CHAPTER-3

CONSTITUTIONAL RIGHTS, STATE INTERVENTION AND POLICY FORMULATION

Introduction

Dr. B.R Ambedkar, in closing speech to the Assembly debates said, “On the 26th of January 1950, we are going to enter a life of contradictions. In politics we will have equality and in social and economic life we will have inequality. In politics we will be recognizing the principle of one man one vote and one vote one value. In our social and economic life we shall by reason of our social and economic structure, continue to deny the principle of one man one value. How long shall we continue to deny this principle of one man one value? How long shall we continue to deny equality in our social and economic life? If we continue to deny it for long, we do so only by putting our political democracy in peril”¹. It was a stark reality of this newly independent nation. The framers of the constitution decided to move ahead and combat such social and economic ills with vision of equality, liberty and justice for all.

The vision however has been questioned and critics insist that the liberal principles were not indigenous but were borrowed from the western society. Some recurrent themes that surface in the literature about the vision of independent India are that liberal concepts of equality, liberty and justice were alien to the cultural and social norms in India; that the demands for the rights based liberal state were and have been more collectivist than individualistic; that the constituent assembly was elitist in nature and the Constitution was ‘given to the people of India by the political choice of an intellectual elite within a remarkably unrepresentative body’²; and that the Constitution fails to reconcile the interests of the individual with group rights.

In reply to the above critique, it is argued that though inspired from the west, liberalism came to India not as a theory by as practice. A set of institutions established by the British to realize their own interests, led to the formation of nationalist discourse which adapted the liberal values according to the needs of the time. As for

² Ibid., p. 34
the 'unrepresentative' nature of the constituent assembly and its distance from the 'real interests of everyone', it is asked that how could some of the most outstanding figures of the century choose a basic structure for their society without a clue about its impact on that society or on its inherited traditions?³

The chapter is divided into four sections that try to locate the concepts of Equality, Liberty and Justice envisioned in Indian Constitution in its various articles and its consequent implementation in the form of policies and programs. There is a brief introduction to the government schemes chosen for the present study and how they are interpreted with rights based approach.

**Individual Rights of Equality, Liberty and Justice in Indian Constitution**

The Constituent Assembly was formed in 1946 through indirect elections by members of the different provincial legislatures (who due to demarcation of separate electorates had themselves been elected by a restricted electorate). The representatives of the assembly constituted a wide range of opinion from different regions of the country and sections of the population (about 82% of the members were from the Congress along with leaders like B.R Ambedkar, Mohammad Saadulla, Shyama Prasad Mookerjee whose opinions had been quite opposed to the Congress). There were legal and constitutional experts as well in the assembly. Some of the features of Constitution were a departure from the colonial times. For e.g. (i) a sovereign legislature elected by direct universal suffrage without a communal representation but with reservations for the Scheduled Castes and Scheduled Tribes, (ii) Constitutional guarantee of a set of Fundamental Rights of all citizens; parliamentary system of government of British type, (iii) an independent judiciary with certain powers of judicial review of laws made by the parliament etc.

The preamble to the Constitution of India sets out the objectives that the constituent assembly intended to achieve: that the people of India have solemnly resolved to secure to all its citizens *justice*- social, economic and political; *liberty* of thought, expression, belief, faith and worship; *equality* of status and of opportunity and to

promote among them all *fraternity* assuring the dignity of the individual and the unity and integrity of the nation.\(^4\)

The objectives of justice, equality and liberty refer to the philosophy of liberalism that the constitution espouses. These objectives were incorporated in the preamble, the Fundamental Rights and the Directive Principles. There are other provisions in the constitution also,\(^5\) which aim to secure these objectives. Article 38 (1) states that the Constitution ordains the state to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice-social, economic and political, shall inform all the institutions of national life.

There are various provisions in the Part III and IV of the Constitution that seek to establish the social order and enable the citizens realize these objectives. Part III, the section on the Fundamental Rights, is known as the ‘cornerstone’ of the Constitution. Article 13 (1) and (2) clearly state that any part of the ‘law’ which is inconsistent with the provisions of part III of the Constitution shall be declared void to the extent of such inconsistency. The Fundamental Rights as elaborated in the Part III of the Constitution are\(^6\):

i. Right to equality: equality before law; prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth; equality of opportunity in public employment; abolition of untouchability; abolition of titles (Articles 14-18).

ii. Right to six freedoms: freedom of speech and expression; to assemble peaceably and without arms; to form associations and unions; to move freely throughout the territory of India; to reside and settle in any part of the territory of India; to practice any profession or to carry out any occupation, trade or business (Articles 19 (1),(a),(b),(c),(d),(e),(g)). Right to property

\(^4\) The Preamble to the Constitution of India states:

> WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens; JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation; IN OUR CONSTITUENT ASSEMBLY this twenty sixth day of November, 1949, do hereby adopt, enact and give to ourselves this constitution."

\(^5\) For instance, Part XVI especially Articles 332, 342 of the Constitution.

\(^6\) All the articles related to the Fundamental Rights are enshrined in Part III of the Constitution of India.
was initially included in these rights but was removed by 44th Constitutional Amendment Act, 1978 and transferred to article 300A.

iii. Right to life and personal liberty (Articles 20, 21, 22).

iv. Right against exploitation (Articles 23, 24).

v. Right to freedom of religion (Articles 25, 26, 27, 28).

vi. Cultural and Educational rights (Articles 29, 30).

vii. Right to Constitutional remedies (Article 32).

In addition to these Fundamental Rights, the Directive Principles of State Policy also categorically express the liberal ideals of equality, liberty and justice. Article 38 requires the state inter-alia, to minimize the inequalities in income and endeavor to eliminate inequalities in status, facilities and opportunities, not only among individuals but also among groups of people residing in different areas or engaged in different vocations. Article 39 requires the state to make available to all the citizens adequate means of livelihood: to distribute the ownership and control of material resources so to subserve the common good; to operate the economic system in such a way that it does not result in concentration of wealth and means of production to the common detriment; that there is equal pay for equal work; to protect the health and strength of workers men and women and the tender age of children against abuse and that citizens are not forced by economic necessity to enter avocations unsuitable to their age and strength, that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. According to article 39 (a) the state is required to provide equal access to justice through the mechanism of free legal aid in order to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Article 41 requires the state to provide right to work, to education and public assistance in cases of unemployment, old age, sickness and disablement and other cases of undeserved want. Article 42: to make provisions for securing just and humane conditions of work and maternity relief; article 43 to provide work, a living wage, conditions of work ensuring a decent standard life and full enjoyment of leisure and social and cultural opportunities; article 43A to secure the participation of workers in the management of undertakings, establishments or other organizations.
engaged in industry; *article 44*: to secure for all the citizens a uniform civil code throughout the country.

These articles were included in the Constitution to realize the objectives of equality, liberty and justice for the citizens.

*Collective rights or Group Rights vis a vis Scheduled Castes and Scheduled Tribes in the Constitution of India*

The multiple justifications for any array of separate rights vis a vis the Scheduled Castes and Scheduled Tribes point to the complexities of pursuing such a policy. The benefits of 'compensatory discrimination' are extended to a wide array of groups. The first challenge was to define these groups. There are three major classes mentioned in the constitution: the Scheduled Castes, the Scheduled Tribes and the Backward class. Following terms are mentioned in the Constitution of India for classification of these categories of citizens:

a) Socially and educationally backward classes of citizens [article 15(4)],

b) Backward class of citizens [Article 16 (4)]

c) Weaker sections of the people [Article 46]

d) Other backward classes [Article 338 (3)]

e) Socially and educationally backward classes [Article 340]

f) Scheduled Castes and Scheduled Tribes.

*Scheduled Castes and Scheduled Tribes as Defined in the Constitution of India*

7 Sudipta Kaviraj, 'On the Construction of Colonial Power', in Kaviraj, Sudipta, ed., *Politics in India*. Oxford, 1997. He points out that, 'The political identity of the Scheduled Castes was a legal creation of the Indian constitution; but its effects are tangible. While earlier each community of untouchables might have suffered in separation, now they can resist together. The constitution conferred on them a new possibility of identity-making, which they seized with enthusiasm. The modern identity of the Scheduled Castes has, as it has grown and matured, sought to create a separate, Iconography for itself through a long but rather haphazard tradition from the Buddha to Guru Ravidas to Ambedkar. It has also given rise to a trend which seeks to transfer its grievance from a caste language to a class language, highlighting the idea of exploitation associated with social indignity, and to confer on themselves a self-description as *dalit* groups. A common identity of the Scheduled Castes/untouchables /dalit is therefore a constructed, modern identity...’

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There has been an attempt to define the Scheduled Castes and Scheduled Tribes in Article 341 and 342, respectively. Article 341 closely resembles section 26 (1) of the First Schedule of the Government of India Act, 1935 which defines the Scheduled Castes as follows:

"The 'Scheduled Castes' means such castes, races or tribes or parts of or groups within castes, races, or tribes being castes, races, or tribes, parts or groups which appear to His Majesty in Council to correspond to the classes of persons formerly known as "the depressed classes", as His Majesty in Council may specify."9

The term 'Scheduled Castes' was used for the first time in the 1935 Act and in accordance with the provisions in the 1st, 5th and 6th Schedules of the Act. The Government of India (Scheduled Castes) Order, 1936 defined the castes and tribes to be treated as the 'Scheduled Castes' for the purposes of the Act in the relevant provinces. The makers of the Constitution initially considered to include a Schedule in the Constitution that would provide a state-wise list of the Scheduled Castes. The Constitutional Adviser in his Draft Constitution, prepared in October, 1947, adhered to this 1936 Order of the Government of India and put these castes in the Eleventh Schedule of the Draft Constitution, province-wise.10 The Drafting Committee, finally, cut down the procedure. So instead of specifying all the Scheduled Castes in a Schedule of the Constitution, it plainly stipulated that the expression Scheduled Castes should mean those as were specified in the Government of India (Scheduled Castes) Order, 1936, in relation to the corresponding provinces.11

On September 17, 1949, towards the end of the Constituent Assembly sessions, a new Article (Article 341) was inserted on a motion moved by Dr. Ambedkar. It empowered the President to issue a general notification, in consultation with the

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8 Article 341 as amended says:
1. The President may with respect to any State or Union Territory and where it is a state after consultation with the governor thereof, by public notification, specify the castes, races or tribes or parts of or of groups within the caste, race or tribe which shall for the purpose of this Constitution be deemed to be the Scheduled Castes in relation to that State or Union Territory, as the case may be.
2. Parliament may by the law include in or exclude from the list of Scheduled Castes specified in the notification issued under clause (1) any the castes, races or tribes or part of group or groups within the caste, race or tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

11 Ibid: 637.
Governor or Ruler of the State, specifying the castes, races or tribes which should be, deemed to be Scheduled Castes for the purposes of the Constitution. The intention was basically to remove the necessity of burdening the Constitution with long lists of Scheduled Castes. This procedure was required because the previous lists covered only the then provinces of the Dominion of India. However, with the inclusion of the territories of the Indian States within the framework of the Constitution it became necessary to define the Scheduled 'Castes in these territories as well.\textsuperscript{12}

The category of Scheduled Tribes was included in 1950 to draw together the diverse tribal groups in order to incorporate them in the mainstream of Indian society. To safeguard the interests of these tribes special provisions were made in the Constitution for the creation of Scheduled Tribes and Scheduled Areas and a protective discrimination policy was pursued for their development. The basic thrust of this policy was to attain all round development of the tribal with the purpose of bringing about a socio-economic transformation in the tribal societies as well as to reduce the vast inequalities between them and the others.\textsuperscript{13}

The decisive factor for the specification seems to be the isolation and distinct cultural background of Scheduled Tribes. Article 366 (25) defines Scheduled Tribes as: “Scheduled Tribes” means such tribes or tribal communities or parts or groups within such tribes or tribal communities as are deemed under Article 342\textsuperscript{14} to be Scheduled Tribes for the purpose of our Constitution. The inclusion of any tribe in the list entitles the persons belonging to such groups to preferential treatment and privileges in the form of reservation of jobs and educational opportunities besides proportional seats in the legislatures.


\textsuperscript{13} B.B Mohanthy ‘Policy for Tribal Development: Protective Discrimination or Discrimination Protected’ in \textit{The Eastern Anthropologists}, vol. 58, no. 1, Jan-Mar, 2005.

\textsuperscript{14} Article 342 reads as:

\begin{enumerate}
\item The president may with respect to any state or union territory and where it is a state after consultation with the governor thereof, by public notification specify the tribes or tribal communities or parts of or of groups within tribes or tribal communities which shall for the purpose of this Constitution be deemed to be the Scheduled Tribes in relation to that state or union territory, as the case may be.
\item Parliament may by the law include in or exclude from the list of Scheduled Tribes specified in the notification issued under clause (1) any tribe or tribal community or part of group or groups within tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.
\end{enumerate}

Constitution Scheduled Tribes (union territory ) Order 1951; Constitution Scheduled Tribes (Andaman Nicobar islands) Order 1959; Constitution Scheduled Tribes (Dadra and Nagar Haveli ) Order 1962; Constitution Scheduled Tribes (Uttar Pradesh ) Order 1967 etc.
Constitutional Safeguards\textsuperscript{15} to Scheduled Castes and Scheduled Tribes

At the time of independence, the Indian State was committed to use constitutional measures to end caste-based discrimination, and to improve the socio-economic status of disadvantaged groups. A focus of this attempt has been the implementation of the constitutional mandate which ensures the presence marginalized groups in state and national legislatures as well as in educational and other fields.

The provisions may be divided into three major categories.

a) Protective i. \textit{Article 17}: abolishes "Untouchability" and forbids its practice in any form. It further states the enforcement of any disability arising out of "Untouchability" an offense punishable in accordance with law. In order to give effect to this Article, Parliament made on enactment viz.; Untouchability (Offenses) Act, 1955. The provisions of this act were made more stringent after the amendment of 1976. The act now came to be known as the Protection of Civil Rights Act 1955. As provided under this act, Government of India also notified the Rules, viz., The PCR rules 1977 to carry out the provisions of this Act. Parliament passed another important Act in 1989 (for taking measures to prevent the atrocities on Scheduled Castes/Scheduled Tribes) known as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989. The Government of India has notified the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules 1995, for carrying out the provisions of this Act. ii. \textit{Article 25 (2) (b)} provides that Hindu religious institutions of public character will be thrown open to all classes and sections of Hindus (the term Hindu includes Sikh, Jaina and Buddhist). This provision was given to present prohibition of Scheduled Castes persons from entering the temples.

b) Political (i) \textit{Article 164} provides that in the state of Bihar, Madhya Pradesh and Orissa, there shall be a minister in charge of tribal welfare who may in addition be in charge of the welfare of the scheduled castes and backward classes or any other work. (ii) \textit{Article 330} provides for reservations of seats for Scheduled Castes /Scheduled Tribes in the Lok Sabha. (iii) \textit{Article 332} provides for reservation of seats for Scheduled Castes /Scheduled Tribes in the state Vidhan Sabhas (Legislative Assemblies). (iv)\textit{Article 334} originally laid down that the provision relating to the

\textsuperscript{15} All the provisions have been taken from the Constitution of India.
reservation of seats for Scheduled Castes /Scheduled Tribes in the Lok Sabha and the State Vidhan Sabhas would cease to have effect on the expiration of a period of ten years from the commencement of the constitution. (This article has since been amended four times, extending the said period by ten years on each occasion) (v) Articles 371A. 317B. 371C and 371F contain special provision with respect to Nagaland, Assam, Manipur and Sikkim respectively.

C) Developmental

Economic Safeguards (i) Article 46 states that the state shall promote with special care the educational and economic interest of the weaker sections of the people and in particular of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation. (ii) Article 23 prohibits traffic in human beings and beggar and other similar forms of forced labour. (It is implied in it that majority of bonded labour belong to Scheduled Castes and Scheduled Tribes). (iii) Article 24 provides that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. (This article, too, is significant for above reason).

Educational Safeguards (i) Article 45 states that the state shall endeavor to provide within a period of ten years form the commencement of the constitution for free and compulsory education for all children until they complete the age of 14 years. (ii) The provision of Article 46 mentioned above also form a part of educational safeguards.

Services Safeguards (i) Article 16 empowers the state to make any provision for the reservation in appointments or posts in favour of any backward class of citizens which in the opinion of the state, is not adequately represented in the services under the state. Article 16 also provides that state can make any provision to any class or classes of posts in the services under the state in favour of the Scheduled Castes and Scheduled Tribes which in opinion of the state, are not adequately represented in the services under the state. Article 335 states that the claims of the members of the scheduled castes and the Scheduled tribes shall be taken into consideration consistently with the maintenance of efficiency of administration in the making of appointments to services and posts in connection with the affairs of the Union or of the state. Article 320 (1) provides that nothing in clause (3) shall require a Public Services Commission to be consulted as regards the manner in which any provision
under article 16 may be made or the manner in which effect may be given to the provision of Article 335.

Mentioned above are the provisions and safeguards incorporated in the constitution to protect the rights of the Scheduled Castes and Scheduled Tribes. Following the vision of the constitution the Indian state introduced a number of policies and programs for the weaker sections of the society.

State Intervention through Various Policy Measures

Various development policies were adopted by the Indian state that were related to allocation mechanisms, the policies for growth, poverty reduction and structural transformation, and the programs aimed at economic development. An evaluation of the five year plans suggests a four-pronged strategy in pursuit of the above aims. First, they have aimed to bring about growth and diversification of economic activity as an essential prerequisite to eliminate malnutrition, illiteracy, poor health and poor housing. Rapid growth increases employment and incomes, thereby gradually enhancing the ability of all classes to secure their basic needs. Second, while better income results in better utilization of various services, the state is primarily responsible for providing universal elementary education, basic health and other services for all sections of the population. Since independence, the government has invested substantial resources in creating the necessary physical infrastructure and in providing these services free of charge in many cases (and at highly subsidized rates in others) to all segments of the population. Third, to make overall growth, fast enough to reach across social groups, the state intervention has been aimed specifically at the development of relatively backward regions and segments of the population. Schemes related to wage employment have become an integral part of the plans.

Finally, there have been interventions in terms of reservations; the reparation argument to that of historic injustice suffered by the Scheduled Castes and Scheduled Tribes. These were designed to tackle "exclusion" reflecting inherent differences between social groups in the opportunity to satisfy basic needs due to social and cultural factors. In societies where there is strong social differentiation, it is difficult
for the public administration to reach the poor and disadvantaged groups efficiently while implementing development programs.

Two main reform strategies have been adopted by the Indian state to reach out effectively to the needs of the poor: (a) strategies that aim at increasing the "demand" for pro-poor public services, such as political decentralization and devolution of authority to locally elected governments, participatory planning methods and the strengthening of organizations among the poor; (b) strategies that aim at improving the "supply" side, such as de-concentration and administrative decentralization and civil service reforms that aim at increasing the incentives of public servants.

Decentralization: Effort of State to Address the Issue of Increasing the "Demand" for Pro-Poor Public Services.

After Independence the debates over Mahatma Gandhi's vision of gram swaraj, led to a consensus and a provision was made in the Constitution under the Directive Principles of State Policy which reads "The state shall take steps to organize village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government". Since the adoption of the Constitution, several high level committees headed by outstanding leaders assessed the structure, powers and functions to be assigned to the Panchayati Raj Institutions. Some of these committees are: Balwant Rai Mehta Committee in 1957, the Santhanam Committee in 1963, the Ashok Mehta Committee in 1978, the GVK Rao Committee in 1985, and the LM Singhvi Committee in 1986. In all the committee reports there was recognition of the fact that the Panchayati Raj Institutions had not been able to acquire the status of workable and responsive people's institutions. Several factors such as the absence of regular elections, arbitrary and prolonged supersessions, insufficient representation for weaker sections, and inadequate devolution of powers and lack of financial resources were cited for the same. This happened all because constitutionally the panchayats had not been conceived as an institution functioning merely as the agency of state government to implement its policies and programmes. Gradually the need for decentralization diverted the attention of political leaders, intellectuals and policy makers. It was believed that neither the development of the people nor their governance was possible without

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16 Article 40 of the Constitution of India.
devolving powers at the local level. As a result the parliament passed (on December 22 and 23, 1992) two amendments to the Constitution, 73rd Constitution Amendment, for rural local bodies (panchayats) and 74th Constitution Amendment for urban local bodies (municipalities) making them 'institutions of self-government'.\(^{17}\) Within a year the states passed their own acts in conformity to the amended constitutional provisions.

**Realization of Right to Life through Various Policy Measures**

In one of its judgments\(^{18}\), the Supreme Court observed that the Directive Principles which are fundamental in the governance of the country cannot be isolated from the Fundamental Rights guaranteed under Part III of the Constitution. These principles have to be read into the Fundamental Rights. The court further held that 'right to life', is the essential expression for all rights which the Courts must enforce because they are basic to the dignified enjoyment of life. The 'right to life' has been interpreted constantly and has been elaborated into right to work, right to food, right to education, right to health etc. This 'rights based approach' is comparatively new to India. The state's role in providing education, work, food, health services etc has been mentioned in the constitution in the Directive Principles of State Policy. But these principles are non-justiciable\(^{19}\). Till recent past, citizens could not demand access to such public good as a right. This has been seen as a major impediment in the implementation of various policies and schemes meant for the socially and economically backward sections of the society. Remedy to these impediments was seen in devolving power to the local bodies and empowering the citizens to as to make the service delivery more effective, transparent and accountable.

This rights based approach enables one to assess the state-society relations in terms of fairness, equity and inclusiveness and simultaneously encourages the participation of citizens in the development process. It is believed that this approach has many

\(^{17}\) Article 243 of the Constitution says, 'panchayat' means an institution of self-government. And 243 G delegates the state legislatures to "endow the panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government. It also says that "such law may contain provisions for the devolution of powers and responsibilities upon panchayats" for preparation of plans and their implementation for economic development and social justice.

\(^{18}\) AIR 1992, SC: 1858

\(^{19}\) While Article 37 of the constitution explicitly states that the Directive Principles 'shall not be enforced by any court', it makes it quite clear that (1) these principles are nevertheless 'fundamental to the governance of the country' and (2) that "it shall be the duty of the state to apply these principles in making laws".
advantages. First, it shifts the focus from government to citizen. Second, the language of rights makes clear that the poor are not the subject of charity or benevolence by governments but instead are entitled to a decent standard of living and that rights are the vehicles for participation and empowerment and third aspect is that it draws attention to the importance of norms and rules. That is, how a society is governed and how it achieves its development becomes equally important as what these processes achieve.

These are precisely the issues that form the core of liberal philosophy. The philosophy of liberal equality entails each person to start their life with an equal share of society’s resources. The resources available to a person include opportunities for skill development, personal accomplishment and the exercise of opportunities. The idea of equality of opportunity is based on the premise that people’s destiny should be shaped according to their choices and not by their circumstances. In the way of pursuing a personal ambition, success or failure should be determined by one’s performance and not by one’s race, class or sex. Right to political participation, freedom of expression, equality before law are some basic rights that should be equally extended to each individual in a society. Thus social inequalities are undeserved and should be removed to give each person an equal opportunity to acquire social benefits.

As discussed in the beginning of this chapter, the constitutional provisions aimed to provide equality, equity and justice to all the citizens and to rectify the wrongdoings of the past. Yet these measures failed considerably to reach out to the masses for whom it was intended.

The Indian state, through a number of public policies initiated developmental process. In post-independent India most of the development policies emphasized on eradication of poverty. It has been noted that, “The community development in the fifties and panchayati raj in the sixties was intended to ensure peoples' participation and improving living conditions of rural people. Along with these institutional devices, there was emphasis on modernizing agricultural and industrial base also.”

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20 Will Kymlicka, *Contemporary Political Philosophy*, New York, 2002, p. 58, “The central motivating idea is this: it is fair for individuals to have unequal shares of social goods if those inequalities are earned and deserved by the individual, that is, if they are the product of individual’s actions or choices. But it is unfair for individual’s to be disadvantaged or privileged by arbitrary and undeserved differences in their social circumstances”.

However as early 1966 it was realized by the leaders and as well as by various segments of the society concerned about the poor, that though the economic policies and power structures did result in a limited growth, they did not result in equitable distribution of benefits of growth at all. Desai notes that, "In fact it was felt that this growth benefited basically a few; viz, the proprietary classes comprising the industrialists, traders, moneylenders and new rich farmers, along with a small section of the upper echelons of bureaucracy and the professionals". It was also realized this process of development also created an atmosphere where large segment of the society such as various categories of poor, predominantly in rural areas were becoming poorer. The situation was such that the poor "...... were caught in the growing network of market relations, losing old securities and getting trapped more and more tightly in the rapidly accelerating price rise. There was also an oppressive impact of the power assertion and economic, political and social aggression of the newly-emerging richer proprietary classes, considered by the state as progressive agents of development. These privileged echelons were being assisted or deliberately connived at by the state and its administrative machinery. This led to varied kinds of legal, extra-legal, traditional-modern forms of exploitation, oppression and even direct use of physical violence". It was felt among various sections of the poor especially from the rural areas that even the basic rights granted to them were being overtly negated and were not permitted to be exercised.

Such negation of justice transports one to the liberal debate of procedural justice and substantive justice. The debate within liberalism, on the nature of justice focuses on the distinction between procedural justice and substantive justice (discussed earlier).

As a means of providing justice to all sections of the society several measures were taken by the makers of the constitution. They were very much aware of the inequality of treatment based on caste and tradition. It was considered necessary to take into account the special claims of certain communities which had for centuries been excluded from position of equality and respect. Departing fundamentally from the individualist premise of the equality principle it was proposed to have rights as legal entitlements that would also be obligations on the members of civil society. As a result within the constitution, the Scheduled Castes and Scheduled Tribes had a set of

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23 Ibid., 1291.
rights and the state a set of duties, to eradicate discriminatory practices. They wished to extend the idea of equality of opportunity to all human beings in the social and political sphere. This required the government to treat all those in its purview as equals, as entitled to equal concern and respect. This conception of equality included the legal and social dimensions. It necessitated the elimination of arbitrary advantages in a social and economic system, irrespective of the cause whether the inequality has resulted from one's choice or that of another. Attempts were made to integrate the Scheduled Castes and Scheduled Tribes into society and politics through 'modern' political institutions. They visualized its realization through the constitution and the legislative process, as well as the representative bodies that would set right the social and economic injustice. The goal of equality of opportunity was the removal of obstacles in the way of an individual realizing individual’s potential.

**Equality of Opportunity and Capability Deprivation: Need for State Intervention**

The fact that intervention by state is required to promote human capabilities and coordinate infrastructure was realized even before India attained independence. So while framing the constitution few disagreed with the proposition that the disadvantaged sections of the population deserve and need special help. But there was much debate on how it should be done. The result was categorization of three types of preferences: first, through reservations, which allotted or facilitated access to valued positions or resources. The most important instances of this type were reserved seats in legislatures, reservations of posts in government service, and reservation of places in academic institutions (especially the coveted higher technical and professional colleges). The reservation device was also used in the distribution of land allotments, housing and other scarce resources. Second, there were programmes involving expenditure or provision of services e.g. scholarships, grants, loans, land allotments, health care, legal-aid to a beneficiary group beyond comparable expenditure for others. Third, there were special protections. These distributive schemes were accompanied by efforts to protect the backward classes from being exploited and victimized\(^{24}\).

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\(^{24}\) Marc Galanter, *Law and Society in Modern India*. Delhi, 1989, pp.192.
Policies and Schemes for Poor and Socially Disadvantaged Groups in India

India’s post independence phase witnessed a lay out of a number of policies, plans and regulations. Policies broadly laid down the objectives and their rationale, and the strategy to achieve these objectives. The plans outlaid the targets of expenditure and physical achievements for major groups of activity in the private as well as public sector. The various Five year plans put forth a number of schemes and programs related to development, especially rural development alongwith schemes for poor and socially disadvantaged groups. The schemes intended to cover growth of production base of household (like farm and rural non farm activities), social needs or amenities, (like education, drinking water, health, housing, electricity etc), poverty programs such as employment, wages, land distribution, education, gender related health schemes, social security measures and affirmative action programs for disadvantaged groups.

A number of schemes were introduced for the rural areas. Broadly these schemes can be classified into following spheres:

- **Developmental Schemes**
  1) Related to agricultural development, mainly related to technology, input supply, irrigation, and land development.
  2) Related to non-farm economic activities like supportive measures for household production activities, particularly the artisans.

- **Schemes relating to Social services and civil amenities**
  These relate to amenities like drinking water, drainage, housing, electricity, health and education infrastructure. Most of these are at the level of village and community and some of them are also at household level

- **Anti-poverty programs**
  These include several programs for poor-and disadvantage groups like scheduled castes and scheduled tribes and other groups such as old age persons, physically handicapped persons.

These include Employment Guarantee schemes, self-employment schemes, Food fair price shops and others social security schemes Land distribution schemes.
Schemes related to education like, scholarship and book bank, mid-day meal schemes in school.

- Enforcement of Equal Opportunity Laws (or anti-discrimination laws) and minimum wage laws

These include responsibilities of government employee to enforce certain laws like anti untouchability Act (or civil right act), Prevention of Atrocities against scheduled caste and scheduled Act, Minimum wages act, Ceiling on land holding act, bonded labour act and other similar acts.

There are number of schemes which are specially earmarked for disadvantage groups under affirmative action programs. These generally fall under general poverty alleviation program and those under Special Component Plan for Scheduled caste and Tribal Sub-Plan for Scheduled tribe.

**Schemes Selected for the Study: A Right Based Approach to the Study**

As Jean Dreze and Amartya Sen\(^2\) say, “The practice of local democracy is also a form of wider political education. In the context of village politics, people are learning (if only at varying speed) to organise, to question established patterns of authority, to demand their rights, to resist corruption, and so on. This learning process enhances their preparedness not only for local democracy alone, but for political participation in general”. To understand the participation of marginalized groups in governance processes and the role of various actors, three schemes have been selected. The schemes selected are the ones in which the panchayat members, local bureaucrats, local NGOs are simultaneously involved. These schemes are also aimed at improving the condition of the marginalized groups selected for the study.

Eleventh Schedule contains 29 functional items placed within the purview of the Panchayats. Out of those three areas were chosen to study the patterns of participation of the marginalized groups. They are the Poverty alleviation programme, education (primary schools) and women and child development. Consequently three schemes were selected: National Rural Employment Guarantee Scheme (NREGS), Mid Day Meal Scheme (MDM), and Anganwaadis (ICDS). These schemes have been

interpreted from the rights based perspective as well as role of the local development actors (local elected political bodies, local Bureaucracy, local Elites, local NGOs) in the implementation of these schemes.

Given below is brief introduction to the schemes followed by a discussion on how they have been interpreted with a rights based approach.

1. National Rural Employment Guarantee Scheme

National Rural Employment Guarantee Act (NREGA) came into force in on February 2, 2006. In the beginning, it was implemented in the two hundred of India's most backward districts. In the next phase it was extended to cover another 130 districts. In the third phase that is, from April 1, 2008, the Act has covered all of rural India. Let us now understand what the Act is all about.\(^{26}\)

_National Rural Employment Guarantee Act 2005_

The Employment Guarantee Act is considered to be a step towards the right to work, as an aspect of the fundamental right to live with dignity. The “right to life” is a fundamental right of all citizens under Article 21 of the Indian Constitution. “Right to life... includes the right to live with human dignity, it would include all these aspects which would make life meaningful, complete and living.”

It is a law where it is stated any adult who is willing to do unskilled manual work at the minimum wage is entitled to being employed on local public works within 15 days of applying. If employment is not provided within 15 days, the applicant is entitled to an unemployment allowance (which is at least one fourth of the minimum wage for the first 30 days and at least one half of the minimum wage thereafter).

The National Rural Employment Guarantee Act 2005 directs every State Government to prepare a Rural Employment Guarantee Scheme (REGS) in order to implement the work guarantee. Thus, the Act provides the legal foundation of the work guarantee,

and the Scheme is the means through which this guarantee comes into effect. It is to be noted that the Act is a national legislation, but the Scheme is state-specific.

**Basic Features**

Each state is free to frame its own Rural Employment Guarantee Scheme. But there should be certain “basic features” that are mentioned in Schedule I of the Act. Schedule I states the type of works\(^\text{27}\) that can be undertaken under REGS, and the minimum facilities that are to be provided at the worksite. “Operational Guidelines” issued by the Ministry of Rural Development in January 2006 is also expected to be followed by each REGS.

- Anyone above the age of 18 who resides in rural areas is eligible to work under NREGS.
- There is a limit on the number of days of work i.e. 100 days per household per year (where in each nuclear family counts as a separate “household”).
- Work would be provided within 5 kilometres of the applicant’s residence, as far as possible.
- If work is provided beyond 5 kilometres, a travel allowance has to be paid. Labourers are entitled to the statutory minimum wage for agricultural labourers in the state, unless the Central Government “notifies” a different norm.
- If the Central Government notifies, the norm is subject to a minimum of Rs 60/day. Wage should be paid weekly or in any case not later than a fortnight, directly to the person concerned, in front of the community.

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\(^{27}\) Schedule I of the NREGA lists eight categories of works that are supposed to be “the focus of the Scheme”. Briefly, these include (1) “water conservation and water harvesting”; (2) “drought proofing” (including afforestation); (3) “irrigation canals including micro and minor irrigation works”; (4) “provision of irrigation facility” to land owned by households belonging to the Scheduled Castes and Scheduled Tribes, beneficiaries of land reforms, or beneficiaries of Indira Awas Yojana; (5) “renovation of traditional water bodies” including desilting of tanks; (6) “land development”; (7) “flood control and protection works” including drainage in water logged areas; and (8) “rural connectivity to provide all-weather access”. In addition, there is a residual ninth category: “any other work which may be notified by the Central Government in consultation with the State Government”. The Act also states that a list of “preferred works”, to be taken up on a priority basis, is to be prepared by the State Employment Guarantee Council. The preferred works are to be identified “based on their ability to create durable assets”, and may differ between different areas.
Facilities like drinking water, shade, medical aid, creche (if more than five children below age 6 are present) are to be provided by the implementing agency.

There would be no gender discrimination of any kind, equal wages for women and men in all circumstances.

There would be priority for women in the allocation of work: at least 33% of labourers should be women.

Block would be the basic unit of implementation.

In each Block, a “Programme Officer” would coordinate the implementation of EGS.

Gram Panchayats would be the main implementing agencies. Other implementing agencies would be other Panchayati Raj Institutions (PRIs), line departments (PWD, Forest Dept.), NGOs etc. Private contractors are banned.

A Programme Officer would maintain shelf of projects, based on proposals from the implementing agencies.

Gram Panchayats are also supposed to prepare a shelf of works based on the recommendations of the Gram Sabha.

Application for work

Application for work is a “two-step” procedure. The first step is to “register” with the Gram Panchayat. The second step is to apply for work. Registration is required only once every five years, but applications for work have to be submitted each time work is required.

Stepwise process for the registration is as follows:

- The unit of registration is the “household”, while applications for work are individual applications. 28 A household has to apply for registration.

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28 The Act defines a household as “the members of a family related to each other by blood, marriage or adoption and normally residing together and sharing meals or holding a common ration card” [Section 2(6)].
Applications for work may be submitted at any time, either through the Gram Panchayat or directly to the Programme Officer. Both have a duty to accept valid applications and to issue a dated receipt to the applicant.²⁹

The Gram Panchayat registers it and issues a "job card".

The job card ensures that labourers are in possession of a written record of the number of days they have worked, wages paid, unemployment allowances received, and so on, instead of depending on government officials for this purpose.

Applications must be for at least 14 days of continuous work [Schedule II, Para 7].

The Act provides for group applications, advance applications, and multiple applications over time [Schedule II, Paras 10, 18 and 19].

Applicants are supposed to be told where and when to report for work within 15 days, by means of a letter as well as of a public notice displayed on the notice board of the Gram Panchayat and at the office of the Programme Officer [Schedule II, Paras 11 and 22].

The unit of registration is the "household", while applications for work are individual applications.

The main purpose of the registration process is to facilitate advance planning of works. If a household applies for registration, it is the duty of the Gram Panchayat to register it and issue a "job card". The job card will ensure that labourers are in possession of a written record of the number of days they have worked, wages paid, unemployment allowances received, and so on, instead of depending on government officials for this purpose. A job card is supposed to be valid for five years at least.

Implementing Agencies

Implementing agencies include any agency that is "authorized by the Central Government or the State Government to undertake the implementation of any work" taken up under REGS [Section 2(g)]. The main implementing agencies are the Gram

²⁹ Schedule II, Para 10.
Panchayats: at least 50 per cent of the works (in terms of share of the REGS funds) have to be implemented through the Gram Panchayats [Section 16(5)]. Other implementing agencies include the Intermediate Panchayats, the District Panchayats, and “line departments” such as the Public Works Department, the Forest Department, the Irrigation Department, and so on. The Employment Guarantee Act also allows NGOs to act as implementing agencies. Private contractors should not be involved at any stage.

Role of the Gram Panchayat / Grama Sabha

The Gram Panchayat has to process applications for “registration” and employment. This involves registering potential workers, issuing job cards to them, receiving their applications for work, forwarding these to the Programme Officer, and informing the applicants as and when work is available. Applications for registration and employment can also be submitted directly to the Programme Officer, but normally they are expected to be submitted at the Gram Panchayat level.

Gram Panchayat is also the main “implementing agency”. It is expected to prepare a “development plan” for the village and maintain a shelf of projects to be taken up under REGS, based on the recommendations of the Gram Sabha. The Gram Panchayat also executes these projects, as and when they are sanctioned by the Programme Officer.

All the relevant documents, including the muster rolls, are to be made available to the Gram Sabha for the purpose of “social audits”. The Gram Sabha is expected to monitor the work of the Gram Panchayat, and also to participate in the planning process.

In particular, the Gram Sabha will discuss and prioritise the works to be taken up, conduct regular social audits of all works carried out in the Panchayat, and verify that all the relevant norms are being observed.

Resolutions of the Gram Sabha are to be given priority in the planning of REGS works by the Gram Panchayat and the Programme Officer.

Management at Block, District and State levels
At the District level, the supervision of the Rural Employment Guarantee Scheme is the responsibility of the “District Coordinator”. The District Coordinator is expected to coordinate the work of the Programme Officers, for instance by consolidating their respective “plans” into a District-level shelf of projects [Section 14(3)(b)]. The District Coordinator is also expected to prepare a “labour budget” every year during the month of December, for the next financial year. Other responsibilities of the District Coordinator include conducting regular inspections of the works in the District, sanctioning works that are not within the jurisdiction of Programme Officers, assisting the District Panchayats, and preparing an annual report to the State Council.

At the State level, the Rural Employment Guarantee Scheme is to be monitored by a State Employment Guarantee Council (or “State Council” for short). The State Council is essentially an advisory body for the State Government. For instance, the State Council is expected to advise the State Government on the “schedule of rates” (payment rates for piece-rate work), the level of the unemployment allowance, and monitoring arrangements. Other key responsibilities of the State Council include preparing a list of “preferred works” to be taken up on a priority basis, conducting evaluations of REGS, and preparing an annual report to be laid before the State Legislature.

The Act also provides for the creation of a Central Employment Guarantee Council or Central Council. The functions of the Central Council are similar to those of the State Council, at the national level. The Central Council monitors the implementation of the Act country-wide, advises the Central Government, and prepares an annual report to be laid before Parliament.

2. Mid-Day Meal Scheme

Concept of meals in school

Provision of meal in schools is has a long history. A Mid Day Meal Programme was introduced for disadvantaged children in Madras Municipal Corporation in 1925. By the mid 1980s, Gujarat, Kerala and Tamil Nadu and Puducherry had universalized a cooked Mid Day Meal Programme with their own resources for children studying in

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primary schools. Tamil Nadu launched a cooked MDMS in the 1950s and expanded it significantly in 1982, and Gujarat introduced mid-day meals in the 1980s. By 1990-91 the number of States implementing the mid day meal programme with their own resources on a universal or a large scale had increased to twelve, namely, Goa, Gujarat, Kerala, Madhya Pradesh, Maharashtra, Meghalaya, Mizoram, Nagaland, Sikkim, Tamil Nadu, Tripura and Uttar Pradesh. In another three States, namely Karnataka, Orissa and West Bengal, the programme was being implemented with State resources in combination with international assistance; Andhra Pradesh and Rajasthan were implementing the programme entirely with international assistance.

Mid Day Meal Scheme:

With a view to enhancing enrollment, retention and attendance and simultaneously improving nutritional levels among children, the National Programme of Nutritional Support to Primary Education, commonly known as, Mid Day Meal Scheme, was launched as a Centrally Sponsored Scheme on 15th August 1995, initially in 2408 blocks in the country. By the year 1997-98 it was introduced in all blocks of the country. It was further extended in 2002 to cover not only children in classes 1 to 5 of government, government aided and local body schools, but also children studying in centres run under the Education Guarantee Scheme (EGS) and Alternative and Innovative Education (AIE) Scheme.

In September 2004 the scheme was revised to provide cooked mid day meal with 300 calories and 8-12 grams of protein to all children studying in classes 1 to 5 in Government and aided schools and EGS/ AIE centres. In addition to free supply of food grains, the revised scheme provided Central Assistance for (a) Cooking cost @ Re 1 per child per school day, (b) Transport subsidy was raised from the earlier maximum of Rs 50 per quintal to Rs. 100 per quintal for special category states, and Rs 75 per quintal for other states, (c) Management, monitoring and evaluation costs @ 2% of the cost of foodgrains, transport subsidy and cooking assistance, (d) Provision

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31 India A Desk Review of the Mid Day Meal Programme, World Food Programme, Home Grown School Feeding project, July 2007
33 All the provisions have been taken from National Programme of Nutritional Support to Primary Education, 2004, Mid-Day Meal Scheme, Guidelines, Ministry of Human Resource Development, Department of Elementary Education and Literacy, Government of India, New Delhi, 2004.
of mid day meal during summer vacation in drought affected areas. In July 2006 the scheme was further revised to provide assistance for cooking cost at the rate of (a) Rs 1.80 per child/school day for States in the North Eastern Region, provided the NER states contribute Rs 0.20 per child/school day, and (b) Rs 1.50 per child/ school day for other States and UTs, provided that these States and UTs contribute Rs 0.50 per child/school day. In October 2007, the scheme has been further revised to cover children in upper primary (classes 6th to 8th) initially in 3479 Educationally Backwards Blocks (EBBs). Around 1.7 crore upper primary children were expected to be included by this expansion of the scheme. The programme was extended to all areas across the country from 2008-09. The calorific value of a mid-day meal at upper primary stage has been fixed at a minimum of 700 calories and 20 grams of protein by providing 150 grams of food grains (rice/wheat) per child/school day.

**Village Education Committees:** The village education committees are supposed to be the agency through which public funds for education services will flow to the village, through which planning, implementation and monitoring will be coordinated. They are known as SDMC (School Development and Management Committee) in Karnataka, PTA (Parent-Teacher Association) in Kerala and VSS (Vidlaya Siksha Samiti) in Bihar.

**Objectives:**

The programme intended to give a boost to universalization of primary education, by increasing enrolment, retention and attendance and simultaneously impacting on nutrition of students in primary classes. The aim was seven fold: promotion of school participation, prevention classroom hunger, enabling healthy growth of children, inculcating intrinsic educational value, promotion of social equality, encouraging gender equity and facilitating cognitive, emotional and social development.

The objectives of the mid day meal scheme are:

- Improving the nutritional status of children in classes I – VIII in Government, Local Body and Government aided schools, and EGS and AIE centres.

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• Encouraging poor children, belonging to disadvantaged sections, to attend school more regularly and help them concentrate on classroom activities.

• Providing nutritional support to children of primary stage in drought-affected areas during summer vacation.

Coverage:35

The programme that started in 1995-96, was implemented in a phase-wise manner, in all Government, local body and Government-aided primary schools in all the States and Union Territories.

The Central Government was to assist the local bodies authorities such as Panchayats and Nagarpalikas in implementing the programme by providing from the nearest Food Corporation of India (FCI) godowns wheat/rice (as may be required) at the rate of 100 grams per student per day free of cost. The broad principles of allocation of food grains were:

• District would be the unit of allocation.

• Allocation of food grains to be supplied through FCI by Government of India will be made once in every quarterly cycle of three months periods.

The District Collector is responsible for collection from the FCI godown and arranging transportation of food grains and distribution thereof to the local bodies/schools based on the entitlement of individual schools. Further linkages between FCI and the schools in each district (involving the block office) ensure smooth flowing of food grains.

Essentially Mid Day Meal Scheme aims for:

Provision of Nutritious hot cooked meal: Nutritious, cooked meals should be provided throughout the year. The menu should offer variety to sustain the interest of children and to enhance the nutritional value of the meal.

35 All the provisions have been taken from National Programme of Nutritional Support to Primary Education, 2004, Mid-Day Meal Scheme, Guidelines, Ministry of Human Resource Development, Department of Elementary Education and Literacy, Government of India, New Delhi, 2004.
Provision of micronutrient supplementation: All mid-day meal programmes should include a "micronutrient supplementation" component (as well as mass deworming if needed), to address common micronutrient deficiencies among children.

Adequate manpower: Every school should have trained staff to provide mid-day meals with no interference to the normal school routine. Each school should have at least a cook and a helper. All cooks should undergo training on nutrition, hygiene, maintenance of accounts, and other essential skills.

Adequate utensils: Each school should have the necessary utensils including vessels for cooking, water, and plates.

Provision of drinking water: Each school should have a reliable supply of clean drinking water within the premises.

Kitchen and storage: Each school should have adequate infrastructure for mid-day meals, including a kitchen and separate storage space.

Logistics management: Reliable arrangements for timely delivery of grain and other supplies should be in place everywhere.

Supervision and monitoring: Effective arrangements should be made for close supervision and monitoring of mid-day meal programmes, and prompt action in the event of lapses such as food poisoning, disruption in food supply, social discrimination, etc.

Social equity: All cooking staff should be women and preference should be given to Dalits. There should be no discrimination in the mid-day meal process based on the social background of children or cooking staff.

School health programme: The mid-day meal programme should be linked with an active school health programme.

Jaitly\textsuperscript{36} suggests that ill-health is a reflection of the multidimensional link between poverty and social inequality, malnutrition and micronutrient deficiencies, and lack of access to critical amenities. To deal with such a situation

Dreze and Goyal\textsuperscript{37} precisely call the MDM scheme a nutritionist's dream.


3. Integrated Child Development Services (ICDS) Scheme

Introduction to the scheme:

The Government of India launched this scheme on 2nd October 1975, to commemorate the birth anniversary of Mahatma Gandhi. Starting with 33 blocks in 1975, ICDS, as of now, has a network of 4200 projects covering nearly 75% community development blocks and 273 urban slum pockets. It reaches out to 4.8 million expectant and nursing mothers and 22.9 million children (under six years of age) of the disadvantaged groups. Of these 12.5 million children (aged three to six years) participate in centre-based pre-school activities. Children in age group 0-18 years constitute 44% of the population of India. Studies have shown that a considerable percentage of children under five years of age become victims to diseases and in extreme cases death due to malnutrition which may be a combination of poverty, low status of women, neglect of the girl child, poor environmental sanitation, inadequate access to primary health care, inappropriate child caring and feeding practices. Integrated Child Development Services (ICDS from now) has tried to address these issues.

Beneficiaries under the Scheme are children in the age group of 0-6 years, adolescent girls and pregnant and lactating mothers. Children below six years, expectant and nursing mothers and women in the age group of 15 to 45 years receive supplementary feeding, growth monitoring and promotion, immunization, health check-up, referral services, nutrition and health education and early childhood care and preschool education. It was believed that in order to reduce infant mortality and malnourishment, it was extremely important to also cater to the health and well-being of the mother. Initially, the focus was on the period from the time she got pregnant until she delivered. Later, it was realized that the mother needed nurturing from much earlier, and therefore the programme for adolescent girls, the Kishori Shakti Yojana (KSY), was started in the year 2000-01. [38][39]

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[38] Website of Department of Women and Child Development, government of India, http://wcd.nic.in
The team includes the anganwadi helpers, anganwadi workers, supervisors, Child Development Project Officers (CDPOs) and District Programme Officers (DPOs). Anganwadi Worker, a lady selected from the local community, is a community based frontline voluntary worker of the ICDS Programme. She is also an agent of social change, mobilizing community support for better care of young children, girls and women. Besides, the medical officers, the lady health visitors (LHVs) and Auxiliary Nurse Midwife (ANM) and female health workers from nearby primary health centres (PHCs) and Heath Sub-Centre form a team with the ICDS functionaries to achieve convergence of different services. The position of Anganwadi Workers (AWWs) and Helpers (AWHs) is not a regular profession but they are "honorary workers" from the local community who come forward to render their services, on part-time basis, in the area of child care and development. Anganwadi Workers & Helpers are the grass roots functionaries to implement the Integrated Child Development Services (ICDS) Scheme. AWWs & Helpers, being honorary workers, are paid a monthly honorarium as decided by the Government from time to time.

The objectives of the scheme are:

- To improve the nutritional and health status of children in the age-group 0-6 years;
- To lay the foundation for proper development of the child;
- To reduce the incidence of mortality, morbidity, malnutrition and school dropout;
- To achieve effective coordination of policy and implementation amongst the various departments to promote child development and;
- To enhance the capability of the mother to look after the normal health and nutritional needs of the child through proper nutrition and health education.

The child-centered approach of ICDS is based on the rationale that care, cognitive and psychosocial development and the child's health and nutritional health well being mutually reinforce each other.

Services provided:

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The objectives and services provided are referred from the 'Working Paper on ICDS and Polio Eradication Initiative in Bihar', UNICEF, Bihar August 2008, p4
The Scheme provides an integrated approach for converging basic services through community-based workers and helpers. The services are provided at a centre called the ‘Anganwadi’. The Anganwadi, literally a courtyard play centre, is a childcare centre, located within the village itself. A package of following six services is provided under the ICDS Scheme:

- Supplementary nutrition
- Non-formal pre-school education
- Immunization
- Health Check-up
- Referral services
- Nutrition and Health Education

The three services namely immunization, health check-up and referral are delivered through public health infrastructure that is, Health Sub Centers, Primary and Community Health Centers under the Ministry of Health & Family Welfare.

*Community participation*:

In order to enhance the outreach of these services, particularly to the disadvantaged groups and ensure their better utilization, the anganwadi worker mobilizes support from the community. The anganwadi worker surveys all families in the community to identify pregnant and nursing mothers, adolescent girls and children below six years of age from the low-income families and deprived sections of the society. This ensures early registration of pregnant women leading to better utilization of key health services, as well as better care and counseling for improved maternal nutrition. It also promotes a healthy prenatal and postnatal environment for the young child, and is likely to reduce the incidence of low birth weight thereby promoting child survival and development.

Following the guidelines of the Seventy-third (Constitution) Amendment Act, Panchayats and Women’s Self-help Groups have been actively involved in the implementation of ICDS Scheme in many States. PRIs are actively involved in implementation, monitoring and supervision of the Scheme. Women’s self-help

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41 See Department of Women and Child Development, government of India [http://wcd.nic.in/udisha/htm/objectives.htm](http://wcd.nic.in/udisha/htm/objectives.htm)
groups have also surfaced as a medium for economic & social empowerment of women.

Rights based perspective of the schemes

1. Right to Work: National Rural Employment Guarantee Scheme:

The “right to life” is a fundamental right of all citizens under Article 21 of the Indian Constitution. “Right to life… includes the right to live with human dignity, it would include all these aspects which would make life meaningful, complete and living.” (Supreme Court) The National Rural Employment Guarantee Act (NREGA) is considered to be a step towards the right to work, as an aspect of the fundamental right to live with dignity.

A number of rural wage employment programmes have been implemented by the Central and State Governments earlier. They targeted at the poor and were normally identified with poverty alleviation. Some of the national level rural employment generation schemes are: National Rural Employment Programme [NREP] 1980-89; Rural Landless Employment Guarantee Programme (RLEGP) 1983-89; Jawahar Rozgar Yojana (JRY) 1989-99; Employment Assurance Scheme (EAS) 1993-99; Jawahar Gram Samridhi Yojana (JGSY) 1999-2002; Sampoorna Grameen Rozgar Yojana (SGRY) since September 2001; National Food for Work Programme (NFFWP) since November 14, 200442.

However, reviews of these programmes showed several persistent weaknesses: (a) low programme coverage; (b) more than 50 per cent beneficiaries not from most needy group; (c) bureaucracy dominated planning; little participation of community in planning; (d) work to women lower than stipulated norm of 30 per cent; (e) only 16-29 days employment provided to household; (f) assets created not durable; and (g) corruption: reports of false muster rolls; contractors persisted; payment often less than prescribed wages (ARC, 2006).

The NREGA goes beyond poverty alleviation and recognizes employment as a legal right. The National Rural Employment Guarantee Act 2005 is a law whereby any

42 SGRY and NFFWP were merged with NREGS in 2005
adult who is willing to do unskilled manual work at the minimum wage is entitled to being employed on local public works within 15 days of applying. If employment is not provided within 15 days, the applicant is entitled to an unemployment allowance (which is at least one fourth of the minimum wage for the first 30 days and at least one half of the minimum wage thereafter).

NREGS is unique in many ways. It is a “demand driven” programme designed as a safety net to reduce migration by rural poor households in the lean period through a hundred days of guaranteed unskilled manual labour provided when demanded at minimum wage on works focused on water conservation, land development & drought proofing. There is a complete ban on the use of contractors.

NREGS is caste neutral. That is to say it has not been targeted towards any particular caste group/groups. A person of any caste is eligible to work under this scheme as long as he/she fulfils the eligibility criteria. NREGS does not make any distinction between persons belonging to APL/BPL category as well.

The most important feature is that it is legal binding on the state to provide work as a right of the individuals. Constraint of resources cannot be mentioned by the government as an excuse for not providing work and its attendant entitlements. This is a commitment by the state that is unprecedented in the history of independent India – both as a legally enforceable right and in terms of financial resources.

2. Right to Education: Mid Day Meals under Sarva Siksha Abhiyan

Provision of primary education to children under the age of 14, is mentioned in the constitution but in the Directive Principles of State Policy which are not enforceable by the state. Till quite recently, the right to education was not a part of education policy. For e.g. the issue is not referred to in the National Education Policy of 1986. Since then, however, there has been a revival of public concern for the right to education. Today, the notion that every child has a fundamental right to elementary education is accepted widely. Various efforts have been taken by the state to enable children of most disadvantaged sections of the society to have an access to primary education. One such effort has been the centrally-sponsored scheme, known as the National Programme of Nutritional Support to Primary Education launched in 1995. The programme intended to give a boost to universalization of primary education, by
increasing enrolment, retention and attendance and simultaneously impacting on nutrition of students in primary classes. Under this programme, cooked mid-day meals were to be introduced in all government and government-aided primary schools within two years. In the intervening period, state governments were allowed to distribute monthly grain rations (known as ‘dry rations’) to schoolchildren, instead of cooked meals. However, for a period of about six years, till 2001, most of the states did not introduce the cooked meal in the schools. On November 28, 2001 the Supreme Court directed all state governments to introduce cooked mid-day meals in primary schools within six months. This order came up in the context of a public interest litigation on the right to food, initiated by a writ petition submitted to the Supreme Court by the People’s Union for Civil Liberties, Rajasthan.43

Mid-day meals were expected to achieve three goals.44 First, that of educational advancement, by boosting school enrolment and pupil attendance. Second, fulfillment of nutritional objective ranging from the elimination of classroom hunger to the healthy growth of school children. This would eventually enhance the learning capacity, because ‘classroom hunger’ does undermine the ability of students to concentrate and affect their learning skills. Third, the mid-day meals would lead to social equity by undermining caste discrimination by making children to sit together and share a common meal, reducing the gender gap, providing a source of female employment (as cook) in rural areas.

3. Right to Food: ICDS in question

National Policy for Children, India’s first comprehensive policy for children, was adopted in 1974 which assigned to the state the responsibility to provide adequate services to children both before and after birth; to ensure full physical, mental and

43 The text of the order of the Supreme Court dated November 28, 2001 in CWP 196/2001 is as follows: ‘We direct the state governments/ union territories to implement the mid-day meal scheme by providing every child in every government and government-assisted primary school with a prepared mid-day meal with a minimum content of 300 calories and 8-12 grams of protein each day of school for a minimum of 200 days. Those governments providing dry rations instead of cooked meals must, within three months, start providing cooked meals in all government and government-assisted schools in half the districts of the state (in order of poverty), and must within a further period of three months extend the provision of cooked meals to the remaining parts of the state.’ The full text of the order is available at www.righttofoodindia.org.

social development; to set up Integrated Child Development Services (ICDS) centres, balwadis and day care centres run by voluntary agencies with government assistance, and preprimary schools run by state governments, municipal corporations and other agencies. The provision of maternal and child health services through primary health centres and sub-centres and other agencies was also approved. ICDS was initiated in 33 blocks in 1975, aimed particularly at the most vulnerable sections of the population and at disadvantaged areas such as backward rural areas, tribal tracts and urban slums.

The ICDS program has been one of the most important public programs in India reaching out to the most neglected sections of the population.

The anganwaadi centers were created under the ICDS program as the only institution at the village level responsible for the health and well-being of mothers, children and adolescent girls. It had following objectives: to improve the nutritional and health status of children in the age group 0-6 years; to lay the foundation for proper psychological, physical and social development of the child; to reduce the incidence of mortality, morbidity, malnutrition and school drop-out; to achieve effective coordinated policy and its implementation amongst the various departments to promote child development; to enhance the capability of the mother to look after the normal health and nutritional needs of the child through proper nutrition and health education. The program identifies that for reduction in infant mortality and malnourishment, it is particularly vital to cater to the health and well being of the mother. Initially, the focus of the program was on the period from the time she got pregnant until she delivered. Later, it was extended for adolescent girls under the Kishori Shakti Yojana in 2000-01. The institutional arrangement to implement the policy objectives of the ICDS comes under the Women and Child Welfare Department. Healthcare is assigned to the health department which is expected to take care of pregnant women, prenatal and postnatal care and children at the village level.

The program relies basically the anganwaadi worker, who takes care of women, children, and adolescent girls, ensures safe delivery of the infant and maintains the nutritional status of children until they reach six years of age. She is also expected to maintain the data that feeds into the statistics of the government on births, deaths, growth of children, records for supplies of food, educational material and lists of women who could access the schemes. Any new idea or agenda for action is seen to be, delivered by the anganwaadi worker. She is neither professionally trained nor paid
even the minimum wages. She receives an honorarium for her duties. There are a number of officials supervising and monitoring her work at the block, district and state levels.

Since 2001, the Supreme Court has been monitoring the implementation of ICDS in the context of Public Interest Litigation (CWP 196/2001) on the right to food. This PIL began with a writ petition submitted to the Supreme Court by the People's Union for Civil Liberties (PUCIL), regarding the food situation in the country. The petition pointed out that the denial of the right to food amounts to a denial of the fundamental right to life enshrined in the Article 21 of Indian Constitution. It argued that the government's gigantic food stocks should be used to enhance the food security of the people, instead of being exported or allowed to rot in the granaries of the Food Corporation of India (FCI). The Supreme Court has issued interim orders that reinforce the mandate and importance of ICDS, which had faded somewhat between 1975 and 1990s.

The order dated November 28, 2001 gave an exceptional fillip to ICDS. It stated that the scheme must be implemented in full and must be extended to each child, adolescent girl, pregnant woman and nursing mother in India. Furthermore, the additional supplementary nutrition under the scheme should be made available to each malnourished child and that every settlement should have an anganwadi\textsuperscript{45}. Two more orders were issued in April 2004 and October 2004. In response to the above petition and the successive hearings, the Supreme Court has been issuing interim orders periodically, especially for the effective implementation of food related schemes.

Inspite of the Supreme Court orders, studies have shown that ICDS has not gone down too well within the society. Reasons cited are varied. A study on ICDS in Andhra Pradesh shows absence of social norms and environment conducive to supporting the beneficiaries, lack of mobilization within the community, lack of

\textsuperscript{45} The order of the Supreme Court dated November 28, 2001 states: "we direct the state governments and union territories to implement the Integrated Child Development Services (ICDS) in full and to ensure that every ICDS disbursing centre in the country shall provide as under: (a) each IV child up to six years of age to get 300 calories and 8-10 grams of protein; (b) each adolescent girl to get 500 calories and 20-25 grams of protein; (c) each pregnant woman and each nursing mother to get 500 calories and 20-25 grams of protein; (d) each malnourished child to get 600 calories and 16-20 grams of protein; and (e) have a disbursement centre in every settlement. The full text of the order is available at www.righttofoodindia.org.
public ownership of program\textsuperscript{46}, lack of recognition of the AWW as a government employee lack of coordination between the AWW and ANM from the health department, lack of clarity on the roles of the Supervisor and the CDPO. Another study in Chattisgarh\textsuperscript{47} shows that child mal nutrition is grossly under-recognized, the outreach of the anganwadi centers to the people as well as the supplies to the centers is inadequate, there is lack of community monitoring and control and also victim blaming.

In all these studies on comes across a similarity that the scheme has not been interpreted in the perspective of rights, right to food to be more precise. The right to food can be interpreted as a claim of individuals on society as an entitlement to be free from hunger. However this term ‘freedom from hunger’, provides itself to a number of interpretations for e.g. getting two meals a day, meeting specific calorie norms, avoiding nutrition-related ailment etc. The right to food can also be seen as a right to 'nutrition', as in Article 47 of the Constitution. But again, good nutrition itself depends on varied needs such as food intake, clean water, basic health care, good hygiene etc. If again, food intake is considered, then the constituents of good nutrition are a matter of debate among nutritionists. For all these reasons, it is difficult to translate the right to food into a specific list of entitlements.

John Dreze\textsuperscript{48} puts forth three perspectives to the right to food. One is the perspective of the Indian Constitution, especially the Directive Principles of State Policy. Under this perspective, right to food is shadowed by corruption because it is not enforceable in a court of law being one of the Directive Principles. The only way of holding the state accountable to its responsibility is through other democratic means for instance on parliamentary interventions, the media, international solidarity, street action, or active community participation.

Second is the international declarations and conventions on this matter, starting with the Universal Declaration of Human Rights.

\textsuperscript{46} Dipa Sinha, ‘Rethinking ICDS:A Rights Based Perspective’ in \textit{Economic and Political Weekly} vol 41, part 4, August 26, 2006, pp.3691. “the ICDS programme is seen not as rights based institution, but a 'podu' (powder) centre, where once in a while some white powder is distributed on the Basis of AWW's likes and dislikes”.


Third is the argument for the right to food as a moral and social right. These three perspectives are not mutually exclusive, rather they complement each other.

However, even when right to food is not enforceable in court, social awareness can have a tremendous influence on public perceptions of who is entitled to what. These perceptions, in turn, can make a real difference in various ways. For instance, in situations where the effectiveness of food security programs depends on the vigilance of the public, perceptions of rights can matter a great deal.

Here the participation of people directly or through the panchayats, role of elected panchayat leaders, local bureaucrats and local elites becomes important. And that is the focus of this study.

**Empirical Evidence of Implementation of programmes:**

As mentioned above several policies and programmes have been framed by the government of India keeping in mind the socially and economically weaker sections of the society. However, the implementation such development programs have often been subject to a large number of governance challenges. These include lack of accountability, transparency and delay in the service delivery by the bureaucracy, politicization of the implementation issue, local elite capture etc. The bureaucratic system generally works at two levels. One, at the level of preparation and design of institutionalizing a professional administrative system. At another level, these organizations and personnel become part of the nexus of local politics and are unable to perform as intended. At first level, committees with experienced administrators suggest model organizations and systems that are quite ideal. But at the next level, the personnel are not adequately trained to carry through their assignments. Failures in performance zeroes down to local level implementation and the inability of local bureaucrats to rise above the corrupting influence of local politics.

Empirical studies have put forth many examples of the lack of bureaucracy to reach out to the poor and needy. For e.g., the way in which benefits are distributed and policies are legitimized, *bureaucratic clientalism* plays a very important role. In such a case, policies are based on large scale development interventions generally ignoring distribution aspects. Political support is built on the benefits distributed through state officials, local party leaders and also the social elites. Several studies in different
states have demonstrated such tendency. Inspite of the devolution of powers the local bureaucracy seems to have the ultimate decision making power. While the names of individual beneficiaries can be suggested by panchayats or pradhan, these are still finalised by the block functionaries not accountable for their refusal. In a number of cases the pradhan and the bureaucracy have lot of space to manipulate the names of beneficiaries and select schemes of their choice. While talking about sample villages in Uttar Pradesh, Jagpal Singh observes that introduction of welfare policies is a boon for local bureaucrats, village level workers, secretaries, patwaris/lekhpals, veterinary doctors, village pradhans and their agents. It is this nexus that benefits from the welfare measures and actual target groups suffer more than they benefit.

Not only corruption but non cooperative attitude of the local officials also creates an impediment. This is either because of ignorance about details of policies or lack of interest. A study in Kerala shows that elected members had problem dealing with the lower level official and the archaic structure of rules and procedure 49. In another study on rural Bihar, Jharkhand and West Bengal, the BDO’s in Bihar were poorly informed about Empowerment Assurance Scheme. They rather understood EAS to be a sister programme to the Jawahar Rojgar Yojna, with the former taking up “big schemes” and the latter ”small schemes” 50. The situation was quite different in old Maida block in west Bengal where the BDO’s informed that rather than mediating between the bureaucracy and the local community, local councilors and political leaders deliberately obstructed the flow of information to the grassroots 51. While examining the power structure, class relations and pattern of leadership, in a village in West Bengal it was found that bureaucratic patronage and caste-based hierarchy continue to frustrate attempts on the part of leaders to introduce change. It was thus derived that there had been little 'structural change' in terms of leadership 52.

Elected leaders in the government, political parties and several interest groups who are the policy-making actors play a major role in the implementation of these programs. Atul Kohli in his work on State and Poverty in India concludes that it is

51 Ibid: 2383
52 Krishna Chakraborty and Swapan K. Bhattacharyya, *Leadership Factions and PR: A Case Study of West Bengal*, Jaipur and New Delhi, 1993
the character of the political ‘regime type’ that determined the possibility for and scale of poverty reductions rather than the rate of economic growth as was generally assumed.

Studies show that many highly structured and centralized government schemes have not been able to adequately respond to the ground realities, especially when many of these schemes remain handouts and do not lead to real empowerment for the people. Lack of participation of people in the decision making as well as implementation processes are seen as the primary cause.

**Participation of people in governance processes:**

Governance as a process of linking values and interest of citizens, legislative choice, executive and organizational structures and roles, and judicial oversight was believed to have significant results for performance. The aim was to create processes that are locally relevant, democratic, participative and responsive. The 73rd Amendment Act was a paradigm shift in terms of making decision-making more participative, especially for the marginalized sections of the society. It had a two pronged approach.

The first approach towards the participation was extension of universal adult franchise at the village level. The ancient tradition of caste system has denied basic education to the lower castes and women. This has been passed on down the ages and it has had a significant impact on the life of the rural people, even today. People belonging to the lower castes are forced to live separately, away from the upper castes, mostly in the outskirts of villages. They are often denied the right to vote and they are also forced to work without any remuneration and treated as bonded labourers. Various studies bring into light the exclusion of marginalized groups not only in claiming their rights but also in holding the elected representatives and bureaucracy accountable.

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53 Beteille (Andre Beteille, ‘Equality and Universality’, in Economic and Political Weekly, Sep. 22-28, 2001, p, 3624) says, ‘Universal adult franchise is not only the basis on which the national parliament and the state assemblies are constituted, it is also the basis for the Constitution of all organs of local government, including the village panchayats. The novelty of this principle at the village level should not be lost to sight. The idea behind the universalisation of the franchise is that each person is to count as one and no person is to count as more than one. This was certainly not the basis on which public affairs were conducted in the traditional Indian village. Even the principle of ‘one man, one vote' would appear strange in a caste-based (or an estate-based) society, and the idea of an electoral system based on the equivalence of men and women would appear contrary to the natural scheme of things. The romantic image of village democracy created during the nationalist movement has very little basis in historical or sociological reality, and this was understood by none better than B R Ambedkar who played such a significant part in the making of the Indian Constitution’.
Caste, class and gender hierarchies have a crucial bearing on institutional processes and democratic practices. A study in Padnabham and Vishakhapatnam districts of Andhra Pradesh reveals that participation in the Gram sabha is affected by the apathy of the villagers. This indifference has its roots in the long historical background of non-participation in governance entrenched because of caste, class and gender hierarchies which are quite unparticipatory. Studies in local institutions have demonstrated great influence of patriarchal norms on role of women. To quote one of the women vice-presidents in gram panchayat of Kerala “Women become members because the seat is reserved for them and not because of their role on public life”. Once their term is over they tend to disappear from public sphere and get back to the sphere of domestic activities. Customary panchayats have been quite damaging to those women in local governance interested in building their political skills and careers by denying them continuity. According to some of the women representatives from the previous term, they were either “not allowed” or discouraged by the customary panchayats to re-contest. Those who did go ahead lost. There is an interesting concept of “pradhan patis” or the husband of the (woman) pradhan acting as the defacto pradhan in the districts of Uttar Pradesh.

The second approach of the amendment was promotion of the leadership of these communities (Scheduled Castes and Scheduled Tribes) in the village panchayats. Some empirical studies have shown that while the higher castes have prevented these groups from actively participating, the latter have remained absolutely passive. Studies in the late 1980s show that the panchayats were captured by the upper castes/classes in the countryside and the weaker sections remained marginalized. The existing literature shows that panchayat institutions at the village, block and district level were captured by the upper castes/classes. Regular elections were not held. If at all they were held, the upper castes/classes in the village managed to capture power, leaving little room for representation for the 'lower castes' that were excluded from participation. Elections became the instrument by which the former were able to

consolidate their power in the countryside. With the introduction of the new generation of panchayats from the early 1990s it was believed that tremendous possibilities had opened up in the areas of decentralization, development, social justice, people's participation and grass roots democracy. The 73rd amendment, managed to bring greater interest of younger and better educated men from the marginalized communities, due to reservation of seats. Situation became better by the end of 1990s in terms of having gained political experience. The process of incorporation of Scheduled Castes and Scheduled Tribes at the grassroots had begun. The reservation policy had altered the rural power structure in favour of the marginalized but the ability of the first generation leaders needed to be fully developed, which, it was felt, required training and capacity building, an aspect which many studies have underlined. Others have pointed out that wherever the pace of economic change and political mobilization is fast Scheduled Castes have questioned the existing patterns of power creating conflict, whereas economic dependence allows the continuance of older structures of dominance and power within the panchayats. In a study of four areas located in eastern and western UP, it was found that numerical superiority of the Scheduled Castes population was an important factor leading to higher levels of participation.

These studies show that reservation has enabled Scheduled Castes to enter into the panchayats and thus reservation has proved to be a major social intervention to empower the panchayat representatives belonging to the disadvantaged sections without which they would not have been able to enter into the Panchayati Raj Institutions. Some studies have tried to question the very notion of representation of marginalized groups through affirmative action. For e.g. according to a study in

59 George Mathew, ‘Panchayati Raj Institutions and Human Rights in India’ in Economic and Political Weekly, Jan. 2003, pp 155
63 J.K Pundir, ‘Development of Scheduled Castes: A Study of their Political and Decisive Participation at Local Level in Rural Areas’. AJSDJ 1995, pp 49-64
Orissa, elected representatives were not able to properly articulate group-specific interests or to exercise their own judgment in panchayat, decision-making\textsuperscript{64}.

**Conclusion:**

The aim of reviewing the constitutional measures and state intervention was primarily to locate the position of the marginalized groups vis-à-vis the liberal principles of liberty, equality and justice espoused in the constitution. The spirit of state initiatives point towards realization of such goals. But reality is far from it. Studies invariably point towards lack of proper implementation for such a result. The three schemes have been implemented by the government at different time lines. NREGS was implemented first in 2006, Mid Day Meal Scheme in 2003 and anganwaadi (ICDS) was started in 1975. Employment generation programmes have had various results in different states in the past. However, NREGS is completely new in its approach as it is a demand driven scheme. Mid Day Meal Scheme had been running in Kerala and Karnataka prior to the Government orders in 2003, where as in Bihar it started in 2003. Similarly ICDS started in 33 blocks initially in 1975 but was later expanded in terms of its services. The states have imbibed these schemes differently as the studies have shown.

Next chapter discusses the implementation of the schemes in the 36 villages across the three states. The effort is to understand the view of the officials involved in the service delivery as well as the beneficiaries of the scheme.

\textsuperscript{64} P. Patnaik, 'Affirmative Action and Representation of Weaker Sections Participation and Accountability in Orissa’s Panchayats', in *Economic and Political Weekly* October 2005, pp 4753-61.