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# **EMPOWERING STREET VENDORS: SOCIAL SECURITY WITHIN THE AMBIT OF THE INDIAN CONSTITUTION**

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## **ABSTRACT**

The Article outlines the significance of street vending as a prevalent form of informal economic activity in India, serving as a vital source of livelihood for individuals with low incomes and contributing substantially to the urban economy. Despite its importance, street vending faces various challenges, including a lack of formal regulation, inadequate infrastructure, and harassment from local authorities. The government of India has recognized these issues and formulated the National Policy on Urban Street Vendors in 2009 to address them. This policy aims to promote the economic and social well-being of street vendors while ensuring the safety and accessibility of urban public spaces. It acknowledges street vending as a legitimate economic activity and establishes a regulatory framework to balance economic contributions with necessary regulations for enhancing the urban environment.

## **Introduction**

Street vending is a widespread form of informal economic activity in India, where numerous vendors engage in selling a variety of goods and services within urban areas. This occupation holds significant importance as a vital source of livelihood for individuals with low incomes, playing a crucial role in the urban economy. Street vendors contribute to the urban landscape by offering diverse products such as food, clothing, household items, and small electronics. Operating in public spaces like sidewalks, parks, and markets, they provide a convenient and cost-effective option for consumers who may lack access to formal retail establishments. Despite its economic significance, street vending in India faces numerous challenges. The sector often grapples with a lack of formal regulation, inadequate infrastructure and basic services, and harassment from local authorities and law enforcement. Street vendors frequently endure evictions and confiscation of their goods, and many operate in unhygienic conditions, posing challenges to both their economic sustainability and the well-being of consumers.

Recognizing the need for a comprehensive approach, the government of India has taken steps to address these issues through the formulation of the National Policy on Urban Street Vendors in 2009. This policy aims to promote the economic and social well-being of street vendors while simultaneously ensuring the safety and accessibility of urban public spaces. Crucially, the policy acknowledges street vending as a legitimate form of economic activity and establishes a framework for the regulation of street vending activities. By doing so, it strives to strike a balance between fostering the economic contributions of street vendors and implementing necessary regulations to enhance the overall urban environment.

## **Legislation for Social Security in India**

India has introduced a comprehensive range of social security legislations to address the needs of both organized and unorganized sectors. These laws consist of both general and specific provisions tailored to support the unorganized sector. While general laws cover both organized and unorganized sectors, specific laws are designed to cater to distinct classes of workers within the unorganized sector. Social security legislations can be broadly categorized into two groups: General Legislations on Social Security and Specific Legislations on Social Security.

The general social security legislations are applicable to various sectors, including the unorganized sector when certain provisions bring them under the purview of these laws. Judicial interpretations further support the applicability of these general laws. Some examples of such legislations providing social security include: The Employees' Compensation Act, 1923, The Employees' State Insurance Act, 1948, The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, The Maternity Benefit Act, 1961, The Payment of Gratuity Act, 1972

On the other hand, specific social security legislations are designed to cater specifically to the needs of the unorganized sector. These acts address social security benefits for this particular workforce. Some of these specific acts are: Contract Labour (Regulation & Abolition) Act, 1970, Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976, Limestone and Dolomite Mines Labour Welfare Fund Act, 1972, Mica Mines Labour Welfare Fund Act, 1946, Beedi Workers Welfare Fund Act, 1976, Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014

These social security legislations play a vital role in providing essential benefits and protections to workers across different sectors, ensuring their welfare and economic security.

### **Constitutional Recognition of Social Security in India**

In India, the constitutional status of social security is enshrined in Article 41 of the Directive Principles of State Policy, which outlines the responsibility of the state to provide social security to its citizens. The Directive Principles are guidelines for the state to follow in governing the country, although they are not legally enforceable.

The Supreme Court's decision in the case of *Bombay Hawkers Union v. BMC & Others*<sup>1</sup> marked a groundbreaking moment as it recognized and upheld the right to livelihood for street vendors. The Court emphasized that imposing unreasonable restrictions and conditions on street vendors is not permissible.

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<sup>1</sup> AIR 1985 3 SCC 528

In *Gainda Ram v. MCD*<sup>2</sup>, the Supreme Court acknowledged that the fundamental right of hawkers should not be left in uncertainty simply because they are economically disadvantaged and unorganized. The Court further emphasized that decisions regarding their livelihood should not be subject to inconsistent standards and changing schemes ordered by the Court.

In the case of *South Calcutta Hawkers Association v. Government of West Bengal*<sup>3</sup>, the Calcutta High Court underscored that street vending is a fundamental right accessible to all citizens under Article 19(6) of the Constitution. While the State has the authority to regulate street vending, necessary regulations must be established to preserve the purpose of public roads.

During the *Sodan Singh v. NDMC*<sup>4</sup> case, the Supreme Court issued guidelines for civic authorities to follow until proper legislation could be enacted. However, the implementation of these guidelines has led to numerous litigations before various High Courts and the Supreme Court. This prompted the Supreme Court to reassess the guidelines in the subsequent case of *Maharashtra Ekta Hawkers Union v. MCGM*.

Article 41 states that *“The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.”*

The Constitution of India guarantees Fundamental Rights to all citizens, which include the right to life. The Supreme Court, in the case of *Olga Tellis v. Bombay Municipal Corporation*<sup>5</sup>, explicitly stated that the right to life encompasses the right to livelihood as well. Social security plays a vital role in ensuring that every individual has the means to sustain their livelihood, and as such, the right to social security and family protection are integral components of the right to life, as emphasized in the case of *Calcutta Electricity Supply Corporation (India) Limited v. Subhas Chandra Bose*<sup>6,7</sup>.

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<sup>2</sup> 1993 3 SCC 178

<sup>3</sup> AIR 1997 Cal 234

<sup>4</sup> 1989 (4) SCC 155

<sup>5</sup> AIR 1986 SC 180

<sup>6</sup> AIR 1992 SC 573

<sup>7</sup> (1993) Supp 4 SCC 100

In the case of *Regional Director, ESI Corporation v. Francis De Costa*, the Supreme Court ruled that security against sickness and disablement must be provided. Additionally, in the case of *S.K. Mastan Bee v. G.M., South Central Railway*<sup>8</sup>, the right to family pension was acknowledged as an essential part of the right to life under Article 21.

To achieve a socialistic pattern of society, the Directive Principles of State Policy set forth guidelines. This socialistic pattern encompasses policies and principles related to social security measures that aim to foster a more equitable and just society.

The Constitution of India not only guarantees Fundamental Rights, including the right to life with inherent right to livelihood, but it also provides a framework for establishing a robust social security system through various legislative measures.

The Employees' State Insurance Act, 1948, is a significant piece of legislation that aims to create a comprehensive social security system for workers in India. Under this act, eligible employees and their dependents are entitled to various benefits, such as medical benefits, disability benefits, maternity benefits, and unemployment benefits. The act operates through contributions from both employers and employees to the Employees' State Insurance (ESI) fund, which is then utilized to provide financial support and medical services to the insured individuals and their families during times of need.

Similarly, the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, establishes a mandatory contributory provident fund scheme for employees in various establishments. Both employers and employees contribute to the Employees' Provident Fund (EPF), and the fund accumulates over time, serving as a retirement benefit for the employees. This system helps workers secure their financial future and provides them with a sense of economic stability after their active working years.

In addition to these acts, the Indian government has implemented the National Social Assistance Programme (NSAP) to further bolster social security measures. The NSAP encompasses various social assistance schemes aimed at providing financial support to vulnerable and disadvantaged sections of society, including the elderly, widows, and persons with disabilities.

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<sup>8</sup> JT 2002 (10) SC 50

Expanding on these legislative measures, it is evident that the Indian government has taken significant steps to establish a comprehensive social security framework. These measures address the healthcare needs, unemployment risks, and retirement concerns of the working population. By providing such social security benefits, the government aims to promote a more inclusive and supportive society, ensuring that citizens have access to essential services and financial assistance during critical stages of their lives. These efforts contribute to creating a sense of social protection and welfare for the people of India, fostering a more secure and prosperous nation overall.

### **Promoting Social Welfare through Constitutional Provisions in India**

The state is entrusted with the responsibility of ensuring and safeguarding social order to promote the welfare of its people. The principles of justice, social, economic, and political aspects mentioned in the preamble find their embodiment in Article 38 of the Indian Constitution. This article emphasizes the necessity of implementing social security measures, which the state is obliged to undertake, and reflects the kind of society that the constitution envisions the state to establish. This interpretation was confirmed in the case of *Air India Statutory Corporation v. United Labour Union*<sup>9</sup>.

Furthermore, the constitution mandates the state to work towards reducing inequalities not only among individuals but also among people residing in different regions and pursuing diverse occupations.

### **State Directives for Ensuring Social Security Measures in Legislative Enactments**

The Constitution of India includes a set of guidelines called the Directive Principles of State Policy, which direct the state to incorporate social security measures while enacting legislation. While these principles are not legally enforceable, they provide valuable guidance for the state in governing the country.

The Constitution of India includes a set of directives aimed at guiding the state in establishing social security measures through legislation. These directives are as follows:

1. Article 39(a): The state is directed to ensure that both men and women have the right to an adequate means of livelihood, which includes fair working conditions, a living wage, and provisions for vocational training and employment opportunities.

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<sup>9</sup> (1997) 9 SCC 377; AIR 1997 SC 645

2. Article 41: Within its economic capacity and development, the state shall make effective provisions for the right to work, education, and public assistance, particularly in cases of unemployment, old age, sickness, disablement, and other forms of destitution.
3. Article 42: The state is mandated to create provisions to ensure just and humane conditions of work and to provide relief for maternity-related needs.
4. Article 43: The state is directed to improve the conditions of work and provide a living wage for workers, especially those engaged in manual, unskilled, or similar vocations.
5. Article 47: The state is tasked with improving public health and guaranteeing the right to health as a fundamental right for every citizen.

By adhering to these directives, the state can establish a legislative framework that promotes social security, uplifts the economic and social conditions of its citizens, and ensures access to basic necessities, allowing people to live with dignity and respect.

### **Constitutional directive: Ensuring Right to Work, Education, and Public Assistance in Specific Situations**

The Constitution of India recognizes the fundamental rights of its citizens, including the right to work, education, and public assistance. These rights are crucial for ensuring social security and economic well-being.

Article 41 of the Directive Principles of State Policy outlines the right to work, education, and public assistance in certain situations. It states that the State must, within its economic capacity and development, make effective provisions to secure these rights for its citizens. This includes ensuring access to employment, education, and public assistance in cases of unemployment, old age, sickness, disablement, and other circumstances of undeserved want. The right to work encompasses the right to gainful employment in safe and healthy conditions, while the right to education emphasizes access to quality education for all.

Several landmark cases have highlighted the significance of these rights. For instance, in a case involving the eviction of pavement dwellers in Bombay, the Supreme Court ruled that the right to livelihood is an integral part of the right to life under Article 21 of the Constitution. Another notable case, *Paschim Banga Khet Mazdoor Samity v. State of West Bengal*<sup>10</sup>, emphasized that the right to live with human dignity includes the right to livelihood and social

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<sup>10</sup> AIR 1996 SCC 4

security. The Court underscored the state's duty to provide social security measures like old age pensions, disability pensions, and maternity benefits to those in need.

Overall, these rights and their legal recognition play a crucial role in ensuring the welfare and dignity of Indian citizens, fostering a society that promotes social security and equal opportunities for all.

### **Constitutional Directive: Ensuring Just and Humane Working Conditions**

Ensuring just and humane conditions is a crucial element of social security in India, encompassing aspects like safe working environments, access to clean water and sanitation, and adequate housing. This provision holds particular importance for vulnerable groups, including informal sector workers, women, and children.

The Constitution of India recognizes the right to life under Article 21, which has been interpreted by the Indian judiciary to include the right to live with dignity in humane conditions. The judiciary has played a significant role in enforcing this provision and compelling the state to take measures for providing just and humane conditions to all citizens.

In the case of *Bandhua Mukti Morcha v. Union of India*<sup>11</sup>, the Supreme Court emphasized that the right to life includes the right to live with human dignity, and it becomes violated when workers are subjected to inhumane and oppressive working conditions. The Court further directed the government to ensure just and humane conditions of work for workers in the informal sector.

Moreover, in cases involving the eviction of pavement dwellers, the Supreme Court held that the right to life incorporates the right to livelihood, and this right cannot be taken away without due process of law. The Court mandated the government to provide alternative accommodation and ensure just and humane living conditions for those affected by the eviction.

In essence, the provision for just and humane conditions is an essential component of India's social security framework, safeguarding the well-being and dignity of its citizens and guaranteeing their right to lead a life with respect and dignity.

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<sup>11</sup> AIR 1997 SCC 549



## **Ensuring Living Wage and Decent Conditions for Workers**

The concept of a living wage is a crucial element of social security in India, ensuring that workers receive adequate compensation for their labour to meet their basic needs. A living wage refers to a wage that sufficiently covers the essential requirements of a worker and their family, including food, clothing, housing, healthcare, and education.

Article 39(d) of the Constitution of India guarantees the right to equal pay for equal work, ensuring that men and women receive fair remuneration for their efforts. The Indian judiciary has also recognized the significance of a living wage and taken measures to ensure just wages for workers.

In the case of *Sanjit Roy v. State of Rajasthan*<sup>12</sup>, the Supreme Court declared that the right to livelihood under Article 21 encompasses the right to fair wages, which cannot be deprived without due process of law. The Court emphasized that workers must receive remuneration sufficient to cover their basic necessities.

Similarly, in *State of Gujarat v. Vora Fiddali Badruddin*<sup>13</sup>, the Supreme Court stressed that the minimum wage set by the government should be a living wage, taking into account the cost of living, essential commodity prices, and the nature of work.

Additionally, in *Reptakos Brett & Co. Ltd. v. Its Workmen*<sup>14</sup>, the Supreme Court affirmed that a living wage should provide for the essential needs of a worker and their family, considering factors like food, clothing, housing, healthcare, and education. The Court emphasized that the government's minimum wage should be set as a living wage, considering prevailing economic conditions.

In *People's Union for Democratic Rights v. Union of India*<sup>15</sup>, the Supreme Court reiterated that the right to livelihood is an integral aspect of the right to life under Article 21. The Court stressed the need for workers to be compensated with a living wage to support their basic needs, and it emphasized the government's responsibility to protect workers from exploitation and safeguard their rights.

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<sup>12</sup> AIR 1983 SC 328

<sup>13</sup> AIR 1964 SC 1043

<sup>14</sup> (1992) 2 SCC 664

<sup>15</sup> AIR 1982 SC 1473

In summary, the concept of a living wage is central to social security in India, and the judiciary has played a vital role in upholding fair remuneration for workers, ensuring their well-being and dignity.

## **Conclusion**

In essence, the prevailing legislative measures often exhibit a notable bias towards prioritizing the concerns and interests of various stakeholders, such as urban planners and commercial establishments, at the expense of safeguarding the rights and livelihoods of street vendors. This inherent imbalance of power significantly exacerbates the marginalization of street vendors, perpetuating their vulnerable status within the informal economy. As a consequence, these individuals face ongoing challenges in accessing fair opportunities for economic advancement and remain susceptible to exploitation due to the inadequacies of existing legal frameworks.

A transformative and more holistic approach is imperative to address this systemic issue. A comprehensive strategy must be formulated that duly acknowledges the indispensable role played by street vendors in the dynamics of urban economies. This approach should prioritize and safeguard their fundamental rights, ensuring their well-being and socio-economic conditions are at the forefront of legislative considerations. Without such fundamental reforms, the existing measures are bound to continue falling short in effectively addressing the multifaceted challenges faced by street vendors and in fostering substantial improvements in their overall quality of life.