

Policy

WATCH

Volume X, Issue 2
February 2021, New Delhi

Constitutional Values and Democratic Institutions

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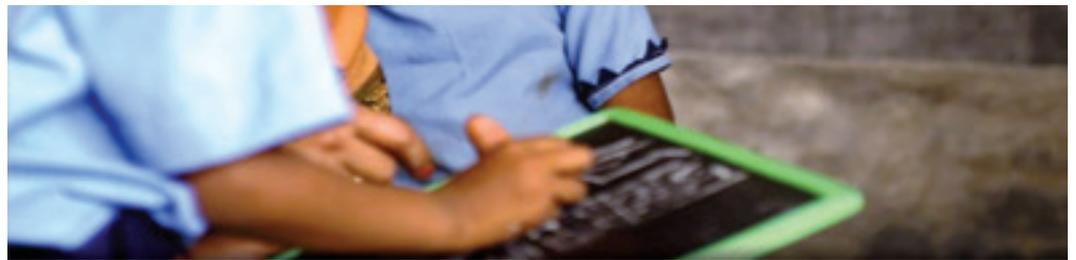
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Editorial

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 of 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 two 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.

This issue of Policy Watch carries a review of the first four of these laws. It begins with a brief introduction of the period 2000-2014, and the social, political and economic exigencies of the period. It then 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 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 the bottlenecks faced in implementation. The chapter ends with a number of suggestions for the way forward, mostly for the government but also for Civil Society organisations.

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

Introduction

At the time of independence, the framers of the Indian Constitution drew a distinction between enforceable fundamental rights, which were to be protected from infringements by the state, and non-enforceable directive principles, which were goals and duties of the state and included social and economic rights highlighted in the Universal Declaration of Human Rights. The Chairman of the drafting committee, Dr. B.R. Ambedkar had stated that it was “the intention of the Assembly that in future both the legislature and the executive should not merely pay lip-service to these principles enacted in this part but that they should be made the basis of all executive and legislative action that may be taken thereafter in the matter of governance of the country”¹.

Thus, the framers made the fulfillment of the basic socioeconomic rights contingent on the economic capacity of the state. For the first few decades, the Supreme Court of India also endorsed this distinction citing economic limitations of the state². But by the 1980s, the court had shifted to a view that harmony between the fundamental rights and directive principles was part of the basic structure of the Constitution³. Consequently, there were a series of judgments that tied the realization of the fundamental right to life, to the basic socioeconomic needs such as food, health and education⁴. This led to the rise of what Upendra Baxi has called ‘judicial activism’⁵, and allowed opening up of new spaces for civil society movements to directly engage with the government.

The emergence of the rights based regime in India is rooted in the judicial activism of the 1980s. In the mid 2000s, a series of rights based laws were enacted under the United Progressive Alliance against the backdrop of state failure in providing quality services to the citizens. For the proponents of rights, the legal enforcement of basic entitlements through rights-based legislations was a means of empowering citizens to hold the state accountable for the effective implementation of its welfare policies. To enable this most of these laws had inbuilt procedural requirements to create spaces for citizen participation and ensure greater accountability. The larger vision was to transform the everyday working of the state. This kind of positioning was made evident by the statement of Sonia Gandhi, leader of the Congress, who had said, “...our rights-based approach...provides labour entitlements to people, puts pressure on the executives to be more responsive and accountable, and also puts in place a credible mechanism to redress grievances. This approach I believe is bringing about an empowerment revolution in our country...”⁶

Today, India stands out amongst countries with comparable economic development for its rights based welfare policies. However, the rights on paper have not always translated into rights in reality. The underlying structural reasons for poor implementation such as insufficient

¹ Constituent Assembly Debates, 19 November 1948.

² Rao, Justice K. Subba. 1970. Human rights. SCC (Jour) 1 (56). State of Madras v. Champakam Dorairajan, 1951.

³ Minerva Mills v. Union of India, 6 SCC 325 (1980).

⁴ Francis Coralie Mullin v. Union Territory of Delhi. 1981 AIR 746, 1981 SCR (2) 516. Also see Bandhua Mukti Morcha vs Union of India. 1984 AIR 802, 1984 SCR (2) 67.

⁵ Baxi, U. (1985). Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India. Third World Legal Studies, 4(1), 107-132.

⁶ <https://www.livemint.com/Politics/vqUdJeKgesXbG2NdZ6e5PM/Food-Bill-Govt-reaches-out-to-political-parties.html>

funds, low capacity of officials, poor policy design, and the need for administrative reforms, remain unaddressed, which this has made the state only weakly responsive. This report seeks to review some of the rights based legislations which provide the basis for the contemporary welfare regime in India with a view to identify key issues and implementation bottlenecks. The laws assessed in this report include RTI, NREGA, FRA, RTE, NFSA, RFCTLARR, and the Street Vendors Act.



RIGHT TO INFORMATION



The Right to Information Act, 2005

Background

In India the demand for greater transparency in government began in the initial decades after independence. These demands were mostly sporadic and were concerned with specific issues and events⁷. However, it was only in 1975 that the Supreme Court of India took cognizance of this demand in *Raj Narain v the State of UP* 1975. The notion of information as a right received further impetus in *SP Gupta and Ors. vs The President of India* in 1982 when the SC held the right to information to be a fundamental right.

In spite of the repeated recognition of the RTI by the Supreme Court there was very little effort by the government to institutionalize this right through an appropriate legislation. It was only in 1990s with the emergence of various people's movements spearheaded by the Mazdoor Kisan Shakti Sangathan (MKSS) which led to a concerted effort towards institutionalization. The MKSS movement was a movement of peasants and labourers which demanded social audit of village level accounts to expose rent seeking at lower levels of administration. They employed a direct method in their fight for greater transparency, namely, the use of *jan sunwais* or public hearings⁸.

While the movement began at the grassroots its impact was felt across the country and gave rise to the National Campaign for People's Right to Information (NCPRI), which was formed as a support group for the MKSS and to do advocacy on right to information at a national level. The efforts of MKSS and NCPRI resulted in many state governments passing their own state level RTI Acts, beginning with Tamil Nadu (1997) and Goa (1997)⁹. This was followed by Rajasthan (2000), Maharashtra (2000), Karnataka (2000), Delhi (2001), Assam (2002), and Jammu and Kashmir (2003). At the national level the Freedom of Information Bill was introduced in 2000.

It was around this time that many sections of the government started becoming concerned about the growing demands for transparency and it marked the beginnings of an organized opposition to the proposed Bill¹⁰. Given the extent of opposition to the right to information, while the freedom of information Act was passed in 2002, it was a highly diluted version of the original Bill drafted by the activists¹¹. Thereafter, in May 2004 the United Progressive Alliance (UPA) came to power at the national level and brought out a Common Minimum Programme (CMP) which included a promise to make the Right to Information Act "more progressive, participatory and meaningful"¹². This was recognized as a rare opportunity by the NCPRI to get a stronger law that recognized the people's access to information as a right. As a matter of strategy it was decided to make amendments in the existing law rather than get a completely new law¹³. Consequently, after heavy lobbying, the RTI Act was passed by both houses of the Indian Parliament in May 2005, with around 150 amendments.

⁷ <http://www.iipa.org.in/www/iipalibrary/RTI-PDF/Chap--4.pdf>

⁸ <https://www.humanrightsinitiative.org/programs/ai/rti/india/history.htm>

⁹ <https://www.hindustantimes.com/books/excerpt-the-rti-story-power-to-the-people-by-aruna-roy-with-the-mkss-collective/story-V5AWqGRa84dCxYoVsR2o4L.html>

¹⁰ <http://www.iipa.org.in/www/iipalibrary/RTI-PDF/Chap--4.pdf>

¹¹ *ibid*

¹² <https://www.rediff.com/election/2004/may/21/cmptext.htm>

¹³ <http://www.iipa.org.in/www/iipalibrary/RTI-PDF/Chap--4.pdf>

Post enactment the RTI Act has been used effectively to fight corruption at various levels of administration and has exposed deep-rooted graft in India. With 40-60 lakh RTI applications each year, it has been a game-changer for good governance with stories abound highlighting the empowerment of people in getting their dues. However, over the years there have been continuous attempts to dilute this law through government action and judicial interpretation, and as a result the effectiveness of its implementation seems to be fading. The most recent concern has been the 2019 amendment which has made changes in the service conditions of various information commissioners leading to a huge outcry from various activists who believe the changes will have a direct impact on the autonomy of the commissioners.

The following section highlights some of the key obstacles faced during implementation which include the lengthening of the waiting period for applications, lack of suo moto disclosure of information, frequent violations of important provisions and very little penalties for these violations. It also highlights some overarching concerns such as the extensive violence faced by RTI activists and the huge divide in the rural and urban populations in using the RTI for getting their dues.

Key Issues

- i. **Government Controlled Appointment of Information Commissioners:** Selection Committee for the CICs in the original 2004 Bill¹⁴ included PM, Leader of opposition and CJI. (Similar for SICs) CJI was replaced by Cabinet Minister in the 2005 Act, making for a government controlled appointment.
- ii. **2019 Amendment Affecting Autonomy:** RTI Act was amended in 2019 to make changes in service conditions of various information commissioners at Centre and states¹⁵. This amendment allows the central and state governments to decide the tenure and other terms of service. Affects autonomy of ICs.
- iii. **Different Rules across Different States:** RTI allows each Appropriate Governments to make rules. There are hundreds of rules with each state having its own set. Under RTI information can be accessed from any public authority anywhere in the country so having variations in rules creates unnecessary problems for information seekers.
- iv. **Denial of Access to Reasons for Government Decisions:** RTI requires every public authority to proactively provide “reasons for its administrative or quasi-judicial decisions to affected persons”. At national level 12%¹⁶ of applications are about decisions made by public authorities. Many PIOs violate this provision and deny information where reasons are sought. Even ICs are upholding this position¹⁷.
- v. **Non Compliance with Suo Moto Disclosure:** Section 4(2) requires all public authorities to provide as much information suo motu to the public at regular intervals so that they have minimum resort to the use of this Act. Proactive disclosures allows public to be aware of any decision and provide feedback making policy formulation more participative. More than 50% of the RTI applications nationally are about information that should have been disclosed proactively¹⁸, showing a failure in compliance. The importance of suo moto disclosures reiterated by the SC in *CBSE vs Aditya Bandhopahay and Ors.* in 2011¹⁹.

¹⁴ https://www.humanrightsinitiative.org/programs/ai/rti/india/national/rti_Bill_2004_tabled_version.pdf

¹⁵ <https://prsindia.org/Billtrack/right-information-amendment-Bill-2019>

¹⁶ TAG, 2015. Empowerment Through Information: The Evolution of Transparency Regimes in South Asia Vol. 2. Empirical Studies. New Delhi: Transparency Advisory Group.

¹⁷ CIC/000018 dated 13.08.2013

¹⁸ TAG 2015

¹⁹ SLP [C] No.7526/2009

- vi. **Illegitimate Transfer of RTI Applications:** Section 6(3) allows transferring an application in case it is related to another public authority. This is provided in recognition that common citizens may not be aware of departments holding required information. There have been instances²⁰ of misuse of section 6(3) to transfer application to multiple PIOs even within the same public authority.
- vii. **Non Functioning ICs and Shortage of Staff:** The SIC of AP remained defunct for 17 months from May 2017 to October 2018. Tripura has remained non functional since April 2019. The SIC of Rajasthan has been functioning without a Chief Information Commissioner since December 2018. Tamil Nadu without CIC since May 2019. The Central IC has a vacancy of 4 commissioners and the SICs of Maharashtra, UP, Karnataka, West Bengal and Odisha have shortage of around 4-5 commissioners²¹.
- viii. **Lack of Diversity in Background of Information Commissioners:** The Act requires selecting Commissioners from diverse fields but data shows most appointees are retired civil servants²². Another concern is the lack of representation of women. Since the passing of The Act only 10% of commissioners have been women.
- ix. **Backlogs and Delays:** There is no prescribed time limit for hearing second appeal in ICs. This discrepancy in addition to shortage of staff has resulted in huge backlog of cases. As of 2019 the total number of pending appeals at national level is 2,18,347²³. In February 2019 the SC had ordered that appeals should be decided within a few months²⁴.
- x. **Perceived Leniency towards PIOs:** Section 20 has stipulated ICs to penalize PIOs in case of malafide denial of information or not adhering to specified time. There has been tendency within ICs to show leniency towards PIOs. At national level 59% of the appeals recorded a violation under section 20 where penalty was imposable; however, actual penalty imposed in only 1.3% of cases²⁵. Total loss of revenue through penalties of the order of Rs 285 crore. Lack of imposition of penalties is a huge loss to the public exchequer. Also leads to lack of deterrence for committing violations.
- xi. **Irregular Publishing of Annual Reports:** Section 25(1) requires ICs to publish annual report on status of implementation of RTI provisions in the year and submit it to respective legislatures. Data shows 22 out of 29 ICs (76%) did not publish their report for 2018²⁶. Punjab SIC did not publish report since 2012. Telangana and AP not published report since their reformation in 2017. 26% of ICs not published their latest report on websites. SIC of Uttarakhand published all reports till 2018 but not presented to assembly since 2014.
- xii. **Violence against RTI Activists:** Between 2014 and 2019 more than 80 RTI activists have been murdered and many more have been assaulted or harassed²⁷. The Whistleblowers Protection Act, 2011 which was passed and notified in 2014 remains in-operational²⁸. In 2017 DoPT issued a draft rule 12 which asked CIC to terminate pending appeals on death of an appellant²⁹. This rule if applied would have further endangered the life of activists. After protests it was rolled back. In order for RTI to be effective in bringing out corruption it is important to ensure that common public feels secure.

²⁰ RaaG. 2017. Tilting the Balance of Power: Adjudicating the RTI Act for the Opressed and the Marginalised. New Delhi: Research, Assessment and Analysis Group.

²¹ SNS, 2019. Report Card of Information Commissions in India. New Delhi: Satark Nagrik Sangathan.

²² SNS 2019

²³ ibid

²⁴ Anjali Bhardwaj and Ors. vs Union of India, 2019

²⁵ RaaG 2017

²⁶ SNS 2019

²⁷ Counterview. December 12, 2019: '80 RTI activists killed since 2014, yet Modi govt 'refuses' to implement whistleblowers Act', Counterview.

²⁸ <https://economictimes.indiatimes.com/news/company/corporate-trends/where-the-law-stands-on-whistleblowers-in-india/cici-loan-scam-exposed-by-shareholder/slideshow/71770817.cms>

²⁹ <https://www.theindiaforum.in/article/defanging-rti-step-step>

xiii. Rural Urban Divide: Data shows 20% of RTI applications from metros and 60% from urban areas³⁰. Only 24% applications from villages. Under representation of rural areas where 60% of population lives.

Recommendations

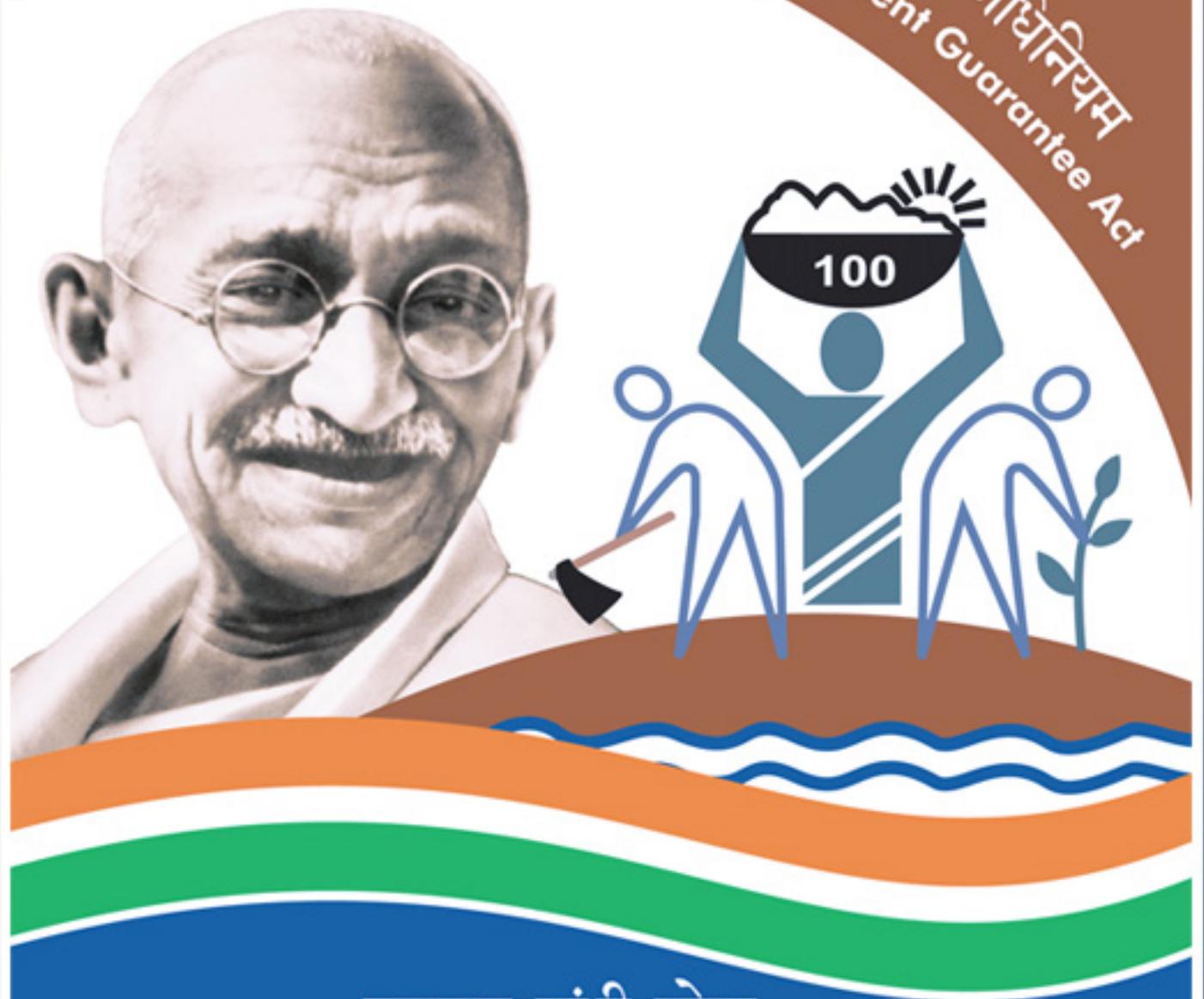
- i. Elevate status of ICs to Constitutional authority. Include Chief Justices in selection committee of ICs instead of Cabinet Ministers
- ii. Have one set of rules for all public authorities
- iii. Take steps to ensure adherence to provisions for proactive disclosure including reasons for policy decisions
- iv. Ensure timely appointment of all requisite commissioners. Make appointments from diverse fields and ensure gender parity
- v. Standardize the number of cases that each commissioner can handle in a year to reduce backlogs
- vi. ICs need to become strict about violations by PIOs including illegitimate transfer of RTI applications. There needs to be rigorous imposition of penalties whenever applicable.
- vii. ICs need to ensure timely publishing of its annual reports and submission to the appropriate legislature.
- viii. The Whistleblowers Protection Act 2011 needs to be made operational on an immediate basis.
- ix. RTI awareness campaigns for villages need greater focus.

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महात्मा गांधी राष्ट्रीय ग्रामीण रोजगार गारंटी अधिनियम
Mahatma Gandhi National Rural Employment Guarantee Act



महात्मा गांधी नरेगा

Mahatma Gandhi NREGA

ग्रामीण विकास मंत्रालय, भारत सरकार

Ministry of Rural Development, Govt. of India

Mahatma Gandhi National Rural Employment Guarantee Act, 2005

Background

The Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) constitutes a major component of the India's national social protection floor, and it provides the legal basis for the biggest employment programme in the world. Since its inception in 2006, it has provided a source of income to rural workers, increased wage rates, achieved high female participation rates and created durable assets. The participation rate coverage of the relevant population is higher in MGNREGA than in any other major Indian social protection scheme (World Bank 2011).

Although MGNREGA is relatively a new act, it is embedded in a long history of social protection initiatives for the disadvantaged and rural groups. However, most of these initiatives have had significant gaps in coverage and have not achieved the desired results. To fill some of these gaps and provide a source of income to India's rural population the MGNREGA Act was enacted in 2005. Following its unanimous adoption by the Indian Parliament on 7 September 2005 under the UPA, it was implemented in three phases, starting with 200 districts in the year 2006-07, followed by another 130 in 2007-08. The remaining rural districts were included under the scheme with effect from 1 April 2008. Today The Act is hailed as landmark legislation nationally and internationally for its innovative policy framework

MGNREGA is innovative in comparison to earlier employment and welfare schemes in India in terms of its legal basis as an Act of Parliament and its rights-based character. The employment guarantee clause of the MGNREGA legally enshrines universal access for the rural population. The Act gives preference to unskilled works, encouraging everyone to participate regardless of their level of training, and the use of contractors is officially banned (Schedule I)³¹. To ensure accessibility employment has to be provided within a 5 km radius of the village (Schedule II)³². Participation in the scheme is designed to be based on demand, and must be provided within 15 days from the date of application. Further, The Act prescribes a minimum one third participation rate for women (Schedule II)³³. It also favours the participation of Scheduled Caste (SC) and Scheduled Tribe (ST) populations³⁴.

Given the rights-based entitlement to demand-based employment, The Act centrally depends on the knowledge of potential participants about their rights, and their ability to claim these rights. Therefore other provisions of the Act, such as mandatory information and education

³¹ NREGA Act, 2005

³² *ibid*

³³ *ibid*

³⁴ *ibid*

campaigns and statutory access to grievance redressal mechanisms are of particular importance. The respect for rights and dignity of people covered by The Act is additionally strengthened through their involvement in decision-making on the works to be performed in their village. MGNREGA delegates decision-making and implementation responsibilities to local political bodies of the Panchayati Raj Institutions (PRI) (Art. 16)³⁵, and states that at least 50 per cent of the works carried out have to be locally decided. Rights and dignity are further reinforced through citizen-Centred monitoring structures that increase accountability. While the policy framework of MGNREGA combines rights-based entitlements with demand-driven employment and citizen-Centred monitoring, when we turn from the provisions of The Act to the practice of implementation it becomes evident that not all of these innovative features are fully realised.

Key Issues

- i. **Low Wages:** Current wage Rs 180/day which is far below market rate³⁶. The Anoop Satapathy Committee recommended setting minimum wage at Rs 375/day as of July 2018³⁷. Wage rate below minimum wage in 23 states³⁸. Low wage rates resulted in lack of interest among workers making way for contractors and middle men to take control, locally.
- ii. **Delays in Wage Payment:** The Act requires payment of wages within 15 days. Frequent delays in payment. According to a study in 2016-17 and 2017-18, the delay by the Gol in releasing funds was 56 days on an average for 10 states in India. The National Level Monitoring report of 2016-17 shows wage disbursements delayed by a month in nearly 17% of villages surveyed and delayed by more than a month in 40% of the villages³⁹. Currently more than 30% wages pending since October 2019⁴⁰.
- iii. **No Compensation for Delays:** NREGA requires payment of compensation in case of delay in wage payment. Currently the MIS calculates delays up to the date when the Fund Transfer Order is generated. It should be calculated up to the date when the wage is credited. 2017-18 data shows 86% of compensation unaccounted due to non-recording of delays post FTO generation⁴¹. Despite order of the Supreme Court⁴² and Government Order by the Union Ministry of Finance, no provision has yet been worked out in the MIS for calculation of full wage delays and payment of compensation for the same.
- iv. **Shortfall in Employment Provided:** The scheme guarantees 100 days of employment. However, from 2012-18 the average number of days of employment was 45.5 days, with a maximum of 49 days in 2015-16⁴³. In 2017-18 49 days of employment was provided. Also, in 2018-19 only 84% of workers who demanded work were provided employment⁴⁴.
- v. **Unemployment Allowance not paid:** In case work is not provided within 15 days of demand The Act requires payment of unemployment allowance. 2018 data shows a total of 8.4 crore persons had demanded work in the year 2017-18, but only 7.2 crore got the opportunity to work. The remaining 1.2 crore did not get any unemployment allowance⁴⁵.
- vi. **Workers penalized for administrative lapses:** The ministry withholds wage payments for workers of states that do not meet administrative requirements within the

³⁵ ibid

³⁶ <https://www.thehindu.com/news/national/government-to-peg-mgnrega-wages-to-inflation-in-bid-to-hike-incomes/article29443145.ece>

³⁷ <https://pib.gov.in/PressReleasePage.aspx?PRID=1564590>

³⁸ <https://www.livemint.com/news/india/is-mgnregs-the-answer-to-the-rural-slowdown-11579685377701.html>

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⁴⁰ <https://www.livemint.com/news/india/is-mgnregs-the-answer-to-the-rural-slowdown-11579685377701.html>

⁴¹ <https://azimpremjiuniversity.edu.in/SitePages/pdf/PaymentDelayAnalysisWorkingPaper-2018.pdf>

⁴² <http://www.indiaenvironmentportal.org.in/files/MGNREGA%20Supreme%20Court%20Judgement%202018%20wage%20payment.pdf>

⁴³ <https://prsindia.org/parliamenttrack/budgets/demand-grants-analysis-rural-development>

⁴⁴ ibid

⁴⁵ <https://www.newsclick.in/BJP-Government-Efforts-Reduce-MGNREGA-Just-Another-Scheme>

stipulated time period⁴⁶ (for instance, submission of the previous financial year's audited fund statements, utilisation certificates, bank reconciliation certificates etc). Workers paying for fault of state administration.

- vii. **Insufficient Funding:** NREGA's success at the ground level is subject to proper and uninterrupted fund flow to the states. Almost every year, more than 80 per cent of funds get exhausted within the first six months. The allocation for 2020-21 has marginally increased from 60,000 crore last year to 61,500 cr⁴⁷. The revised estimates for last year was 71,002 crore which was 9.1% higher than this year's allocation. According to NREGA Sangarsh Morcha⁴⁸ the required allocation for smooth implementation is around 1 lakh crore with 66,960 crore required for wages if only 248 per is paid, 16,740 for material cost, 13,252 crores for pending liabilities of previous year, coming to a total of 92,767 crore. Considering 10% inflation the figure would be around 1 lakh crore. Thus, fund allocation is insufficient to ensure proper implementation on the ground. It is at root of a lot of problems including low wages, lack of provision of compensation and unemployment allowance and work supply lower than 100 days.
- viii. **Problems with Technology:** The implementation of MGNREGA is increasingly dependent on technology. However, as per many activists the use of technology has made NREGA less transparent for workers, reduced accountability of frontline functionaries and aided in centralisation of the programme⁴⁹.
- In many areas problems with use of e muster rolls. Attendance continues to be maintained in a register and this register is used to generate post-dated work demand and EMRs⁵⁰.
 - The shifts from cash payments to bank (or post office) accounts, then to electronic payments, and now to Aadhaar-based payments were supposed to enhance transparency and reduce leakages. However, there is evidence showing how real-time MIS has and is leaving lakhs of workers unpaid every year⁵¹.
- ix. **Too much Centralization:** A real-time MIS-based implementation and centralised payment has left Panchayati Raj Institutions with no role in implementation, monitoring and grievance redress of NREGA schemes⁵². Convergence with other schemes without considering local priorities such as linking NREGA to Pradhan Mantri Awas Yojana (PMAY), construction of household toilets and anganwadi Centres have meant that the plans of gram sabhas and gram panchayats not being honoured, which violates the Act. The Centre through the arbitrary "Approved Labour Budget" has put a cap on funds through the National Electronic Fund Management System. According to Ne-FMS guidelines, states won't be allowed to generate employment above the limits agreed by Approved labour Budget making it supply driven rather than demand driven⁵³.

The Importance of MGNREGA during the Covid Pandemic

According to the World Bank, 12 million people in India may slip below the poverty line due to pandemic-related job losses⁵⁴. The repercussions of the COVID-19 crisis for low-

⁴⁶ <https://www.indiaspend.com/19-states-freeze-mgnrega-payments-Centre-not-releasing-funds-2/>

⁴⁷ <https://thewire.in/labour/budget-2020-nirmala-sitharaman-mgnrega>

⁴⁸ *ibid*

⁴⁹ <https://www.ideasforindia.in/topics/poverty-inequality/mnrega-technology-vs-technocracy.html>

⁵⁰ *ibid*

⁵¹ <https://www.epw.in/journal/2017/6/web-exclusives/ten-ways-mgnrega-workers-do-not-get-paid.html>

⁵² <https://www.ideasforindia.in/topics/poverty-inequality/mnrega-technology-vs-technocracy.html>

⁵³ <https://www.pressreader.com/india/the-hindu/20180516/281956018432902>

⁵⁴ <https://www.bloombergquint.com/coronavirus-outbreak/world-s-biggest-lockdown-to-push-12-million-into-extreme-poverty>

skilled migrant labourers and informal workers have been overwhelming. Due to lack of social security nets and formal benefits, these labourers have lost their jobs and travelled to their home towns without any guarantee of returning. In light of the reverse migration that took place the MGNREGA scheme has been expected to play a huge role in providing rural livelihood support. Consequently, on 17 May, Union Finance Minister Nirmala Sitharaman announced an allocation of an additional INR 40000 crore for the scheme as part of the economic stimulus package announced under the government's Aatmanirbhar campaign⁵⁵. The government also increased the daily wage rate of labourers under MGNREGA from INR 182 to 202⁵⁶. However, if MGNREGA is expected to effectively reduce rural distress, it will require adequate budgetary support to ensure rural communities are able to deal with the economic aftershocks induced by the pandemic.

The People's Action for Employment Guarantee (PAEG) has recently stated that the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) has emerged as the main source of income for the rural populace during the pandemic⁵⁷. According to the group, 5.8 crore households have got work under the MGNREGA since April, already exceeding the scheme's usual annual beneficiaries of 5 crore. Further, around 85 lakh job cards have been issued this year, 22 per cent more than the usual annual average. Given the importance of MGNREGA the group has demanded a hike in the wage rate and the number of permissible days for work per family from 100 to 200 days. The researchers in the group have also suggested that the government had allocated Rs 61,500 crore in this year's budget for the MGNREGA, and the programme's funding had already run into a deficit. The group has therefore, urged the government to release the additional Rs 40000 crore as announced in May as soon as possible.

Recommendations

- i. There needs to be a roadmap to ensure funding requirements are met.
- ii. The tendency to over-centralise implementation of the programme needs to be stopped. It has to be ensured that the programme remains demand driven.
- iii. Need independent audit of all technological features to understand the major gaps in implementation using technology. The Tamil Nadu Model where technology has been put to good needs to be studied further to assess the possibility of replication.
- iv. It must be ensured that minimum wages are paid. Dated receipts for demanded work should be issued so that workers can also claim unemployment allowance and compensation whenever applicable.
- v. Training and capacity building of elected representatives and other functionaries of PRIs especially in use of technology must be done regularly.
- vi. Social Audits, Grievance redress and Ombudspersons need to be strengthened. Set up an independent social audit unit and frame detailed training programmes for Social Audit functionaries.

⁵⁵ <https://thewire.in/economy/coronavirus-nirmala-sitharaman-fifth-tranche-mgnrega-state-borrowing-limit>

⁵⁶ <https://economictimes.indiatimes.com/news/economy/finance/Centre-releases-rs-4431-crore-to-clear-pending-wages-under-mgnrega-to-pay-all-dues-by-april-10/articleshow/74849430.cms>

⁵⁷ <https://timesofindia.indiatimes.com/india/activists-demand-doubling-of-financial-grant-and-work-days-under-nrega/articleshow/78043722.cms>

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The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

Background

The context of the FRA legislation in India lies in the history of denial of rights of traditional forest dwelling communities during the colonial period as well as the post-independence era. During the pre-British era the forests were under the rule of the kings. The locals were allowed to inhabit, cultivate, graze cattle, and earn their livelihoods through forest resources without any restrictions⁵⁸. However, with the advent of the British, these people started being looked upon as ‘encroachers’ on their own land. By the 19th century, imperial needs had started dictating British interests in Indian forests and the British started taking control over vast tracts of forest land⁵⁹. It was during this period that centralized forest administration had started taking roots in India.

The first major attempt to assert state monopoly and legislate on forests was made during 1864-65⁶⁰ through the enactment of the 1865 Forest Act. As stated by Gadgil and Guha (1992)⁶¹, in the name of “scientific management, this Act was an attempt to obliterate centuries of customary use of the forests by rural population all over India.” Thereafter, the enactment of the 1878 act gave the colonial government powers to declare any forest land as ‘government land’, resulting in reservation of forests⁶². Then, in 1894, the National Forest Policy (NFP) led to further regulation of users’ rights in forest areas. The year 1894 also saw the enactment of the Land Acquisition Act of 1894 which allowed land to be acquired by the government for public purposes. This Act proved to be extremely draconian and continued to be used to displace tribals for various development projects even after independence, up to 2014⁶³. In early 20th century the 1927 Forest Act was passed. While this Act was a more comprehensive legislation which accounted for village forests, the provisions for this were never implemented.

In the post-independence era, Scheduled Tribes (STs) were provided with certain constitutional safeguards, however, in many areas the deprivation of the tribals and the problem of non-

⁵⁸ Guha, Ramchandra. 1983. Forestry in British and Post-British India: A Historical Analysis. *Economic and Political Weekly*, Vol. 18, No. 44, pp. 1882-1896.

⁵⁹ Gadgil, M, Guha, R. 1992. *This Fissured Land : An Ecological History of India*. Oxford University Press, New Delhi.

⁶⁰ https://shodhganga.inflibnet.ac.in/bitstream/10603/1876/7/08_chapter2.pdf

⁶¹ Gadgil and Guha 1992

⁶² Springate-Baginski, O. & Blaikie, P., ed. 2007. *Forests, People & Power- The Political Ecology of Reform in South Asia*. Earthscan, London.

⁶³ Springate et al. 2007

recognition of their rights to forests actually worsened. The National Forest Policy of 1952 enabled centralized control to protect forest resources and allow its commercial exploitation, while depriving the livelihoods of forest dwellers⁶⁴. By the 1970s the Indian Parliament had also started taking an active interest in formulating policies and regulations to protect the environment. This led to further threat to tribal rights due to the various laws of conservation of forests and wildlife. The 1972 Wildlife Protection Act followed by the 1980 Forest Conservation Act led to the formation of various national parks and wildlife sanctuaries. Thereafter, the 1991 amendment to the 1972 WPA, further contributed to restricting the movements of the Forest-Dependent People⁶⁵.

The Forest Policy formulated in 1988 showed a slight shift from the earlier legislations as it had a comprehensive focus on conservation, subsistence needs, as well as protection of rights⁶⁶. This created some hope for the forest dependent communities. Around the same time the 1990 Gol guidelines were also issued which allowed for regularising encroachments, and settling disputed claims over forest lands⁶⁷. However, despite the favourable 1988 policy and the 1990 guidelines the problems of tribals continued due to the bureaucratic mindset of the forest department.

This long history of marginalization has made the tribals one of the most vulnerable and disadvantaged communities in the country. While various governments have attempted to mitigate some of these disadvantages through state interventions in the form of provision of physical infrastructure, settlement of land rights, poverty alleviation programmes, these have been largely ineffective due to various structural factors and resource constraints. It was with a view to correct the historical injustices that led to the enactment of the FRA legislation. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, was enacted in 2007 through the Ministry of Tribal Affairs (MoTA). The Act gives individual property rights to the tribals and other forest dwellers on the forest lands under their occupation for cultivation and dwelling rights to manage them. The Act also provides total ownership rights to these communities for Non-Timber Forest Produce (NTFP) and Minor Forest Produce (MFP), as well as community rights.

The FRA 2006 is considered a landmark legislation which had laid the foundations of a more democratic governance of forests through recognition of tradition rights of these forest dependent communities. Through this Act, the forest dwelling communities have gained the opportunity to have their rights recognised over a minimum of 40 million hectares of forest land that they have been managing, using, and protecting in more than 170,000 villages⁶⁸. However, it has been more than a decade since the passing of The Act and its implementation has been extremely disappointing, where few successes have been completely overshadowed by a large number of failures. As per the latest MoTA report of January 2020, tribal communities across the country have filed around 4.25 million claims to acquire ownership and use rights to forest land, however, only 1.9 million claims (46%) have been approved. For the Community Forest Rights (CFRs) and Community Forest Resource (CFRe) Rights the approval rate has also been around 50%. Thus, the data clearly suggests that in spite of the emancipatory potential of the Act, poor implementation over the last decade has meant that the benefits have not completely translated to the beneficiaries on the ground.

⁶⁴ Government of India. 1952. National Forest Policy. Ministry of Environment and Forests, Department of Environment, Forests and Wildlife, New Delhi.

⁶⁵ Springate et al. 2007

⁶⁶ Government of India. 1988. National Forest Policy. Ministry of Environment and Forests, Department of Environment, Forests and Wildlife, New Delhi.

⁶⁷ Prasad, Archana. 2003. Forest Encroachments: Guidelines and Implications of Recent Orders. People's Democracy, Vol. XXVII, No. 1, January 5.

⁶⁸ <http://www.rightsandresources.org/publication/potential-for-recognition-of-community-forest-resource-rights-under-indias-forest-rights-act/>

Key Issues

- i. **Under-Resourced Nodal Agencies:** MoTA is the central nodal agency for the implementation of FRA. It is severely understaffed and under-resourced⁶⁹. The state tribal welfare departments also lack human and financial resources. In many states, forest officials have been deputed to the tribal departments who often hinder implementation of FRA.
- ii. **Misunderstandings about FRA:** A lack of in-depth understanding about the FRA amongst officials leading to misinterpretation⁷⁰. Misunderstanding regarding the scope of the Act, particularly in relation to other forest laws. Misunderstanding about its CFR and CFRe provisions. Misinterpretation of FRA as a welfare legislation to distribute land to the landless and other user rights to the marginalized forest dwellers rather than recognition of existing rights. A misplaced fear that forests are being distributed to all the forest dwellers which would lead to ultimate decimation of forests. These misinterpretations lead to frequent violation of provisions.
- iii. **Attempts to Dilute the Act:** Since 2014 there have been many attempts to dilute the provisions of the FRA through creation various rules (such as village forest rules) by side-stepping MoTA⁷¹. These rules allow the introduction of the forest department in the management of forests. Most of these changes have happened in states which are rich in minerals and as per activists with these rules the government wants the forest department to become an arbiter for forest resources. MoTA had initially opposed these rules but after pressure from the Centre there has been a tacit approval.
- iv. **Lack of Cooperation from Forest Officials:** Across the country forest departments have been hostile to FRA with forest officials dictating the agenda of implementation. Several cases of obstruction in the claim and recognition process by not cooperating in the verification proceedings, raising illegal objections to the claims, imposing Joint Forest Management on areas claimed as CFRs, re-refusing to sign titles approved by District Level Committees and carrying out evictions where claims have been filed but not yet processed⁷².
- v. **Focus on Individual Rights rather than CFR rights under Section 3(I):** Administrative machinery found to be concentrating more on claims for individual rights rather than community rights. Of the total recognised 19,05,155 claims made till January 31 2019, IFR constitutes 96 per cent⁷³. Some issues concerning CFR as highlighted by the 2016 performance report:
 - Gram sabhas have filed large numbers of CFR claims which are pending at SDLCs and DLCs without any response
 - Customary boundaries delineated by the Gram Sabhas arbitrarily changed by forest department officials during field verification;
 - In some states CFR titles being issued to Joint Forest Management committees in violation of FRA.
 - Titles have been issued with illegal conditions, such as the Gram Sabhas having to follow forest department's working plans while exercising CFR rights.
 - No guidance and support systems for CFR management by the Gram Sabha.

⁶⁹ Promise and Performance Report 2016

⁷⁰ MoTA 2012. Regional Consultations on Implementation of the Forest Rights Act: Amendments in the Rules and the Way Forward. Ministry of Tribal Affairs, Gol.

⁷¹ <https://www.downtoearth.org.in/news/forests/rights-overruled-53977>

⁷² Promise and Performance Report 2016

⁷³ <https://www.downtoearth.org.in/blog/forests/10-interventions-government-must-make-to-protect-forest-rights-64863>

- vi. **High Rate of Rejection and Illegal Evictions:** A significant number of Forest rights claims have been rejected without following due process. According to a status report of the Ministry of Tribal Affairs, only around 50% claims approved as of April 2018. The data found in the Supreme Court Order of February 13, 2019 show a rejection rate as high as 75% in some states such as Uttar Pradesh. Additionally, widespread evictions in both protected and other areas continue⁷⁴. Large scale evictions in violation of FRA reported from Himachal Pradesh, Telangana, Andhra Pradesh, Karnataka and Assam. Despite provisions of The Act willful destruction of legally mandated livelihoods also continues.
- vii. **Non-recognition of Rights in Protected Areas:** In protected areas, the process of settling the claims is extremely slow. There are efforts to relocate beneficiaries from tiger reserves in violation of FRA. A study on violations of FRA in protected areas⁷⁵ revealed a large number and types of violations since 2007, including, curtailment of NTFP access, grazing bans, prohibition of fuel wood collection, harassment of villagers by the forest department and evictions.
- viii. **State Control over NTFPs:** In most states policies not aligned to FRA provisions with respect to NTFPs. State control over high value NTFPs such as bamboo continues⁷⁶. Gram Sabhas continue to be denied transit permit by forest departments and transport of NTFP remains a challenge⁷⁷. This is despite the amended FRA rules giving authority to issue transit permits to gram sabhas.
- ix. **Little Progress on Habitat Rights of Particularly Vulnerable Tribal Groups:** The provision for habitat rights of PVTGs is not appropriately implemented⁷⁸. There are instances of forest diversion for extractive industry like mining in habitats of PVTGs, evictions from protected areas as well as forcible plantations on their traditional cultivation lands under CAMPA, MGNREGA and other programmes.

3.3 Recommendations

- i. Ensure adequate staff and separate funds for implementation of FRA for MoTA. Appointment of officials, dedicated full-time to FRA implementation at sub-divisional and district levels.
- ii. Training sessions for FRC/SDLC/DLC members using simple, accurate material in multiple languages to ensure clear understanding of provisions
- iii. MoEFCC and MoTA need to coordinate to ensure that all rules are aligned with FRA by undertaking systematic review. It needs to be acknowledged that the gram sabhas are the statutory institutions for CFR management instead of JFMCs.
- iv. Government should send circular to forest officials giving clear directions to stop obstruction of FRA implementation
- v. Social audit similar to that of MGNREGA should be introduced. The report should include disaggregated information on CFRs, CRs, IFRs and, habitat rights.
- vi. Governance of protected areas must be based on FRA. Gram Sabha based plans for management of CFRs provides best opportunity for co-existence plans for all PAs.

⁷⁴ Promise and Performance Report 2016

⁷⁵ Siddhartha, A., Rai, N., & Menon, A. (2016). An analysis of the violations of the Forest Rights Act in Protected Areas. Ashoka Trust for Research in Ecology and the Environment. Bengaluru

⁷⁶ <https://www.downtoearth.org.in/blog/forests/freeing-bamboo-from-the-state-33345>

⁷⁷ <https://www.downtoearth.org.in/news/forests/despite-forest-right-titles-2-kalahandi-villages-denied-transit-permit-60504>

⁷⁸ Promise and Performance Report 2016

- vii. Procedural obstacles in the collection, sale and transportation of NTFPs by right holders and gram sabhas need to be removed. Minimum Support Price for NTFP needs to be provided.
- viii. Rights of PVTGs need to be pro-actively recognized and declared suo moto by District Level Committees. Criteria which have been used for declaring them as PVTGs should also be applied as evidence of their forest rights.

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The Unorganised Workers' Social Security Act, 2008

Introduction

The term social security which may be known by different names (such as social assistance, safety nets, social funds and social protection), is understood and practiced in both developed and developing countries as what may be called collective care arrangements to meet contingencies. The United Nation Development Programme (UNDP) states that for most people, a feeling of insecurity arises more from worries about daily life than from the dread of a cataclysmic world event⁷⁹. A person who is already employed is concerned primarily with the protection of his income in contingencies, whereas a person who is poor, has no employment, is primarily concerned with securing a work and thus some livelihood, with the basic needs problem. Hence given the dimension of the informal economy and massive and persistent poverty in the developing countries, the concept of social security has to be suited to the actual situation of these countries and hence to include the idea of poverty reduction as a necessary condition for attaining a minimal stage of development.

There has already been some attempt to broaden the concept of social security in the context of developing countries, for instance by Dreze and Sen by distinguishing two different aspects, viz., protection and promotion⁸⁰. The former is concerned with the task of preventing a decline in living standards while the latter refers to the enhancement of general living standards and to the expansion of basic capabilities of the population⁸¹. The protective form of social security has been explained by International Labour Organisation in its Convention No. 102, which enumerates nine risks or core contingencies from which unorganised or informal workers need to be protected that lead to the stoppage or substantial reduction of earnings namely; 1) Sickness 2) Maternity 3) Employment Injury 4) Unemployment 5) Invalidity 6) Old Age 7) Death 8) Need for long term medical care 9) Need to support families with children⁸².

In the Indian context wealth inequality continues to plague the country with about 22 percent of the population live below the poverty line⁸³. Chronic poverty and wealth inequality persist because marginalised populations face vulnerability impelled by factors such as unemployment, social exclusion, ailment, disability and market fluctuation. Social-protection policies and programmes are paramount in tackling these issues. In addition to enhancing labour-market efficiency and providing income security to the poor and vulnerable, they address multiple facets of poverty by building resilience against socioeconomic crises and shocks, e.g. health hazards, disability, unemployment and old age. Through mechanisms such as social insurance,

⁷⁹ India: Economic Reforms and Labour Policy

⁸⁰ Dreze, Jean and Sen, Amartya (1989), *Hunger and Public Action*, Oxford: Clarendon Press.

⁸¹ *Ibid*

⁸² The 1st ILO instrument to deal directly with family benefit was the Income Security Recommendation, 1944 (No. 67). In 1952, the Recommendation was codified in the Social Security (Minimum Standards) Convention (No. 102), which simply states "responsibility for the maintenance of children"

⁸³ Basic Statistics 2017 (CSV)," ADB Data Library

direct cash-transfer schemes and public work programmes, social protection provides safety nets for the poor and helps them mitigate risks. According to the World Bank, social safety nets reduce the poverty gap by 15 percent and the poverty headcount rate by eight percent⁸⁴. The National Commission on Labour in India has observed that “social security envisages that the members of a community shall be protected by collective action against social risks causing undue hardship and privation to individuals whose prime resources can seldom be adequate to meet them”⁸⁵.

Social Security Legislations in Independent India

India has enacted several social security legislations. The Constitution of India provides basis for enactment of these legislations by both the Parliament and the State. These laws could be divided under the general and special category. The general laws cover both the organised and unorganised sector and the special laws are applicable for certain groups of unorganised workers. Although prima facie the general laws do not cover the unorganised sector, but the unorganised workers come within their purview on the basis of certain enacted provisions, supported by judicial interpretation.

General Laws

- i. **The Employees’ State Insurance Act, 1948:** It covers factories and establishments with 10 or more employees and provides for comprehensive medical care to the employees and to their families in the form of cash benefits also during sickness and maternity and monthly payments in case of death or disablement.
- ii. **The Employees’ Provident Funds & Miscellaneous Provisions Act, 1952:** It applies to specific scheduled factories and establishments employing 20 or more employees and ensures terminal benefits to provident fund, superannuation pension, and family pension in case of death during service. Separate laws exist for similar benefits for the workers in the coal mines and tea plantations.
- iii. **The Workmen’s Compensation Act, 1923:** It requires payment of compensation to the workman or his family in cases of employment related injuries resulting in death or disability.
- iv. **The Maternity Benefit Act, 1961:** It provides for 12 weeks wages during maternity as well as paid leave in certain other related contingencies.
 - i. **The Payment of Gratuity Act, 1972:** It provides for 15 days wages for each year of service to employees who have worked for five years or more in establishments having a minimum of 10 workers.

⁸⁴The State of Social Safety Nets, World Bank Group, 2015.

⁸⁵ Report of National Commission on Labour, 1969

Table 1: General Social Security Legislations in India

Laws	Objectives	Coverage	Eligibility	Benefits
Employees State Insurance Act, 1948	To provide for healthcare and cash benefits in case of sickness, maternity and employment related injury	Factories/ establishments to which the law is made applicable by the Govt.	Employees drawing pay not exceeding Rs. 5000 per month	Benefits for sickness, maternity, disability and death, for dependents
Employees' Provident Fund & Miscellaneous Provisions Act, 1952	To provide compulsory provident fund, pension, deposit linked insurance.	Factories / Establishments employing 20 or more employees (in Scheduled industries); other establishments notified by the central Govt.	There is no wage limit for coverage provided the workman is not covered by the Act.	Provident fund, pension, and refundable withdrawals.
Workmen's Compensation Act, 1923	To provide compensation for workmen in cases of industrial accidents/ occupational diseases resulting in disablement or death.	Persons employed in factories, mines, plantations, railways and other establishments mentioned in Schedule II of the Act.	The benefits are payable in respect of work-related injuries to the workers dependents not covered by the ESI Act.	Compensation for death, disablement, and occupational disease.
Maternity Benefit Act, 1961	To provide for maternity protection before and after child birth	Factories, mines, plantations, commercial and other establishments to which the law is extended.	There is no wage limit for coverage provided the woman is not covered by the ESI Act	Payment for actual absence upto 12 weeks on average daily wages, minimum wage or Rs. 10.
Payment of Gratuity Act, 1972	To provide for payment of gratuity on ceasing to hold office.	Factories, mines, oilfields, plantations, railway companies, shops and establishments also to other establishments to which the law is extended	Five years continuous service is required for entitlement of gratuity	15 days wages for every completed year of service or part thereof in excess of 6 month subject to maximum of Rs. 3,50,000. The seasonal employees are entitled to gratuity at a rate of 7 days wages for each season.

Source: Ministry of Labour and Employment, Director General of Employment and Training and Economic Survey (various years) in A.C Dhas & M. Helen, Social Security for Unorganised Workers in India

Special Laws

- i. **Contract Labour (Regulation & Abolition) Act, 1970:** It aims to regulate the employment of the contract labour in every establishments employing twenty or more workmen and also to provide for its abolition in certain circumstances

- ii. **Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979:** An act to provide the employment of inter-State migrant workmen and to provide for their conditions of service.
- iii. **Cine-workers welfare Fund Act, 1981:** An Act to provide for the financing of activities to promote the welfare of certain cine-workers. “cine-worker” means an individual who has been employed in connection with the production of not less than five feature films to work as an artiste (including actor, musician or dancer) or to do any work, skilled, unskilled, manual, supervisory, technical, artistic or otherwise; and whose remuneration with respect of each of any five feature films, has not exceeded 1600/- per month in case of monthly payment and Rs. 8000/- where such remuneration has been by way of a lump sum.
- iv. **Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976:** An Act to provide for the financing of activities to promote the welfare of persons employed in the iron ore mines, manganese ore mines and chrome ore mines.
- v. **Limestone and Dolomite Mines Labour Welfare Fund Act, 1972:** An Act to provide for the levy and collection of a cess on limestone and dolomite for the financing of activities to promote the welfare of persons employed in the limestone and dolomite mines.
- vi. **Mica Mines Labour Welfare Fund Act, 1946:** An Act to constitute a fund for the financing of activities to promote the welfare of labour employed in the mica mining industry.
- vii. **Beedi Workers welfare Fund Act 1976:** An Act to provide for the financing of measures to promote the welfare of persons engaged in beedi establishments.
- viii. **Building and other Construction Workers (Regulation of Employment and conditions of service) Act, 1996:** An Act to regulate the employment and condition of service of buildings and other construction workers and to provide for their safety, health and welfare measures and for other matters connected therewith or incidental thereto.

In addition to the above, both the Central and State Governments have formulated certain specific schemes to support unorganised workers, both promotional and protective. Social security for the unorganised sector is being provided through centrally funded Social Assistance Programmes, Social Insurance Schemes, and social assistance through welfare funds of the Central and State Government and public initiatives. The centrally funded Social Assistance Programme includes a Scheme called the National Social Assistance Programme (NSAP) which was launched through the following 3 subschemes i) National Old Age Pension Schemes (NOAPS); ii) National Family Benefit Schemes and iii) National Maternity Benefit Scheme⁸⁶.

⁸⁶ Planning Commission Reports on Labour and Employment in the 10th Plan (2002-2007)

NSAP also provides opportunities for linking social assistance package to schemes for poverty alleviation and a provision of basic minimum services⁸⁷. The Social Insurance Schemes available to the unorganized sector are through the LIC such as Social Security Group Insurance Scheme. All persons in the age group of 18 to 60 years belonging to the 24 approved occupation groups are covered⁸⁸. At present, to provide social security to some of the unorganised workers, welfare funds for various groups have been set up by the government without burden on the budget. These welfare funds have been developed by way of collecting cess from the persons who are selling the finished products⁸⁹.

At the State level, the Old Age Pension Scheme (OAPS) was introduced in all States and Union Territories. Kerala was the First State to implement the pension scheme for agricultural workers in 1982, followed by Tamil Nadu in the same year. Andhra Pradesh introduced the OAPS to the landless agricultural workers in 1983. The Government of Maharashtra introduced a pension scheme in 1980 to support the physically handicapped and economically weaker sections of society.

The Government of West Bengal introduced a State Assisted Scheme of Provident Fund for Unorganised Workers (SASPFUW)⁹⁰. Similarly, the Government of Punjab has been implementing a social security scheme for farmers and labourers in case of death or injury on duty. To extend social security cover to manual workers, auto-rickshaws, washermen, tailors, handcraft workers etc., the Government of Tamil Nadu has introduced a new social security and welfare scheme in 2001⁹¹. Such state level initiatives are also carried out in Kerala, Bihar, Uttar Pradesh, Madhya Pradesh, Haryana and Gujarat.

The Unorganised Sector in India: Need for Social Security

The Indian economy is characterized by the existence of a large proportion of unorganized labour. As per a survey carried out by the National Sample Survey Organization (NSSO) in 2009–10, the total employment in the country was of 46.5 crore comprising around 2.8 crore in the organized and the remaining 43.7 crore workers in the unorganized sector. Out of these workers, 24.6 crore were employed in the agricultural sector, about 4.4 crore in construction work and the remaining in manufacturing and service. At over 90 percent of the total workforce, informal labour is the norm, and contributes up to 50 percent to the national income⁹². This predominance of informal labour suggests high susceptibility and low levels of social protection in the country.

Since independence various governments have instituted various protective social-security schemes for its organised sector, as highlighted in the previous section. While in theory, these policies should be applicable to both formal and informal workers. However, in practice, their reach is limited to formal workers with long-term contracts. As per the ILO, the proportion of informal workers in organised manufacturing more than doubled between 1990 and 2012, from 15.6 percent in the late 1990s to 34.7

^{87,88,89,91} Ibid

⁹⁰ The scheme covers all wage employed and self-employed workers between the age of 18 to 55 years in the unorganized sector having an average family income of not more than Rs. 3500 per month (Ibid).

⁹² Report of the Committee on Unorganised Sector Statistics, National Statistical Commission, GoI, 2012.

percent in 2011–12. Yet, only 79 percent of such workers had written contracts and only 23.8 percent were entitled to social-security benefits⁹³. Further, according to the 68th National Sample Survey, 93.3 percent of the informal workers in non-agricultural activities were not entitled to any form of social security during 2011–12⁹⁴. Most daily-wage labourers continue to suffer from poor working conditions and scanty wages. They are extremely vulnerable to occupational hazards, especially those working in construction, mining or chemical factories. Considering their high exposure to risks and contingencies along with low incomes, a comprehensive social security system is the need of the hour.

Unorganised Workers' Social Security Act, 2008: Key Features

The Unorganised Workers Social Security Act (UWSSA) was debated and passed by the Rajya Sabha in October 2008 and by the Lok Sabha in December 2008⁹⁵. The Act came into force on 30 December 2008 when the President gave her assent. This legislation was an outcome of years of campaigning by organisations working with unorganised sector workers. During the years 2006 and 2007, the slogan Social Security Now had echoed across various cities⁹⁶. Millions of workers had participated in protests to draw attention to their problems and acknowledge their rights. In light of the challenges faced by the unorganized workers, the National Commission for Enterprises in the Unorganised Sector (NCEUS), led by economist Arjun Sengupta, proposed two draft Bills (for agricultural and non-agricultural workers) in 2007, with a comprehensive set of recommendations based on inputs from trade unions. The NCEUS also submitted a report on Social Security for Unorganised Sector Workers in 2006. The NCEUS' submissions aimed to regulate the employment and conditions of service for unorganised-sector workers and provide for their social security, health and welfare. The UWSSA, 2008 was a result of the NCEUS' report. The prime objective behind the Act was to provide social security and welfare of the unorganized workers and all matters that is in connection with it.

The UWSSA has six chapters. Chapter I includes the scope of coverage and the definitions of terms; Chapter II names the social security schemes and identifies the sources of funding; Chapter III and IV deal with the constitution of national and state Social Security Boards and their powers; Chapter V deals with the registration of unorganised workers and the eligibility for receiving social security benefits; and Chapter VI deals with miscellaneous provisions, including the powers of the central and the state governments to make directions and lay rules. It has two schedules: Schedule I, with the names of the social security schemes for unorganised workers, and Schedule II, with a list of Acts applicable to unorganised workers.

Enabling Framework for Social Security Schemes

The Act enables the central government to formulate welfare schemes for unorganized sector workers. These welfare schemes consist of health and maternity benefits, life and disability cover, old age protection and any other benefit by the government. The Act, lists down 10 schemes for the unorganized sector workers⁹⁷. Further, the Act also enables state governments to formulate welfare schemes which are related to

⁹³ India Labour Market Update, International Labour Organisation, 2017.

⁹⁴ Informal Sector and Conditions of Employment in India, NSS 68th Round (Jun 2011–Jun 2012), Report 557.

⁹⁵ <https://www.prsindia.org/billtrack/the-unorganised-sector-workers-social-security-bill-2007-434>

⁹⁶ <https://thewire.in/labour/national-social-security-fund-unorganised-workers>

⁹⁷ Unorganised Sector Workers Social Security Act, 2008 (Schedule I)

provident fund, employment injury benefits, educational schemes for children, and skill up graduation of workers, funeral assistance and old age homes. These notified schemes may be wholly funded by the central or state government or both and it might require contributions by the beneficiaries of the schemes or their employers to unorganized sector workers.

Establishment of State and National Social Security Advisory Boards

The Act provides for institution of a National Social Security Advisory Board to recommend formation and implementation of suitable welfare schemes for the unorganized sector workers⁹⁸. This national board will consist of an appointed chairperson, a member secretary, and 31 nominated members. Further, the Act seeks to establish state level Social Security Advisory Boards. These state boards will have alike functions as the central board at the relevant state and district levels. Each state board consists of an appointed chairperson, a member secretary, and 26 nominated members.

Provision for Registration and Smart Cards for Unorganized Sector Workers

The Act requires the unorganized workers to mandatorily apply for registration with the district administration. As per the Act, for registration an individual must be 14 years of age or older and should declare that he is an unorganized sector worker. Upon registration, the district administration shall issue a smart card which will carry a unique identification number. Further, if any scheme requires contribution from worker, then the worker will become eligible for the scheme only upon contribution.

Key Issues

Social Security Not Defined: The Act does not give any clarity on what the state means by `social security` or any of the benefits it proposes. Chapter II (3(1)) says that the central government shall `formulate and notify from time to time, suitable welfare schemes for unorganised workers on matters relating to a) life and disability cover; (b) health and maternity benefits; (c) old age pensions and (d) any other benefits as may be determined by the Central Government⁹⁹. This is followed by the statement (3(2)) that `the schemes included in the schedule I of this Act shall be deemed to the welfare schemes under sub-section (1)`. Social security cannot be reduced to schemes but should be substantively articulated in terms of concrete entitlements from the perspective of rights derived from constitutional rights and principles.

Livelihood Systems Based Workers Excluded: The definitions exclude workers dependent on livelihood systems such as forest workers and fish workers, who cannot be brought within the ambit of home-based workers, self-employed workers and wage workers¹⁰⁰. For instance, most of the traditional fish workers in India follow a sharing system, in which the catch is shared among the boat owner and the crew. This excludes them from being considered as `workers` because they do not receive wages.

⁹⁸ Unorganised Sector Workers Social Security Act, 2008, Chapters III, IV and V

⁹⁹ Unorganised Sector Workers Social Security Act, 2008 (Sec 3(1))

¹⁰⁰ Unorganised Sector Workers Social Security Act, 2008, Sec 2, Sec 2(n)

Migrant Workers Excluded: The Act does not cover unorganised cross-border temporary migrant workers, who have gone to other countries to be engaged in dirty, difficult and dangerous jobs such as construction, cleaning, domestic work, paramedical work and such other occupations in manufacture and service sectors. When on work, they contribute to the national income by their remittances. These workers are a vulnerable and require social security protection. Similarly, the definition does not address the specificity of vulnerable internal migrant workers. The words, `migrant worker`, appear only in the definition of wage workers¹⁰¹ although migrant workers are engaged in various kinds of occupations, in which they experience vulnerabilities different from that of local workers.

Non Justiciability of Social Security: A justiciable right is one in which the aggrieved individual can seek remedy in a court of law. To make a right justiciable, it should be defined and be available for the individual for a sufficiently long period of time. Although the stated objective of the Act is to provide social security and welfare to the unorganised workers, the Act does not confer any defined right to social security for them. In the Act, social security schemes are not included as part of the body of the Act and are given in a schedule. This essentially means that schemes can be changed at any point of time by a notification, and not after discussion in the Parliament, thereby denying the workers the benefit of consistency and justiciability.

No Nodal Ministry for Implementation: Though the Act has been introduced by the Ministry of Labour, the social security schemes mentioned in the schedule are managed by various ministries. Moreover, Chapter IV Section (8) gives the record-keeping functions of the provision of social security for unorganised workers to the district administration, the panchayat and to the local urban bodies. Though the Unorganised Workers` Social Security Act has been introduced by the Ministry of Labour, no role has been given to the labour administration to implement the Act. The national and the state Social Security Boards are also not vested with enough powers to administer social security schemes. This raises doubts on the commitment of the government about the delivery of social security to the unorganised workers.

Absence of Grievance Redressal Machinery: Despite a strong recommendation from the Parliamentary Standing Committee on Labour¹⁰², the Act does not provide for a grievance redressal mechanism. The fairness and effectiveness of the implementation of the Act greatly depends on the availability of a functional institution of grievance redressal mechanism, through which workers have recourse to a method for voicing their complaints about violations.

Lack of Budgetary Expenditure: Between 2012 and 2018, the average union budget outlay for major social security schemes in India was 0.07 percent of the GDP (accounting for 0.57 percent of the total budget expenditure)¹⁰³. This amount includes the expenditure to create the National Platform of Unorganised Workers as well as key schemes under the UWSSA, such as the RSBY, National Social Assistance Programme (NSAP) and Aam Admi Bima Yojana. It also involves independent schemes such as the APY and the Pradhan Mantri Jeevan Jyoti Bima Yojana. In 2017–18, the budget estimate for expenditure on these schemes

¹⁰¹ Unorganised Sector Workers Social Security Act, 2008, Schedule I, Chapter IV

¹⁰² https://www.prsindia.org/sites/default/files/bill_files/scr1197091003_unorganised_sector_1.pdf

¹⁰³ World Social Protection Report, 2019, ILO.

was merely INR 11,425 crores (114.25 billion), whereas India's unorganised workforce accounted for approximately 46.8 crores¹⁰⁴. These figures demonstrate the inadequacy of the budgetary spending on social security for the unorganized workforce. While the private-sector employees and civil servants are statutorily entitled to comprehensive benefits and pensions through their employers, provisions for the unorganised sector are arbitrary and substandard.

Unutilised Funds: As a follow up to the Act a National Social Security Fund for unorganized workers was set up in 2010-11 with an initial capital of Rs 1000 crore. The Ministry of Labour and Employment was the nodal ministry for implementing the budget announcement on NSSF. The fund was to be used for schemes formulated for welfare of unorganised sector workers. A committee was constituted for recommending the schemes to be funded from the NSSF. The National Social Security Fund was to be transferred from the Consolidated Fund of India to the NSSF. Table 2 shows the fund allocation to NSSF as per the CAG report 2016-17.

Table 2: Fund Allocation to the NSSF in Rs (crores)

Year	Sanctioned Provision	Actual Disbursement to NSSF	Short Release	Percentage of Short Release
2010-11	1000	1000	0	0
2011-12	1000	500	500	50
2012-13	1000	120	880	88
2013-14	609.55	200	409.55	67
2014-15	607	107	500	82
2015-16	607	Nil	607	100
2016-17	0	Nil	-	-
Total		1927		

Source: CAG Report 2016-17

However, the CAG audit report on Union government accounts 2016-17 stated that funds lying in the National Social Security Fund could not be utilised since its inception and unutilised fund accumulated to Rs 1927 crore. Thereafter, the entire unutilized/accumulated amount of Rs 1,927 crore lying in Public Account under NSSF was written back to CFI in March 2017 by the Department of Economic Affairs.

Recommendations

The term social security needs to be addressed in the Act. It cannot be reduced to schemes but should be articulated in terms of concrete entitlements with comprehensively defined expectations and guidelines from the perspective of rights derived from constitutional principles.

The Act should redefine the term “unorganised worker” to include all those who are not formally employed in the organised sector or covered by the EPF and ESIC, including livelihood

¹⁰⁴Total Union Budget Outlay for Major Social Security Schemes Union Budget Analysis 2017-18, CBGA.

system based workers and agricultural and contract labourers. Further, the Act should pay special attention to those individuals and groups, who have traditionally faced difficulties in exercising rights. Additional measures are necessary for adivasis to protect their right to water, land and forest, and for migrant workers and dalits.

The national and state social-security boards must re-examine their structures and roles to ensure accountability and the efficient implementation and monitoring of the schemes at the district and sub-district levels.

The Act should allow for a feedback and grievance-redressal mechanism in collaboration with trade unions, to enable dispute settlements and participatory planning. Further, state governments should seek to improve their social-protection delivery systems, by partnering or consulting with experts from the ILO and other international agencies.

For effective implementation of any Act, a nodal ministry is essential, to bring coherence and consistency to the delivery of social security rights and a well-defined administrative mechanism.

Going forward the Act should declare universal access to social-protection schemes for all unorganised workers, regardless of whether they fall below the national poverty line. The budgetary allocations need to be increased sufficiently and all funds need to be utilized effectively. As per a 2010 CBGA report an allocation of Rs 22841 crore needs to be made for universal social security coverage.

Social Security has been universally accepted as the responsibility of the state to protect labour from contingencies. In the context of developing countries such as India, it needs to be viewed from an even broader perspective as it is crucial in tackling extreme poverty and ensuring equitable development. In India about 90 percent of the workforce is from the unorganized sector, yet, they continue to be excluded from the current social security schemes.

In this regard the enactment of UWSSA 2008 was an important milestone in providing some sort of protection to the large informal workforce. However, inherent structural gaps and inadequacies coupled with insufficient budgetary allocations and poor implementations have rendered the Act completely ineffective.

Going forward the government should modify some of the provisions and more importantly ensure sufficient funding. This Act has opened up an important opportunity for the protection unorganised workers. However, the basic question of how it will translate into adequate and justiciable social security rights for the unorganised workers still remains.

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16. World Social Protection Report, 2019, ILO.



SARVA SHIKSHA ABHIYAN

EDUCATION FOR ALL



Right of Children to Free and Compulsory Education Act, 2009 (Right to Education Act)

Background

In India the demand for a right to education has been there since before independence. At the time of the constitutional assembly debates, education was first considered to be part of the fundamental rights¹⁰⁵. However, due to financial considerations it was dropped from the list; it was then introduced as part of the directive principles under Article 45 which stated “The State shall endeavour to provide... free and compulsory education for all children until they complete the age of fourteen years”. But, due to the recommendatory nature of the directive principles, primary education lacked attention and even after decades very little progress was made. The 1991 Census highlighted that even after 40 years of independence 61% of women and 36% of men above age 7 were not able to read or write¹⁰⁶.

The right to education received special impetus in the country after India ratified the UN Convention on the Rights of the Child (UNCRC) in 1992¹⁰⁷. Shortly after the ratification, the Supreme Court of India, in a 1992 judgement in *Mohini Jain v. Union of India*¹⁰⁸, recognised education as a part of the right to life, and therefore a fundamental right. However, due to inertia and lack of political will, it took 10 years for this to be reflected in the Constitution¹⁰⁹. Finally in 2002, Article 21-A was inserted into the constitution through the 86th amendment, making education a fundamental right of all children between 6-14 years. The supporting legislation for this right which listed out the terms, took another eight years to come into effect.

The Right of Children to free and Compulsory Education (RTE) Act was finally enacted on 4th August 2009 to fulfill the mandate of Article 21-A of the Constitution. The Act describes the modalities of providing free and compulsory education to all children between 6-14 years. It makes it legally binding on the state to ensure that all children within the age group are admitted to a formal school of a certain standard. Many consider the RTE historical as it carries with it the hopes and aspirations of millions who were previously excluded due to class, caste and patriarchy. However, even as the 10 year anniversary of this landmark Act has passed, its implementation continues to be a huge challenge.

¹⁰⁵ Juneja, Nalini. January 2018. 'Constitutional History of Right to Education and Legislation in India,' Norrag, Special Issue 1. Geneva: Norrag, pp. 37-39.

¹⁰⁶ Census of India 1991.

¹⁰⁷ Juneja (2018).

¹⁰⁸ *Mohini Jain v. Union of India* (1992) 3 SCC 666

¹⁰⁹ Juneja (2018).

Key Issues

- i. **Low Enrolment of STs and Muslims:** The RTE has helped increase the total enrolment in absolute terms especially at the upper primary level. The figure has increased by 23.86%, from 5,33,50,189 in 2008-09 to 6,54,48,222 in 2017-18 as per DISE data¹¹⁰. However, the enrolment of STs and Muslims remains low. The 2017-18 data shows the enrolment of muslims at 14.7% and STs at 10.7% of the total enrolment.
- ii. **Discrepancy in Data on Out of School Children:** There is lack of availability of updated data and within the available data there are huge discrepancies¹¹¹. Contradictions in the data provide by the Census 2011 and MHRD. Even state level data suffers from variation. For instance, in Karnataka the PAB minutes note a decrease of 1 lakh children, however, as per the data provided by the state the fig. is 21,816.
- iii. **High Drop-Out and Low Transition for Girls at Upper Primary Level:** As per the latest DISE data¹¹², in 2017-18 the drop-out rate for girls at the upper primary level was at 5.57%, which was much higher than boys at 4.49%. The transition rate from upper primary to secondary for girls was at 87.54% as compared to 90.84% for boys. This points to a gender divide at the upper primary level.
- iv. **Poor Learning Outcomes:** The learning outcome of students is taken from the ASER 2018 report¹¹³. The percentage of children in class 3 who can read class 2 level texts has increased from 25.1% in 2016 to 27.2% in 2018. At class 5 the proportion has increased from 47.9% to 50.3% and at class 8 level the figure has remained constant at 73% between 2016 and 2018. In basic arithmetic skills, the students of class 3 who could do basic subtraction has increased marginally from 27.6% to 28.1%, and class 5 students who could do basic division has increased from 26% to 27.8% during the period. While, the figures do reveal a slight improvement, they continue to indicate very poor learning outcomes across levels. This is one of the most important concerns as attending school becomes meaningless if appropriate learning is not happening.
- v. **Low Compliance with RTE Infrastructure Norms:** The numbers on most counts such as building, drinking water, toilets etc. are above 95% and remain consistent with the previous year¹¹⁴. However, the figures for boundary wall, playground, kitchen shed and ramp remain low at around 60%. It is also important to note that while the individual figures above seem high, this conceals the fact that when aggregated, the numbers change drastically. For eg. while more than 95% have drinking water and separate toilets for both boys and girls, all WASH facilities when taken together are present in only 53.85% of the schools. Also, as per the CAG 2017 report¹¹⁵ the aggregate figures for states remain extremely low. The report highlights that at national level the full compliance stood at 8% in 2016, and 20 out of 34 states had compliance below 8%.
- vi. **Inconsistencies in DISE Data:** Since the DISE data is self reported by schools its accuracy is questionable. The CAG 2017 report¹¹⁶ has noticed many inconsistencies in the DISE figures.

¹¹⁰ U-DISE. 2018. School education in India, 2017-18, Flash Statistics. New Delhi: National University of Educational Planning and Administration.

¹¹¹ RTE Forum. March 2018. Status of Implementation of The Right of Children to Free and Compulsory Education Act, 2009. New Delhi: Right to Education Forum.

¹¹² U-DISE 2017-18 Flash Statistics

¹¹³ ASER. 2018. Annual Status of Education Report (Rural) 2018. New Delhi: ASER Centre.

¹¹⁴ U-DISE 2017-18 Flash Statistics

¹¹⁵ CAG. 2017. Report of the National Controller and Auditor General of India on Implementation of Right of Children to Free and Compulsory Education Act, 2009: Report No. 23 of 2017. New Delhi: Ministry of Human Resource Development, Government of India.

¹¹⁶ *ibid*

- vii. **Huge Vacancy of Teachers under SSA:** The RTE at the time of implementation allowed 3 years for the recruitment of teachers and 5 years to complete their training. However, the current data¹¹⁷ highlights a continual shortage under SSA. As per the Lok Sabha Question 2018, while the recruitment of 19,33,398 teachers were sanctioned, there is a vacancy of 4,17,057 teachers, which is more than 21%. There are also shortages of teachers for CWSN.
- viii. **Critically Low Figures of Trained Teachers:** The 2017-18 DISE data¹¹⁸ shows that at the 'primary with upper primary' category only about 33% of teachers are trained. Owing to a lack of progress, the 2017 amendment increased the time for training of teachers till 2019. At the time the HRD Minister Prakash Javadekar had said that there were around 7 lakh teachers that lacked basic qualification and the amendment was to allow these teachers complete B.Ed. and other professional degrees.
- ix. **Non Academic Duties Given to Teachers:** The RTE prohibits the use of teachers for activities other than teaching. A 2008 SC order¹¹⁹ also prohibits using teachers for non academic duties, however, as per many media reports this practice continues.
- x. **Implementation of 12(1)(c) Below Stipulated Norm with Huge Variation in States:** Section 12(1)(c) allows for 25% reservation for economically weaker sections (EWS) and disadvantaged groups (DG) in private unaided schools. It has been estimated that around 16 million children should be getting admission under this provision¹²⁰. However, due to resistance and many implementation hurdles, enrolment remains below the stipulated figure. There are also huge variations across states. A 2017 paper¹²¹ observed that the enrolment rate in 2013-14 in UP was only 3.62 percent and in AP it was an appalling 0.21 percent of the total stipulated seats under this provision, as compared to MP which had 88.2% filled seats. The RTE Forum has also noted that only 15 out of the 36 states and UTs have asked for central government funds to implement this provision.
- xi. **Huge Delays in Completing Admission Process under Quota:** The application forms for 12(1)(c) are complex with many parents finding it difficult to complete the application¹²². There are also shortages in help desks¹²³. Consequently, there are huge delays in the entire admission process. In MP last year more than 44,000 students got delayed in admission¹²⁴.
- xii. **Discrepancy in Per Child Cost and Delays in Reimbursement:** 12(1)(c) requires reimbursement of per child cost to the schools; however, as per the IIMA study¹²⁵ there are a lot of discrepancies in arriving at this cost across states. There are also frequent delays in getting the reimbursement. Consequently, some private schools have been threatening to stop admissions under this provision¹²⁶.
- xiii. **School Management Committees not Constituted:** The 2016-17 DISE data shows that within government and aided schools of all category types, about 76.88% have formed an SMC¹²⁷. It has marginally declined from the previous year when it stood at 77.7%. The CAG report (2017) had highlighted a huge variation in SMC formation across states which varied from 96% in Delhi to 12% in West Bengal¹²⁸. The report also observed that in 9 states no school development plans were formed during 2015-16.

¹¹⁷ RTE Forum, March 2018, Status of Implementation of The Right of Children to Free and Compulsory Education Act, 2009. New Delhi: Right to Education Forum.

¹¹⁸ U-DISE 2017-18 Flash Statistics

¹¹⁹ Election Commission of India v. St. Mary's School, (2008) 2 SCC 390

¹²⁰ RTE Forum Report 2018

¹²¹ Sarin, Ankur, Ambrish Dongre, and Shrikant Wad. 2017. State of the Nation: RTE Section 12(1)(c). Ahmedabad: IIM Ahmedabad.

¹²² Ibid

¹²³ <https://timesofindia.indiatimes.com/city/pune/parents-pay-rs-100-to-fill-up-rte-admission-forms/articleshow/68433472.cms>

¹²⁴ <https://www.freepressjournal.in/cmcm/indore-44000-students-fail-to-get-admission-under-right-to-education-act>

¹²⁵ Sarin, Ankur, Ambrish Dongre, and Shrikant Wad. 2017. State of the Nation: RTE Section 12(1)(c). Ahmedabad: IIM Ahmedabad.

¹²⁶ <https://www.tribuneindia.com/news/archive/not-paid-private-schools-say-no-to-ews-admissions-756038>

¹²⁷ U-DISE 2017-18 Flash Statistics

¹²⁸ CAG Report 2017

- xiv. **Lack of Awareness about SMCs:** There are some important challenges facing SMCs. The most important hurdle is the lack of awareness amongst parents and the larger community about the existence and the roles of SMCs. A study by JOSH (2014) revealed that 94% of parents surveyed in Delhi were not aware about SMCs¹²⁹. There have also been malpractices within the SMC elections as reported by the RTE Forum¹³⁰.
- xv. **Shortage of Resources in NCPCR and SCPCR Leading to Delays:** According to Oxfam (2015)¹³¹, the NCPCR and SCPCR face severe shortages of staff and financial resources leading to inordinate delays in hearing complaints. CAG (2017) has reported more than 900 pending complaints between 2010 and 2016 in the NCPCR¹³². Rule 28 of RTE Rules mandates SCPCRs to set up child helplines, but as per the CAG report, 12 states have not set up any helplines.
- xvi. **Lack of Clarity in Convergence under Samagra Shiksha Abhiyan:** In May 2018 the government launched the Samagra Shiksha programme leading to the convergence of SSA, RMSA and Teacher Education¹³³. The rationale was to achieve administrative efficiency by streamlining resource allocation and spending. However, as per a study conducted by CPR in 5 states¹³⁴, at ground level there is lack of clarity. The convergence of finances, administrative structures and monitoring mechanisms remains incomplete. There is a question mark on how collaborative planning under Samagra will be achieved. There is also concern that if in some year secondary education is prioritized this may reduce allocation for elementary education. Post merger, while the bank account of each scheme has been combined to receive funds for implementation, but there is lack of clarity on the roles of officials. There is also lack of clarity on how the monitoring mechanisms will be combined.
- xvii. **School Consolidation Leading to Decline in Enrolment:** School consolidation was institutionalized in Rajasthan since 2014-15 as part of its 'Adarsh Schools' programme, where it was envisioned to develop one such model school in each of its 9895 Gram Panchayats over a period of time¹³⁵. These model schools were expected to have all the necessary facilities to ensure improved learning. As per the department of education in Rajasthan in between 2014 and 2019 around 22000 schools have been merged¹³⁶.
- However, a CPR study¹³⁷ in Rajasthan has found that post consolidation there has been a greater decline in enrolment in these schools (7% in 2014-15) than the decline in all government schools (1.4% in 2014-15) in the state. Further, the study also found that decline in enrolment was the highest amongst CWSN followed by SCs and STs. There was also a greater decline in enrolment of girls than boys. The greater distance of the consolidated schools seemed to be the primary cause for decline.
- xviii. **SSA Allocation Well Below MHRD Approved Outlay:** Every year the Ministry of Finance allocates the budget for implementing SSA to MHRD, which should be based on the approved outlay by the Project Approval Board (PAB). The PAB approval is based on the Annual Work Plan and Budget (AWP&B) which covers the various items for SSA. However, there is a stark difference between what is approved in the AW&B

¹²⁹ JOSH. 2014. Status of Implementation of the Right of Children to Free and Compulsory Education Act, 2009: The Delhi Story 2012-13. New Delhi.

¹³⁰ RTE Forum Report 2018

¹³¹ Oxfam. November 2015. Grievance Redress and Right to Information Act: Seeking Accountability for Effective Implementation of Right to Education Act: Learning from the Field. ES-Education, No. 3. New Delhi. Oxfam in Action

¹³² CAG Report 2017

¹³³ <https://pib.gov.in/newsite/PrintRelease.aspx?relid=179528>

¹³⁴ <https://scroll.in/article/941617/a-year-after-three-schemes-to-fund-school-education-were-merged-theres-still-confusion-on-ground>

¹³⁵ RTE Forum Report 2018

¹³⁶ Bordoloi, Mridusmita and Shukla, Ritwik. August 2019. School Consolidation in Rajasthan: Implementation and Short Term Effects. New Delhi: Accountability Initiative, Centre for Policy Research.

¹³⁷ *ibid*

by the MHRD, and the actual allocations by the Ministry of Finance. As per 2017-18 budgetary estimates, the figure approved was 55,000 crore but the actual allocation was 26,129 crores, which is 42.7% of the approved amount¹³⁸. It is also a matter of grave concern that since 2013-14 there has been a severe and consistent drop in the allocation percentage, which has declined from 87.9% in 2013-14 to 42.7% in 2017-18¹³⁹.

- xix. **A Major Part of SSA Funding Coming from Education Cess:** The biggest proportion of SSA funding is coming from the education cess. While the initial purpose of the cess was to supplement the government funding, over the years it has almost replaced government expenditure. The data shows¹⁴⁰ the contribution of cess to SSA has gone up since 2013-14 and remains consistently above 60%.
- xx. **Under Utilization of SSA Funds:** As per government data¹⁴¹, utilization of funds for SSA as a percentage of allocated funds remained well below 80% from 2013-14 to 2015-16.

Impact of Covid-19 Lockdown on School Education

- i. Shutting schools to maintain social distancing amidst the COVID-19 crisis was critical to avoid community transmission. However, the prolonged closure has had a disproportionately negative impact on the most vulnerable students and the pandemic has exacerbated the existing inequalities in education. The rapid shift to e-learning prompted by the pandemic has resurfaced long-standing issues of inequality and a digital divide in India. According to the NSSO 2017-18 report only 23.8 percent Indian households had internet access. Further, in rural areas the access was at 14.9 percent as compared to urban at 42 percent. Additionally, in terms of gender, males are primary users at 36% and females at 16%. And, the percentage of students with access to smartphones is at 12.5 percent. Further, in a recent 2017-18 survey, the Ministry of Rural Development found that only 47% of Indian households receive more than 12 hours of electricity and more than 36% of schools in India operate without electricity.
- ii. Aside from the lack of access another important issue has been the lack of availability of trained teachers. The 2017-18 DISE data shows that at the 'primary with upper primary' category of schools only about 33% of teachers are trained. The shift towards remote learning has further added to the problem. Since the digital divide is present not just amongst learners but also amongst teachers, most teachers were ill equipped to undertake such teaching methods without any prior training at a short notice.
- iii. The prolonged closure has also increased the possibility of rise in drop outs. Even before the lockdown the school drop-out rates were quite high. In between 2016 and 2017 the total drop-out rate at primary level had gone up from 4.13 to 6.35 and at the upper primary level from 4.03 to 5.76 (DISE). As per the latest DISE data, in 2017-18 it came down to 3.51 and 5.02, respectively. In spite of the slight decline, the overall drop out continues to remain high. Given the extent of loss of livelihoods and drop in incomes there is a possibility that many children from the vulnerable sections are forced to help households in work, post lockdown. This is especially likely in farms and family businesses which are allowed under the Child Labour (Prohibition and Regulation) Act, 1986.

¹³⁸ Kundu, Protiva. 2017. Is There Enough Public Resource for School Education? Examining the Available Evidences. New Delhi: Centre for Budget and Governance Accountability.

^{139, 140} *ibid*

¹⁴¹ CPR Budget Brief 2018-19

Recommendations

- i. Mapping of out of school children needs to be done to have up to date data and to understand reasons for non-enrolment.
- ii. Take measures to track attendance of students through a database, and not just enrolment. Attendance database can help identifying risk of drop out.
- iii. Special focus to bring back and retain children from disadvantaged communities especially STs, Muslims, migrant labour and nomadic tribes. Need for targeted awareness campaigns.
- iv. Girls drop-out rate increases at upper primary level. One possible reason could be that once girls reach puberty, social taboo around menstruation and a lack of menstrual hygiene facilities in school may cause them to drop out. Need to include menstrual hygiene facilities in all schools with female students and having secondary grades. Ensure friendly and supportive environment for girls.
- v. Ensure proper implementation of CCE with a focus on foundational skills. Need for regular oral assessments for lower grades which focus on basic skills and regular interventions to address weaknesses. Realign curriculum to stress on foundational skills.
- vi. Medium of instruction in the lower grades as far as possible should only be in the mother tongue. English should be introduced gradually in later grades.
- vii. Ensure availability of all facilities as per RTE norms including safety regulations to ensure child friendly and safe learning environment. Special attention needs to be given to inclusive infrastructure for CWSN as per RPWD 2016 provisions.
- viii. Need independent audit of DISE data.
- ix. Teacher vacancies need to be filled as soon as possible. Hiring teachers for CWSN also needs attention.
- x. Teacher training needs to be fast tracked. Training should include understanding of CCE as well as sensitization about gender and social inclusion. Need strengthening and adequate funding of teacher training institutions.
- xi. Provide autonomy to teachers on teaching activities to enable them to cater to specific needs of children. Non-academic duties should be completely stopped.
- xii. Ensure compliance with 12(1)(c) to enable social integration of rich and poor children. Need regulatory mechanism for private schools.
- xiii. Application forms for 12(1)(c) needs to be simplified and standardized. Ensure adequate help desks to support filling both offline and online forms.
- xiv. Mechanism for arriving at per child cost needs to be standardized. Reimbursements should happen on a timely basis.
- xv. SMCs in all mandated schools should be constituted on an immediate basis.

- xvi. Election process of SMCs needs to have clear guidelines and should be made transparent.
- xvii. Increase awareness amongst parents about roles and functions of SMCs and its election process through PTA meetings. Information transparency boards as mandated by SSA, also need to be operationalized within schools.
- xviii. In the short term strengthen capacity and ensure adequate staff and funding within NCPCR/SCPCR for timely redressal. Since NCPCR is already burdened with other functions, in the long term there needs to be a separate tribunal system for school education with adequate enforcement powers.
- xix. Provide clarity of administrative and financial functions within Samagra Shiksha post convergence.
- xx. School closure and consolidation needs to stop as it increases dropouts and is in violation of RTE norm of neighbourhood schools within 1km.
- xxi. Ensure adequate funds to SSA as approved by MHRD. In 2013-14 allocation had reached 88% of approved amount, but has gone down since and is a serious concern. There should be a clear road map of reaching allocation of 100% of the approved amount, and it should be achieved as soon as possible.
- xxii. Education cess should supplement budgetary allocations. In the short term cess could continue to be used for SSA, however, there needs to be a clear road map with proper time lines to ensure SSA in the long run is funded through budgetary allocation, with cess only providing additional support.
- xxiii. SSA allocations need to be tracked with regular reviews to ensure proper and timely utilization of funds.

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