

Research Summary #13 - Do Rights Work? Law, Activism and the Employment Guarantee Scheme

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This paper forms part of a five year research programme under the Centre for the Future State, based at the Institute of Development Studies. Below is a summary of principal findings. Further details are available at www.ids.ac.uk/gdr/cfs/index.html

Introduction

This case explores how the legal status of the Maharashtra Employment Guarantee Scheme (EGS) (see summary #12 “The Politics and Bureaucratics of Rural Public Works: Maharashtra’s Employment Guarantee Scheme” for more details), and the justiciable rights to employment which it embodies, impact on the capacity of political and social activists to advance the social and economic interests of actual and potential EGS workers. The paper examines the experience of one activist organization the Bandhkam ba Lakudkam Sangathana (henceforth called the Sangathana), which initiated several court cases against the state in the mid-1980s for the enforcement of legal provisions. The key argument is that although having rights enshrined in law offers incentives for the poor to mobilise, legal action in itself cannot ensure access to those rights. The political context is important and activists must be able to effectively balance legal and political efforts in their pursuit of social change.

The Case of Sanghatana

The Sanghatana was formed by two progressive activists in 1980 in North Eastern Maharashtra. One of the key needs of poor rural villagers was employment. In the EGS, the Sangathana found a scheme that enabled them to mobilize workers around a key need. The EGS, underpinned by law was long-term, predictable and embodied a right that any rural villager could access. One could take the state to court for non implementation of the EGS. The Sangathana took advantage of the provisions of the scheme to pressure local government for implementation. At the start, its strategies proved successful in gaining employment for the villagers and mobilizing them in large numbers. In order to gather broader public support for its cause, it appealed to urban taxpayers (whose taxes formed a large proportion of the funding) to pressurize the government to implement EGS properly. It also sought allies in large farmers by joining the farmer’s movement - the Shetkari Sangathana. At the same time, it adopted a pro-active litigation strategy detailed below. By the early nineties, the momentum of the organization had died down and differences between its two founders led to its closure.

Litigation and Its Implications

Between 1982 and 1987, at the peak of its activism, the Sanghatana filed legal cases against the state on two key issues - the payment of minimum wages and the payment of unemployment allowance. The law provided that if works were not opened within fifteen days of the collective demand, then workers were entitled to unemployment allowance of Rs. 1 per day. Despite this provision, the local administration routinely failed in its obligations. The Sangathana filed several cases for the payment of the unemployment allowance, but these were dismissed by the local administration. The organization was forced to appeal to the High Court. The case took over ten years for the first

judgement to be given, which found inadequate evidence for the case. The appeal with the supporting evidence was decided last year, with the judge sending the case back to the court of the local administration. The Sanghatana did not have high expectations from the case, but wanted to assert a rights-based principle and gain a moral victory.

The Sanghatana's experience has several implications for the use of litigation by social activists: (1) for the law to work for poor people, huge amounts of energy and resources need to be invested by those pursuing their rights. The support of a strong membership organisation is needed for ensuring better access to justice; (2) activist organisations seeking to enforce 'rights-based' law need to prepare for litigation cases in advance so that they have all the detailed documentation read. Such a pro-active strategy is difficult due to the pace of legal process but has advantages in gaining broad-based support; (3) formal confrontation through the court system can be costly for everyday organisational functions and interactions with local authority; (4) although the anticipated material benefits from a litigation case provide a strong incentive to mobilise, litigation cases may take too long in delivering good results to the poor; (5) while the direct benefits of litigation might be uncertain, the indirect benefits of litigation such as the impact on mobilization and the protection of workers from arbitrary action by local officials are important outcomes for activist organizations.

Conclusion

Litigation has mixed consequences for activist organisations. On the one hand, legal processes are protracted and consume scarce organizational resources. Mobilisation can also be hampered by the inaccessibility of the justice system and the danger of members losing enthusiasm. Open confrontation with the local administration can make organizational work difficult. On the other hand, a pro-active strategy that seeks to implement existing law can mobilize workers and gather broad based support through the moral nature of the struggle. These outcomes can perhaps be more important than court victories.

Thus, the experience of the Sanghatana shows that it is important to look beyond judicial outcomes to the broader impacts of the use of courts by social activists. Litigation needs to be supported by other strategies such as mobilising broad public support and building alliances with other social groups. Although in itself a complicated and lengthy process, litigation can lead to other desirable outcomes such as strengthening the social movement, reframing public discourse, building broad-based support and protecting activists. The law can, therefore, provide incentives for people to mobilise around their rights but activists need to understand how to capitalise on the political context to their advantage.