

## **Social Security and Gender Rights In India**

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### **ABSTRACT**

*Social and economic rights have a special importance for women given the close link between poverty and gender-related disadvantage, exclusion and marginalisation. The focus of this paper is on the right to social security; a central social and economic right aimed at ensuring the redistribution of wealth in society so as to address the need and promote gender equality and dignity. In the ensuing analysis an attempt is made on analyzing the extent to which India's social security system is assisting women and girls to overcome grinding poverty and inequality. It finds that social security and social protection are developing rapidly but that on examination of a key programme, there are important respects in which such a programme fails to align with the principles for a substantively equal, gendered right to social security. Analysis of some of the positive and negative features of the programmes may assist to realise a gendered right to social security in India.*

### **Introduction**

It is observed that women throughout the world, face disproportionate poverty, un- or under employment, poorer working conditions and greater responsibilities for the care of others. Recent decades have seen certain positive changes in development indicators relating to women and girls in many parts of the world like increased educational enrolment, labour force participation, increased access to work and income opportunities etc. But it can be seen that women predominate in the informal sector, work in family enterprises, small-scale farming and other low-profit business such as street vending and waste-collecting, and in the lowest paid jobs. Because of all this, women in all countries generally earn less than men. While employment of women has increased, less than half of the world's women have income-producing work, as opposed to nearly four-fifths of the world's men.

Global economic changes have led to growing inequality, insecurity and loss of workplace rights for workers. In fact, the model worker around whom social security standards were designed (the

formally employed, full-time, male bread-winner) is rapidly becoming a rarity in global terms. As a result of the negative impact of neo-liberal economic policies on women in the developing world, the majority of women are located in precarious informal work, including in migrant labour, which is inadequately protected. There has been a 'feminisation' of work in terms of its gender composition alongside a 'feminisation' of working conditions characterised by deregulation, discrimination and reduced protection.

Globalisation has resulted in growing international migration flows that are increasingly feminised as women migrate to provide care and other labour elsewhere in the world or within states. In fact, increased life expectancy has meant that women are now caring for both children and elderly relatives while also needing to earn an income – a 'triple burden'.

In every country of the world, women are overrepresented among the poor due to a range of inequalities – social, cultural, political and economic - that serve to exclude them from full and equal participation in society. The 'feminisation of poverty', a term coined to describe the growing number of women who comprise the poor, has been used since to record this phenomenon at both the micro-level of home and family and at the macro-level within nations and globally. Women are primarily responsible for caring in society, an activity which is undervalued, usually unremunerated or poorly paid, and which restricts women's entry into other parts of the labour market.

In addition to general disadvantage experienced by women as a result of their gender, specific groups of women face heightened inequality as a result of further forms of discrimination based on factors such as race, disability, age, religion or geographic location. This discrimination often translates into economic disadvantage affecting vulnerable groups of women's access to resources, resulting in greater poverty. Legal, cultural and religious barriers prevent women in many parts of the world from owning land and other property. Women also face exclusion from political representation, decision-making and full participation in many parts of the world that has an impact on their life chances and material position. The many facets of discrimination against women, discussed here in brief, contribute to gendered poverty across the globe.

Multiple responses are required to address gendered poverty including structural economic reforms at the global and domestic level alongside political, social and cultural transformations. The provision of social security is one component of the response to this situation. However, simply providing social security without consideration of the gender dimensions of poverty may ignore and even reinforce underlying inequalities facing women. Thus the international human right to social security, developed from a gender perspective, can assist in ensuring that social security better responds to women's poverty and disadvantage.

### **Defining the Right to Social Security**

The nation-state has a central role in addressing the economic needs of its people. One mechanism for achieving this is through social provision, a key component of which is social security. As a matter of international law the right to social security is embodied in the *Universal Declaration of Human Rights* (1948) and the *International Covenant on Economic, Social and Cultural Rights* (1966). The International Labour Organisation (ILO) has played a major role in setting standards for social security for almost a century. In 2008 the United Nations (UN) Committee on Economic, Social and Cultural Rights (CESCR) defined the right to social security, in Article 9 of the *International Covenant on Economic, Social and Cultural Rights*, as follows: The right to social security encompasses the right to access and maintain benefits, whether in cash or in kind, without discrimination in order to secure protection, inter alia, from

- (a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member;
- (b) unaffordable access to health care;
- (c) insufficient family support, particularly for children and adult dependents.

### **Developing the Right to Social Security from a gender perspective**

Feminists have identified a range of concerns with the way in which the economy, the state and society are structured to the disadvantage of women and the consequent negative impact on their rights to social security. Some of these concerns include: the failure to recognise care as work; the undervaluing of women's work; the linking of benefits to formal employment; the erosion of formal employment and of the welfare state with particular impacts on poor women and sole mothers; the inadequacy of women's pensions; the sometimes onerous conditions attached to social assistance; the failure to provide social protection to the poor in the context of the feminisation of poverty; the failure to accommodate the circumstances and wishes of women in the design and implementation of social security programmes; and the failure to use social security, as one component of social policy, to challenge problematic gender roles and relationships in society.

### **Social Security in India**

India is a lower-middle-income economy with a population of 1.2 billion. The vast majority (77 per cent) of India's people are poor, consuming the equivalent of US\$2 a day or less. Recent developments in the expansion of social protection are notable, but the challenges of addressing poverty and disadvantage in India remain massive. The following section analyses the extent to

which India's social security system is assisting women and girls to overcome grinding poverty and inequality. It finds that social security and social protection are developing rapidly but that on examination of key programmes, there are important respects in which such programmes fail to align with the principles for a substantively equal, gendered right to social security. Analysis of some of the positive and negative features of the programmes may assist to realise a gendered right to social security in India.

### **Social Security: Concept and Approach**

Social security is defined by the International Labour Organization (ILO) as 'the protection which society provides for its members, through a series of public measures to prevent the social and economic distress that would otherwise be caused by the stoppage or substantial reduction in earnings resulting from sickness, maternity, employment injury, unemployment, invalidity, old age and death; the provision of medical care and the provision of subsidies for families with children (ILO, 1942). Social security is a basic human right, which was recognized in the United Nations Declaration of Human Rights in 1948. The Right to life, recognised as a fundamental right by Article 21 of the Constitution of India, implies the Right to live with human dignity. It encompasses not only the security regarding the basic human needs of food, clothing and shelter, but also health security.

Social security schemes usually give priority to income security because, generally, the basic needs of the vulnerable sections may be satisfied, if people have an adequate income. Most of the elderly become vulnerable due to their inability to work and earn. Vulnerability due to advancing age can be anticipated in time, and can be mitigated by making specific provisions if one has an adequate income. In traditional agricultural societies, families, especially in the joint family system with multi-generational co-residence, usually take care of the economic and emotional security needs of the elderly. When people and families are not able to make arrangements for the care of the elderly, their needs must be provided for by society/state, either in cash or kind (through social insurance and social assistance schemes).

### **Social Assistance**

Limited social assistance is provided to the poorest of the elderly, people with disabilities, widows and families who have lost a breadwinner at the national and state level. The National Social Assistance Programme (NSAP), introduced in 1995, has the following components:

1. The Indira Gandhi National Old Age Pension Scheme for aged people living below the poverty line;
2. The Indira Gandhi National Widow Pension Scheme;

3. The Indira Gandhi National Disability Pension Scheme;
4. The National Family Benefits Scheme providing one-off payments for families who have lost a breadwinner;
5. Annapurna (food security for the destitute not falling under the Age Pension).

Despite recent improvements in coverage and increases in grant size, these schemes reach a small proportion of the total population in need, and the amounts of benefits are very small and are 'inadequate to address the problem of acute poverty and vulnerability'. A task force established to consider proposals for a comprehensive national social assistance programme has recommended that the amounts, the coverage and the delivery of grants should be improved with the gradual universalisation of all schemes. In addition to central government schemes there are a variety of state programmes offering social assistance and social insurance, including, in some cases, for informal sector workers, but the quantity, quality and access to the schemes varies significantly across states.

### **Women's employment profile**

The rate of female workforce participation has declined in India - from 37 per cent in 2004-5 to 29 per cent in 2009-10. Less than a third of Indian women have paid employment, and the bulk of this work is in agriculture, the poorest paid sector, where women have a growing share. Even with this greater share, the unemployment rate of rural women is increasing. Since women provide a 'flexible labour force in agriculture - as own account workers, casual agricultural labour or unpaid family workers', their work is often insecure. The most marginalised groups of women, women in scheduled tribes and castes, have the highest rates of workforce participation amongst women because 'extreme poverty leaves them with little choice but to work and because they do not face social taboos that disapprove of work'. Muslim women have the lowest workforce participation rates because of religious norms that keep women in the home. The lack of child care facilities keeps women with young children out of the paid workforce. Unequal division of household labour between men and women is a major barrier to women's workforce participation. Women spend approximately 34 hours per week on unpaid household work and care. Their higher burden of total work leads to 'less time for rest, sleep, and recreation' with resulting poorer health for women. This workforce profile indicates that most women are not located within the paid workforce. Of those that are, the majority are involved in poorly paid informal sector work with very limited access to occupational social security. Within the informal sector there is a significant gender gap in income. Maternity and child care benefits are entirely inadequate for Indian women. Women's unpaid, and often even their paid work, is invisible.

The majority of Indian women lack access to the resources needed for adequate livelihoods, decent work and social security. Strong responses are needed to address cultural and religious attitudes that prevent women from engaging in paid employment and burdened with the majority of household and reproductive labour. Government efforts to provide social security must not increase the burdens that Indian women already face in the home and in the workplace. The different needs of elderly women, girls, tribal and dalit (lower caste) women, women with disabilities, Muslim women, women who are immigrants and internal migrants, widows and single women require specific attention within the social security system. In addition, certain occupational groups that are women-dominated such as domestic workers, sex workers and home-based workers also require targeted policies. As discussed above, small sums of social assistance are available for certain groups (the aged, widows and people with disabilities) within the poorest section of the population. This leaves millions of poor women without any form of social assistance, along with limited access to social insurance and social protection. Even where there are social security entitlements, there are significant access barriers to these, many of which relate to gender such as illiteracy, lack of access to information, safety concerns and intra-household control of income.

### **National Social Assistance Programme (NSAP)**

An attempt has been made to evaluate NSAP, a major social assistance programme and its' compliance with the right to social security from a gender perspective. The NSAP was introduced in 1995 with the aim of providing a national minimum standard of social assistance additional to further provision by states. Implementation of the scheme occurs through each state's social welfare department but payments are funded by the central government. Under the NSAP payments are made to the eligible elderly, widows and people with disabilities.

There are also one-off payments of Rs 20,000 (US\$ 332) to families who have lost a 'primary breadwinner'. The primary breadwinner can be a man or woman between the ages of 18-59. The old age pension is the sum of Rs 200 (US\$ 3.32) per month paid to people of 60 and over who are below the poverty line. People of 80 years and over are entitled to Rs 500 (US\$ 8.31) per month. Widows (aged 40-79) and people with 'severe and multiple disabilities' (aged 18-79) who are below the poverty line are also entitled to monthly sums of Rs 300 (US \$5).

The Annapurna scheme provides 10kg of food grain per month to senior citizens who, although eligible for the old age pension, are not in receipt of the pension. The programme applies in rural and urban areas. In December 2012 the old age pension had 22.3 million beneficiaries, the widows pension reached 4.2 million women, the disability pension reached 800,000 people, as did the Annapurna scheme, and the family benefit for the loss of a breadwinner reached almost 300,000 people.

The social assistance programme accounts for a small percentage of the total social safety net spending in India (4 per cent based on 2008-9 figures), which is about 2 per cent of GDP. Half of the safety net budget goes to subsidised food and a third to public works. This relatively small investment in pensions appears to be increasing as the Indian government recognises the benefits of cash transfers to address poverty. This is because the food distribution programmes (and some of the other social programmes) have experienced significant leakage and inefficiency. Cash transfers, like NREGA payments, are more easily protected through computerisation and payment into bank and post office accounts. Social assistance coverage is increasing but still has a long way to go to reach all those in need. Awareness-raising and removal of access barriers (including corruption) and waiting periods are some of the measures that need to be taken to achieve greater reach of the programme. Bribes to obtain grants and to receive payments are common.

A task force appointed in November 2012 by the Ministry for Rural Development (the Ministry responsible for the NSAP) proposed an increase in the amount of the old age and widows pensions from Rs 200 to Rs 300 per month. It also recommended extending the widows pension to other categories of single women who face the 'same kind of discrimination as widows especially stigmatization leading to social exclusion and imposition of restrictions on socio-economic development'. Such categories include single, divorced, separated and abandoned women. It proposed reducing the age of eligibility of the widows pension from 40 to 18 for all categories except 'single never married' women. Women whose husbands are 'missing'/disappeared (described as 'half widows') should be able to claim the pension after three years rather than seven. It called for removal of the age restrictions on the disability pension and a reduction in the severity of the disability/activity limitation for eligibility, with double the amount going to the most severely disabled. The task force noted that despite the availability of the National Family Benefit Scheme to male or female breadwinners, in practice the grant is only provided on the death of a male family member. They recommended that any adult household member's death, including that of a woman who was a 'homemaker', should attract the grant given the contribution by all such adults to the livelihood of poor households.

The task force also recommended indexation of pension amounts to inflation and the expansion of coverage of the programme to all households eligible for benefits under the *National Food Security Act* by 2017. This would mean coverage of 75 per cent of the rural population and 50 per cent of the urban population. The task force also suggested a range of measures to improve implementation of the programme and to avoid corruption and wastage including central administration of the scheme rather than by the states. Two members of the task force provided minority reports in their recommendations to the Minister. These reports both questioned the proposed increase from Rs 200 per month to Rs 300 per month as not based on rationality or

social equity. They showed that on the basis of various measures (minimum wages and poverty lines) the pension amount should be between Rs 1000 and Rs 2000 per month and the National Family Benefit Scheme should also be higher. They also recommended that eligibility based on the Below Poverty Line measure be abandoned and that government move towards universal coverage. Although the task force recommendations have not been followed by the government (as at June 2014) they offer a valuable itemization of some of the limitations of India's NSAP.

### **Evaluation**

An examination of India's social assistance programme in terms of the principles for a substantively equal, gendered right to social security highlights a number of issues that are now discussed.

### **Reach and quantity of NSAP**

The programme is positive in offering some support to the elderly, people with disabilities and families who have lost a breadwinner as these groups are likely to have limited access to income-earning opportunities. The fifth principle, provision of social security for those in need, unlinked to work, is acknowledged through the NSAP. Since women are disproportionately represented within the poor, this is a critical response to their difficult circumstances. However, the payment amounts are extremely small and raise doubts about the compliance of the NSAP with the CESCR's General Comment 19 requirement that social security be adequate. Obviously, any evaluation must be cognisant of the financial capacity of the Indian State to provide higher sums to a huge number of people.

### **The Widows Pension**

The inclusion of widows as a category deserving support raises interesting questions under the sixth principle, the design of social security systems that promote gender equality. The Widows Pension is an important recognition of the stigma facing widows in India and the economic consequences of widowhood. However, as the government task force noted, this grant currently excludes many other types of single women who face similar stigma and poverty due to the lack of a male partner. If the function of the system is to address vulnerability then the existence or lack of a marriage, and death rather than abandonment by the male partner, are not appropriate factors to take into account in determining eligibility. It is also possible that men who lose female partners may suffer from loss of income or household labour and should also be considered for this benefit. Gender inequalities in India are created through the cultural construction of widowhood and require special measures to address this pervasive disadvantage. However, without undermining the need for such measures and without attempting to equalise out of context, it may also be necessary to address the needs of indigent men who have lost a

partner. The recognition that men may depend on women's income or unpaid labour, whether in or outside of the household acknowledges the value of women's different types of work for the purposes of social security (principles one to four).

### **Loss of breadwinner**

The National Family Benefit Scheme is formally gender-neutral as it provides one-off support to families that have lost a breadwinner of any gender. It has been noted, however, that in practice the benefit is generally paid only on the loss of a male household member who was the primary breadwinner. This is a contrary to principle seven relating to full and equal access to social security. While men rather than women are more likely to face access barriers, there may be girls and other women within a household who lose out when the benefit is not paid. The task force proposal to extend this scheme to cover the loss of any householder, regardless of whether their contribution was the largest in terms of income, is a valuable recommendation. This recognises that the loss of any adult member of a household who has been contributing in some way (whether through their labour or their income) results in hardship for a household and that support is therefore required. The acknowledgement that unpaid household labour should be compensable would reflect a significant shift in traditional approaches to social security. As with the widows pension this would provide recognition of the value of women's different types of work (principles one to four).

### **Gaps in coverage**

There is no social assistance benefit for a range of categories of people living in poverty including children, children with disabilities, unemployed adults, underemployed adults, adults unable to work due to sickness or injury and women unable to work due to maternity (other than the JSY). These categories correspond to the ILO and CESC's listed contingencies and risks that must be covered in order to realise the right to social security. Even for those who are able to work but cannot produce an adequate livelihood for themselves, the lack of social assistance is a severe hardship and a violation of their right to social security. Working age women, overrepresented among the working poor in India, urgently require social assistance measures to make up the shortfall from their meager incomes (in terms of principles two to four). Similarly, unemployed women who are not elderly, widowed or disabled cannot currently expect any social assistance benefits. This gap in provision is a contrary to principle five which requires provision of social security on the basis of need, not relationship to work.

It could be argued that other social policies meet the needs of these groups. NREGA, discussed below, provides up to 100 days a year of work to every rural household. While this is making a significant impact on the income of many by reaching millions of poor households, the gaps in

coverage must be acknowledged. Urban households are excluded and there is only provision for 100 work days of each year. The remaining 265 days are not accommodated. While the midday meal scheme, a very important anti-poverty measure, provides a daily cooked meal for every child in India, it does not address the other needs of poor children. As noted, there is a persistent problem of stunting and nutritional deficiency in Indian children. The *National Food Security Act 2013* contributes to but does not absolve the Indian government of its obligations to realise the full social security entitlements of its people. Since women and girls make up the majority of the poor and face multidimensional disadvantage, a comprehensive social security system is particularly important for meeting their needs.

### **Conclusion**

The analysis has led to a deeper understanding of the strengths and weaknesses of the social protection programme in India. This understanding can be used to inform improvements to this programme and contribute more broadly to the advancement of gender equality.

The social assistance programme is aimed at providing for those who cannot support themselves – the elderly, people with disabilities and widows. These benefits are critical for many Indian women facing poverty and disadvantage. This programme has historically reached a limited number of the potential beneficiaries in need with payments of very small sums of money. There appears to be a growing effort to expand the reach of these grants to greater proportions of the poor. This is important but insufficient to address the spectrum of need and the multidimensional nature of disadvantage. Cash transfers alone will not be enough without greater access to food, livelihoods, health care, education and housing .

The development of rights-creating legislation that gives meaning to the positive Indian constitutional rights framework in the areas of work, education and food suggests a favourable climate for future social security legislation that entrenches and extends existing social assistance programmes. This could provide an opportunity for a push for more comprehensive coverage. Framing social security as a right might also provide a greater role for legal challenge, including equality-based challenges aimed at addressing the rights of those groups excluded from the system. This could assist women facing multiple forms of discrimination of all ages and circumstances.

Given India's size and global importance, a more gender equal, entitlement-based social security system would provide an enormously positive example to other countries of the world. Efforts to address the needs of women, whether they are widows, pregnant women or the rural poor, are encouraging. However, not all of these measures have been adequately designed to challenge existing gender inequalities in Indian society. The evaluation also points to the significant gaps

in provision of social security to urban women, women of working age who are unpaid, unemployed or underemployed, and girls and women who face poverty and complex disadvantage. Using the principles for a substantively equal, gendered right to social security to craft new approaches that build gender equality into expanded social security provision would have a profound impact on some of the most vulnerable women in India.

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