cards has previously run into many problems³⁹. There have been instances of people being denied food due to absence of Aadhaar card or malfunctioning of the Biometric authentic system. Experts argue the same could happen with the new scheme. The pilot for ONOR was started in Odisha on 1st September 2019 for its intrastate migrants. But out of 32 million beneficiaries, 1.8 million (6%) could not get their Aadhaar linked with their ration card before the deadline of September 15⁴⁰. A survey conducted in October 2019 in Odisha found that 35% of households did not have Aadhaar-seeded ration cards. Further, up to 12.42% individuals did not have an Aadhaar number while 19% submitted it but could not get it linked to their

^{29, 34, 35, 36, 38, 40} ibid

³⁰ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6747310/>

³¹ http://164.100.47.193/lsscommittee/Food,%20Consumer%20Affairs%20&%20Public%20Distribution/16_Food_Consumer_Affairs_And_Public_Distribution_3.pdf

³² https://cag.gov.in/sites/default/files/audit_report_files/Union_Civil_National_Food_Security_Report_54_of_2015.pdf

³³ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6747310/>

³⁷ <https://www.prsindia.org/theprsblog/food-security-india>

³⁹ <https://thenewleam.com/2019/11/one-nation-one-ration-programme-faces-many-challenges-experts/>

ration card. Similarly in Gujrat tribal communities have reported not being able to get ration due to poor internet connectivity in their villages. Another concern is that the seasonal migrants are not tracked. The 2011 Census shows that the exact number of migrant workers within India is not easy to measure, especially at state level. This makes it a challenging task to reach a majority of beneficiaries in the country. The availability of Electronic PoS machines in the ration shops is also crucial. But data shows by February 2019, only 72% of fair price shops across the country had installed electronic PoS machines⁴¹. Bihar, which has the second highest immigrants after UP, had the least number of devices installed.

- iv. **Inadequate Storage Capacity:** The total storage capacity in India by 2017 was 788 lakh tones. 354 tones capacity was with the Food Corporation of India and 424 lakh tonnes was with state agencies⁴². The 2015 CAG report found that the available storage capacity in states was inadequate for the allocated quantity of food grains⁴³. It highlighted the example of Maharashtra where of the 233 godowns sanctioned for construction, only 93 had been completed as of 2015. The report also observed that in between 2010-15 for 4 years the stock of food grains with the Centre was higher than the storage capacity with the Food Corporation of India.
- v. **Poor Quality Food Grains:** A 2011 survey observed that the quality of food grains received under PDS was of poor quality and adulterated, and had to be mixed with other grains to make it edible⁴⁴. Poor quality of grains can not only have an adverse health affect but can also lead to reluctance to buy food from fair price shops. While State Food Safety Officers undertake regular surveillance, monitoring, inspection and random sampling of all food items, separate data for food grains provided through PDS is unavailable⁴⁵. The absence of data makes it difficult to ascertain whether the quality meets the prescribed standard.

The NFSA During the Covid-19 Crisis

The arrival of the Covid-19 virus has triggered not just a health crisis in India but also a social one. As a response to the Covid emergency the government of India announced the largest lockdown in history, with 1.3 Billion people ordered to stay inside starting 25th march. While the lockdown was integral to ensure the slowing down of the disease progression, implementing a lockdown in a country such as India has had a disproportionate impact on the poor and has brought to the forefront the deep class divide present in the country. An inadequate safety net has left many from economically weaker sections without food security and access to basic services. Many media reports have shown how migrant workers in cities have found themselves without a daily wage, street food suppliers and even a home, since they could no longer pay rent, and this has led to a large scale reverse migration⁴⁶, with desperate migrants leaving cities amid lockdown and walking hundreds of miles towards their home villages.

The biggest concern during the crisis has been in ensuring food security particularly for the vulnerable sections. With this in mind the government on the 26th of march announced a

⁴¹ ibid

⁴² <https://www.prsindia.org/theprsblog/food-security-india>

⁴³ https://cag.gov.in/sites/default/files/audit_report_files/Union_Civil_National_Food_Security_Report_54_of_2015.pdf

⁴⁴ Revival of the Public Distribution System: Evidence and Explanations, The Economic and Political Weekly, November 5, 2011

⁴⁵ <http://164.100.47.190/loksabhaquestions/annex/10/AU2124.pdf>

⁴⁶ <https://www.thehindu.com/news/national/karnataka/reverse-migration-during-covid-19-lockdown-exposes-chinks-in-pds/article31263564.ece>

1.7 lakh crore relief package with a major food component, and the PDS is supposed to be playing a key role in disbursing government support⁴⁷. However, according to a recent government survey despite the government making efforts to reach people with relief and supplies, access has not been universal and only 31 percent have reported receiving relief in either cash or kind⁴⁸. The covid crisis has brought to the fore the many gaps within the system and implementing food security has been a huge challenge. Some of the major challenges:

- i. **Inadequate Relief Package:** The Pradhan Mantri Garib Kalyan Yojana was announced by the government on 26 March. The package was for Rs 1.7 lakh crore and included an itinerary of measures. However, as per a number of experts the package in itself lacked the reach to address the needs of the most vulnerable sections.
- ii. **Exclusion from the PDS:** According to a study by Jean Dreze, Reetika Khera and Meghana Mungikar due to use of outdated 2011 census data to calculate state wise PDS coverage currently around 100 million people have been excluded from receiving rations from the PDS⁴⁹. Under the NFSA, the PDS is supposed to cover 75% of the population in rural areas and 50% of the population in urban areas, which works out to 67% of the total population, using the rural-urban population ratio in 2011. India's population was about 1.21 Billion in 2011 and so PDS covered approximately 800 million people. However, applying the 67% ratio to a projected population of 1.37 Billion for 2020, PDS coverage today should be around 920 million⁵⁰. Even taking into account growing urbanisation, the shortfall would be around 100 million. The estimates are based on 2016 state-wise estimates of birth and death rates.
- iii. **Non Portability of Ration Cards:** Currently, PDS ration cards are neither portable across locations nor can rations be divided, allowing family members to pick up portions at different locations, making them potentially useless for seasonal migrant laborers⁵¹. The One Nation One Ration scheme launched last year has also run into a number of problems as noted earlier. And even if the ONOR programme is implemented, it has no provision for divisibility. This has raised serious concerns for last mile delivery of ration especially for seasonal migrants.
- iv. **Impact on Supply Chain and Price Rise:** The effect of the lockdown hit the agricultural sector hard. A lack of transport, market shutdowns, labour shortages, strict action by police on transport and the stringent imposition of lockdown by local authorities put enormous strain on India's food supply.
- v. **Insufficient Agricultural Budget:** One of the most critical challenges that the current coronavirus pandemic has highlighted is the ability of the agricultural sector to effectively cope with crisis situation. However, this is also one sector that has been the most ignored for policymakers. The budget allocation of 2020-21, the Ministry of Agriculture and Farmer's Welfare was allocated Rs 1,42,762 crore which accounted for a mere 5 percent of the total budget⁵². While the percentage

⁴⁷ <https://www.financialexpress.com/economy/finance-minister-nirmala-sitharaman-live-economic-relief-package-coronavirus-slowdown-subsidy-cash-transfer-daily-needs/1909878/>

⁴⁸ <https://www.tribuneindia.com/news/nation/food-insecure-indians-eating-less-skipping-meal-govt-study-76900>

⁴⁹ <https://www.thehindu.com/news/national/outdated-census-data-deprives-over-10-crore-of-pds-economists/article31350648.ece>

⁵⁰ <https://www.thehindu.com/news/national/outdated-census-data-deprives-over-10-crore-of-pds-economists/article31350648.ece>

⁵¹ <https://www.hindustantimes.com/india-news/still-lacking-scale-e-pds-missed-migrants/story-lowBmqM32Pi8LIdgHcwgnN.html>

⁵² <https://www.prsindia.org/parliamenttrack/budgets/demand-grants-2020-21-analysis-agriculture-and-farmers%E2%80%99-welfare>

of allocation to agriculture has steadily increased over the years in relative terms, it has not exceeded the 5 percent mark in the last decade. A token allotment of 4-5 percent of expenditure for a sector which contributes around 16 percent to the country's GDP is bound to face critical challenges that directly impact millions during the current crisis.

Recommendations

- i. Emphasis should be given to strengthen basic infrastructure of Anganwadi Centres and to improve their overall ambience to ensure optimal utilization of services by beneficiaries.
- ii. Ensuring job satisfaction by regularizing employment and increasing honorarium of AWWs is necessary to ensure higher quality of service delivery.
- iii. Regular and stringent monitoring of ICDS needs to be ensured.
- iv. Adequate funding for ICDS and proper utilization of funds needs to be ensured. There needs to be a road map for meeting the funding requirements.
- v. Need for stringent monitoring of quality of food provided during mid day meals by SMC. The responsibility of cooking, cleaning utensils etc. needs to be given to local women's groups and self help groups, school should play a supervisory role.
- vi. Independent social audits need to be regularized. There needs to be proper utilization of monitoring and evaluation funds.
- vii. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 needs to be amended to include new forms of discrimination within the Mid Day Meal Scheme.
- viii. It is imperative that the teachers and serving staff be sensitised to the ill-effects of caste discrimination on children as well as the society. Building more schools in Dalit dominated regions and employing more Dalit cooks and servers can also help this objective.
- ix. Need for stringent action against any case of corruption in the Mid Day Meal scheme.
- x. Adequate funding for MDM scheme needs to be ensured at the earliest.
- xi. The PMMVY scheme needs to be universalized to ensure all cases of pregnancies are covered.
- xii. Cash entitlement under PMMVY should be revised to Rs. 6000. Timely payment to all beneficiaries needs to be ensured.
- xiii. Funding for PMMVY needs to increase and there needs to be a roadmap to meet the funding requirement as given by experts.
- xiv. Better use of Information Technology right from the time of purchase of food grains till its distribution will help minimize leakages. There should be seamless flow of information online between the FCI and State. The exact information about how much food grain has been procured from which mandi, which warehouse it is stored in and for how long and when it has been released for distribution needs to be available.

- xv. Targeting has led to inclusion and exclusion errors. Dual pricing has also contributed to leakages. In the long run we need a road map to move to a universal PDS with self exclusion.
- xvi. Storage capacity of states needs to be expanded. All sanctioned godwns need to be constructed at the earliest.
- xvii. Information about quality of food grains at time of purchase, storage conditions in warehouse, when it is given to PDS shops and when the shops have distributed it to the beneficiaries etc. should be made available. Need regular quality monitoring of food grains.
- xviii. There is a need for a proper study of migration patterns across the country. Information on the inflow and outflow of migrants is vital for the allocation of the ration cards under ONOR.
- xix. Aadhar seeding of ration cards should happen as soon as possible. Poor internet connectivity is a larger infrastructure issue that needs to be resolved.
- xx. All ration shops need to install ePOS machines at the earliest.

References

1. Ambast, Shruti and Pant, Happy. 2020. While Malnutrition Rages, Nutrition-Related Schemes Get 19% Less Funding. New Delhi: Centre for Budget and Governance Accountability.
2. Basole, Amit. 2018. State of Working India 2018. Bengaluru: Centre for Sustainable Employment, Azim Premji University.
3. CAG. 2015. Performance Audit of Mid Day Meal Scheme (2009-10 to 2013-14): Report No. 36 of 2015. New Delhi: Controller and Auditor General of India.
4. ----. 2015. Audit on the Preparedness for Implementation of National Food Security Act, 2013 for the year ended March 2015: Report No. 54 of 2015. New Delhi: Controller and Auditor General of India.
5. Chaudhary, Manira. September 10, 2018. 'Taken for Granted and Ignored, Anganwadi Workers Demand Better Pay, Conditions,' The Wire. Delhi: The Wire.
6. Deogharia, Jaideep. September 4, 2019. 'CGovernment violates NFSA, thousands of women deprived of maternity benefits; reveals survey,' Times of India. Ranchi: Times of India.
7. Dutta, Anisha and Haq, Zia. April 10, 2020. 'Covid-19 in India: Food prices surge 3 times as supply chain takes a hit,' Hindustan Times. New Delhi: Hindustan Times.
8. FE Online. March 27, 2020. 'Nirmala Sitharaman Highlights: Rs 1.7 lakh cr economic relief package to give cash, free food to survive coronavirus,' Financial Express.
9. Ghosh, Jayati, Patnaik, Prabhat and Mander, Harsh. April 27, 2020. 'Covid-19 crisis calls for universal delivery of food and cash transfers by the state,' The Indian Express. New Delhi: The Indian Express.

10. Government of India. 2013. National Food Security Act.
11. Gunjan, Raunak Kumar. April 15, 2020. 'Impatient, Starving, Angry: As India Extends Lockdown, Stranded Migrant Workers Emerge as Crisis in Making,' News18.
12. Haq, Zia. March 30, 2020. 'E-PDS could have helped migrants, but scheme still lacks the scale,' Hindustan Times. New Delhi: Hindustan Times.
13. Jha, Praneta. February 1, 2020. 'Budget Fails Indian Children Yet Again,' Newsclick.
14. Khera, Reetika. November, 2011. 'Revival of the Public Distribution System: Evidence and Explanations,' Economic and Political Weekly, Vol. 46, No. 44-45. Mumbai: Economic and Political Weekly.
15. MoCAFPD. 2015. Standing Committee on Food, Consumer Affairs and Public Distribution (2014-15): Demand for Grants (2015-16) Third Report. New Delhi: Ministry of Consumer Affairs, Food and Public Distribution, Government of India.
16. Nanda, Prashant K. September 10, 2019. 'Govt set to review mid-day meal scheme amid row over food quality,' livemint.
17. Pandey, Kundan. September 27, 2018. 'Mothers of 57% newborns not entitled to maternity benefits,' DownToEarth.
18. PIB. March 26, 2020. SFinance Minister announces Rs 1.70 Lakh Crore relief package under Pradhan Mantri Garib Kalyan Yojana for the poor to help them fight the battle against Corona Virus. New Delhi: Press Information Bureau, Government of India.
19. PRS. October 2017. 'Food Security in India', New Delhi: PRS Legislative Research.
20. Rupawat, Prudhviraaj. July 9, 2019. 'Budget 2019-20: Govt Schemes for the Poor Neglected Again,' Newsclick.
21. Sen, Amartya, Rajan, Raghuram and Banerjee, Abhijit. April 17, 2020. 'Huge numbers may be pushed into dire poverty or starvation...we need to secure them,' The Indian Express. New Delhi: The Indian Express.
22. Special Correspondent. April 15, 2020. 'Outdated census data deprives over 10 crore of PDS: economists,' The Hindu. Delhi: The Hindu.
23. SWAN. April 15, 2020. 21 Days and Counting: Covid-19 Lockdown, Migrant Workers, and the Inadequacy of Welfare Measures in India. Stranded Workers Action Network.
24. Tandon, Aditi. April 26, 2020. 'Food-insecure Indians eating less, skipping meal: Govt study,' Tribune News Service. New Delhi: The Tribune.
25. Tiwari, Suyash. February 2020. 'Demands for Grants 2020-21 Analysis: Agriculture and Farmers' Welfare', New Delhi: PRS Legislative Research.



Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

Background

The history of land acquisition in India carried out under the sanction of a formal state structure began in the colonial era. The first formal law was the Bengal Regulation I of 1824 whose sole objective was to promote British commercial interests⁵³. After the introduction of railways, legislation was needed to acquire land for its development, which was done under the said Regulation and finally the first Railway came up in 1853. Later, the Bengal Regulation I of 1824 was replaced by Act I of 1850, which extended some provisions of the 1824 Act to the Calcutta Presidency. Meanwhile, there were similar legislations enacted in the presidency towns of Bombay and Madras⁵⁴.

By 1857 the need for construction of railways and other public purpose was increasing and various laws on land acquisition were consolidated into a single law, known as the Land Acquisition Act, 1857 for Railways and other Public Purposes, and it was made applicable to the whole of British India. However, the 1857 Act had many procedural problems to overcome which a new act was passed by the Government in 1870 called The Land Acquisition Act, X of 1870. As with the 1857 Act, the Land Acquisition Act 1870 was also found to be dissatisfactory. The drawbacks of the 1870 Act ultimately led to it being repealed and replaced by The Act of 1894.

The 1894 Act was enacted with the definite objective of building infrastructure like railways, telegraph lines, roads, bridges, canals, communication network and means to transfer the army and weaponry to different parts of the country⁵⁵. The basic intention was to extend, control and further consolidate British rule throughout the country. Since its inception it laid out certain key principles in the process of land acquisition that continued to form the foundation of state policy much after independence until as late as 2013⁵⁶.

Most importantly it established the principle of eminent domain. Additionally, the phrase 'public purpose' was defined under section 3(f) as including the need for sites of planned development, extension or establishment of new villages, town planning, pursuing a government scheme or

⁵³ Verma, Santosh, Subverting the Land Acquisition Act, 2013, *Economic and Political Weekly*, 2015, 50 (37): p. 18-21.

⁵⁴ Mohan and Shiju, Land Acquisition Act, 1894: Historical Overview of Judicial Interpretation" in *Development-Induced Displacement, Rehabilitation and Resettlement in India: Current Issues and Challenges*, by Somayji, Sakarama and Smrithi Talwar 2011. (eds) Routledge, Taylor and Francis Group, London, New York.

⁵⁵ Nandal Vikas, "Land Acquisition Law in India: A Historical Perspective"; Vol.3 Issue 5, 2014 *International Journal of Innovative Research and Studies*, Pg 468.

⁵⁶ Ibid

policy, housing for the poor and/or people affected by natural calamities, building of public or government offices, and for any other development scheme or plan, including construction of railways, irrigation canals, etc⁵⁷. Even after independence and the adoption of the Indian Constitution, the 1894 Act continued to be in force, but with periodic amendments⁵⁸. But the Land Acquisition Law of 1894 continued to remain the basic Act from which land acquisition decisions were derived.

After liberalisation of the Indian economy in the 90s the role of the private sector increased and it started taking responsibilities which were earlier discharged by the government. As a result a large number of acquisitions were made for companies under Part VII of the 1894 Act proposing to use the land for a public purpose⁵⁹. While eminent domain was still central and public purpose needed to be considered, the term public purpose became a subject of multiple interpretations. Further, with the enactment of the Special Economic Zone Act, 2005, political parties, industrialists, and global agents all came together to enable land acquisition under the pretext of globalization, alienating people from their own natural resources⁶⁰. All this led to a number of protests all across the country.

Following continued criticism of the 1894 Act, and people's movements protesting forced land acquisition, in 2006 the National Advisory Council (NAC) drafted a National Development, Displacement and Rehabilitation Policy. This document drew heavily on a draft presented by the National Alliance of People's Movements (NAPM)⁶¹. This report led the UPA government to finally introduce the LAA (Amendment) Bill and the Rehabilitation & Resettlement Bill in 2007, which proposed to make the Resettlement and Rehabilitation policy an integral part of the land acquisition process⁶². The 2007 amendment Bill was passed in Lok Sabha as the Land Acquisition (Amendment) Act, 2009, but the government did not have the required majority in the Rajya Sabha to pass the Bill.

In 2011 owing to increasing pressure from NGOs and international organizations, the UPA-II government appointed the National Advisory Council to prepare a new draft for Land Acquisition. On recommendations of NAC to combine the two Bills, a comprehensive Land Acquisition, Rehabilitation and Resettlement Bill was introduced to replace the existing Land Acquisition Act 1894 to bring the process of land acquisition and subsequent rehabilitation into the ambit of one single law⁶³. The Resettlement and Rehabilitation Bill, 2011 was introduced in Lok Sabha on 7 September, 2011. Certain key new elements introduced in this Bill included the increase in compensation values to four times the market price of land in rural areas, and two times the market value in urban areas⁶⁴. While it limited the acquisition of land for public purposes only, it included private companies as well as public-private partnership projects within the ambit of the law, requiring the consent of 80 per cent of displaced people in this case⁶⁵. Consent was to be sought through gram sabhas, or village assemblies, as per existing Panchayati Raj institutions and laws, including PESA⁶⁶. Social Impact Assessment was to be conducted in the case of all land acquisition. This Bill was a far more comprehensive Bill taking into account several of the key demands of displaced and affected populations. The law that was finally passed in 2013 came to be known as the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (RFCTLARR 2013).

⁵⁷ Section 3(f), Land Acquisition Act, 1894.

⁵⁸ The Land Acquisition Act, 1894 has been amended in 1919, 1921, 1923, 1933, 1962, 1967 and 1984.

⁵⁹ Part VII of the 1894 Act provides for the Acquisition of Land for Companies. (Sections 38A-44B).

⁶⁰ Janhavi, S.S., Legal regime on land acquisition in India: a critical study', Online Thesis. 2014. Department of Studies and Research in Law, Karnataka State Open University, Karnataka.

⁶¹ Sampat, Preeti, Limits to Absolute Power: Eminent Domain and the Right to Land in India. Economic and Political Weekly, 2013. 48 (19): p.40-52

^{62,65} Ibid

⁶³ <https://www.prsindia.org/Billtrack/the-land-acquisition-rehabilitation-and-resettlement-Bill-2011-1978>

⁶⁴ <https://www.prsindia.org/uploads/media/Land%20and%20R%20and%20R/LARR%20-%20Final%20Brief.pdf>

⁶⁶ Panchayati Raj Institutions include the various layers of decentralized village to district-level institutions of governance. PESA refers to the Panchayats (Extension to Scheduled Areas) Act 1996 that mandated the extension of this system of governance to V and VI Scheduled Areas

In May 2014, as the Bharatiya Janata Party-led National Democratic Alliance (NDA) came to power through its development-driven agenda, and sought to bring about immediate reforms in land acquisition procedures. The amendments that were proposed would remove a lot of the protections, safeguards, and checks and balances introduced in the 2013 law. Specifically being sought was the expansion of the set of exceptions to the requirement of SIA and informed consent to include industrial corridors, infrastructure projects under public-private partnership, as well as electrification of villages and provision of housing for the poor, amongst others. To facilitate its economic agenda, the government promulgated the land acquisition amendment ordinance in December 2014 with a view to introducing legislation in the Budget session of parliament⁶⁷. The 2015 land acquisition amendment Bill was eventually tabled in the parliament in February and passed in the lower house in March amidst heavy opposition both within and outside the parliament⁶⁸.

Post the passing of the Bill in the Lok Sabha the opposition parties continued their protest against the Bill and in May 2015 the Lok Sabha referred the Bill to a joint parliamentary committee. Meanwhile, in June the government once again promulgated an ordinance which was challenged in the Supreme Court by three Delhi based NGOs⁶⁹. Thereafter, in August the JPC submitted its report and recommended that the government withdraw six key amendments, including the plan to remove the consent clause and the social impact assessment⁷⁰. Subsequently, the government said it would let the ordinance lapse and would allow the states to amend the RFCTLARR in effect allowing the states to remove or change the clauses in the Act⁷¹.

Since then, owing to large-scale farmers' protests and political opposition, the government has been unable to have these amendments passed in the Parliament. Social movements protesting forceful land acquisition have mobilized all across the country to ensure transparency and make the state accountable in the land acquisition process. However, at the same time these laws are constantly being sought to be reversed by dominant forces in order to dilute the process of acquisition under the pretext of development. Several states have implemented changes which severely compromise the scope of the Act. These changes have been executed through Rules under Section 109 of the Act, or have enacted their own state level land acquisition legislations using Article 254(2) of the Constitution of India⁷².

States which have enacted their own law, have managed to override the provisions of the central law, such as those related to consent and Social Impact Assessment. A 2018 RTI by CSE revealed that seven states including Tamil Nadu, Telangana, Gujarat, Haryana, Maharashtra, Jharkhand and Andhra Pradesh, had bypassed the law and implemented their own Acts by replicating the 2014 Ordinance⁷³.

Key Issues

i. Dilution by States: Many states have made amendments to the 2013 Act incorporating changes introduced by the ordinance which had lapsed in 2015. These amendments compromise the scope of provisions related to consent, Social Impact Assessment (SIA), food security and higher compensations and restrict the applicability of The Act at the state

⁶⁷ Basu, Indrani. 24 February, 2015. "What exactly is the contention about the land acquisition amendment?", The Huffington Post.

⁶⁸ <https://qz.com/india/471117/timeline-200-years-of-indias-struggle-with-land-acquisition-laws/>

^{69,70} Ibid

⁷¹ <https://economictimes.indiatimes.com/news/economy/policy/five-years-on-has-land-acquisition-act-fulfilled-its-aim/articleshow/65639336.cms?from=mdr>

⁷² <https://www.cprindia.org/news/mapping-dilutions-india%E2%80%99s-2013-land-acquisition-law>

⁷³ <https://www.downtoearth.org.in/news/agriculture/-state-govts-acquire-land-by-subverting-rights-and-bending-the-law--62463>

level⁷⁴. The changes have been made through Rules under Section 109 of the Act, or using Article 254(2) which allow instances for states to override central legislations provided they receive presidential assent⁷⁵. In the present case this has meant doing away with the provisions of consent and Social Impact Assessment. Some states have also framed rules which are completely different from the provisions of the Act. For instance, the multiplier factor of compensation for rural land in Haryana, Chhattisgarh, and Tripura has been kept at 1.00, (instead of 4) thus reducing the compensation amount⁷⁶. Further, instead of returning the unutilized lands, some states are transferring them to land banks.

ii. **Non Compliance with Social Impact Assessment:** The LARR Rules framed by states have, to varying extent, diluted the provisions of social impact assessment. The RFCTLARR (Amendment Acts) of Tamil Nadu, Gujarat, Maharashtra, Telangana, Jharkhand and Andhra Pradesh have drastically limited the scope of SIA. The RFCTLARR (Tamil Nadu Amendment) Act, 2014 stipulates that The RFCTLARR Act, 2013 is not applicable when land is sought to be acquired under three state laws, except for the purpose of compensation⁷⁷. In Maharashtra, only private projects have to adhere to the two clauses. Other changes by states include Andhra Pradesh reducing the notice period for public hearing for SIA from three weeks to one, and Jharkhand having no provision for return of unused land for five years⁷⁸. The requirement of a dedicated website for public disclosure of the entire work flow from the notification of SIA, as per Section 13 of The RFCTLARR (Social Impact Assessment and Consent) Rules, 2014 has also not been adhered to by Ministries, States and Union Territories⁷⁹.

iii. **Land Disputes Due to Many Conflicting Laws:** There are two opposing views about ownership and management of land in India. The first sees common land as merely a commodity with the state as the ultimate owner. The second view articulated by farmers, traditional communities such as cattle grazers, forest dwellers, tribals and fisherfolk see common land as an economic, social and cultural resource over which multiple groups exercise property rights. According to CPR⁸⁰, as a consequence of these two historically competing policy narratives, the constitutional, legislative and administrative framework governing land extremely fragmented and is at the root of a majority of land disputes in India. Further, due the fact that many subjects pertaining to land are in both in the state list and concurrent list of the Constitution, there are a multitude of original and active laws. Yet, there is no official comprehensive database of all land laws in India. This problem is exacerbated by the fact that these laws are administered by numerous government ministries at the central level, such as the ministries of Law and Justice, Rural Development, Mining, Industries, Infrastructure, Urban Development, Tribal Affairs, Home Affairs and Defence and the departments at the state level.

iv. **Large Number of Disputes under Section 24(2):** Section 24(2) of The Act states that in case of land acquisition, if a developer fails to take possession of land acquired under the old laws for five years, or if compensation is not paid to the owner, the land acquisition process would lapse. The process would then have to be re-initiated under LAAR, which would allow the owner to get better compensation. After the LARR Act was enacted

⁷⁴ <https://www.cprindia.org/news/6456>

⁷⁵ *ibid*

⁷⁶ TERI. 2018. Report of the National Conference on the Five-Year Journey of THE RFCTLARR ACT, 2013: THE WAY FORWARD. New Delhi.

⁷⁷ *ibid*

⁷⁸ <https://economictimes.indiatimes.com/news/economy/policy/five-years-on-has-land-acquisition-act-fulfilled-its-aim/articleshow/65639336.cms?from=mdr>

⁷⁹ TERI. 2018. Report of the National Conference on the Five-Year Journey of THE RFCTLARR ACT, 2013: THE WAY FORWARD. New Delhi.

⁸⁰ <https://www.cprindia.org/policy-challenge/7872/regulation-and-resources>

in 2013, more than 280 cases have been filed in the Supreme Court, challenging land acquisitions made under the previous law (Land Acquisition Act, 1894)⁸¹. 272 out of these 280 cases were filed under Section 24 of LARR Act. In 83% of these cases, compensation had not been paid and in 11% neither the compensation was paid nor the possession of land taken. In 95% of the cases the Supreme Court ordered the earlier land acquisition proceedings to lapse.

- v. **Poor Quality Land Records:** In most states due to outdated/no land surveys and inaccurate/outdated land records there is limited documentary proof establishing rights over land. This results in a number of legal disputes⁸². The Department of Land Resources has sought to resolve the problem of inaccurate land records through the 'Digitisation of Land Records Modernisation Programme'. However, unless the government makes an attempt to update land records on the ground to reflect the property rights of all landowners, digitizing them would not eliminate the problem of inaccurate land records.

Recommendations

- i. Dilution of the central law by states is a serious concern. It is imperative that the central law is followed both in letter and spirit especially with respect to rights of land owners.
- ii. The SIA clause is one of the most important provisions of the Act. There is a need to ensure in all required cases SIA is being conducted by an independent body. The state governments need to roll back changes and incorporate SIA in their respective laws.
- iii. There is a need to eliminate legal conflicts on land through rationalizing land laws. More coordination is needed between the Ministry of Law and Justice, Department of Land Resources, Ministry of Environment and Forests, and the state boards of revenue, and state forest departments to resolve conflicting land laws and streamline land administration.
- iv. Transparency needs to be ensured in land administration. The government needs to comply with its obligations under the Right to Information Act, 2005, to make digitally accessible all land laws, executive notifications, rules, circulars, etc. pertaining to land administration.
- v. The courts have come out with conflicting judgments with respect to section 24(2). There needs to be more clarity and consistency in the position taken by courts, especially since it deals with retrospective application of the law.
- vi. The government needs to provide dedicated financial and technical resources to conduct ground level land surveys and update records which reflect accurate property rights of people. This should form the basis of digitization of land records. Digitization of only existing records that are mostly inaccurate will not resolve the problem of poor quality of land records.

References

1. Ananth, Venkat. May 22, 2015. 'The evolution of the Land Acquisition Act,' livemint.
2. Basu, Indrani. 24 February, 2015. "What exactly is the contention about the land acquisition amendment?," The Huffington Post.

⁸¹ TERI. 2018. Report of the National Conference on the Five-Year Journey of THE RIGHT TO LAND ACT, 2013: THE WAY FORWARD. New Delhi.

⁸² <https://www.cprindia.org/policy-challenge/7872/regulation-and-resources>

3. Bedi, P. and Gangwani, S. 2015. 'Legislative Brief - The Land Acquisition, Rehabilitation and Resettlement Bill, 2011', New Delhi: PRS Legislative Research.
4. Bhattacharyya, Debjani. December 12, 2015. 'History of Eminent Domain in Colonial Thought and Legal Practice', Vol. 50, No. 50. Economic and Political Weekly.
5. Das, Sanjava Kumar. 2011. Land acquisition livelihood concerns and adivasi protests a case study of Jajpur district Orissa. Online Thesis. Centre for Political Studies, Jawaharlal Nehru University, New Delhi.
6. Government of India. 2013. Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act.
7. Janhavi, S.S. 2014. "Legal regime on land acquisition in India: a critical study". Online Thesis. Department of Studies and Research in Law, Karnataka State Open University, Karnataka.
8. Kohli, Kanchi, Gupta, Debayan. September 25, 2017. Mapping dilutions in India's 2013 Land Acquisition Law. New Delhi: Centre for Policy Research.
9. Land Acquisition Act, 1894.
10. Mohan and Shiju, Land Acquisition Act, 1894: Historical Overview of Judicial Interpretation" in Development-Induced Displacement, Rehabilitation and Resettlement in India: Current Issues and Challenges, by Somayji, Sakarama and Smrithi Talwar 2011. (eds) Routledge, Taylor and Francis Group, London, New York.
11. Nandal Vikas. 2014. "Land Acquisition Law in India: A Historical Perspective"; Vol.3 Issue 5, International Journal of Innovative Research and Studies.
12. Sampat, Preeti. 2013. 'Limits to Absolute Power: Eminent Domain and the Right to Land in India'. Vol. 48, No. 19. Economic and Political Weekly: pp.40-52.
13. Seetharaman, G. September 1, 2018. 'Five years on, has land acquisition act fulfilled its aim?,' ET Bureau. New Delhi, The Economic Times.
14. Sonak, Ishani. December 12, 2018. 'State govts acquire land by subverting rights and bending the law,' New Delhi, DownToEarth.
15. TERI. 2018. Report of the National Conference on the Five-Year Journey of THE RFCTLARR ACT, 2013: THE WAY FORWARD. New Delhi.
16. The Constitution of India (44th Amendment) Act, 1978.
17. Vanka, Sarita and Parker, Priya. March 10, 2008. 'Legislative Brief - The Rehabilitation and Resettlement Bill, 2007', New Delhi: PRS Legislative Research.
18. Verma, Santosh. 2015. 'Subverting the Land Acquisition Act, 2013', Vol. 50, No. 37. Economic and Political Weekly: pp. 18-21.



A Review of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013

Introduction

Manual scavenging entails the manual cleaning, handling or disposing of human excreta from open pits, drains, dry toilets or latrines built without a flush system. Across much of India, consistent with centuries-old feudal and caste-based customs, manual scavengers still collect human waste on a daily basis, load it into cane baskets or metal troughs, and carry it away on their heads for disposal at the outskirts of the settlement. Manual scavengers are usually from caste groups customarily relegated to the bottom of the caste hierarchy and confined to livelihood tasks deemed to be too menial by higher caste groups. Their caste-designated occupation reinforces the social stigma that they are unclean or untouchable and perpetuates widespread discrimination.

India's central government since independence in 1947 has adopted legislative and policy efforts to end manual scavenging. However, because these policies are not properly implemented, the practice continues to be widespread across many regions in the country. According to the International Dalit Solidarity Network, around 1.2 million people, mostly women from the Dalit community are engaged in manual scavenging⁸³. Considering the failure of earlier policies, in 2013, the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act was enacted by amending the previous Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. The amendment resulted in inclusion of all those who worked without adequate physical safety protection and through direct human contact to manually clean human faecal waste⁸⁴. It expanded the definition from the manual carrying of human excreta, to all sewerage and septage workers who may, without adequate protection and safety gear, come into direct physical contact with human faeces. This Act was believed to be a game changer. However, seven years since, its implementation continues to be lacking. This paper aims to review the practice of manual scavenging in India and highlight the key issues in implementation of the 2013 Act which have rendered it ineffective.

In India the problem of untouchability can be traced back to around two thousand years based on a strictly defined division of labour. The origin of untouchability lies in the restrictions imposed on the lives of the depressed classes, which comprised the untouchables amongst

⁸³ <https://idsn.org/wp-content/uploads/2017/10/Submission-Caste-and-Gender-Based-Sanitation-Practice-of-Manual-Scavenging-in-India.pdf>

⁸⁴ <https://www.prsindia.org/uploads/media/Manual%20Scavengers/Brief--manual%20scavenging.%202013.pdf>

other backward classes in various forms. The key reason for considering this group as untouchables originates mainly from their unclean professions such as scavenging. From the middle of the 19th century, efforts were made to improve the lives of these untouchables but no real progress was made until much later. In 1901, the then Census Commissioner, Sir Herbert Hope Risley classified the census data into seven key caste categories according to their social hierarchies⁸⁵. “The scavenging castes which were known by different names in different states like Bhangi, Balmiki, Chuhra, Mehtar, Mazhabi, Lal Begi, Halalkhor, etc. in northern India; Har, Hadi, Hela, Dom and Sanei, etc. in eastern India; Mukhiyar, Thoti, Chachati, Pakay, Relli, etc. in Southern India ; and Mehtar, Bhangias, Halalkhor, Ghasi, Olgana, Zadmalli, Barvashia, Metariya, Jamphoda and Mela, etc. in Western and Central India, also made an effort to get united and have a common name.”⁸⁶ Thereafter in 1927, Dr. B. R. Ambedkar, who was the foremost champion to take this cause of social reform, launched a movement against untouchability⁸⁷.

In the wake of this movement, on 16 August 1932, the British Prime Minister Mac Donald announced a communal award which resulted in granting of a separate electorate to the disadvantaged classes⁸⁸. At the time Gandhi was against this decision and believed that granting of separate electorate for the disadvantaged would result in vivisection amongst the people of India⁸⁹. In the wake of Gandhi’s resistance Ambedkar brought forward a separate proposal of joint electorate and greater representation for the depressed classes. Following this Gandhi began to devote himself to the cause of the depressed classes whom he started calling ‘Harijans’ or the children of God . Gandhi declared that it was a sin to treat the Harijans as untouchables as they have every right to live like other human beings. Through the efforts of Gandhi and many others, wells and temples were opened to the untouchables. Moreover, gradually, the age-old restrictions on their entry into such places began to crumble.

After India’s Independence in 1947, the problems and conditions of the disadvantaged classes were considered by the framers of the Constitution by making special provisions to protect their interests. A wide range of minority rights were enshrined in the articles 14, 15, 16, 25, 26, 29, 341 and 342. Further, the articles 15(2), (4), (5), 16(3), (4), (4A), (4B), 17, 23 and 25(2) (b) sought to remove social and economic disabilities of the deprived classes⁹⁰. In addition to the fundamental rights, certain directive principles of state policy also made it obligatory on part of the State governments to ensure the welfare of the disadvantaged classes⁹¹. Article 38 of the Constitution required the state to promote the welfare of the people by securing a social order based on justice.

In 1953, a Backward Classes Commission was constituted under the chairmanship of Kaka Kalelkar to determine the criteria to be adopted in deciding the backward classes as well as to describe the condition of backward classes including sweepers and scavengers⁹². The Commission in its report emphasized the need to introduce mechanical and up-to-date methods of cleaning latrines in order to do away with the existing system of manual scavenging. This report was brought to the notice of the State governments by the Ministry of Home Affairs in October 1956. Following these recommendations, in 1956, a Central Advisory Board was further constituted under the chairmanship of GB Pant, the then Home

⁸⁵ Srivastava, B.N. (1997). *Manual Scavenging in India: A Disgrace to the Country*. New Delhi: Sulabh International Social Service International and Concept Publishing

⁸⁶ Ibid

⁸⁷ Keer, Dhananjay (1990). *Dr. Ambedkar: Life and Mission* (3rd edn). Bombay: Popular Prakashan Private Limited

⁸⁸ <https://www.tandfonline.com/doi/abs/10.1080/00856407908722988?journalCode=csas20>

⁸⁹ <https://www.thehindu.com/opinion/op-ed/ambedkar-and-the-poona-pact/article31333684.ece>

⁹⁰ The Constitution of India

⁹¹ Part III and IV of the Indian Constitution

⁹² http://164.100.47.193/Refinput/New_Reference_Notes/English/Manual%20Scavengers%20welfare%20and%20Rehabilitation.pdf

Minister to review the working and living conditions of the sweepers and scavengers, which recommended a centrally-sponsored scheme for the purpose⁹³. Thereafter, in October 1957, under the chairmanship of Professor N. R. Malkani the Board constituted a committee known as the Scavenging Enquiry Committee to prepare a scheme to abolish the practice⁹⁴. The committee also suggested some measures to be taken to improve the working and living conditions of the scavengers.

In 1965, the Ministry of Labour constituted the National Commission on Labour under the chairmanship of Shri Bhanu Prasad Pandya, which again examined the working and service conditions of sweepers and scavengers⁹⁵. The commission suggested that the Government of India should undertake a comprehensive legislation to regulating their working conditions. In 1970, under the pioneership of Dr Bindeshwar Pathak, a follower of Gandhian ideology, Sulabh International Social Service Organisation, a non-profit voluntary social organisation was formed with an aim to emancipate the scavengers⁹⁶. Over the years the Sulabh Movement has become known for achieving success in the field of cost-effective sanitation and the liberation of scavengers⁹⁷.

In 1986, the plight of the manual scavengers again came into focus when a vigorous campaign was started for the abolition of this practice⁹⁸. The campaign gained momentum and culminated into an all India movement known as the Safai Karamchari Andolan (SKA). The movement achieved a significant milestone after the Supreme Court heard their petition and thereby decided to hold District Collectors of each districts accountable for any continuation of the practice⁹⁹. Thereafter, in 1993 the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act 1993 was passed, which provided for the prohibition of employment of manual scavengers and construction or continuation of dry toilets¹⁰⁰. All the State governments were asked to frame rules under the Act. Accordingly, from 26 January 1997, the Act became applicable in 6 states and the union territories¹⁰¹.

Recent Scenario

In spite of various recommendations and suggestions made by the committees to improve the working conditions of the sweepers and scavengers from time to time since independence, there has been very little progress. In 2009 a survey was undertaken by the Safai Karamchari Andolan and the report was presented to the Supreme Court¹⁰². The data showed that upon surveying 265 districts across 15 states, manual scavenging was found to be prevalent in 114 districts. It was also highlighted that there were 7,630 such workers as well as 34,365 dry latrines in use. Further, as per the 2011 Socio Economic and Caste Census, 1,82,505 households in India in rural areas were reported to be engaged in manual scavenging. The data also noted the number of dry latrines at 795,252 where human waste was cleaned manually¹⁰³.

The Census 2011 provided a more comprehensive data on latrines. The all-India figures suggested that there were still 794,390 dry latrines in the country where the human excreta was cleaned by humans at the time¹⁰⁴. 73% of these were in the rural areas where as 27% were in the urban areas¹⁰⁵. Apart from these there were

^{93,94,95,101,103,105} Ibid

⁹⁶ Social Inclusion of Manual Scavengers (2012). A Report of National Round Table Discussion Organised by United Nations Development Programme and UN Solution Exchange

⁹⁷ <http://www.sulabhinternational.org>

⁹⁸ Raghunathan, S. R. (2009). Supreme Court Steps In: Struggle in Progress, Frontline (25 June 2009)

⁹⁹ Zaide, Annie (2006, September 22). India's shame: Manual scavenging is still a disgusting reality in most States despite an Act of Parliament Banning it, Frontline.

¹⁰⁰ <https://nhrc.nic.in/press-release/commission-pursues-issue-abolition-manual-scavenging>

¹⁰² Safai Karamchari Andolan Survey, 2009.

¹⁰⁴ Census 2011, Govt

1,314,652 toilets where the human excreta was flushed in open drains and there were 497,236 toilets where the human excreta was serviced by animals¹⁰⁶. According to the Rashtriya Garima Abhiyan both of these require cleaning by conservancy workers. Thus, in total there were more than 26 lakhs dry latrines in the country where the practice of manual scavenging still continued at the time of the census. Further, the data showed 14,703,818 million urban households in India (or 18.6 %) did not have latrine facility within the premises¹⁰⁷. In addition to this a large number of dry latrines exist in the Indian railways which are serviced by manual scavengers. However, the data for this was not included in the Census statistics.

What we can conclude from this data is that even after two decades after the first law banning dry latrines and manual scavenging, there was little progress. Although households using such latrines formed only a tiny proportion of the urban households, nevertheless, they did represent a substantial number in absolute terms. This underscores the lack of will on the part of the state, institutions as well as society to eliminate the practice, which continues to exist in 21st century modern India.

State Intervention for the Protection of Manual Scavengers

Constitutional Safeguards

Since manual scavengers belong to the backward section of society, they are entitled to general as well as some special rights under the Indian constitution. Some of the important constitutional provisions for their protection are as follows:

- Article 14: Equality before law (Right to Equality)
- Article 16(2): Equality of opportunity in matters of public employment
- Article 17: Abolition of Untouchability
- Article 21: Protection of life and personal liberty
- Article 23: Prohibition of traffic in human beings and forced labour
- Article 41: Right to work, to education and public assistance in certain circumstances
- Article 42: Just and humane conditions of work
- Article 46: Promotion of educational and economic interests of scheduled castes, scheduled tribes and other weaker sections
- Article 338: Constitution of a National Commission for Schedule Caste

Legislative Provisions

Apart from these Constitutional provisions the parliament has also enacted certain laws for the protection and upliftment of the backward communities including manual scavengers.

- **The Protection of Civil Rights Act, 1955:** The Untouchability (Offences) Act was enacted in 1955 to abolish the practice of untouchability and the social disabilities arising out of it, against members of the scheduled caste¹⁰⁸. It was amended in 1977 and is now known as the Protection of Civil Rights Act, 1955. Under the revised Act, the practice of untouchability was made both a cognizable and a non-compoundable offence with stricter punishments for the offenders. Under section 7(a) of the Act, anyone forcing another person to illegally to engage in bonded labor, manual scavenging or disposing animal carcasses shall be deemed to be committing a criminal offense and can be sentenced to 3 to 6 months of imprisonment or fined up to Rs. 500¹⁰⁹.
- **Bonded Labor System (abolition) Act, 1976:** An Act to abolish the bonded labour system.
- **The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989:** This Act came into force on January 31, 1990. The main objective of the Act is to prevent the commission of offences of atrocities against the members of the scheduled castes and the scheduled tribes, to provide for special courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and related matters¹¹⁰. The Act was further strengthened in relation to manual scavengers through a recent amendment making it a punishable offence to employ, permit or make any person belonging to the SC/ST community work in manual scavenging¹¹¹. The contravention of the said provision attracts an imprisonment for a term not less than six months and may exceed to five years including a fine.
- **Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993:** This Act provides for the prohibition of employment of manual scavengers as well as construction or continuance of dry latrines and for the regulation of construction and maintenance of water sealed latrines and other related matters¹¹². This Act has been replaced by the Prohibition of Employment as Manual Scavengers and their Rehabilitation (PEMSR) Act, 2013.

Statutory Commissions

The Government of India has appointed some commissions to oversee rehabilitation and social inclusion of manual scavengers

- **National Commission for Safai Karamcharis:** The 1993 Act established the National Commission for Safai Karamcharis as an autonomous organization to study, evaluate and monitor the implementation of various schemes for safai karamcharis as well as for the grievance redressal of the manual scavengers¹¹³. This commission has also been recognized by the 2013 Act. Section 31 of the PEMSAR Act, 2013, bestows statutory responsibility on the Commission to monitor the implementation of the Act, as well as to enquire into the contraventions within the implementation of the PEMSAR Act, 2013¹¹⁴.

¹⁰⁸ Act no. 22 of 1955 and the Protection of Civil Rights (PCR) Rules, 1977

¹⁰⁹ Ibid

¹¹⁰ Act no. 33 of 1989 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995

¹¹¹ The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (Act no. 1 of 2016).

¹¹² Act No. 46 of 1993

¹¹³ Act no. 64 of 1993

¹¹⁴ Prohibition of Employment as Manual Scavengers and their Rehabilitation (PEMSR) Act, 2013

- **National commission for schedule caste (NCSC):** The commission is constituted with a mandate to safeguard the interest of schedule castes in India. Article 338 (5) of the constitution of India lays down certain duties of the NCSC¹¹⁵.
 - i. to investigate and monitor all matters relating to the safeguards provided for the scheduled castes and evaluate the working of such safeguards
 - ii. to inquire into specific complaints with respect to the deprivation of rights and safeguards of the scheduled castes
 - iii. to participate and advise on the planning process of socio-economic development of the scheduled castes and to evaluate the progress of their development
 - iv. to make recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the scheduled castes
 - v. to discharge such other functions in relation to the protection, welfare and development and advancement of the scheduled castes
 - vi. to make in such reports recommendations as to the measures that should be taken by the Union or any state for the implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the scheduled castes

Government Schemes

Some schemes initiated by the various governments for the welfare of scavenging communities are:

- **Self-employment scheme for rehabilitation of manual scavenging (SRMS):** In April 2007, the government initiated this scheme for the rehabilitation of manual scavengers. Central Government has revised the SRMS through the provisions of the 2013 Act¹¹⁶. The main features of the Scheme include a one-time cash assistance, training with stipend and concessional loans with subsidy for taking up alternative occupations¹¹⁷.
- **National scheme of liberation and rehabilitation of scavengers and their dependents (NSLRSD):** Initiated in 1989, the main objective of the NSLRSD was to liberate manual scavengers from their existing hereditary occupation and to provide for alternative dignified occupations. In 2003, a CAG report concluded that scheme failed to achieve its objective. The report further pointed that there was no evidence to suggest that those liberated were also rehabilitated¹¹⁸.
- **Integrated low cost sanitation scheme:** The Ministry of Urban Employment and Poverty Alleviation along with HUDCO have joined hands in taking up a programme for Integrated Low Cost Sanitation, for conversion of the dry latrine system into water borne low cost sanitation while liberating manual scavengers¹¹⁹.

¹¹⁵ Constitution of India, art. 338 (5) a-h

¹¹⁶ Act no. 35 of 2014

¹¹⁷ Ibid

¹¹⁸ Safai Karamchari Andolan v. Union of India (2014) 1 SCC 224

¹¹⁹ Under 'Pay and Use Toilet Scheme', Central assistance through Housing and Urban Development Corporation (HUDCO) was available to Urban Local Bodies (ULBs) for construction of toilets for footpath and slum dwellers who were unable to construct their own toilets.

• **Nirmal Bharat Abhiyaan (NBA) (2009-14) and Swach Bharat Abhiyaan (SBA) (2014- 19):** The Total Sanitation Campaign (TSC) was conceived in 1999 to ensure 100% sanitation in rural and urban areas by 2017. It was later renamed the Nirmal Bharat Abhiyan in 2012 and then replaced by the Swach Bharat Abhiyan (SBA) in 2014. The SBA has been conceived with the following objectives¹²⁰ :

- i. Elimination of open defecation.
- ii. Eradication of Manual Scavenging.
- iii. Modern and Scientific Municipal Solid Waste Management.
- iv. To effect behavioural change regarding healthy sanitation practices.

The Judiciary has always played an active role in strengthening the cause of socio-economic justice by translating several directive principles into enforceable rights for the weaker sections of society. A liberal interpretation of article 21 of the constitution has created numerous rights and has given a new direction to social welfare jurisprudence in India. With regard to manual scavenging, the courts have adopted a stern attitude towards the State authorities for failing to eliminate this practice. The following two cases highlight the position of the judiciary.

Safai Karamchari Andolan v. Union of India, 2014¹²¹

In this case the Supreme Court acknowledged the menace of manual scavenging as an inhuman, degrading and undignified practice. The Court observed that the PEMSAR Act, 2013 and the EMSCDL Act, 1993, neither dilute the constitutional mandate of article 10 nor does it condone inaction on part of union and state governments. The Court also held that the PEMSAR Act, 2013 expressly acknowledges article 17 and 21 of the constitution as the rights of persons engaged in cleaning sewage and tanks as well as cleaning human excreta on railway tracks. Further, the Supreme Court laid down following propositions with regards to rehabilitation of manual scavengers:¹²²

- a. Sewer deaths – entering sewer lines without safety gears should be made a crime even in emergency situations. For each such death, compensation of Rs. 10 lakhs should be given to the family of the deceased.
- b. Railways – should take time bound strategy to end manual scavenging on the tracks.
- c. Persons released from manual scavenging should not have to cross hurdles to receive what is their legitimate due under the law.
- d. Provide support for dignified livelihood to safai karamchari women in accordance with their choice of livelihood schemes.
- e. Identify the families of all persons who have died in sewerage work (manholes, septic tanks) since 1993 and award compensation of Rs.10 lakhs for each such death to the family members depending on them.
- f. Rehabilitation must be based on the principles of justice and transformation.

¹²⁰ https://swachhbharaturban.gov.in/writereaddata/Mission_objective.pdf

¹²² Ibid para 14.

¹²¹ 2014 (4) SCALE 165.

The Supreme Court stressed on the rehabilitation of manual scavengers in accordance with part IV of the PEMSAR Act, 2013. It further directed the state governments and union territories to fully implement various provisions of PEMSAR Act, 2013 and take appropriate action for non-implementation as well as violation of provisions contained in the Act.

Delhi Jal Board v. National Campaign for Dignity & Rights of Sewerage and Allied Workers, 2011¹²³

In this case the Supreme Court passed a judgement highlighting the plight of the scavengers and sewage workers who risk their lives by working without any safety equipment and have been deprived of their fundamental rights for the last six decades. The Court also criticised the government and the state apparatus on being insensitive to the safety and wellbeing of these people who are compelled to work under the most unfavourable conditions and regularly face the threat of death. In addition the Court not only ordered a higher compensation to the families of the deceased, but also directed the civic bodies to ensure immediate compliance of the orders passed by the Delhi High Court for ensuring the safety and security of the sewage workers.

The PEMSAR Act, 2013

The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 received assent of the President of India on 18 September 2013¹²⁴. This Act replaced the existing Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 as it had been completely ineffectual¹²⁵.

The 2013 Act has a wider scope and goes beyond prohibitions on dry latrines, and outlaws all manual excrement cleaning of insanitary latrines, open drains, or pits. And, importantly, it recognizes a constitutional obligation to correct the historical injustice and indignity suffered by manual scavenging communities by providing alternate livelihoods and other assistance.

Salient Features

- i. The Act prohibits manual scavenging and also discharges employees who are engaged in this practice on a contractual basis¹²⁶.
- ii. It widens the definition of manual scavengers by including in it all forms of manual removal of human excreta like an open drain, pit latrine, septic tanks, manholes, and removal of excreta on the railway tracks¹²⁷.
- iii. It lays key focus on rehabilitating the manual scavengers by providing them with ready-built houses, financial assistance & loans for taking up alternate occupation on a sustainable basis, organizing training programs for the scavengers so that they can opt for some other profession at a stipend of Rs. 3000 and offering scholarships to their children under the relevant scheme of the government¹²⁸.
- iv. The Act makes the offense of manual scavenging cognizable and non-bailable¹²⁹.

¹²³ 2011 (8) SCC 568

¹²⁴ Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013 (Act 25 of 2013)

¹²⁵ Ibid Sec. 3

¹²⁶ Ibid Sec. 5(1)(b)

¹²⁷ Ibid Sec. 2(1)(g)

¹²⁸ Ibid Sec. 13(1)

¹²⁹ Ibid Sec. 22

- v. It calls for a survey of manual scavenging in urban¹³⁰ and rural areas¹³¹.
- vi. It makes it obligatory for employers to provide protective tools to the workers to eliminate the need for manual handling of excreta¹³².
- vii. Under the Act, each local authority, cantonment board and railway authority is responsible for surveying insanitary latrines within its jurisdiction¹³³. They shall also construct a number of sanitary community latrines¹³⁴.
- viii. It provides for detailed vigilance mechanism at the district, state and the central level¹³⁵.

Table 1: A Comparison between the EMSCDL Act, 1993 Act and the PEMSR Act, 2013

	EMSCDL Act 1993	PEMSR Act 2013
Focus	Sanitation with a focus on prohibition of dry latrines	Right to Dignity through welfare and rehabilitation
Coverage	Dry Latrines	Dry latrines; the sewage system, railway tracks, septic tanks and insanitary Latrines.
Definition of Manual Scavengers	A person employed in manually carrying human excreta.	A person employed in manually cleaning, carrying, disposing of, or otherwise handling in any manner, human excreta in an insanitary latrine or in an open drain or pit.
Enactment	Under State List	Under Concurrent List
Classification of Offence	Cognizable	Cognizable and Non-Bailable
Identification of Manual Scavengers	No Provision	Provision for conducting survey of manual scavengers
Penal Provisions	Upto 1 year of imprisonment and fine upto Rs. 2000.	For violation of provisions of prohibition of insanitary: 1• st contravention- upto 1 year imprisonment and fine upto Rs. 50,000/- or both. Double in case of 2nd and subsequent• offences. For violation of provisions of prohibition of hazardous cleaning of septic tanks and sewers 1• st contravention- upto 2 years imprisonment and fine upto Rs.2 lakh. 2• nd/ subsequent contravention - 5 years and fine upto Rs. 5 lakh, or both.
Local Authorities	No responsibility to provide sanitary latrines	Mandatory obligation to provide sanitary latrines under section 4(1).

Source: PRS Legislative Research, 2013

Key Issues

- i. **Loophole in the Act:** Bans ‘hazardous cleaning’ of septic tanks and sewer pits, but only if workers are not provided ‘protective gear’ and ‘other cleaning devices’. However, does not define what the ‘protective gear’ is¹³⁶. A worker may be provided only a safety belt but not the helmet, waterproof apron, or headgear. It defeats the whole purpose of safety from hazardous work.

¹³⁰ Ibid Sec. 14(1)

¹³¹ Ibid Sec. 14(1)

¹³² Ibid Sec. 33(1)

¹³³ Ibid Sec. 4(1)(a)

¹³⁴ Ibid Sec. 4(1)(c)

¹³⁵ Ibid Sec. 24(1)

¹³⁶ <https://www.epw.in/engage/article/manual-scavengers-blind-spot-urban-development-discourse>

- ii. **Discrepancy in Data:** The Act provides rehabilitation measures to a person identified as a manual scavenger as per Sec 12 of the Act. For the purpose of identification state agencies are required to collect reliable data on the number of dry latrines and the number of people involved in manual scavenging. However, in many states surveys not conducted properly and there are huge discrepancies in data. As per the National Safai Karamchari Finance and Development Corporation's Report (2016-2017) there are 26 lakh insanitary latrines in the country. 13.29 lakh are in urban areas and 12.71 lakh in rural areas¹³⁷. Further, as of 31st March 2017, 12,742 manual scavengers have been identified in 13 states¹³⁸. This figure is prima facie disproportional as it is inconceivable that 13,000 manual scavengers can excavate 26 lakh insanitary latrines. There is also mismatch between independent studies and the number of manual scavengers identified by State Governments.
- iii. **Death of Manual Scavengers:** In September 2019 in response to a petition the Supreme Court had remarked that sewers in India were like gas chambers where manual scavengers were sent to die¹³⁹. The court had questioned the government's failure to provide protective gear leading to a large number of deaths. Manual scavenging was banned 25 years ago with the passage of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, but every year, scores of manual scavengers die, asphyxiated by poisonous gases. According to official data, 820 sewer deaths have happened in between 1993 and August 2019¹⁴⁰. However, experts and activists say that this number is grossly underestimated. SKA recently collated data of 1,870 deaths and submitted it to the government. This is an increase by 400 deaths from just September 2018 when the organisation had done a similar exercise. The problem lies in the lack of planning and regulation in the construction and maintenance of sewage. In many cases, workers are also not provided with any safety equipment or gear such as masks or protective clothing, goggles, etc. This also results from the lack of clarity on the definition of protective gear.
- iv. **Laxity in Punishment:** Section 9 of the Act explicitly stipulates a punishment of up to two years' imprisonment and fine of rupees two lakh for the first offence, and five years' imprisonment and fine of rupees five lakh for subsequent offences. These penalties are attracted the moment a worker is sent into a manhole or septic tank without protective equipment even if death is not caused as a result. Despite such stringent provisions, no FIR was filed under the provisions of this Act in 2014¹⁴¹. Two cases under the law were reported from Karnataka in the NCRB report of 2015, where only one went for trial. Till March 2018 Karnataka had the highest FIRs at 55. Till date, not a single employee of DJB has been successfully prosecuted for any of the deaths occurring in Delhi's sewers¹⁴².
- v. **Administrative Neglect:** The eradication of manual scavenging requires compliance from all bodies of the government. However, several authorities are often found flouting the Act¹⁴³. There is complete absence of planning for maintenance of sewerage, septic tanks, and waste disposal systems in the urban policies made for the city by the state and private companies. Ad-hocism prevails in official bodies where the work of maintaining sewers and drains are subcontracted to private contractors. There is no monitoring on the quality or conditions of work. This kind of acute contractualisation has also made fixing legal responsibility and identification of the guilty much more difficult.

¹³⁷ <https://clpr.org.in/blog/review-of-data-on-survey-and-identification-of-manual-scavengers/>

¹³⁸ Ibid

¹³⁹ <https://timesofindia.indiatimes.com/india/in-sewer-deaths-supreme-court-sees-gas-chamber/articleshow/71193184.cms>

¹⁴⁰ <https://www.downtoearth.org.in/news/rural-water-and-sanitation/sewers-are-gas-chambers-where-manual-scavengers-are-sent-to-die-sc-66803>

¹⁴¹ <https://theprint.in/india/282-deaths-in-last-4-years-how-swachh-bharat-mission-failed-indias-manual-scavengers/354116/>

¹⁴² <https://thewire.in/labour/manual-scavengers-rehabilitation-sanitation>

¹⁴³ <https://www.news18.com/news/buzz/manual-scavenging-is-illegal-in-india-then-hows-there-7-lakh-foot-soldiers-of-swachh-bharat-1898891.html>

- vi. **Failure of Swachh Bharat Mission:** The policy push for toilet construction and under the Swachh Bharat Mission and Atal Mission for Rejuvenation and Urban Transformation has serious implications for those engaged in cleaning them¹⁴⁴. The SBM is completely silent on manual scavengers. According to the Urban Development Ministry, under SBM more than 50 lakh individual household toilets have been constructed. However, the problem is that while toilets are being constructed there are no ways of disposing off the waste¹⁴⁵. Most parts of India, especially rural India, are not connected by the sewage system. Therefore most toilets that are built under SBM are single pit toilets which need to be cleaned manually. This is adding to the problem of manual scavenging.
- vii. **Inadequate Rehabilitation:** The Self Employment for Rehabilitation of Manual Scavengers (SRMS) scheme under the Ministry of Social Justice and Empowerment provides 3 main ways for rehabilitation of manual scavengers. First, under the one-time cash assistance scheme, one member of a manual scavengers' household is given Rs 40,000. Second, manual scavengers receive Rs 3,000 per month for two years of skill development training. And third, subsidies are provided on loans up to a predetermined fixed. However, as per the data¹⁴⁶, of the 42,203 who were identified in 2018 only 27,268 have been given cash assistance of Rs 40,000. Skill development training has been imparted to only 1,682 and only 252 manual scavengers have received a credit-linked subsidy of INR 325,000. Rehabilitation is constrained by a shortage of funds. As per the data provided by the National Safai Karamcharis Finance and Development Corporation (NSKFDC), the government has released a total of Rs 226 crore for rehabilitation since 2006-07¹⁴⁷. All funds were released before the financial year 2013-14 and no further funds have been released since then. Additionally, over Rs 24 crore of the funds released during the UPA government's tenure remains unspent.

Recommendations

- i. It is not going to be possible to eliminate manual scavenging unless right sanitation technologies are adopted. For instance,
- ii. Hyderabad Metropolitan Water Supply and Sewerage Board is using 70 mini jetting machines that can access narrow lanes and smaller colonies to clear the choked sewer pipes.
- iii. In Thiruvananthapuram, a group of engineers have designed a spider-shaped robot that cleans manholes and sewers with precision.
- iv. Need clear definition of what constitutes protective gear. In case a human has to be put inside a sewer, protective gear such as gloves, masks, and shoes must be provided. Any violation should be strictly penalized. A doctor must as well as an ambulance must be kept at hand in case of emergency.
- v. Need a thorough and independent study to ensure reliability of data on manual scavengers
- vi. The Supreme Court's judgment of 2014 should be duly implemented and applied in all cases of sewer/septic tank deaths and compensation should be ensured.

^{144, 145} Ibid

¹⁴⁶ <https://www.orfonline.org/expert-speak/swachh-bharat-a-failed-mission-for-manual-scavengers-60538/>

¹⁴⁷ <https://thewire.in/government/modi-govt-manual-scavengers-rehabilitation>

- vii. Criminal accountability of employers guilty of sending/compelling workers to clean sewers/septic tanks etc., leading to their death or illness, should be established. Trials in all such cases should be fast tracked.
- viii. Authorities should be sensitized to recognize the intensity of the issue and see the problem as dehumanizing and unconstitutional. The underlying caste-based attitude to sanitation workers should be identified and strong action should be taken in case of malpractice.
- ix. The state should take primary responsibility for sewerage and ensure that provisions are made for proper working conditions for all sanitation workers.
- x. The right to sanitation should not be provided at the cost of the basic fundamental rights of sanitation workers. It is important to factor in the repeated deaths of sewer/septic tank workers into the design of present and future sanitation policies and campaigns of cleaning India. The government should turn its attention away from toilet construction and explore ways to empty pits without human intervention.
- xi. Adequate funding needs to be ensured. All rehabilitation measures need to be made available to all identified manual scavengers on an immediate basis.

For manual scavengers in India it was earlier a struggle for dignity, but today it has become a struggle for survival. They are denied any other secure source of livelihood, and are compelled to resort to manual scavenging in order to meet their livelihood needs. And in the process many of them lose their lives. The very existence of manual scavenging and the apathy of the state must be seen as a form of violence, especially when there are explicit orders from the Supreme Court on the matter. The state is culpable of criminal neglect leading to preventable death of individuals from the most vulnerable section of society. This situation continues due to the state's neglect of its vital oversight role regarding compliance with the law banning manual scavenging as well as the directives from the Supreme Court. The state is also involved in the unconstitutional and inhuman practice through its various urban local bodies and government departments. The state of affairs also continues because of the continuing operation of caste and untouchability in society. Therefore, going forward it is imperative that the government fully commit itself in ensuring that the law prohibiting this inhuman practice is implemented fully in letter and spirit.

References

1. Balakrishnan, Uday. April 14, 2020. 'Ambedkar and the Poona Pact,' The Hindu. New Delhi: The Hindu.
2. Balani, Sakshi. June 2013. 'Legislative Brief: The Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill, 2012', New Delhi: PRS Legislative Research.
3. Bose, Rakhi. October 9, 2018. 'Manual Scavenging is Illegal in India. Then How are There '7 Lakh Foot Soldiers of Swachh Bharat'', News18.
4. Census 2011, Gol.

5. Choudhary, Amit Anand. September 19, 2019. 'In sewer deaths, Supreme Court sees 'gas chamber',' The Times of India. New Delhi: Times News Network.
6. CLPR. June 26, 2019. 'Review of Data on Survey and Identification of Manual Scavengers', Bengaluru: Centre for Law and Policy Research.
7. Darokar, Shaileshkumar. June, 2018. 'Manual Scavengers: A Blind Spot in Urban Development Discourse,' Economic and Political Weekly, Vol. 53, No. 22. Mumbai: Economic and Political Weekly.
8. Desai, Dhaval. January 22, 2020. 'Swachh Bharat – A failed Mission for Manual Scavengers', Mumbai: Observer Research Foundation.
9. Desai, Dhaval. January 27, 2020. '282 deaths in last 4 years: How Swachh Bharat Mission failed India's manual scavengers,' The Print.
10. Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993
11. IDSN. 2017. 'The Inhuman Caste and Gender Based Sanitation Practice of Manual Scavenging in India....', International Dalit Solidarity Network.
12. Kapil, Shagun. September 18, 2019. 'Sewers are gas chambers where manual scavengers are sent to die: DC,' Downtoearth.
13. Keer, Dhananjay (1990). Dr. Ambedkar: Life and Mission (3rd edn). Bombay: Popular Prakashan Private Limited
14. Mishra, Dheeraj. August 31, 2018. 'Modi Govt Has Not Released a Single Rupee for Rehabilitation of Manual Scavengers,' The Wire.
15. Prohibition of Employment as Manual Scavengers and their Rehabilitation (PEMSR) Act, 2013
16. Protection of Civil Rights Act, 1955 and the Protection of Civil Rights (PCR) Rules, 1977
17. Raghunathan, S. R. (2009). Supreme Court Steps In: Struggle in Progress, Frontline (25) June 2009.
18. Safai Karamchari Andolan Survey, 2009.
19. Singh, Tripti and Singh, Manish. May 8, 2019. 'Rehabilitating Manual Scavengers Must Go Beyond Reinforcing Caste Hierarchies,' The Wire.
20. Social Inclusion of Manual Scavengers (2012). A Report of National Round Table Discussion Organised by United Nations Development Programme and UN Solution Exchange
21. Socio Economic Caste Census 2011
22. Srivastava, B.N. (1997). Manual Scavenging in India: A Disgrace to the Country. New Delhi: Sulabh International Social Service International and Concept Publishing

23. The Constitution of India

24. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

25. Zaide, Annie (2006, September 22). India's shame: Manual scavenging is still a disgusting reality in most States despite an Act of Parliament Banning it, Frontline.

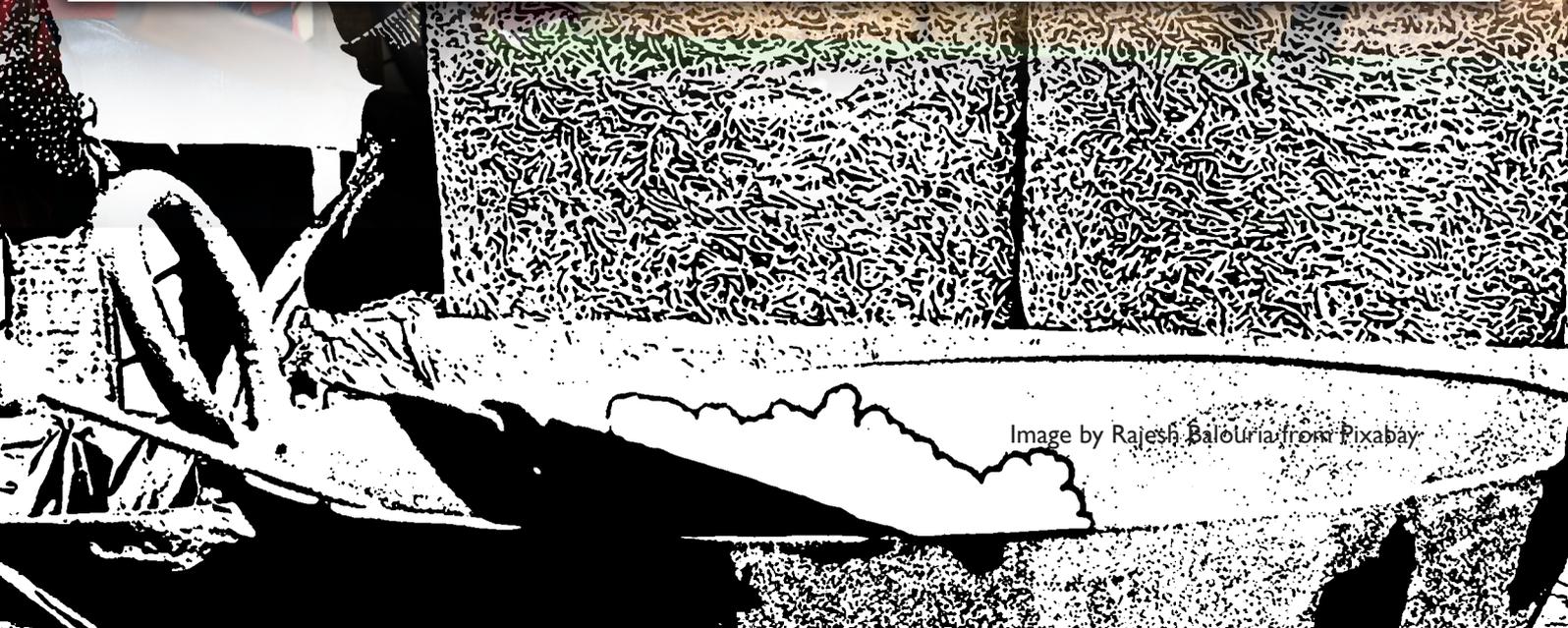


Image by Rajesh Balouria from Pixabay

Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014

Background

Street vending is a source of livelihood for a large number of people in India's informal sector, yet it has been considered an undesirable activity by many in the city administration. The general public too sees them as encroachers of public space and this notion has led to their constant harassment by the police and civic authorities.

This conflict between civic authorities and street vendors has its roots in 19th century colonial India. In the second half of the 19th century the colonial regime started seeing hawking as an obstruction and a threat to public order¹⁴⁸. At the time many Municipal regulations were introduced to deal with the perceived breakdown of urban order associated with industrialisation, migration and social and communal riots¹⁴⁹. The introduction of these regulations represented a redefinition of the legal status of public space and the outside became a public space under the jurisdiction of the colonial state. This new demarcation between public and private had the effect of depriving the working classes and removing their access from the collective use of public spaces¹⁵⁰. This notion continued post independence and vendors were continued to be seen as encroachers by the state.

The contestation over public space in post independent India led to a number of litigations and street vending emerged as a major policy issue in the 1980s. In a 1985 ruling by the Bombay High Court, in the case of *Bombay Hawkers Union v Bombay Municipal Corporation*¹⁵¹, for the first time the courts upheld the right of livelihood street vendors, and sought to legitimise vendors through licensing, and creating hawking and non-hawking zones. Subsequently, in 1985 the Supreme Court also held the right to livelihood to be an integral part of the right to life in *Olga Tellis v. Bombay Municipal Corp*¹⁵². Thereafter, in 1989, in the case of *Sodan Singh vs. NDMC*¹⁵³, the Supreme Court again held that street vendors had a right to carry on their business and the same can't be sacrificed for the peoples' superficial right to use streets. The court ordered that the vendors be given the right to trade with reasonable restrictions, and observed that inaction on the part of the government with regard to street vendors would amount to negating the fundamental rights of citizens.

¹⁴⁸ Anjaria J.S. 2016. *The Slow Boil*. Stanford, Stanford University Press.

¹⁴⁹ Kidambi P. 2007. *The Making of an Indian Metropolis. Colonial Governance and Public Culture in Bombay, 1890-1920*. Aldershot, Ashgate.

¹⁵⁰ Anderson M. 1992. *Public Nuisance and Private Purpose: Policed Environments in British India, 1860-1947*. SOAS Law Department Working Papers, July (1).

¹⁵¹ (1985) 3 SCC 528.

¹⁵² (1985) 3 SCC 545.

¹⁵³ (1989) 4 SCC 155.

In the 1990s India entered the liberalization era and there was exponential growth in urbanization and related issues. India's big cities started confronting problems similar to many cities worldwide such as congestion, lack of formal job opportunities and growing informal economies. As in other countries, the drive to achieve world class cities led to large-scale evictions of street vendors and many small organizations of street vendors emerged in protest of these evictions¹⁵⁴. At the time, globalization and urbanization had exacerbated city-level conflicts between vendors and local authorities across the world and street vendors began to organize internationally¹⁵⁵. In November 1995, representatives of street vendors from 11 cities across the world held the inaugural meeting of the International Alliance of Street Vendors in Bellagio, Italy¹⁵⁶.

The Bellagio International Declaration of Street Vendors, signed by representatives at that meeting, envisaged the formulation of a National Policy for hawkers and vendors to improve their standard of living by giving them a legal status through licensing, promotion of self-regulation, access to legal system and credit facilities etc¹⁵⁷. Following the Bellagio Conference, in September 1998, the National Association of Street Vendors of India (NASVI) was formed to bring the struggles of street vendors to the national stage¹⁵⁸. Over the years NASVI along with NGOs such as SEWA, National Hawkers Federation, Nidan, Manushi etc. have played a critical role in creating an enabling environment for the promotion of street vendors' rights in India.

Post the Bellagio declaration, although India was a signatory, it was only in 2001 with considerable pressure from civil society groups such as NASVI and Sewa that the Government took the initiative of forming a Task Force to look into the issues and come up with a suitable policy¹⁵⁹. This effort culminated in a National Policy that was introduced in 2004. The main weakness of the 2004 policy statement was that it was only a guideline, and there was no mechanism to ensure implementation by the state and municipal governments¹⁶⁰. As a result the implementation was patchy.

In the same year the National Commission for Enterprises in the Unorganized Sector (NCEUS) was set up by the government to assess the problems faced by small enterprises. The NCEUS consulted with NASVI and other NGOs working with street vendors who expressed concern over the lack of implementation. Following from these consultations the NCEUS published a report in 2006 giving specific recommendations for policy implementation¹⁶¹. Based on the 2006 report the 2004 guidelines were later updated in 2009 to include modifications to improve implementation¹⁶². After the revised 2009 guidelines were published, the cause of street vendors was taken up by the National Advisory Committee.

The NAC consultations were followed by a 2010 Supreme Court ruling which called on the government to enact a law on street vending and reinforced the need for state and local governments to implement binding laws based on the National Policy¹⁶³. This judgement culminated in the drafting of the Street Vendors' Bill in 2012, which involved extensive dialogue between NASVI and the Ministry of Housing and Urban Poverty Alleviation. However, at one point in 2013 the drafting process stalled due to a petition in the Supreme Court for the "protection of public spaces" in the 2013 case of Maharashtra Ekta Hawkers Union &

¹⁵⁴ https://www.wiego.org/sites/default/files/publications/files/Sinha_WIEGO_PB2.pdf
^{155, 156, 160} Ibid

¹⁵⁷ <https://ccs.in/sites/default/files/research/research-property-rights-of-street-vendors.pdf>

¹⁵⁸ <http://nasvinet.org/newsite/about-nasvi/#:~:text=US%20%2F%20About%20NASVI-,About%20NASVI,Societies%20registration%20Act%20of%201860.>

¹⁵⁹ https://www.wiego.org/sites/default/files/publications/files/Sinha_WIEGO_PB2.pdf

¹⁶¹ <https://ruralindiaonline.org/library/resource/national-policy-on-urban-street-vendors-report-recommendations/>

¹⁶² Government of India. (2009) National policy on street vendors. New Delhi: Ministry of Housing and Poverty Alleviation.

¹⁶³ (2010) 10 SCC 715.

Anr. v. Municipal Corporation, Greater Mumbai & Ors¹⁶⁴. But the SC once again came in support of the street vendors gave detailed guidelines for the implementation of the 2009 policy. Thereafter, the Bill was passed in both houses by February 2014 and became the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014. This Act was drafted with the legislative intent of protecting the livelihood rights of street vendors under Article 19 of the Constitution, as well as regulating street vending.

The Street Vendors Act acknowledges the integral role played by street vendors in the urban ecosystem. Further, The Act mandates local bodies under the state governments to carry out surveys and identify street vendors, set up participatory town vending committees comprising all stakeholders (street vendor associations, resident welfare associations, municipal officials), and create dedicated vending zones to accommodate the street vendors¹⁶⁵. The Act now governs over all matters in regards to the rights and duties of the street vendors in India. It also provides for confiscation of goods that are being sold by street vendors to be cataloged properly¹⁶⁶. The 2014 Act was widely seen as a major success for NASVI, which after nearly ten years of lobbying was actively involved in drafting the legislation. The Act also represents a significant innovation in mechanisms to regulate the informal sector.

The Street Vendors Act is unanimously considered a progressive social policy aimed at protecting the livelihoods of street vendors. However, many studies and reports have pointed out that there is an uneven implementation of The Act cross the country, thus subverting the very spirit of the Act. The 2019 report by the Centre for Civil Society had identified 11 steps that were required to be undertaken by states to implement the Act¹⁶⁷. Further, it had pointed that no state has implemented all of them yet, and Tamil Nadu, Mizoram, Chandigarh and Rajasthan had progressed the most. The main highlights of the study:

- Only 26 states had notified the rules whereas, four states namely, Arunachal Pradesh, Karnataka, Telangana and Nagaland had not notified the rules
- Section 38 of The Act requires state governments to frame and notify a scheme within 6 months from May 2014. However, till January 2019 only 19 states had notified the scheme, whereas 11 states including Arunachal Pradesh, Gujarat, Haryana, Karnataka, Kerala, Madhya Pradesh, Manipur, Nagaland, Puducherry, Sikkim and West Bengal were yet to notify the scheme.
- Only Four states including Assam, Madhya Pradesh, Uttarakhand and Punjab, had formed the Grievance Redressal Committees as mandated by section 20.
- Only 14 states namely Andhra Pradesh, Bihar, Chandigarh, Goa, Gujarat, Haryana, Kerala, Meghalaya, Mizoram, Puducherry, Punjab, Rajasthan, Telangana and Tripura had formed TVCs in all their towns. Further, only 33% of the 7,263 towns had formed the Town Vending Committees as required by section 22(1). And only 58% of TVCs had the requisite vendor representation of 40%
- 98% of TVCs formed had completed vendor enumeration as required by section 3. Further, the following eight states, Arunachal Pradesh, Gujarat, Haryana, Karnataka,

¹⁶⁴ (2014) 1 SCC 490.

¹⁶⁵ Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014

¹⁶⁶ Ibid

¹⁶⁷ CCS. January 2019. Progress Report: Implementing the Street Vendors Act 2014. New Delhi.

Kerala, Madhya Pradesh, Manipur, and Puducherry had enumerated vendors without a scheme.

- 50% of TVCs had issued identity cards to the identified vendors. Five states, namely Arunachal Pradesh, Gujarat, Kerala, Manipur and Puducherry had distributed identity cards without a scheme.
- Section 21 mandates the local authority to frame a street vending plan based on recommendations from the TVC. The vending zones are to be earmarked based on these plans. However, only 20% of the TVCs had published vending plans. The following 5 states: Madhya Pradesh, Maharashtra, Meghalaya, Nagaland and Punjab have demarcated vending zones without a vending plan.
- Only 31% of the TVCs formed had published a street vendor charter as required by section 26. These belong to the following seven states namely Bihar, Madhya Pradesh, Maharashtra, Odisha, Puducherry, Rajasthan and Tamil Nadu.

Key Issues

- Discrepancy in Number:** There is conflicting data on the number of street vendors in Indian cities¹⁶⁸. The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 puts forth a figure of a maximum of 2.5 percent of a city's population as street vendors. According to the 2011 census the urban population at the time was around 377 million which would make the number of vendors at a little more than 9 million. Considering the growth rate the current figure would be around 10 million vendors. However, as per the NSSO data the urban population with vending as their occupation has grown from 1.03 million in 1983 to 1.61 million in 2011-12. Even if it is considered to be 2 million at present, there is still a huge variation in both figures. Having reliable data is necessary from the perspective of land use planning.
- Bar on Other Livelihood Sources:** Section 5 of The Act mandates that in order to be eligible for a street vending certificate a vendor cannot have any other means of livelihood except street vending. This provision puts an unnecessary bar on any additional sources of income.
- Continued Eviction:** Despite The Act street vendors continue to be seen as encroachers on public land and continue to be evicted across the country¹⁶⁹. In 2019 there were a number of eviction drives in Delhi in places such as Karol Bagh, Connaught Place etc. Around 58,000 vendors were evicted in Mumbai between August and October 2017 as reported by the Hindustan Times. In Indore, about 200 vendors were evicted and moved 2 kilometres away to a spot where getting customers became difficult.
- Extortion and Harassment:** Across the country street vendors are often required to pay bribes to avoid harassment from public authorities. This is in gross violation of the primary objective of The Act which is to provide a safe and harassment free environment. A 2017 study on various spatial market zones in Delhi found that harassment by authorities included confiscation of goods, discriminate fines as well as physical violence in some

¹⁶⁸ <https://www.orfonline.org/research/strengthening-urban-indias-informal-economy-the-case-of-street-vending/>

cases¹⁷⁰. A 2015 study by the Center for Civil Society in 8 market zones in Delhi, reported that an average annual loss by vendors was Rs.1,76,238 on account of paying bribes, penalties, affidavit charges and costs incurred due to damaged goods during evictions¹⁷¹. This amounted to 30% of their annual income.

v. **Problems in Formation of Town Vending Committees:** The Act requires formation of TVCs through elections and only street vendors with valid ids can vote in these elections. However, the problem is that these ids have to be issued by the TVC through periodic surveys of vendors in the first place. This creates an inherent problem in the formation of TVCs. To overcome this some states have created provisional Town Vending Committees with nomination or elections based on outdated official lists¹⁷². However, it is not clear how states will transition from provisional to final. The initial TVCs that have been formed also have an under representation of vendors. The law mandates 40 percent representation of street vendors in the TVCs. A 2019 CCS study¹⁷³ has shown that in 756 TVCs in fourteen states, which account for 30 percent of all TVCs, there is no vendor representation.

vi. **Failure of Urban Planning:** The Act requires alignment of state planning laws to vending needs. Vendors need to be located in spots where customers can be found easily, but this needs to be achieved without impeding pedestrians, moving traffic and any other city activity. Therefore, street vending needs to be a planned activity and needs to be written into the urban planning laws. However, little has been done in practice to achieve this¹⁷⁴. The Smart City Mission which envisions building over 100 smart cities in the country has also done little to include the interest of vendors¹⁷⁵. There are many cities such as Delhi, Patna, Ranchi and Indore where vendors have been evicted under the guise of Smart City projects.

Impact of Covid-19 on Street Vendors

The recent covid-19 lockdown had resulted in the whole country being virtually shut down and had a huge impact on the lives of people. It had a particularly grave impact on the unorganised sector that constitutes the majority of the population in the country, which according to the Economic Survey released in 2019 accounts for 93 per cent of the total workforce of the country¹⁷⁶. While this sector has a big hand in running the country's economy, there is no concrete provision to protect it. Amongst them are the largest segment of the self employed, men and women who personify the true entrepreneurial spirit of India, the street vendors, hawkers and itinerant sellers.

The hawkers are the backbone of the cities with each cluster of vendors in Kolkata, Delhi, Mumbai, Bengaluru, Chennai and in tier two and three cities catering to different kinds of buyers, from the relatively rich to the absolute poor. The National Federation of Hawkers estimate 4 crore people engaged in the business of selling on the streets, in the metros, in small towns, in rural hubs across India¹⁷⁷. Further, their estimates suggest that 50% of the street vendors sell food, 35% of the fruits and vegetables sold in urban areas and in far-flung, remote rural corners are sold by vendors and around 20% of vendors sell clothes,

¹⁷⁰ <https://thewire.in/economy/street-vendors-act-implementation-gaps>

¹⁷¹ <https://peoplesdispatch.org/2019/11/15/indian-street-vendors-mobilize-to-demand-protections/>

¹⁷² <http://www.asianstudies.org/wp-content/uploads/Anand-Narang-Shah-Sabharwal.pdf>

¹⁷³ CCS, January 2019. Progress Report: Implementing the Street Vendors Act 2014. New Delhi.

¹⁷⁴ <https://www.orfonline.org/research/strengthening-urban-indias-informal-economy-the-case-of-street-vending/>

¹⁷⁵ <https://thewire.in/urban/street-vendors-hawkers-elections>

¹⁷⁶ <https://www.newindianexpress.com/opinions/2020/may/30/what-is-it-that-ails-our-informal-sector-2149869.html#:~:text=The%20Economic%20Survey%20of%202018,85%25%20of%20all%20workers.%E2%80%9D>

¹⁷⁷ <https://indianexpress.com/article/business/coronavirus-kolkata-lockdown-hawkers-association-6364899/>

plastic goods, unbranded crockery, cutlery and household goods. The turnover of this parallel economy is estimated to be around Rs 80 crore per day¹⁷⁸, where, at an average every vendor supports 3 others either as workers or partners. The lockdown had meant that this entire parallel economy had suddenly come to a standstill.

The lockdown had also caused the informal sector production lines to shut down as the hawkers had gone off the streets. This included thousands of cottage, tiny, small and medium enterprises that produced goods for the street markets, as well as women's self-help groups that produced pickles, papads, home made confectionary etc., who were without work because there was no off-take.

Recognising that street vendors are entrepreneurs and should have rights, the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act of 2014 was legislated to turn a vulnerable existence into an established model of doing business. The role of street vendors in every urban area as a model for creating livelihoods was made permanent. However, due to the lack of implementation of The Act coupled with the ripple effect of the pandemic, their situation during the lockdown became extremely precarious. Some of the major issues that emerged:

- i. **Insufficient Relief Package:** The street vendors had been recognized as a particularly vulnerable group by the central government and one of the first measures of the 'Atma Nirbhar Bharat' package on 14th May was directed towards them. As part of the package¹⁷⁹, the Central Government announced a Rs 5000 crore special credit facility for street vendors keeping in view the adverse impact on their livelihood. This was part of the 2nd leg of the Rs 20 lakh crore economic stimulus which was aimed at benefitting around 50 lakh vendors. Each vendor was supposed to be provided the initial working capital of Rs. 10000 in the form of a credit. However, the efficacy of the loan was under question and received criticism from the hawkers' association and trade union bodies who were seeking benefits like direct cash transfer¹⁸⁰.

In a 2018 city wide survey in Bangalore of 1000 street vendors conducted by the Indian Institute of Human Settlements, it was found that vendors often have a limited and reluctant engagement with formal financial institutions¹⁸¹. According to the survey, 10% of the respondents had previously applied for a bank loan and 28% did not even have a bank account. Further, the survey showed that less than 1% food vendors had previously accessed any government financial support scheme for starting their business. While 61% of the respondents were confident that the banks were willing to give loans, very few actually applied for these loans. Their main concern was a lack of knowledge about the process, documentation requirements, provision of collateral and even the fear of being unable to repay the loan which was holding them back.

The survey also reported on the incomes of street vendors. It found that the average monthly profit of food street vendors was about Rs 13,000, and for over half the

¹⁷⁸ <https://thewire.in/labour/street-hawkers-lockdown>

¹⁷⁹ <https://www.newindianexpress.com/business/2020/may/14/covid-19-relief-package-street-vendors-seek-cash-transfers-say-they-have-no-confidence-to-borrow-2143430.html>

¹⁸⁰ <https://www.newsclick.in/Delhi-Street-Vendors-Face-Debt-Trap-Absence-Government-Relief>

¹⁸¹ <https://www.deccanherald.com/opinion/coronavirus-lockdown-why-rs-5000-crore-credit-facility-for-street-vendors-may-fall-short-842796.html>

vendors, income from their food vending businesses constituted over 90% or more of their total household income. This also indicates how the lockdown would have resulted in most of the families of street vendors across the country losing almost all their household income over the last two months.

ii. **Discrepancy in Numbers leading to Exclusion:** The credit package of Rs. 5000 crore was supposed to benefit 50 lakh street vendors. However, as has been noted earlier, there is a huge discrepancy in the number of street vendors. As per the recent figures quoted by Mr. Hardeep Singh Puri, MoS, MoHUA, the figure stands at 18 lakh with 13 lakh vendors having valid identity cards. On the other hand the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014 puts forth a figure of a maximum of 2.5 percent of a city's population as street vendors. Considering the 2011 census, when the Urban population was 377 million, 2.5% would be a little more than 9 million and after adjusting for population growth it would come to 10 million or 1 crore vendors¹⁸². The National Hawker Federation has noted an even higher figure of 4 crore¹⁸³. These figures suggest a huge variation. Even if one considers the figure of 1 crore, this meant that a large number of vendors were excluded from the credit facility.

iii. **Impact on Women Vendors:** According to some estimates there are roughly 4 crore street vendors in India with women forming around 30% of this population. These women are mostly found in weekly haats and in street or footpath stalls, or helping their families in the back-end work. Given the pre existing inequalities in the informal workforce the current lockdown also has had a severe impact on women, including women street vendors. A recent study¹⁸⁴ by the Institute of Social Studies Trust has attempted to capture the impact of the lockdown on the women informal workers in Delhi. This has been done through studying 5 different sectors including domestic work, home based work, construction work, waste picking and street vending. The main findings of this study were as follows:

- 97.14% of the respondents had been adversely affected by the lockdown
- The women vendors working in weekly haats or street side stalls had completely lost their livelihoods
- 54% of respondents had taken loan to help them sustain during lockdown and 37.1% were finding it difficult to repay the loans. 65% respondents were depending on personal savings.
- 6% of the respondents attributed the income drop to mobility restraints or due to police patrolling which had a much greater impact on women
- Around 60% respondents shared lack of support from family members in sharing household chores and child care. A further 30% said that support was provided by other family members
- Many women were not able to explore alternative employment options as they had young children who needed care

¹⁸² <https://www.orfonline.org/research/strengthening-urban-indias-informal-economy-the-case-of-street-vending/>

¹⁸³ <https://thewire.in/labour/street-hawkers-lockdown>

¹⁸⁴ http://www.isstindia.org/publications/1590050642_pub_ISST_-_Women_Street_Vendors.pdf

- Vendors selling through carts have been harassed by RWAs and colonies are not allowing their entry
- 5.7% expressed concern over payment of house rent which would continue post lockdown

Recommendations

- It must be ensured that the provisions of The Act are implemented at the earliest. The Act comes with specific timelines and it is important to ensure accountability to prevent any further delay.
- Proper surveys of vendors need to be conducted within a short time period to ensure reliable data.
- Any bar on street vendors on having additional livelihood sources should be removed.
- A clear time limit should be mandated for providing vending certificates to reduce harassment by authorities.
- The eviction by local authorities should be done only after compliance with the TVC. A notice period should be given to street vendors before eviction.
- Any violation of The Act through extortion, illegitimate harassment or eviction must be severely penalized to ensure deterrence and accountability within the system.
- All TVCs need to ensure the mandated 40% representation of street vendors is adhered to.
- The roads around transportation terminals, hospitals, government offices, business Centres and similar places, which find a large number of people entering and exiting these spots, should be allotted for vending activities. This would require balancing vending, pedestrian and vehicular mobility, and hygiene. To achieve this, vending needs to be made a planned activity incorporated into urban planning.

References

- Anand, Bhuvana, Narang, Prashant and Ritika Shah. 2019. 'The Ease of Doing Business on the Streets of India,' Asian Studies, Vol. 24, No. 2. Ann Arbor: Association for Asian Studies.
- Anderson M. 1992. Public Nuisance and Private Purpose: Policed Environments in British India, 1860-1947. SOAS Law Department Working Papers, July (1).
- Anjaria J.S. 2016. The Slow Boil. Stanford, Stanford University Press.
- CCS. January 2019. Progress Report: Implementing the Street Vendors Act 2014. New Delhi: Centre for Civil Society.
- Chhabra, Ronak. June 1, 2020. 'Delhi: Street Vendors Face Debt Trap in the Absence of Government Relief,' Newsclick.

6. Dash, Dipak K. April 4, 2020. 'Covid-19 lockdown: Let identified vendors sell essentials, says Centre,' Times of India. New Delhi: Times of India.
7. Government of India. 2009. National policy on street vendors. New Delhi: Ministry of Housing and Poverty Alleviation.
8. Government of India. 2014. Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act.
9. Jagadeesh, Keerthana and Anand, Shriya. May 28, 2020. 'Coronavirus Lockdown: Why Rs 5,000 crore credit facility for street vendors may fall short,' Deccan Herald. Bengaluru: Deccan Herald.
10. Jha, Ramanath. July 2018. 'Strengthening urban India's informal economy: The case of street vending', Mumbai: Observer Research Foundation.
11. Kaur, Gurpreet, Ramachandran, Risha and Nanda, Rituu B. May, 2020. IMPACT OF COVID-19 LOCKDOWN ON WOMEN STREET VENDORS IN DELHI. New Delhi: Institute of Social Studies Trust.
12. Kidambi P. 2007. The Making of an Indian Metropolis. Colonial Governance and Public Culture in Bombay, 1890-1920. Aldershot, Ashgate.
13. Kulkarni, Pavan. November 15, 2019. 'Indian street vendors mobilize to demand protections,' Peoples Dispatch. New Delhi: Peoples Dispatch.
14. Kumar, Vikas. April 13, 2019. 'For Street Vendors and Hawkers, a Litany of Failed Promises,' The Wire. New Delhi: The Wire.
15. Maitra, Ashoke K. May 30, 2020. 'What is it that ails our informal sector?,' The New Indian Express. New Delhi: The New Indian Express.
16. Mukherjee, Shikha. April 23, 2020. 'The Streets Are Empty. How Are Hawkers Surviving This Lockdown?,' The Wire. New Delhi: The Wire.
17. NCEUS. 2006 National Policy on Urban Street Vendors: Report and Recommendations. New Delhi: Government of India.
18. PTI. April 16, 2020. '5 crore families who depend on roadside vending awaiting 'financial epidemic', says hawkers' body,' The Indian Express. Kolkata: The Indian Express.
19. Rai, Shivkrit and Mohan, Deepanshu. November 1, 2017. 'Gaps in Implementation of Street Vendors Act Are Making Delhi's Merchants Invisible,' The Wire. New Delhi: The Wire.
20. Sen, Sesa. May 14, 2020. 'COVID-19 relief package: Street vendors seek cash transfers, say they have no confidence to borrow,' The New Indian Express. New Delhi: The New Indian Express.
21. Sinha, Shalini and Roeber, Sally. April 2011. India's National Policy on Urban Street Vendors. Policy Brief, No. 2. New Delhi: WIEGO.
22. YUVA and NHF. July 2019. State-Wise Analysis of Rules for the Implementation of the Street Vendor's (Protection of Livelihood and Regulation of Street Vending) Act, 2014. City Say. Mumbai: Youth for Unity and Voluntary Action.



The Rights of Persons with Disabilities Act 2016

Introduction

India signed and subsequently ratified the UN Convention on Rights of People with Disabilities (UNCRPD) in 2007¹⁸⁵. The UNCRPD proclaims that disability results from the interaction of impairments with social attitudes which leads to barriers in full and active participation of PWDs in society on an equal basis¹⁸⁶. The convention also mandates the signatories to change their national laws in compliance of the principles of the UNCRPD¹⁸⁷. In this regard, the Indian Government began the process of enacting a new law replacing the Persons with Disabilities Act, 1995 to make it compliant with UNCRPD in 2010.

After many rounds of consultation the Rights of PWD Act (RPWD Act, 2016) was passed by both the houses of the Parliament in 2016. It was notified on December 28, 2016 after receiving Presidential assent and finally came into force on 19th April 2017¹⁸⁸. The 2016 Act reflects a paradigm shift in viewing disability from the perspective of charity to a human rights perspective. The main objective of the 2016 Act is to enable empowerment of persons with disabilities (PWD) through respect for inherent dignity and individual autonomy of PWDs. It emphasizes nondiscrimination, full and effective participation and inclusion in society, respect for difference and acceptance of disabilities as part of human diversity, equality of opportunity, accessibility, equality between men and women, respect for the evolving capacities of children with disabilities, and respect for the right of children with disabilities to preserve their identities¹⁸⁹.

The Act has defined disability based on an evolving and dynamic concept. The types of disabilities has been increased from 7 to 21 and includes mental illness, autism, spectrum disorder, cerebral palsy, muscular dystrophy, chronic neurological conditions, speech and language disability, thalassemia, hemophilia, sickle cell disease and Parkinson's disease which were largely ignored in earlier act¹⁹⁰. This Act is supposed to be a game-changer, however, 4 years since it largely remains on paper with its implementation varying across states. The purpose of this paper is to review the 2016 Act and discuss some of the key issues in its implementation. The 2011 census in India revealed that over 26.8 million people suffered from some kind of disability¹⁹¹. This was equivalent to 2.21 percent of the population. Among the total disabled in the country at the time, 14.9 million were males and 11.8 million were females¹⁹². Further, 18.6 million PWDs resided in rural areas while 8.2 million reside in urban areas¹⁹³. Considering the high numbers and the demands from civil society, by 2012, the

¹⁸⁵ <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1584572>

¹⁸⁶ https://www.un.org/disabilities/documents/convention/convention_accessible_pdf.pdf

^{187, 189, 190, 192, 193} Ibid

¹⁸⁸ The Rights of Persons with Disabilities Act, 2016, Gazette of India, 28 December: 2016.

¹⁹¹ http://mospi.nic.in/sites/default/files/publication_reports/Disabled_persons_in_India_2016.pdf

Union Government of India came up with a disability Bill. After some amendments to the original draft the Bill was tabled in the parliament the very next year. After a wait of over three years, the Rights of Persons with Disabilities Bill was finally passed by both houses of parliament in 2016¹⁹⁴.

Disability status was not canvassed in India's census from 1941 to 1971¹⁹⁵. Thus, PWDs were excluded from the population census until the 1980s. After a long absence, the 1981 census included information on three types of disabilities¹⁹⁶. However, again in the 1991 census it was left out. This resulted in a growing demand by PWDs for their inclusion in the population census of India. After a prolonged advocacy, a question on disability was finally included in the 2001 census questionnaire. With minimal awareness and training, the enumerators found that 2.1 percent of the total population of the country consists of PWD¹⁹⁷. However, persons belonging to many disabilities, including persons with mental and intellectual disabilities, were completely excluded. Census 2001 only included 5 types of disabilities¹⁹⁸. Given that the RPWD Act 2016 has enumerated 21 types disabilities it is imperative to further update the methodology in order to get a more accurate data on PWDs as soon as possible.

Salient Features of the RPWD Act 2016

The Rights of Persons with Disabilities Act 2016 was enacted to codify India's obligations under the UN Convention on the Rights of Persons with Disabilities (UNCRPD). The Ministry of Social Justice and Empowerment set up a committee in 2009 to draft this Bill, which in accordance of the UNCRPD, included people with different types of disabilities. After a series of consultations the committee came up with a Bill in 2012 which was tabled in the parliament in 2013. That Bill lapsed in 2014. A new Bill was introduced by the NDA Government and finally passed in 2016 and received the assent of the President on December 27, 2016.

This Act for the first time truly represented a rights based disability legislation in India. Its focus was on transforming the meaning of disability by expanding its definition from the existing medical framework to a social one. The preamble of this Act states that it aims to uphold the dignity of every Person with a Disability (PwD) in society and prevent any form of discrimination. It also facilitates full acceptance of people with disability and ensures full participation and inclusion of such persons in society.

The Act defines a PwD as any person with long-term physical, mental, intellectual, or sensory impairments which on interacting with barriers hinder effective and equal growth in the society. Further, it also defines a "Person with Benchmark Disability" as a person with not <40% of the specified disability, thereby viewing disability in terms of a dynamic concept. The act contains 17 chapters with 102 sections.

i. Rights and Entitlements of Persons with Disabilities¹⁹⁹

- Persons with disabilities shall not be discriminated on grounds of their disability unless it is shown that the specific act is appropriate to achieve a legitimate aim. Persons with disabilities shall have the right to equality, personal liberty and to live in a community. They will not be obliged to live in any specific arrangement and shall have access to residential services and community support.

¹⁹⁴ The Rights of Persons with Disabilities Act, 2016, Gazette of India, 28 December, 2016.

¹⁹⁵ Disabled Persons in India: A Statistical Profile, 2016 Report, MoSPI, GoI

^{196, 198} Ibid

¹⁹⁷ Census of India 2001.

¹⁹⁹ RPWD Act 2016, Chapter II.

- The Election Commission (Centre and state) has to ensure that polling stations and all electoral materials are accessible to persons with disabilities. Central and state governments have to ensure that all public documents are in accessible formats.
- The Disaster Management Authority (Centre and state) will take necessary steps to include disabled persons in its disaster management activities for their safety and protection.

ii. Special provisions for persons with benchmark disabilities²⁰⁰

- **Education:** Children between the ages of six to 18 years, with a benchmark disability, have the right to free education in a neighbourhood school or special school if required. All government and government aided institutions of higher education are required to reserve at least five per cent of seats for persons with benchmark disabilities. For admission in higher education institutions, they will be allowed relaxation in the upper age limit, by five years.
- **Employment:** Five per cent of government owned or controlled establishments shall be reserved for persons with benchmark disabilities. One per cent of this must be reserved for persons with (i) blindness and low vision; (ii) hearing and speech impairment; (iii) locomotor disability; (iv) autism, intellectual disability and mental illness; (v) multiple disabilities. The government may exempt any establishment from this provision.
- The central, state and local governments shall provide incentives to the private sector to ensure that at least five per cent of their work force is composed of persons with benchmark disability.
- Five per cent reservation to be provided for persons with benchmark disabilities in (i) allotment of agricultural land and housing in all relevant schemes and programmes; (ii) poverty alleviation schemes (with priority to women with benchmark disabilities); and (iii) allotment of land on concessional rate for purposes of business, enterprise, etc.

iii. Guardianship of PWDs²⁰¹

- If a district court determines that a PWD is unable to take care of himself or of taking legally binding decisions, it may assign limited guardianship for such a person. A limited guardian will take joint decisions with the PWD.
- In extraordinary situations, where limited guardianship cannot be awarded, the district court can award plenary guardianship where the guardian takes legally binding decisions for the PWD. The guardian need not consult with, or determine the will or preference of the PWD.

iv. Authorities established under the Bill²⁰²

- **Chief and State Commissioners for Persons with Disabilities:** The central government shall appoint a Chief Commissioner, and state governments

²⁰⁰ RPWD Act 2016, Chapter VI.

²⁰¹ RPWD Act 2016, Article 14.

²⁰² RPWD Act 2016, Chapter XI, Chapter XII.

shall appoint State Commissioners for PWDs. The Commissions will be required to: (i) identify any laws, policies or programmes that are inconsistent with the Act; (ii) inquire into matters relating to deprivation of rights and safeguards available to disabled persons and recommend appropriate remedial measures; (iii) monitor implementation of the Act and utilization of funds disbursed by governments for the benefit of disabled persons, etc.

- **Central and State Advisory Boards on Disability:** The central government shall constitute a Central Advisory Board, and state governments shall constitute a State Advisory Board each, for disability matters. State governments shall also constitute District-Level Committees. The functions of these advisory boards will include: (i) advising the government on policies and programmes with respect to disability; (ii) developing a national/state policy concerning persons with disabilities; (iii) recommending steps to ensure accessibility, reasonable accommodation, non-discrimination, etc.

Key Issues

i. **Slow Progress in Implementation:** A study²⁰³ was conducted by Disability Rights India Foundation (DRIF) in 2018, across 24 States, to evaluate the progress of implementation of RPWD Act. The study highlighted poor compliance even after 2 years of enactment. Some key findings (as of December 2018):

- More than half the states (14 out of 24) had not notified the State Rules, in spite of the Act mandating notification within six months of the enactment.
- 12 states had not constituted State Advisory Boards (SAB) and 20 had not constituted District Committees.
- 9 States had not appointed the required Commissioners for Persons with Disabilities and only 3 States had constituted Advisory Committees to assist the State Commissioners.
- 19 States had not constituted the mandated State Fund for implementing the Act.
- Only 4 States had appointed a Nodal Officer in the District Education Office to deal with admission of children with disabilities.
- 14 States had not notified the mandated Special Courts for the purpose of trying offences under the Act and 20 had not appointed Special Public Prosecutors
- As per the Act, every establishment (private and government) is required to formulate an Equal Opportunity (EO) Policy and register it with the Commissioner. However, 22 States had not received any EO policy from the Government.
- 13 states had not issued the notifications for increasing reservation in employment from 3% to 4%
- Only one State had taken action with regard to providing increased assistance in social security schemes for people with disabilities

²⁰³ DRIF, December 2018. Two Years of The Rights of Persons with Disabilities (RPWD) Act 2016 - Status of implementation in the States and UTs of India. New Delhi.

- Only 12 States had started issuing disability certificates pertaining to the new disabilities that had been included in the Act.

- ii. **Under-estimation of Numbers:** As per 2011 census, people with disability form 2.21% of the population. However, according to experts this is an underestimation²⁰⁴. The WHO estimates that worldwide the number of people with disabilities is 10 to 15 per cent of the total world population²⁰⁵. Compared to other countries, especially the developed ones, the percentage of disabled persons in India is much lower²⁰⁶. This does not mean India has succeeded in tackling disability by medical advancement. The problem lies in faulty data collection and insistence on requirement of higher degree of disability²⁰⁷.
- iii. **Lack of Coordination between Departments:** Since creating an inclusive ecosystem for people with disability is a cross policy issue it requires coordination between various departments and ministries. However, in practice there is little coordination between the Department of empowerment for People with Disabilities DePwD and other ministries²⁰⁸. This has excluded the concerns of persons with disabilities from policies especially in the context of disaster management, motor vehicles, right to information, etc.
- iv. **No Penalty for Violation of Access to Public Services:** The Act mandates that all public services shall be accessible; however, no penalty has ensued for its violation²⁰⁹. Consequently, there is little progress in ensuring a more inclusive ecosystem to avail services. The dismal state of roads, public transport and infrastructure make it inaccessible for persons with disabilities. There is little compliance between the National Building Code and the harmonised guidelines. Guidelines for accessible websites are also not made explicitly applicable to private websites.
- v. **Problems with Issue of UDID Cards:** The Unique Disability ID (UDID) has been implemented with a view to create a National Database for PwDs. However, the progress is extremely slow²¹⁰. Many differently able people have not applied due to lack of awareness. Several people who have applied have complained about long waits. And even those that have received the cards have noticed many errors. The application for corrections is also a long and cumbersome process. Additionally, since UDID cards are only given to persons with benchmark disabilities, it is suggested that the data will be under representative. For instance members of the Multiple Sclerosis Society of India have stated that since Remitting Relapse Multiple Sclerosis does not fit the 40% benchmark, such individuals are neither provided disability certificate nor are they recorded in official data²¹¹.
- vi. **Underutilization of National Fund:** Section 86 of the RPWD Act provides for a National Fund for persons with disabilities and the previous fund under the 1995 Act has been merged with it. The fund is used for various activities including scholarship support for students with disabilities. In between 2009-15 Rs 3.51 crore was disbursed to support more than 50 lakh students every year²¹². However, since then the fund had been frozen for four years, and as of July 2019 more than 260 crore of the fund remained unutilized. Also, the DGCAE through an RTI reply has stated that it has not conducted any audit of the fund²¹³.

²⁰⁴ <https://www.newindianexpress.com/states/kerala/2019/dec/03/india-more-disabled-friendly-but-yet-to-be-fully-inclusive-2070469.html>

²⁰⁵ <https://www.hindustantimes.com/india-news/disabled-persons-data-of-2011-may-be-underestimated-actual-number-more-higher-official/story-oByDrUwC5YsbktjRpD6nxL.html>

²⁰⁶ <https://www.newindianexpress.com/states/kerala/2019/dec/03/india-more-disabled-friendly-but-yet-to-be-fully-inclusive-2070469.html>

^{207, 209, 213} *ibid*

²⁰⁸ <https://thepolicytimes.com/cross-disability-rights-organizations-demand-stringent-implementation-of-rpwd-act-2016/>

²¹⁰ <https://www.thestatesman.com/cities/bhubaneshwar/differently-abled-unaware-udid-cards-1502781401.html>

²¹¹ <https://thepolicytimes.com/cross-disability-rights-organizations-demand-stringent-implementation-of-rpwd-act-2016/>

²¹² <https://indianexpress.com/article/india/rs-260-62-crore-national-disability-fund-lying-unused-reveals-rti-5860598/>

vii. **Challenges for Inclusive Education:** Current data indicates that an estimated 7.8 million children below 19 live with disabilities. Amongst them, 75% of the population below 5 does not go to any educational institution, and for CWDs between 5 and 19 the figure is at 25%²¹⁴. Further, the proportion of CWDs who are out of school is much higher than the overall proportion of out-of-school children. Thus, in spite of schemes aimed at bringing CWDs into schools, many gaps remain²¹⁵. There continues to be a lack of accessible physical infrastructure, assistive technologies and information and communication technology. Governance-related challenges such as lack of effective coordination between different stakeholders, inadequate allocations, delays and underutilization of funds remain.

While all three types (neighbourhood school, special school and home-based school) of schooling are legally endorsed for CWDs, there is absence of a legal framework specifying standards that is applicable across all three categories. There is also absence of a coordinating authority that can enforce norms and standards across multiple educational settings. The New Education Policy unveiled in 2019 also does little for the interest of CWDs²¹⁶. It lacks provisions for intervention in early childhood care and education (ECCE). It does not have any provision for special educators and teachers training. It also proposes creation of school complexes which would further hinder access.

viii. **Lack of Awareness:** In Indian society there are still preconceived notions of disability and its association with religious faith²¹⁷. People still consider disability as a direct result of misdeeds of previous life. Additionally, the society is steeped in referring to PWDs by their disability. As a result they continue to suffer social stigma and discrimination. Thus, awareness about PWDs is one of the most important issues that need to be addressed.

Recommendations

- i. Administrative Mechanisms and plans should be put in place by the Nodal Ministry and other relevant Ministries at the earliest. There are very specific mandates and timelines given in the Act. It is necessary to ensure accountability of stakeholders to prevent any further delay in implementation.
- ii. Awareness should be raised, and capacities should be built among various personnel who have a role to play in implementing the Act. The Rehabilitation Council of India (RCI) and relevant training bodies should devise a plan for ensuring that disability issues are included in the curriculum.
- iii. Social Audits should be undertaken periodically as mandated by the Act to help in monitoring progress and improving various schemes.
- iv. There is a need to ensure accurate and reliable data on PWDs through Census 2021.
- v. Need convergence and streamlining of all relevant departments on the issue of RPWDs to enable policies for an inclusive ecosystem.
- vi. Need to implement penalties for any violation of access to public services to disincentivize non-compliance.

²¹⁴ <https://counterview.org/2019/07/08/children-with-disabilities-indias-partial-progress-in-harmonizing-national-laws-with-un-requirements/>

²¹⁵ *ibid*

²¹⁶ <https://thepolicytimes.com/cross-disability-rights-organizations-demand-stringent-implementation-of-rpwd-act-2016/>

²¹⁷ <https://www.villagesquare.in/2019/03/22/rural-india-still-insensitive-to-persons-with-disabilities/>

- vii. UDID cards need to be issued at the earliest and the process of applying for any corrections needs to be simplified. There is also a need for further consultations with representatives of various disability organizations to ensure benchmarking does not lead to any under estimation.
- viii. Adequate resources should be allocated and disability budgeting should be introduced in relevant departments. Proper utilization of funds needs to be ensured.
- ix. Need to provide a legal framework of standards which is aimed at meeting needs of CWDs and which is applicable across all three categories of schooling. Also need to provide a coordinating authority to enforce the standards.
- x. Need a dedicated fund to ensure inclusive physical infrastructure and assistive technologies are made available as soon as possible. All effort needs to be made to make educational institutions more accessible.
- xi. The new education policy needs to be revised after consultations with groups representing CWDs to ensure their interests are incorporated.
- xii. Need comprehensive awareness campaigns amongst PWDs as well as the larger society to sensitize population about rights of PWDs especially in rural areas.

References

1. Disabled Persons in India: A Statistical Profile, 2016 Report, MoSPI, Gol.
2. DRIF, December 2018. Two Years of The Rights of Persons with Disabilities (RPWD) Act 2016 - Status of implementation in the States and UTs of India. New Delhi.
3. Elston, Philips, "THE E.U. AND HUMAN RIGHTS, 1999, Oxford Publication.
4. Express Web Desk. July 29, 2019. 'Rs 260.62 crore national disability fund lying unused, reveals RTI,' Indian Express. New Delhi.
5. Hashim, Muhammed. December 3, 2019. 'India more disabled-friendly but yet to be fully inclusive,' The New Indian Express. Kerala.
6. Hosamane, Sakshi Broota. 2007. "Developing the Gender Dimension in India in Disability Rights Movement".
7. Kokare, Kailas. March 22, 2019. 'Rural India still insensitive to persons with disabilities,' Village Square. Pune.
8. Lawson, Edward, "ENCYCLOPAEDIA OF HUMAN RIGHTS", 1996.
9. Lindqvist, Bengt, "Standard rules in the disability field - a United Nations instrument, Human Rights and Differently-abled Persons, Degener and Koster-Dreese", eds., Dordrecht, Kluwer Academic Publishers Group, 1995.
10. Mental Healthcare Act, 2017, Gol.

11. Miles, M. 2002. "Community and Individual Responses to Disablement in South Asian Histories: Old Traditions, New Myths?", *Asia Pacific Disability Rehabilitation Journal*.
12. National Policy on Disability, 2006, Gol.
13. Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, Gol.
14. PTI. May 30, 2017. 'Disabled persons data of 2011 may be underestimated; actual number more higher,' *Hindustan Times*. Hyderabad.
15. Quinn, G., and Degener, T., "Human rights and disability: The current use and future potential of United Nations human rights instruments in the context of disability", Geneva, Office of the High Commission for Human Rights, 2002.
16. S.K.Verma, "International legal regime on the rights of persons with disability: it's relevance to national legal system" in S. K.Verma (Ed.) *RIGHTS OF PERSONS WITH DISABILITIES*, 2002.
17. Statesman News Service. July 23, 2019. 'Differently abled unaware of UDID cards,' *The Statesman*. Bhubaneswar.
18. State of Education Report for India 2019: Children with Disabilities, 2019, Tata Institute of Social Sciences, Mumbai.
19. The Declaration on the Right to Development, 1986, UN.
20. The Mental Health Act, 1987, Gol.
21. The National Thrust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, Gol.
22. The Rehabilitation Council of India Act, 1992, Gol.
23. The Rights of Persons with Disabilities Act, 2016, Gol.
24. TPT Bureau. January 21, 2020. 'Cross-Disability rights organizations demand stringent implementation of RPWD Act 2016,' *The Policy Times*.
25. United Nations Convention for the Rights of People with Disabilities, 2006, UN.



RAJIV GANDHI
INSTITUTE FOR CONTEMPORARY STUDIES

Rajiv Gandhi Institute for Contemporary Studies

Jawahar Bhawan,
Dr Rajendra Prasad Road,
New Delhi 110 001
India

Please visit us at:

web: www.rgics.org



<https://www.facebook.com/rgics/>



<https://www.youtube.com/user/RGICSIndia>