

# India Exclusion Report

## 2019–2020

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Three Essays Collective *with* Centre for Equity Studies

India Exclusion Report 2019-20  
Supported by Rosa Luxemburg Stiftung and Tata Trusts

The opinions expressed in the Report do not reflect the view of these organisations

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# Acknowledgements

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From where we stand, what we need to acknowledge first is the fact that we are passing through a particularly difficult time. Not just for our nation, but for humanity at large this has been one of the hardest times in a generation, and the greatest health emergency in a century. This has also been a time when democratic values have steadily been eroding taking with it notions of accountability, truth, responsibility and criticality. This edition of the India Exclusion Report got completed amid the raging pandemic. Four of the contributors to this edition, in fact, themselves have battled with COVID including our editor Harsh Mander.

In such a context we are happy to be able to present the sixth edition of the *India Exclusion Report*, for 2019-20. This endeavour began as an attempt to examine the role of the State in public provisioning, and to generate public knowledge, concern and debate on the many profound and widespread forms of exclusion, injustice and exploitation in Indian society. The objective in the end is to contribute to attempts to combat and ultimately overcome these. Today, in the time of fake news, indifference, and rising hate targeting minorities, as well as elite capture, this has also become a collective exercise in truth-telling, and hence doubling relevant. After all, as Orwell said, “In times of universal deceit, telling the truth is a revolutionary act.”

That apart, the goal of the India Exclusion Report has been two-fold. One purpose is to shine a light on the condition of select social groups, called vulnerable groups in the IXR, that face the severest multiple exclusions. We invite engaged researchers and activists to present what is often original and unorthodox research in this part. These pieces provide a granular view of a particular group and then analyse the exclusions from public goods that they face. They also suggest measures that can be undertaken by the state to better the situation. Second, to investigate the effectiveness of public policy in ensuring access of public goods to people at large, and specifically to marginalised communities in India. For this purpose, we invite domain experts – both scholars and practitioners - to present a thorough analysis of select public goods, and exclusions from them, and to suggest recommendations for state action. We also carry a

standalone chapter on budgets and planning to throw light on one of the most pressing public policy challenges in that domain.

Although much of the IXR was written well before the pandemic was even in the horizon, the way it was handled in India became an unending almost unimaginable catastrophe for India's working poor and destitute people. So, we invited many authors to revisit their pieces to bring in reflections about the pandemic, lockdown and the working poor. Dr T Sundararaman agreed to write a special piece on this subject, and there are few more qualified than him to do so. And we focused much of our introduction also to this theme. We hope to address it with greater depth in the next IXR as well.

Both the strategy and the central strength of the series of IXRs is that these attempt build ever-widening collaborations between scholars, practitioners, activists and their organizations and institutions, all of which are bound by a commitment to states which are held accountable for ensuring the rights and dignity of India's most oppressed and dispossessed peoples. We would like to thank everyone who has encouraged, advised, participated in, provided research support, read and engaged with the Report in its last few iterations. For this year's report, we are particularly grateful to our wide range of contributors and authors. We are proud that young scholars rub shoulders here with some of the most senior and respected names (in order of their appearance in this volume) — Abdul Kalam Azad, Abida Desai, Akhila Sivadas, Amrita Jain, Christophe Jaffrelot, Daksha Parmar, Devika Singh, Harsh Mander, Jayati Ghosh, M. Mohsin Alam Bhat, Mona Mishra, Nivedita Jayaram, Prabhat Patnaik, Priyal Thakkar, Priyanka Jain, Reetika Revathy Subramanian, S. Krithi, Sanjay Patel, Sharik Laliwala, Shruti I., Sumitra Mishra, Sutapa Majumdar and T. Sundararaman

We strive also that everything we say in these Reports should be evidence based, because the difficult truths that we seek to lay out in each Report will only then carry the necessary credibility. In this, a central strategy is to invite leading Indian and international scholars to review and advise about each chapter in various stages of its writing. For these reviewers, too, this is a labour of love. We therefore extend our warmest thanks to all those who took the time to discuss and review these chapters and provide valuable feedback: Andres Hueso, Anjela Taneja, Ayeesha Rai, Chinmay Tumble, Chirashree Dasgupta, Coen Kompier, Hilal Ahmed, Jens Lerche, Louise Tillin, Mohsin Alam, Paul D'Souza, Prabha Kostiswaran, Rachana Mudraboyina, Radhika Alkazi, Rafiul Ahmed, Raphael Susewind, Ratna Sudarshan, Ravi Srivastava, Tanika Sarkar and Vandana Prasad.

A number of organisations, institutions, and movements have lent a hand in supporting this Report, and this includes the International Institute of Social Studies at The Hague, the Institute of Development Studies, Sussex, and Brown University. We also would like to thank our partners at the Centre for Budget and Governance Accountability, Digital Empowerment Foundation, National Academy of Legal Studies and Research, All India Network of Sex Workers and the Indian Institute of Human Settlements. We also extend our thanks to

our funding partners, Rosa Luxemburg Stiftung and Tata Trusts without whose support this Report wouldn't have seen the light of day. We are also grateful to organisations and individuals who have supported us with the fieldwork and research.

This enterprise has benefited a great deal from the careful attention of our publishers, Three Essays Collective, led by Asad Zaidi and the team. Anirban Bhattacharya designed the cover for this year's Report. We know Anirban for his radical politics; few know of his finely honed aesthetics. We also thank Sandeep Yadav, Manish Shukla, Sudharak Olwe, and Meesha Holley. A special thanks to Sandeep Yadav for allowing us to use a powerful photograph of his for this year's cover.

We are grateful that more and more institutions, scholars and activists have joined us in contributing to and working on this project. Alongside, we have also tried to prioritise bringing the findings of this Report into the public domain in diverse forms. The public goods chapters in the Exclusion Reports of past years have lent themselves to a series of Policy and Inclusion Debates held bimonthly in collaboration with the India International Centre and the The Wire. Similarly, the Vulnerable Groups chapters have contributed towards series of Conversations with India's Margins again held bimonthly in collaboration with the India Habitat Centre and NewsClick. Even through the period of the lockdown and the pandemic, we have continued the public debates alive through webinars. We have also started a series of photo essays wherein we capture and unpack the lives and struggles of people in various walks of life based on our engagement with the themes covered in the Exclusion Reports. We have also developed teaching material and factsheets for university students; a graphic anthology (published by Yoda Press, titled *First Hand 2*); newspaper editorials and so on.

The task of coordinating this report was carried out admirably by Anirban Bhattacharya and Balu Sunilraj. The copy editing task was deftly handled by Rosemary Sebastian. The research team was managed by Buddhadeb Halder and Anirban Bhattacharya over the course of this report's writing and preparation, and they were assisted by the rest of the research team who provided support in coordinating the review and dissemination process: our thanks go to Jenny S, Sagar Kumbhare, Mihika Chanchani, Suresh Garimella, Shirin Choudhary, Madhurima Majumdar, Misbah Rashid, Buddhadeb Halder, Sazid Ali and Banojyotsna Lahiri. We would also like to extend our sincere gratitude to Navsharan Singh for her gentle guidance; to Natasha Badhwar for helping us take the report to a much larger audience by other media; and to the entire media and legal team of *Karwan-E-Mohabbat* for supporting our endeavours in more ways than one. Our sincerest thanks also go to our office staff without whose support this work would not have been possible.

### **Harsh Mander**

Director

Centre for Equity Studies



# Introduction

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A homeless old man in Yamuna Pushta, at the nation's capital. As hunger and job loss looms large with the most stringent and unplanned lockdown in the world, the millions of the informal working poor were faced with mounting uncertainty.

*Photo: Sandeep Yadav*

# In The Shadow of Covid-19

**Harsh Mander**

Most of this, the sixth edition of the annual India Exclusion Report of the Centre for Equity Studies, was written before India and the world were stricken by the most lethal of all pandemics in a century. However, the report was concluded in the shadow of Covid-19, as it had to, because the lethal impacts on the lives of people of disadvantage may be felt for years, decades, even for a generation. It is important to stress, as I will argue later, that these impacts of a sudden and precipitous fall into mass hunger, joblessness and illness without care were not the inevitable consequence of the virus, but of public policy choices, cumulatively of the past and those made to fight the pandemic, like lockdowns.

The next, the seventh India Exclusion Report, will examine in close detail the impact of the pandemic and lockdown strategies on vulnerable people in India. In this report, I will try to dwell on some early evidence of these in my introduction here. We also invited one of India's best regarded progressive public health practitioners and teachers, Dr T. Sundararaman, to write an additional special chapter for this report, and he kindly agreed to do so within a very short deadline. Some other writers, too, revisited their chapters in the light of the experience of the pandemic and early months of lockdown.

I will first reflect critically, from the consistent vantage of the Exclusion Reports, on the strategies chosen by the Union Government of India to combat the challenges thrown by the pandemic of this new and highly contagious virus. The central premise of the Exclusion Report series is that it is the central duty of any democratic State to ensure equitable access to every person, including the most vulnerable, to all public goods. These, in turn, are understood in the framework of political philosophy, as goods, services, capabilities and functioning which are essential for a human being to live a life of dignity. In the context of the pandemic and lockdown, the most pertinent public goods are healthcare, food and nutrition, decent work, social protection, safety, information and custodial rights, among many others.

In the second part of this introduction, I will introduce briefly the remaining chapters of this report.

## Part 1

### The Lockdown and the Labouring Poor

It is evident by now that India has plunged deep into what will probably be the greatest humanitarian crisis that most of us have seen in our lifetimes. But we must be mindful that this humanitarian crisis was spurred, but not *created* by the Covid-19 pandemic. The crisis is, instead, the direct consequence of public policy choices that the union government has made, particularly of imposing the largest, most stringent lockdown on the planet and in human history, without notice on the entire country, in a land which is home to the largest numbers of people immersed in poverty, with some of the lowest spending on public health and social security, and with the one of the smallest relief packages as a percentage of GDP for people whose livelihoods are ravaged by the lockdown.<sup>1</sup>

Literally within days of the precipitate closure of the country's economy, we observed the sudden burgeoning of telltale signs of mass hunger, first in the cities and soon in the countryside. The earliest to be swept away by this flood of hunger after the lockdown were the city's homeless, because most among them have no savings or stores of food to tide them over a single day, and the religious food charities which are their last resort on days of hunger also shut down abruptly.

My young colleagues in the Karwan e Mohab-

<sup>1</sup> The 20 lakh crore relief package announced by the union government in May comprised merely 1 per cent of the GDP, as per several estimates. Experts recommended that ideally the relief package should include 5 to 9 per cent of the GDP. See Kumar, K. (2020, April 9). Scale up the relief package to 5-6% of GDP. *Livemint*. Retrieved November 20, 2020 from <https://www.livemint.com/opinion/quick-edit/scale-up-the-relief-package-to-5-6-of-gdp-11586417238332.html>; and Saha, M. (2020, May 18). 'Stimulus to cost only about 1% of GDP'. *The Hindu*. Retrieved November 20, 2020 from <https://www.thehindu.com/business/stimulus-to-cost-only-about-1-of-gdp/article31617629.ece>.

bat, a voluntary collective which came together to respond to hate violence but immediately got drawn into organizing solidarity feeding to respond to the intense surge of mass hunger, were on the streets of Delhi from the second day after the Prime Minister's sudden announcement of the lockdown. Our van drove with cooked food to a street corner in the Walled City of Delhi, called Company Bagh. Perched between the Old Delhi Railway Station on one side and the Town Hall in Chandni Chowk on the other, this is a 'labour adda'. Here, on any ordinary morning, you would find a thousand homeless men, offering their services for work on any terms. Already we found their numbers had swollen several times over.

A young man from Nepal said to us, 'I have not seen a roti for four days. And to think that I earned my living by making rotis in a tandoor. I would earn 5 or 600 rupees on any day. Today I am waiting for hours for your rice gruel' (Karwan e Mohabbat, March 2020). There are many skilled workmen like me here, he added. The word he used was *karigar*, or artisan. Several other voices joined his, speaking of their years of work in eateries and lamenting the irony and anguish of their hunger.

They often named Prime Minister Narendra Modi in their hapless rage. 'Why has Modiji done this to us? If we are hungry, will we not be more at risk to catch the disease?'

Yamuna Pushta is a stretch of land on the banks of the river, just adjacent to the Nigambodh cremation ground. Normally, there are about 4000 near-desitute homeless men who live there. A legendary Sardarji (who insists on remaining anonymous) has fed at least a thousand homeless people there every day for the last 15 years. In the early days of the lockdown, their numbers swelled to 10,000, as scattered homeless people from other locations converged there, as did stranded migrants, in the hope that food charities would reach them there because of their large numbers.

As I walked past a shanty of plastic roof and walls in Majnu ka Tila during our food distribution there, a woman hurriedly covered the vessel cooking over a fire of twigs on a brick stove outside her

shanty with her sari edge. ‘I am ashamed,’ she explained to me simply. She felt humiliated that she was cooking the feet of chickens, which are usually thrown away as waste. ‘What can we do, when there is no money?’ I squatted on the ground beside her and tried as gently as I could to tell her that it is not she who should be ashamed, but the government which has driven her to this. She was doing all she could to feed her family. She was only deserving of pride, because she was holding her family together in such hard times.

In this crowded slum littered with rotting waste, people survive in normal times by carving stone *silvattas*, grinding stones, for making chutney, pulling rickshaws, rag picking, working as domestic help and begging. All of this is halted overnight. Even children begging at traffic lights are driven away harshly by the police and, in any case, who was there to beg from?

The situation was no different in the slum in the shadow of Tughlakabad Fort. Here, families go from house to house bartering vessels in exchange for old clothes, in addition to rag picking and begging among the aged. A young woman with a baby spoke into the camera wielded by my young colleague for his field report, addressing Modi and Kejriwal (Karwan e Mohabbat, May 4 2020). ‘Is this what you want to reduce us to?’ she asked them piercingly. Another said, ‘We fear now that we are fated to die. They say this will go on for a year. They will say we died of corona. But actually we would have died of hunger.’

Residents of both settlements told us that as summer is peaking, drinking water is becoming almost as scarce as food. They had no water supply of any kind, not even a public tap. In Majnu ka Tila, they have to carry water in plastic containers on their shoulders from outside an apartment building a kilometre away. In Tughlakabad, they begged the driver of the tanker which comes to water the trees which line the avenue for some water. In both places, the police drove them away most times, swinging their batons. Bathing—even occasionally—was a challenge, and washing hands was out of the question. In usual times, they pay 10 rupees

in the morning and 5 in the non-peak afternoons at the Sulabh Complex to bathe or defecate. The Prime Minister’s appeal to wash one’s hands regularly and to maintain ‘social distance’ seemed like a cruel joke.

The Karwan volunteers nearly drowned in distress calls round the clock, from every corner of the city, and soon from across the country. We heard from collectives of sex workers about how work had completely dried up (Karwan e Mohabbat, April 2020). Many home-based sex workers are migrants from Hindi-speaking states, and do not have ration cards or Aadhar cards with a Delhi address—therefore are excluded from state assistance. They spoke to us of begging shopkeepers for rations on credit, and their expecting sexual favours in return. Several survived only with the ration kits we were able to supply every 10 days.

Our Karwan helpline also got jammed with calls from industrial areas around the city. The winding lines of people who gathered to receive our ration kits in areas comprised mostly of factory workers in micro and small industrial units there, making shoes, chappals, jeans and a surprising range of other products. Not one of the women and men we spoke to were paid the statutory minimum wage in these factories in normal times. After the lockdown, some employers paid them for the month of March, but few beyond that. Most did not have the capacity to pay them at all. Their landlords were also pressing them for rent. They did not blame their landlords. Many were not much wealthier than them, and critically depended on this rental income. They spoke to us of electricity bills to be paid, of children without milk and of their shame at having to stand and beg for food (Karwan e Mohabbat, 3 May)

Belatedly, the Delhi government announced that e-coupons would be issued to those without ration cards. But accessing this required both a smartphone and proof of a Delhi address, and this excluded both the most dispossessed, too poor to own a smartphone, and migrants who had no documents of residence in Delhi—the very people it was in theory meant to include.

## Locking Down Unequal India

The privileged Indian has been comfortable for too long with a comprehensive range of some of the most unconscionable inequalities in the planet. The lockdown has exacerbated these fractures, and threatens to decimate the survival probabilities and fragile livelihoods of those at the lowest depths of this teeming country.

It is common knowledge that the virus has no cure, and its spread can only be prevented. The measures to slow its dispersal adopted by the government were first to advise people to work from home, wash their hands frequently, and ensure what was called ‘social distancing’. Social distancing is an unfortunate word in the Indian context: caste is a radical form of social distancing that the Indian people have practised for millenia. In this text, we will use the term ‘physical distancing’, because to fight the pandemic we need not social distance but, instead, the highest levels of social solidarity.

The Prime Minister also sagely advised us to undertake not just ‘social distancing’ but also ‘self-isolation’ by staying confined to our homes during the lockdown. However, he seemed to have been puzzlingly unaware, or in amnesia, first about hundreds of thousands of children, women and men in every city who have no home to stay back in; for whom the only home is the pavement or dirt-patches under bridges or on the banks of stinking open drains. The 2011 census estimated that India has 1.7 million homeless people. Those of us who work with homeless people recognize that they are hard to count, and estimate the numbers of urban homeless people to be at least 4.7 million homeless adults (1 per cent of the urban population), adding half that number for homeless street children.

The Prime Minister’s amnesia seemed to extend to the massive numbers in overcrowded jails in which distancing of any kind was an impossibility. Two-thirds of the inmates were not even convicted for any crime but awaiting the completion of their trials. There was even less thought for those unfortunate people confined to detention centres in Assam, which are jails within jails.

For those with homes, there was some possibility of physical distancing only if there was enough space in the home for people to sleep and interact in ways that allow a safe distance between them. Even most conservatively, let us assume a household of five would need for this a house of at least two rooms. The room-wise housing data according to Census 2011 indicates that a staggering 67 per cent of urban dwellers live in houses with two or less rooms, with the average family size of 4.9. Which indicates, by our assumption, that approximately 67 per cent of the urban population was not in a position to maintain physical distancing (2014, p. 316). Five people share one room in four out of every 10 Indian families, 9.6 million households have no exclusive rooms while 91.5 million households have only one room (‘No room’, 2020).

Recorded messages on our phones never tired of urging citizens to wash their hands regularly. We forgot, however, that millions of Indians live in shanties without water supply, and they buy a pot of water sometimes for a fifth of their day’s earnings. Regular cleanliness is a distant luxury entirely beyond their means. Ninety-five million Indians were at higher risk of Covid-19 infection because they did not have access to a source of clean water (Paliath and Raman, 2020). NSS 2018 showed that half of Indian households did not have an exclusive water source. Thirty-four per cent households required a family member (mostly women) to walk a distance to fetch water, carrying this in containers on their heads or backs. Today, business leader Ratan Tata lamented the ‘miserable standard of living in slums with lack of fresh air, hygiene, open space, and close proximity.’ But neoliberal policies have led to the private sector producing housing for the poor, and so public health regulations being diluted to make urban development projects ‘viable’, squeezing even more people into smaller areas, and packing buildings closer than ever before. The government and builders have become facilitators and spectators of human misery (Indorewala and Wagh, 2020). Thus, the lockdown assured little protection to the poor through its central strategies of radical physical distancing and intensive personal hygiene.

Yet, it placed the burden of the most destructive costs on their shoulders.

## **The Migrant Road: How Far is Home?**

There are many deep gashes left by the lockdown which will not heal at least for a generation. One of these is the trauma of an entire country closing down by the hubris of an overnight decree, resulting in hundreds of millions of informal workers being thrown out of work. Unending streams of men, women and children desperately trudging or cycling, or packed behind trucks, for hundreds of kilometres home on burning highways swelled into the largest movement of human populations since the Partition. Chinmay Tumble estimates that 30 million interstate migrants returned home between mid-March and early June, or around 15–20 per cent of the workforce. Amitabh Kundu's estimate is 22 million (Chishti, 2020). Despite their central contribution to the economy and the lives of the middle classes, we know very little about them, and care even less. It is telling that even estimates of their numbers vary widely. The Economic Survey of 2017 placed the numbers of interstate migrants at 60 million. Estimates by scholars vary widely, some pegging the numbers between 40 to 150 million (Chishti, 2020). These confusing variations reflect both official and social neglect of this massive reserve army of labour, even though it is this which powers the economy.

However, there is also confusion about definitions. There are, in fact, many kinds of migrant workers. The most disadvantaged among them are the circular migrants. They were evocatively described by Jan Breman as the 'hunters and gatherers of work'. Usually landless, and of disadvantaged caste and tribe, they are desperate for any work on any terms in any corner of the country (NCEUS, 2007, quoted in Thomas, et al., 2020). They are often recruited by labour contractors and work against an advance as semi-bonded labour. Then, we have migrants who return regularly to the same destination and sometimes to the same employer, but go back to their villages one or more times a year,

for harvesting and festivals. These workers switch roles repeatedly from farm labour to the non-farm urban workforce in the rhythm of their hard lives.

Others with more settled employment after a time bring their families to the city more permanently, often compelled by the prospects of better educational opportunities for their children. They form a spectrum of semi-permanent migrants, some of who develop stronger ties to the city, while their bonds with their villages grow more tenuous over time.

And finally, there are also destitute people, like many of the homeless, whose connections with their villages are almost severed, and they have nowhere to go back to. Each of these categories of migrant workers were badly felled by the lockdown, but each made choices to return based on how strong their bonds remained with family in the village and how desperate was their dispossession in the city.

It was not only the overnight annihilation of their livelihoods which drove millions of migrants home. It was the demolition of their faith and trust—in their employers, in their middle-class neighbours and, most of all, in their governments. 'We are workers, not beggars' is something we heard from many of them at this time. And that if we have to die of the coronavirus, it is better to do so among people we love, not amid uncaring strangers.

With the first wave of movement from late March, governments sealed borders between states, beat and arrested walkers and confined them to crowded quarantine centres, which they called jails. Hundreds of thousands still persisted, walking through village pathways away from the highways, hiding in airless truck containers, and, in one case, inside a cement mixer. Many ate just biscuits and slept on the hard road or railway tracks.

Some didn't wake up. Sixteen migrant workers, exhausted walking from Jalna in Maharashtra for their village in Shahdol in Madhya Pradesh, slept on a railway track and were run over by a goods train (Banerjee, 2020). The sight of *rotis* and *chap-pals* lying scattered on the tracks shook the nation. Only till the media distracted them again with their

usual dose of jingoism, hyper-consumerism and hate. Stories emerged of the rarest human endurance, such as 15 year-old Jyoti Kumari, who cycled 1,200 kilometres with her injured father travelling pillion from Delhi to Darbhanga (Srinivasan, 2020), and an 11 year-old boy, Tabaraak—like a modern-day Shraavan Kumar—who cycled with his blind mother and injured father on a three-wheeled cart from Varanasi to Araria (Asif, 2020). These were celebrated widely, but I am convinced that these should have been, instead, occasions of collective introspection, shame and resolve, that our children were driven to these limits of physical and psychological endurance and peril by a government which refused to care. Many migrant workers reported being beaten like fugitives from the law by the police (Pisharoty & Bhatnagar, 2020). Some spent their last savings, or asked their impoverished families to wire them money, to buy a bicycle for their journeys home. Twenty-five-year-old Kundan cycled 1,100 km to reach Patna from Panipat. He was stopped after three days on an expressway by the police, who beat him. They asked him how he got a cycle, retorting ‘You have money for cycles and not for food?’ (Pandey, 2020)

The central and state governments offered no relief of any kind to the workers on the road. Some senior IAS officers in Delhi organized buses for some of those who wanted to return, but they were reprimanded, suspended and removed from their postings in disgrace (Bhardwaj and Bedi, 2020). For worker families who ultimately reached their destinations, they were sometimes sprayed with unsafe disinfectants as though they were vermin. Many villages built blockades, refusing to allow any outsider to walk through. State borders were alike to international borders of hostile fiefdoms. The Maharashtra government transported workers to the borders of neighbouring Madhya Pradesh. Here, they were blocked for several days by the MP police, without food or water, and beaten at times. Rules were changed whimsically and suddenly. The Uttar Pradesh government had blocked migrants from walking across the border. Those who could afford taxis could inexplicably cross.

Several died of exhaustion on the way. According to one estimate, more than 200 people died on the roads travelling home, due to exhaustion, hunger, heatstroke and accidents (PTI, June 2020). Two friends, Amrit Kumar and Mohammad Saiyub, were returning from Surat, where both worked in textile units, to their village in Basti in Uttar Pradesh. Travelling on a scorching summer day on the back of a truck, Amrit developed a fever. His co-travellers feared he had Covid and offloaded him. His friend would not leave him alone and also left the bus. He died with his head cradled on his friend’s lap (‘Migrants’ misery, 2020). Their story will remain imprinted on the public conscience not just for the tragedy of their dispossession and loss, but for their friendship across religious boundaries, challenging the dominant narrative of division, hate and, indeed, apathy.

Two doctors explained to *Scroll* what toll these days of walking took on the human body (Chakravarty, June 14 2020). Yogesh Jain said it takes 60 to 70 calories to be able to walk a single kilometre. A large meal of 600 calories takes you 8 to 10 kilometres. ‘And these are calculations that have been done in 25 degrees centigrade temperature, when you are not undernourished, lifting weights or stressed.’ But migrants walked 8 to 10 kilometres a day, often with no food and at temperatures hovering at 40 degrees. The production of glucose, the final substance that is metabolized to release energy, falls in tired bodies. In the hot sun, there is dehydration, or water loss, causing electrolyte imbalance, driving down sodium levels, which can result in heatstroke.

## Wayward Trains

It was only after five weeks of lockdown, and searing images of walking migrants flashed on the front pages of newspapers and television screens around the world, that the union government announced a series of special *Shramik* or ‘worker’ trains. This raised hope for some belated display of humanity by State authorities.

But these hopes were short-lived. For one, the State ran too few trains for the numbers who needed them, and then enmeshed the workers in complex and opaque online bureaucratic processes, requiring them initially to pay for their travel, and ran the trains without food and water for long stretches. To get a seat on the Shramik trains, migrants were required to register and get clearances from their home states, agreement from the destination states and medical certificates. No official seemed perturbed by the obvious class bias of these different rules for those who could spend money on their travel and those who could not.

It was very difficult for migrants to get a doctor to sign a certificate of good health. This was mandatory even for bus travel. This also cost money. A mason from Jharkhand in Mumbai's Dharavi slum, said he had been reduced to eating just one meal given by a charity. He gave all his savings to someone who said he would organize a bus to Jharkhand, and disappeared. When trains were started, local social workers helped him fill the registration form, but he hit a roadblock because he could not organize a health certificate.

Vibha Devi, eight months pregnant, lived with her husband, a construction worker, and two children in Faridabad near Delhi (Sharma, S., 2020). They walked for two days to New Delhi station after the Shramik trains were announced. But for four days, they waited outside the railway station in vain, dodging hunger and the police, sleeping on the pavement. Finally they reached Anand Vihar Station, were checked for fever, before at last boarding a train to Bihar. But their fellow-villagers did not welcome them back, suspecting them of carrying the virus, although they kept showing certificates from doctors that they were not infected. Despite being locked down without work and wages for several weeks, the union government initially required workers to pay for their tickets, the cost of a sleeper berth with a top-up for 'super-fast' travel. It was only after nationwide outrage that the union government backtracked. The union government claimed it was, in fact, giving an 85 per cent subsidy on the ticket price. But it turned out that the

price of tickets on the special migrant trains was, in fact, higher than normal train tickets (Shrivastava, 2020).

The union government then seemed to have second thoughts about facilitating their travel altogether, with the Union Home Secretary issuing a directive that interstate travel would be allowed only for 'distressed' persons, and not for those 'residing normally at places other than native places for purposes of work' (Jain, 2020). Again, after popular outrage, this directive was not acted upon, although I don't think it was officially withdrawn.

For those who were fortunate enough to get a seat on a train, it was like winning a whimsical lottery, but they had further ordeals to endure. On many trains, there was no food or water for hours, the toilets were unusable because there was no water in the taps or flushes and the trains were known to lose their way inexplicably to other states, sometimes many hours late. A particularly notorious example was of a train from Mumbai to Gorakhpur in Uttar Pradesh: the travellers were astounded to find themselves instead in faraway Rourkela in Odisha! (Shrivastava, 2020). The Railway Protection Force reported that at least 80 people died of dehydration or hunger on these harrowing train journeys (Dutta, 2020). Only after four days the body of a 37-year-old driver from Mumbai who died in the toilet of one of these trains was discovered, which meant that these were not cleaned even after several days of travel (Rashid, 2020). It took the tragic death of a 26-year-old mother after she collapsed—probably from intense dehydration and food deprivation while travelling from Ahmedabad at Muzaffarpur Railway Station—with her baby son trying to awaken her caught on camera, which finally stirred the conscience of the nation. But there were still no apologies and little changed for the better (DNA Web Team, 2020).

The most powerless among the migrants, such as adolescent girls in mills and garment factories, remain trapped despite the trains. Nineteen-year-old Jasoda Debbarma travelled to Tamil Nadu from Tripura to work in a garment workshop near Tir-

upur in Tamil Nadu. They worked 12-and-a-half-hour long workdays. She has not been paid since February. Desperate to return to their villages on Shramik trains, she and other girls applied for seats on Shramik trains, and even got messages on their phones confirming they could travel. But their employers did not allow them. They fed them during the lockdown, and now forcefully recommenced production. 'I keep saying I want to go home until tears come to my eyes,' she said (Chakravarty, 30 May 2020).

## Wages of Neglect of Informal Labour Rights and Food Security

The calamitous situation in which India's indigent working people find themselves is also the cumulative consequence of profound public policy failures of the past several decades.

I can talk of many such failures, aggravated by India's political economy of neoliberalism and elite capture, built on much older oppressions of caste, tribe, gender and religious identity. First is the persisting gaps in the food security of significant populations.

The swift and precipitous fall of millions into acute food insecurity and hunger within just days of the lockdown resulted from India's badly broken food security nets, despite progressive Supreme Court rulings recognizing the fundamental right to food, the National Food Security Act, 2013, and a vibrant food rights people's campaign. The *Global Hunger Index (GHI) Report 2019* ranked India at 102 out of 117 countries, and recorded that over a third of India's children are stunted and a fifth suffer from wasting.<sup>2</sup> This while the ranking of Mukesh Ambani climbed in course of the lockdown from being the seventh to the fifth and then to the fourth

richest man in the world (Bloomberg, 2020). A report released by the Stranded Workers Action Network (SWAN) noted that 50 per cent of the 11,000 workers they had been in touch with had rations left for less than a day; 96 per cent of the workers had not received rations from the government and 70 per cent had not received any cooked food. And to compound problems, 89 per cent of them had not been paid by their employers during the lockdown period (Agarwal, 2020). When some state governments belatedly began to distribute cooked food and rations, large numbers of the hungry slipped through many cracks. Food rights activists had for long pressed for community kitchens serving affordable and nutritious cooked meals to informal workers, on the model of the Amma Canteens in Chennai. Had these been in position, they could have been pressed into service to feed the out-of-work labourers and their families.

Belatedly again, some state governments began distributing rations, relying on the Public Distribution System (PDS). Over the last 60 years, one cornerstone of India's food security measures is the distribution of subsidized cereals through the PDS. The NFSA made this a legal guarantee, ensuring about half the calorie requirements of nearly 800 million people almost free. But economists Meghana Mungikar, Jean Drèze and Reetika Khera estimated that 108.4 million people in India are excluded from the PDS (Agarwal, 2020). Prabhat Patnaik underlines other gaps: 'first, not all essential commodities are distributed under the public distribution system; and second, not all the working people are covered by the public distribution system' (2020). Food rights activists have long demanded a universal PDS, because any system of selection by the State of those who are most needy would always exclude those who are actually most food-vulnerable because of their social and political powerlessness and invisibility. Particularly vulnerable to exclusion are also migrant workers, who have no food rights in the destination location. Again, had India established a universal PDS, it would have been the most effective vehicle to ward off mass hunger.

2 See Grebmer, K.V. et al. (2019, October). *2019 Global Hunger Index: The Challenge of Hunger and Global Change*. Dublin: Helvetas. Retrieved November 20, 2022, from <https://reliefweb.int/sites/reliefweb.int/files/resources/2019%20Global%20Hunger%20Index.pdf> and Local food systems and Covid ; a glimpse of India's responses. *Food and Agricultural Organization*. Retrieved November 20, 2022, from <http://www.fao.org/in-action/food-for-cities-programme/news/detail/en/c/1272232/>.

Another of the many ironies of the development trajectory of the Indian republic is that the informalization of labour has grown in the periods of high economic growth over recent decades. Informal workers are those denied job security, statutory wages, safe and healthy working conditions and social security. They are the engines of the economy, contribute about half the GDP and constitute 80 to 90 per cent of the workforce.

In two articles with economists Prabhat Patnaik and Jayati Ghosh on mitigating the suffering created by the decision to snap all livelihoods of workers, we advocated cash transfers of 7,000 rupees a month to every household for at least three months, and universal access to PDS (Ghosh, Patnaik, & Mander, 2020). Rural workers presented less of an operational challenge, thanks to the Mahatma Gandhi National Rural Employment Guarantee Programme, which ensures that all workers seeking wage employment are registered with job cards and have bank accounts into which their wages are paid. But for urban informal workers, we realized that there is absolutely no listing of these workers in any official records. This is not a chance failure: it signifies that the State is doing nothing at all to secure the protection of their rights as workers or their social security, nor does it intend to do this. The only practical way we could find to emerge from this conundrum was to suggest—as imagined by senior economist Prabhat Patnaik—that any adult who presents herself or himself in designated offices in the city should be given the cash, and a mark made with indelible ink (of the kind used during elections) on fingers assigned for each tranche of transfer. It is not as though laws don't exist mandating the State to register migrant workers. The stated objective of the Interstate Migrant Workmen Act, 1979, is to regulate and lay down the conditions of service of interstate migrant workers. It mandates registration of contractors who employ migrant workers and for employers to maintain a record of their workers. However, by design itself, it excludes a vast majority of self-employed wage labourers and intra-state agrarian and other migrants in the informal economy. The 2011–12 report of the Standing Committee on Labour records

that 11 states do not have a single employer or contractor registered under this act (Standing Committee on Labour, 2011). The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, or BOCW, acknowledges the seasonality and precarious nature of employment of construction workers and defines anyone who worked in construction for 90 days in the past year as a construction worker. This law makes registered establishments responsible to provide housing and childcare facilities to workers and obliges state construction boards to register workers as beneficiaries of several welfare measures. However, each worker needs the employer or a trade union to certify them to be construction workers to avail these benefits. The lived reality of a large section of informal workers is that they are deliberately overlooked by this legislation.

A recent study conducted by Jan Sahas found that more than 90 per cent of the construction workers they interviewed were outside the ambit of this act since they did not have BOCW cards. And only 29 per cent of the small number of 20.37 lakh labourers registered under BOCW Board in Uttar Pradesh had access to a bank account (Sulfath and Sunilraj, 2020). The even more cruel paradox is that many state governments tried to use the pandemic to further weaken the feeble protections which the law currently provides. The governments of Gujarat, Madhya Pradesh and Himachal Pradesh cited a public emergency to extend maximum hours of work to 12 hours a day and 72 hours a week, followed by the governments of Odisha, Maharashtra and Goa (PTI, May 2020). Uttar Pradesh went further, proposing an ordinance to suspend almost all labour laws for factories and manufacturing establishments in the state for three years. (Gaur, 2020) Madhya Pradesh diluted provisions of the Factories Act ('The government of Madhya Pradesh', 2020), Karnataka freed many establishments from the application of various labour laws (Balasubramanyam, 2020) and Gujarat signalled its resolve to follow the example of Uttar Pradesh. Some of these changes have been blocked by legal challenges. Overall, this indicates that far from atoning for the distress of unprotected workers by raising their pro-

tections, the State's priority is to weaken the feeble labour rights regime further in the name of attracting capital investment to revive the economy.

## **Lockdown, Government 'Packages' and the Supreme Court**

A week into the lockdown, lawyers Prashant Bhushan and Cheryl D'souza filed a Public Interest Petition (PIL) in the Supreme Court, seeking the upholding of the right to life with dignity under Article 21 of the Constitution for the migrants who were badly hit by the sudden and severe lockdown. The petitioners were Anjali Bhardwaj and this writer (Singh, 2020).

Our petition pointed to the intense humanitarian crisis created by the lockdown. Its central demand was that the Centre and states must 'jointly and severally' ensure payment of minimum wages to all migrant workers within a week, for the entire period of the lockdown (Saxena, 2020). This should be agnostic to whether they were employed in an establishment, engaged by contractors or self-employed. Our petition also demanded that this must be done by self-attestation and self-identification, because the State has no comprehensive record of employed workers, let alone casual and self-employed workers.

The union government reported to the Supreme Court that the Central Government had announced a financial package of Rs 1.70 lakh crores. We replied that the package, just around 1 per cent of GDP, was entirely inadequate to deal with the crisis. The 5 kg grains and 1 kg pulses would not reach a large section of migrant workers, as PDS was a domicile-based entitlement which requires proof of permanent address. The ex-gratia of Rs 500 to 20.4 crore women with Jan Dhan accounts was extremely inadequate, both in terms of quantum and its inclusion only of those with functional accounts (Rajagopalan, 2018).

The union government claimed in its reply to the Court that its financial package took care of the daily needs of every poor person, which included migrant workers and their families, and that there

was no imperative for migrant workers to rush to their villages (Anand, 2020). Their daily needs were being taken care of wherever they were working, and the needs of their families were being assured in the villages. It added that the central government had directed states to provide food, shelter and medical facilities to migrant workers who have been quarantined en route to their places of origin (Anand, 2020).

We contested all of this as well, stating that the figures of the number of active relief camps and shelters for migrant workers submitted by the government themselves laid bare the complete inadequacy of the official provisions made for migrants. The government informed the Supreme Court there are 26,476 active relief camps and shelters in which 10,37,027 persons are housed. The government's own affidavit revealed that Kerala alone accounts for 59 per cent of the relief camps and shelters. Haryana and Delhi accounted for 51 per cent of the 15 lakhs reported by the union government to being given cooked food (Legal Correspondent, 2020). Estimates of migrant workers in India range from 40 to 150 million and more; therefore, even if the lower end of the estimate is used, the government admits to about 10 lakh workers in shelters and 15 lakhs additionally being given food; this total of 25 lakhs account for only 6 per cent of the migrant labour force.

Our petition also spoke of problems with the order of 29th March of the union government, under the Disaster Management Act, 2005, which directed all public and private employers to continue to pay workers their wages through the period of the lockdown. It also prescribed that landlords should not seek rent from workers during the lockdown. This, in effect, shifted the entire burden of protecting the earnings of migrant workers and preventing their eviction away from the State to the shoulders of employers and landlords. The order instituted no mechanism to secure the implementation of this order, nor for redress when it was flouted.

Further, this order made no provision for the financial security of the large proportion of migrant workers who are self-employed and are therefore

not paid any salaries, such as street vendors, rickshaw pullers, dhobis, petty service providers, rag-pickers and sex workers. It also ignored completely one of the most vulnerable segments of the labour market, namely, casual daily wage workers. Studies show that only 17 per cent of workers in the informal sector have identifiable employers (Rajan, 2008, p. 95).

The Bench stated that in times of such crisis, it did not want to interfere with government decisions. On complaints raised by our lawyer Prashant Bhushan about inedible food in crowded shelters or the lack of access to food at the feeding centres opened by the government, the Court merely asked the government to put in place a helpline for complaints (Mander, 2020).

Into the third phase of the lockdown, the Prime Minister announced a grand relief package of 20 lakh crore rupees, claiming that these amounted to 10 per cent of GDP. This kindled brief hopes of belated succour for the labouring poor. But it turned out to be one more of the ‘conjuring tricks’ that the Indian people have come to associate with Prime Minister Modi, because it was revealed that there was less than 1 per cent of *new public spending* in this package, and there was even less of this for the poor. Analysts found that the largest part of the package was credit-focussed, to be paid out by banks (‘Modi’s 20 lakh crore package’, 2020).

In the final hearing of our petition, a newly constituted Bench very briefly heard the case. In this hearing, the petitioners additionally placed on record in the Supreme Court the study by the Stranded Workers Action Network, which found alarming conditions of hunger in the migrant workers they surveyed. Fifty per cent of workers had rations for less than one day, 72 per cent for two days, and 70 per cent said they had not received food from the State and 98 per cent had not received any cash. The Bench said it could not rely on studies by private bodies when the government portrayed a completely different picture.

With this, they chose to finally close the case, without giving any relief to the migrants during the lockdown. The final order blandly read: ‘we call

upon the respondent-Union of India to look into such material and take such steps as it finds fit to resolve the issues raised in the petition (Stranded Workers Action Network, 2020).’

## Costs of the Lockdown

### *Economic Costs of the Lockdown*

India was already struggling with an economic downturn before the lockdown. But by suddenly closing both demand and supply across the economy overnight, there has been a calamitous shrinkage of the economy.

Surabjit Das, an economist from Jawaharlal Nehru University (JNU), calculates that even assuming government consumption remains unaffected and private consumption expenditure is one-third during the lockdown period, in 40 days of lockdown, private consumption would have fallen by Rs 9 lakh crore. Since capital or investment is unlikely during the lockdown, investment demand would fall by at least Rs 6.75 lakh crore. Adding the trade deficit, the net loss in GDP due to lockdown would be to the tune of Rs 16 lakh crore or so. This is equivalent to 8 per cent of the current GDP of India. The estimates of Tejal Kaniktar, Associate Professor in National Institute of Advanced Studies, are even direr. He expects that the total loss of output conservatively to be between Rs 40 and Rs 66 lakh crore, or about 20 to 32 per cent of GDP (2020). CMIE’s weekly survey of employment shows that 114 million workers, almost half of the non-agricultural workforce, were out of work in April, of whom 91 million are daily wage earners and 17 million are salary earners. At a conservative estimate, their lost income amounts to Rs 90,000 crore a month. That is the extent of decline in demand from this sector alone (Jha, 2020). Worst hit are India’s 50 million MSMEs and their 110 million employees. Of these enterprises, 98.6 per cent employ less than 10 workers, of which 95 per cent employ less than five workers. They form the bulwark of the entire economy, contributing, by official estimates, over one-third of exports and around half the national income. Since nearly 90 per cent workers are informal, at least 70 per cent and probably more

would be economically fragile, unable to bear the shocks of the lockdown of the economy and consequent loss of jobs. Development economist K. P. Kannan underlines that 418 million workers, or 89 per cent of all Indian workers, fall under the informal work category. He points to an official 2019 report of the Ministry of Labour and Employment which estimated that nearly two out of three informal workers, totalling 278 million workers, do not even earn the Rs. 375 daily wage recommended as the national minimum wage necessary to meet their household basic needs at 2017–18 prices (2020). Economists with political beliefs ranging the spectrum from Left to Right—except those fiscal conservatives who seem to have the highest influence on the union government and believe that even in a crisis of this magnitude, government must keep its fiscal deficit low—are convinced that the only hope for some revival of the economy even in the medium run would require massive public spending, of the kind Keynesians recommended in the New Deal to overcome the Great Depression in America.

### ***Health and Human Costs of Lockdown***

Economist S.A. Aiyar makes important global comparisons of the health and human costs of lockdowns ('SA Aiyar', n.d.), concluding the lockdowns may be taking almost as many lives as Covid-19. He quotes a comparison by *The Financial Times*, London, of excess mortality in March and April—the excess of deaths over the average for five preceding years—for several countries. It found excess mortality of as high as 49 per cent, with much of this explainable mainly by the lockdown's side effects. Sweden on the other hand, the only European country to refuse to lock down, had a figure only of 12 per cent. In a discussion organized by the Centre for Equity Studies, Vandana Prasad, a noted practitioner of community public health, said the government transposed a public health problem into a policing and law and order problem. 'What we have done,' she said, 'is bad public health, and it is critical from our understanding that we frame it in that way. Lockdown is not simply disastrous economics. We should not be tempted into thinking of the food and job crises only as collateral dam-

age. Hunger and livelihoods are an essential part of public health.'

In the same discussion, Vikram Patel, Harvard-based public health psychiatrist, agreed that no epidemic is only a biomedical phenomenon. It is also very importantly a social phenomenon. The outcomes of mass hunger are tragic because the lockdown has turned the country back even decades.

There was firstly an official or unofficial suspension of the Outpatient Department (OPD) and other services in most public and private hospitals. Even premier public hospitals in the national capital—the All India Institute of Medical Sciences (AIIMS) and Safdarjung Hospital—in Delhi suspended registering new patients in their OPDs from the beginning of lockdown for a month and a half. There are numerous troubling reports of hospitals either formally closing down or refusing to treat patients, both for Covid-19 and other ailments. Meh-fuz Ali, 65, in kidney failure, needed dialysis twice a week. He went to the public Dr Ram Manohar Lohia Hospital's emergency department in desperation. Private hospitals, which had administered his dialysis before the lockdown, now refused unless he presented a negative Covid-19 report. They said they would not admit patients without such certification, because another patient in the hospital had tested positive (PTI, 19 May 2020). Delhi government guidelines barred testing for people who did not show symptoms. Meanwhile, public health services in every other sector took a severe beating. Across India, data from National Health Mission (NHM) shows '69 % reduction in measles, mumps, and rubella vaccination in children, a 21% reduction in institutional deliveries, a 50% reduction in clinic attendance for acute cardiac events and, surprisingly, a 32% fall in inpatient care for pulmonary conditions in March 2020, compared with March 2019' (Sharma, E.K., 2020). All of this would have taken a severe toll of life and health. WHO estimates that India has 15 million malaria cases, causing 20,000 deaths per year (Sharma, S., 2019). The lockdown has disrupted preventive anti-malaria programmes in most states. A downward cascade

impact can be seen on reproductive and maternal health as well (Express News Service, 2020). Family planning services such as sterilization and Intra-Uterine Contraceptive Devices (IUCD) were shut down from mid-March till further notice. This may have resulted in as many as 1.94 million unwanted pregnancies and 1.45 million abortions, including 834,042 unsafe abortions in 2020 (Chandrashekar and Sagar, 2020). Journalists and feminist researchers recognize that many women are quarantined with abusive partners, and domestic violence has mounted. The National Commission of Women (NCW) in mid-April suggested an almost 100 per cent increase in domestic violence during the lockdown (Joy, 2020). The lockdown also fostered a shadow mental health crisis which would continue long after the lockdown was lifted. The Indian Psychiatry Society (IPS) found there was a 20 per cent rise in mental illness cases, with at least one in five Indians suffering from mental health distress. Given the abysmally low awareness about mental health in our society, this ought to be an underestimation.

The human, social and political consequences of the lockdown may well outlast even the economic and health consequences. UNICEF and the ILO fears a rise in child labour in India after 20 years, because as families struggle with job loss, hunger and the infection, children will be pressed into unsafe and exploitative work, and even trafficking for commercial sex and cheap labour (Sharma, S., 2020). The schooling of a child (particularly a girl child) in a poor family may be interrupted because the child does not have the hardware, connectivity and uninterrupted electricity to enable online learning, and may drop out of education completely, assisting the family instead in its economic and health challenges (ibid.).

### **Were the Public-Health Benefits from the Lockdown Achieved?**

There was only one possible rationale for this unprecedented closure of the entire economy through an authoritarian nationwide lockdown, repeatedly extended, for over two months. This was

if governments had used the window the lockdown provided at such immense human cost to greatly expand its health infrastructure and capacities for dealing with the anticipated surge of patients requiring testing, quarantine, treatment and care. But despite being warned by scientists working for them, as proved by official documents accessed by the Reporters' Collective<sup>3</sup>, the government chose to ignore them. The government has not been transparent about how much it has actually scaled up the available infrastructure such as hospital beds, beds available for patients requiring intensive care, ventilators, oxygen cylinders, Personal Protective Equipment (PPEs) and safe quarantine.

When the Prime Minister announced on April 14 that they had created 1 lakh beds (Pilla, 2020), the government had mostly repurposed the current health system beds for this. There was a dramatic report of cancer patients from two Mumbai hospitals being shifted to sleep on floor mats under a bridge (Sawant and Dubey, 2020). The Delhi government records showed that there were in mid-June 9,179 beds in the state, central and private hospitals in the city. Only 4,914 were occupied, which made the hopeless search for beds by patients leading many to die even more culpable. But they estimated that Delhi would need 80,000 beds by end-July, and with union Home Minister Amit Shah making a dramatic public intervention, plans are unfolding to spaces in train compartments, banquet halls, hotels and religious establishments.

The unanswered question is why these additional beds were not created during the punishing lockdown. The situation is little different in Maharashtra, Tamil Nadu, Gujarat, Karnataka and Uttar Pradesh, where a massive demand for beds was expected by July.

It is evident today that even middle-class patients are losing their lives because hospital after hospital refused them admission. In Delhi, a family was similarly refused by four private hospitals (one of them asked for 10 lakh rupees) and then a government hospital, outside which he died (Babu,

<sup>3</sup> <https://www.article-14.com/post/govt-knew-lockdown-would-delay-not-control-pandemic>

2020). A factory worker in Noida took his 30-year-old pregnant wife on an autorickshaw in the summer heat for 15 hours to eight hospitals, but each refused her admission because she had Covid-like symptoms, before she died (Ellis-Peterse and Dhillon, 2020). The bedlam at times seems farcical, like a black comedy—like monkeys stealing Covid blood samples in Meerut (France-Prese, 2020). Even the Supreme Court, not known these days to criticize the government, declared the conditions of hospitals in Delhi to be ‘deplorable’ and ‘pathetic’. It spoke of Covid patients running from pillar to post to get admitted to hospitals even as a large number of beds lay vacant. The Solicitor General admitted that bodies had been found lying with patients, and that there had been instances of bodies being dragged with rope. The Court also referred to dead bodies ‘found in the garbage’ (Ananthakrishnan, 2020). It is rather shameful that most of the politicians and ministers who tested positive preferred to go to private hospitals, including the Home Minister (The Wire Staff, 3 August 2020).

### ***Failures to Consult with Scientific Opinion and Confused Decision-Making***

Even more culpably, while imposing the lockdown, the government ignored recommendations from its top scientists. Their advice was: ‘Instead of coercive top-down quarantine approaches, which are driven by the authorities, community and civil-society led self-quarantine and self-monitoring could emerge as more sustainable and implementable strategies in a protracted pandemic like Covid-19’ (Koshy, 2020). Instead of asking epidemiologists and public-health specialists to lead the country on its public-health strategies in the pandemic, it appointed a clinical paediatrician and member of the NITI Aayog, Vinod Paul, as chairperson of the 21-member task force and also chairperson of the first empowered group, on a ‘medical emergency management plan’. Sujatha Rao, former union Health Secretary, in the discussion organized by the Centre for Equity Studies on the pandemic,<sup>4</sup> af-

4 Leading public health professionals and scholars Vikram Patel, Vandana Prasad, T. Sundararaman and Vikas Bajpai; and retired civil servants who creditably led the public health ministry in the union government, Sujatha

firming that India has a rich experience of successful public health strategies to overcome HIV and polio; but this learning was set aside, epidemiologists were marginalized and crucial decision-making was placed in the hands of clinicians. The same was communicated to the PM by the Indian Public Health Association (IPHA), Indian Association of Preventive and Social Medicine (IAPSM) and Indian Association of Epidemiologists (IAE) Joint Covid-19 Task Force.<sup>5</sup> The incoherent and often rapidly shifting strategies and policies, especially at the national level, are more a reflection of ‘afterthought’ and ‘catching up’ phenomenon on part of the policy makers rather than a well-thought cogent strategy with an epidemiologic basis (The Wire Staff, 31 May 2020).

*Caravan* reports that in a press briefing, Vinod Paul presented a slide that ambitiously claimed that India would see no new cases of Covid-19 after 16 May. ‘In the graph the number of new cases dived in a drastic fashion, in perfect alignment with the Modi administration’s lockdown dates.’ An epidemiologist and member of the National Task Force said to *Caravan* the slide was ‘wildly inaccurate.’

This reflects two problems. The first we have mentioned, that despite enormous talent available both inside and outside government, it chooses to sideline it. The other is an old one with the Modi government, that it routinely suppresses data of any kind which does not show government efforts in a rosy light, and in its place makes grand generalized claims with no empirical basis.

### ***Lack of Transparency, Clear Directives and Public Outreach***

Experts tell us that one of the factors across countries that accomplished some flattening the curve,

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Rao and Keshav Desiraju participated in this discussion.

5 The full statement can be read here: Indian Public Health Association (IPHA), Indian Association of Preventive and Social Medicine (IAPSM) & Indian Association of Epidemiologists. (2020, May 25). *2nd Joint Statement on COVID-19 Pandemic in India – Public Health Approach for COVID19 Control*. Retrieved November 21, 2020, from [https://www.iphaonline.org/wp-content/uploads/2020/05/Second-Joint-Statement-of-IPHA-IAPSM-and-IAE-on-COVID-19-containment-plan-May-25-2020\\_Shorter-version-final.pdf](https://www.iphaonline.org/wp-content/uploads/2020/05/Second-Joint-Statement-of-IPHA-IAPSM-and-IAE-on-COVID-19-containment-plan-May-25-2020_Shorter-version-final.pdf)

especially in less autocratic states, was clear unambiguous messaging. India's official communication was stymied first because Prime Minister Modi believes only in one-way communication, never fielding questions in an open press conference.

The Indian Prime Minister made three one-way communication national broadcasts. He often used Hindu imagery, and was economical in describing details of what the government was doing and why, and mostly seemed to suggest that the suffering of the poor would have to be dealt with by the charity of those better off, their employers and landlords, and by people themselves. The daily briefings of the Government of India were mainly by a Joint Secretary-level civil servant. His communication has been criticized for being opaque, lacking vital information, and some ducking and stonewalling (Venkataramakrishnan, 2020). From April 24, the Indian Council of Medical Research's representative stopped attending the daily briefings. Eventually, the daily briefings were stopped on May 11, and the government claimed that they would hold briefings 'when required' (Vidya, 2020).

To make matters worse, from the very beginning of the pandemic, what some have called an 'infodemic' (PTI, 30 March 2020) of fake messages and unscientific miscommunications about how the public should protect themselves, broke out. Former Health Secretary Sujatha Rao deplored, for instance, that the government and scientists were intimidated by the lobbies of traditional medicine that seemed to have proximity to political power, which claimed that yoga, pranayama, good nutrition, and Ayurvedic therapies like cow-dung application or cow-urine intake could cure a novel coronavirus infection. They should instead have clarified that these were not scientific claims.

### ***Testing***

Instead of attempting containment of Covid-19 through the bluntest weapon of the lockdown, the experience of South Korea should have convinced us that the smartest and least hazardous method to combat the pandemic would have been to learn from, and rely primarily on testing and extensive contact tracing by mobilizing our vast networks of

Primary Health Care Workers.

The testing rate of India was abysmally low at the start of the lockdown. But even after two months of the lockdown it remained at 2,000 tests per million, against over 65,000 for Spain, 38,000 for Germany and the US, and 21,000 for France. Moreover, the India figure is misleading in some international comparisons, because it includes multiple tests for the same person.

The response of the government to testing has also remained highly confused. At first, ICMR heavily leaned on antibody tests, which reveal if a person has been infected in the past. It sourced antibody testing kits from China. But this became embroiled in a shocking controversy reeking of possible corruption in procuring substandard testing kits during the pandemic (Krishnan, 27 April 2020; The Print, 2020; and Mehrotra, 2020). It is a commentary on the media, the political opposition and the judiciary that no one has been held criminally accountable for corruption at a time of the worst pandemic in 100 years threatening the lives of tens of thousands of people.

### ***Class Bias in Quarantine Facilities***

Vikas Bajpai, public-health expert from JNU, during the CES discussion, was most trenchant in his criticism of the lockdown. He spoke of a profound class bias in the strategy of the lockdown itself which could not protect from the virus those who were without secure jobs, larger homes and running water. The movement of migrants was barred, whereas special planes flew in Indians from overseas, and stranded students in Kota.

But the gravest consequence of this class bias on the pandemic was by portraying the worst victims of this pandemic as the criminals and most dangerous, rather than victims, and their confinement in subhuman overcrowded quarantine facilities.

Nand Ram Ahirwal and his wife Leela from Lalitpur in Uttar Pradesh were working on a construction site in Delhi when the lockdown was imposed. Left without food and work, they tried to walk to Lalitpur, but were caught by the police.

‘For 45 days now, I have been living like a qaidi (criminal) for no fault of mine. I beg you to let me go home,’ he pleaded with a policeman.

These quarantine centres, which incarcerated migrants and homeless people, were set up ostensibly to prevent the spread of the contagion. But, ironically, they were like hothouses most favourable for the rapid breeding and circulation of the deadly virus. Had the migrants instead been allowed to leave for their villages at the start of the lockdown, when infection rates in the country were a little more than 500, very few in the countryside would have been infected.

### ***Privatization of Healthcare and its Consequences during the Pandemic***

India has a total of 11,54,686 registered allopathic doctors<sup>6</sup>. Of this, the government sector—which is where the current testing and treatment of the novel coronavirus is mostly limited to—has 1,16,756 doctors. That amounts to one government doctor for every 10,926 persons. The World Health Organization recommends a doctor-to-patient ratio of one doctor for every 1,000 patients (Krishnan, 16 March 2020). India’s public health response to the Covid-19 health emergency has been significantly foreclosed because of the systematic neglect of public health under the influence of neoliberal policies. In 1947, the private health sector provided only 5–10 per cent of total patient care. Today, it accounts for 82 per cent of outpatient visits, employment of 80 per cent of doctors and 70 per cent of nurses and midwives (ibid.), providing 70 per cent of national healthcare needs. India spends only around 1.15 per cent of its GDP on health, yet ranks among the top 20 of the world’s countries in its private spending, at 4.2 per cent of GDP.

The primary reliance on for-profit private healthcare is actively promoted by State policy. In her 2020 budget speech, the Finance Minister proposed handing over even government-run district hospitals to private medical colleges and offered land at concessional rates to facilitate private med-

ical colleges. Sixty per cent of public funds disbursed under the Prime Minister Jan Arogya Yojana (PM-JAY) health insurance programme already goes to the private sector. This could instead have been used to strengthen the public health systems, which would have been invaluable today as India fights the surging Covid-19 pandemic.

Yet, when we are hit by the greatest health emergency since Independence, the contribution of the private sector is one of shocking abdication. Private hospitals, which account for two-thirds of hospital beds in India, and almost 80 per cent of available ventilators, are handling less than 10 per cent of this critical load (Raghavan, Barnagarwala, & Ghosh, 2020). With coronavirus infections spreading in hospitals through unknown carriers, some private hospitals have even gone to the extent of denying admission to all patients, except in a life or death situation (and in practice sometimes not even then).

There are then shameful reports of private hospitals turning away Muslim patients because of communal prejudice, or poor patients who could not pay. Even more shocking, there are both news reports and anecdotal evidence of hospitals greatly inflating costs of beds and treatment, preying on the dread of Covid among relatives of anyone infected. Patients were charged 10,000 rupees extra per day for PPE equipment by a private hospital in Delhi, 8,900 rupees in Mumbai, and 4,000–5,000 rupees in Chandigarh (‘HT Chandigarh debate’, 2020); but India Spend has calculated that the costs of one set of PPE is 362 rupees, and, at the most, health personnel would need to use 4 such sets each day, amounting to 1,448 rupees (Bhuyan, 2020).

To my mind, in such a situation, the only effective and equitable public policy response would be nationalization, at least for the duration of the pandemic, of private health services, in the way Spain has done, making their entire personnel and infrastructure available for State deployment. But given the pro-business predilections of the government, this is most unlikely to happen.

<sup>6</sup> 2019 National Health Profile, which is a compilation of all the resources that the union health ministry has at its disposal.

## Did the Coronavirus Turn Muslim?

The pandemic and severe lockdowns are a time of immense dislocation and dread for all Indians, as the country fights a malign mutating virus with no cure. But as it unfolded, it became a time of particular despair and desolation if you were an Indian Muslim.

During the weeks that the coronavirus began penetrating India, the national capital was rocked by communal violence. India's Muslims, with secular Indians countrywide, were continuing countrywide resistance to the discriminatory citizenship arrangements beginning with the National Population Register scheduled to roll out in April.

All of this suddenly was thrust into memory, which is already hazy, after Prime Minister Modi announced a 21-day nationwide lockdown. We could have expected that the country would come together. But the ruling establishment had other plans.

From March 13 to 15, an orthodox fundamentalist Muslim group called the Tablighi Jamaat held a large international gathering in their five-storey building in West Nizamuddin in Delhi called the Markaz, with many participants from countries like Malaysia and Indonesia. The official briefings quickly shifted to depicting the Tablighi gathering as the epicentre and central cause of the virus spreading across India. The Delhi government in its briefings, for instance, referred to these as the 'Markaz Masjid' cases ('After Minority Commission's intervention', 2020). There were obvious statistical biases in all of this, as pointed out by Shoaib Daniyal in *Scroll*, because whereas (at a time when testing was very low) more than 25,000 Jamaat members and their contacts were traced and tested, the participants in other large religious and political gatherings held around the same time, including those patronized and attended by senior leaders of the ruling party, including the chief minister of Uttar Pradesh, were not aggressively pursued or tested to even a fraction of the degree to which the Tablighi participants were. Statisticians explain that if during those days of reporting, the

majority of cases which were tested were from the Tablighi Jamaat, then it is not surprising that the majority of identified Covid-19 cases would also be linked to the gathering (Daniyal, 2020). In contrast, the over 700 Covid cases in the Tirupati shrine did not see a similar uproar (Express Web Desk, 2020). Neither did anyone make much of the huge gathering celebrating the PM's *bhumipujan* at Ayodhya. The consequences of these flames of hate lit against Muslims through official briefings were immediate, terrifying and deadly. The members of the Tablighi Jamaat were, of course, the most directly stigmatized and hated among non-Muslims across the country, on par with terrorists. At least two suicides were reported soon after by Jamaat members.

Some of my Muslim volunteer colleagues who are part of Karwan-e-Mohabbat's countrywide feeding campaign reported that they were brusquely turned away from Hindu settlements even when they went there to distribute rations.

Along with these were widespread calls for the social and economic boycott of all Muslim vendors. Muslim agricultural workers in western Uttar Pradesh were asked to first get themselves tested for Covid before they returned to their fields<sup>7</sup>. Some of these boycott calls turned violent. It is hard to believe that the language and tenor of official briefings which succeeded in making the Tablighi Jamaat, and through them the entire Muslim community, centrally culpable for the spread of the killer virus, was accidental. Instead of showing attention on the criminal insensitivity shown by the government towards the plight of migrants, supported by large sections of the television and print media—which is Islamophobic even in normal times—the narrative that the Covid-19 virus had spread in India mainly on the backs of religiously bigoted and socially irresponsible Muslims swept the country with astonishing and highly troubling speed and ease.

<sup>7</sup> This was told to the author by Senior researchers in CES Anirban Bhattacharya and Sazid Ali. For further details, see Ali, S., & Bhattacharya, A. (2020, April 24). Shamsheer Ali and sons: Peeling the layers of struggle that define lockdown for one family. *The Wire*. Retrieved November 25, 2020, from <https://thewire.in/communalism/lockdown-uttar-pradesh-muslims-riots>.

In northeast Delhi, the lockdown, imposed exactly a month after the violence, was a double catastrophe for the survivors of communal violence. Over the period of the lockdown, families affected by the riots were displaced from their homes not once, but multiple times. They had to hunt for shelter in their relatives' homes, and in some cases, even strangers' houses.

Amidst the dark shadows of lockdown the Delhi police—controlled by the federal government of India—were busy with tasks entirely unrelated to controlling the Covid-19 pandemic. Their demanding schedule through these weeks was, instead, packed with searching homes and offices, confiscating phones and documents, and questioning, detaining, arresting and sending to prison large numbers of persons (Mander and Verma, 2020). It is instructive that these arrests were being mounted at a time when the Supreme Court had directed governments to decongest jails to prevent the spread of the coronavirus (Rajagopal, 2020).

The charges levelled against the women and men embroiled in the mesh of the Delhi police investigations related firstly to their alleged role in organizing protests against the discriminatory amendments to India's citizenship law, the proposed National Register of Indian Citizens and National Population Register. They were further accused for variously instigating and participating in the violent communal carnage which engulfed working class settlements in northeast Delhi, the gravest Hindu-Muslim conflagration in the capital since the Partition riots of 1947. Even the Additional Sessions Judge Dharmender Rana was moved to note, 'Perusal of the case diary reveals a disturbing fact. The investigation seems to be targeted only towards one end. Upon enquiry from Inspector Lokesh and Anil, they have failed to point out what investigation has been carried out so far regarding the involvement of the rival faction (Menon, 2020).'

It is significant that while the police redoubled its detentions and arrests after a brief respite following the imposition of the lockdown, legal services were not included in 'essential services' permitted to operate during the lockdown (Yamnunan,

2020). This meant, in effect, the suspension of the fundamental rights of accused persons (Khaitan and Khanna, 2020).

Deploring these 'random arrests', the Delhi Minorities Commission sent a notice to the Police Commissioner stating that the police was 'arresting young Muslim boys by their dozens every single day', even during the lockdown (Khan, 2020). This spike in detention and arrests has come reportedly after the Home Ministry's instructions to the Crime Branch, at the end of March (Manral, 2020).

The targeting of local Muslim residents of northeast Delhi was ominously followed by grave criminal cases against young Muslim activists, including Jamia Millia Islamia University student leaders Meeran Haider and Safoora Zargar, who was pregnant, and Umar Khalid, a charismatic youth leader. They were all charged under the draconian Unlawful Activities Prevention Act (UAPA).

Like several right-wing authoritarian governments, the Indian ruling establishment is cynically using the crisis of the pandemic to kill all dissent, and to create an alternative mythology: that Muslims are the enemy, responsible even for malevolently spreading the virus, and that the movement against amending India's citizenship laws was violent and seditious.

## The Lockdown Strategy

The lockdown was used first to prevent the spread of the Covid-19 virus in China, where the virus originated. But China, even with its powerful authoritarian State apparatus, chose to use the harsh instrument of a sweeping lockdown mainly in its large cities, restricting the movement of just 56 million people or around 5 per cent out of a country of 1.4 billion people ('China expands coronavirus outbreak lockdown', 2020). India, which prides itself to be a democracy, imposed at one stroke a lockdown on all its 1.3 billion people (Union Home Secretary, 2020). Many other countries also adopted this strategy as infections crossed national borders and deaths were reported. A fifth of the populations of the world came under lockdown (Davidson,

2020). But India imposed its punishing lockdown on its entire population with a notice of just three-and-a-half hours. Researchers from the Blavatnik School of Government at the University of Oxford rated India's lockdown as the most stringent in the world.

There are many scalding critics, in India as in many parts of the world, of the lockdown. One segment among these believe that some form of lockdown was necessary to save tens of thousands of lives to the contagion, but are critical regarding its planning and implementation.

But there are others, and this writer is one of these, who believe that the policy of a stringent lockdown was dangerously wrong in principle itself, and not just in its implementation. The lockdown was disastrous public health, disastrous economics, disastrous sociology and bad public ethics.

My fundamental objection to the policy of the lockdown in India is that if it aimed to slow the advance of the infection, through the most radical physical distancing in history enforced by coercive police action, even in principle a lockdown could never ensure safety from infection to the large mass of the poor. This was because the arduous conditions of their life and work excluded them from the possibility of robust physical distancing, even in the most strictly enforced lockdowns.

And since the Covid-19 virus loves crowded spaces and human bodies with low immunity, it is likely to infect the labouring poor, in their shanties, on the streets or in the farms and forests much harder than the spatially dispersed and well-nourished middle classes and the rich. When that happens, the consistently under-resourced and broken public health system will be unable to test, treat and cure the majority of the poor, while the middle classes and the rich would have privileged access to both the private and public health care services.

I can do no better than to end this section by quoting Carlo Caduff (2020, pp. 1–21). He describes the strategy of lockdown 'massive and unprecedented', as a result of which 'life has come to an almost complete standstill... Never in the history

of humanity have such drastic interventions into the lives of populations occurred in the name of health on such a scale and in such a short period of time'. He finds it 'stunning' that these 'extreme measures that affect billions of people and that push societies to the edge of collapse, creating poverty, hunger, misery, debt, and unemployment' have been taken without sound knowledge of the impact, cost and consequences'. The response, he says, was cast into the language and ideology of 'nationalism', suggesting a common and equal threat across the population. It demanded 'equal sacrifice'. This obscured the central reality that the contagion 'disproportionately affected the already vulnerable, along lines of age and race;...(and) poor and marginalized people, along lines of class and race'.

### **The Path Not Taken: What Could the Government Have Done Differently?**

It is evident that the policies of the union government to battle the Covid-19 pandemic have failed. I believe that the people of India will gravely suffer the consequences of these failures for at least a generation.

People ask: what could the government have done differently? The stark answer is— virtually everything.

Begin with the decision whether to impose a nationwide lockdown, that too without notice or preparation. We have seen that had the government consulted widely with public-health experts, epidemiologists, economists and social scientists, and studied the global experience carefully—indeed, listened to scientists within the government—it would have ruled out lockdown as bad public health, because you cannot save millions of working people from infection by thrusting them into mass hunger.

But even if parts of the country with high infection were locked down, the government could have first explained the reasons for this to the people, addressing, most of all, the working poor. For the period of a limited lockdown, it should have ensured that every household would receive unconditional

cash transfers of 7,000 rupees per household and a universal expanded PDS (including also pulses and oil). Prabhat Patnaik and Jayati Ghosh have calculated that for three and six months respectively for all Indians, this would cost not more than 3 per cent of GDP, and a manageable depletion of India's foodgrain stocks of 77 million tons (Mander, Ghosh and Patnaik, 2020). The government should have arranged repayment of loans instalments for six months of SMSEs to ensure they do not sink. The government should have pegged pensions at half the minimum wage, universalized these, and ensured during the pandemic and these are hand-delivered to older persons so as to not place them at risk. Migrants—and other citizens—should have been given at least a week to return to their homes before even a limited lockdown. It should have utilized Indian railways for their purpose. In normal times, the railways ran 13,452 passenger trains, transporting 23 million passengers daily ('Indian Railways Industry', 2020). Yet in over a month and a half after it belatedly started workers' trains, it transported less than 6 million workers (Special Correspondent, 2020).

The government should have ensured free water tankers supplying water in slum shanties throughout the day until the pandemic ebbs, to enable people to wash their hands regularly and secure personal hygiene.

It should have massively ramped up helplines for both mental health and domestic violence, as well as mental health OPDs and places of safety for battered women. It should have emptied custodial beggar homes, women's homes and children's homes for those in conflict with law, and offered instead voluntary and dignified places of safety for all at-risk persons.

The government should have, like in Spain, deployed all personnel, beds and equipment of private hospitals for public use, free of cost, for the duration of the pandemic. It should, by ordinance, have ordered that no patient be turned away or charged by any private hospital for diagnosis or treatment of symptoms which could be of the coronavirus. It should have also ensured that treatment of all oth-

er ailments do not suffer during the pandemic. The government should, from the start, have incentivized public and private corporations to exponentially expand production of PPEs, testing kits and ventilators. Most front-line health workers, like Accredited Social Health Activists (ASHAs) and Integrated Child Development Scheme (ICDS) workers and sanitation workers, are underpaid and lack job security. It should ensure their regularization as government servants to remedy the injustice with which they have been forced to work so far.

You may ask, where would the money come from? Most countries which went down the road of lockdown have invested 10 to 20 per cent of GDP to public spending to cushion against hunger and unemployment ('India's economy', 2020). India's additional public spending turns out to be less than 1 per cent. The government could have imposed a cess of 2 per cent on the wealth of just the top 1 per cent, and an inheritance tax of 33 per cent. This would have more than sufficiently raised all the resources we needed for everything I have suggested here.

Are we likely to do any of this? The clear answer is no. But not because this is not feasible. It is. Other countries have done all of this. It will not happen because the government and people of privilege will not allow this to happen.

## **In Conclusion: A Moment for Civilizational Introspection**

The traumatic months of lockdown lay bare many troubling truths about the profound estrangement of people of privilege from the working poor. They reveal a society with an extraordinary comfort with inequality, and the ruling classes wanting in elementary empathy and solidarity. They confirm that the veneer of modernity and the progressive, egalitarian values of the Constitution remain—in the prophetic words of Babasaheb Ambedkar—no deeper than a coat of paint.

In my book *Looking Away: Inequality, Prejudice and Indifference in New India*. I described the Indian rich and middle class to be among the

most uncaring in the world, mired still in the cruelties of caste and class, with a singular capacity to look at injustice and suffering and just turn their faces away. For a young person growing up in middle-class homes, the poor are visible at every turn, but only in their instrumentality as people who exist to service our every need. They never know them as classmates, as colleagues or competitors at work, or as friends in a playground or cinema theatre. They see them as problems, as their slums deface their beautiful city or when governments buy their support with ‘freebies’.

We welcomed the strategy of lockdown—the harshest and largest in the world, with the smallest relief package. We felt safe, locked in our homes. Deprived of domestic help, we were inconvenienced, but adjusted willingly for our own safety. We also adjusted to working from home, secure that our salaries and savings would tide us through. With running water from our taps, we washed our hands regularly.

However, the lockdown by design had nothing to offer to the poor except to destroy overnight the lives they had resiliently built for themselves. With their livelihoods bombed out by State policy, in ruins they suddenly were forced to endure the very hunger they escaped when they had moved to the city. Despite this, we in the middle classes readily demonstrated our support for the lockdown, cheerily banging utensils or lighting candles as instructed.

The brazen class bias of State policies did not trouble us at all. All government servants and most employees in the formal private sector were assured full salaries during lockdown. The poor had to make do with slim financial handouts not more than two days’ wages, an appeal from the Prime Minister to employers to pay wages and lining up for cooked meals for hours each day.

But nowhere was the cruelty of the ruling classes on display more than in the treatment of migrant workers who wished to return home. For people stranded overseas, students in hostels and pilgrims, the State organized special flights and buses. For migrants, there was first a complete sealing of borders and cancellation of trains and buses. Govern-

ments and business did not help them because they did not care, and because they did not want them to move. They did not see them as human beings in their fullness of agency and humanity, but only as a factor of production, labour which should be obediently available on call whenever they were able to restart their enterprises.

This should be a moment of civilizational introspection. A recognition of the abject collapse of our moral centre and our collective culpability in the social crime of the radical dispossession of our people. In coming months, as hunger spreads like a cancer, jobs crumble, children are pulled out of school and people are dying without hospital beds and ventilators, will we at last learn lessons of solidarity, equality and justice?

## Part 2

### Vulnerable Groups

Following the special chapter on the pandemic and equity by Dr T. Sundararaman, the first section of this Report, as with earlier Exclusion Reports, describes in depth the experience of certain selected vulnerable categories of people.

#### *Vulnerable Groups*

##### *Odia Loom Workers in Surat City*

Researcher-activists of the Aajeevika Bureau, Reetika Revathy Subramanian and Sanjay Patel, describe vividly the lives of precarity, toil and loneliness of migrant men, and some women, from Odisha’s ecologically sensitive, low-income Ganjam district in the country’s textile capital Surat in Gujarat. Even before the Covid-19 pandemic rendered them stranded, starving and unemployed since March 2020, they lived harrowing lives of toil; yet, an unending supply of workers desperate to take their place meant that they endured their lot.

For six decades, the path from Odisha to Gujarat emerged as a ‘corridor for hectic labour mo-

bility'. Gujarat saw massive economic growth: if it were a country, it would have the third fastest growth rate in the world, after China and South Korea. Textiles were one of the power engines of the economy, growing at 18 per cent per annum since 2004. But Jan Breman argues that Gujarat's growth is predatory, the state facilitating and underwriting capitalist accumulation at the cost of labour. There is a conscious thrust by the government to not monitor compliance with labour laws to reassure the industry of an investor-friendly climate. Gujarat also spends less than most states on public goods such as health, nutrition and safe water,

Odisha, 1,600 kilometres away, is one of the poorest states of India. Migration has remained the main means of sustenance for a major percentage of its rural households. Aajeevika Bureau estimates that among Odia migrant workers in Surat, 700,000 migrants are from Ganjam alone, an ecologically devastated district. This despite appalling conditions of work and stay, exposure to electrocution and burns, asphyxiation and falls, loss of fingers and crushed limbs; and work characterized by lower wages,<sup>8</sup> irregular income and employment, frequent retrenchment and no social security.

In Surat, possibly the fastest growing city in the world, (its population rising from 0.5 million in 1971 to nearly 5 million inhabitants in 2011) a staggering 58 per cent of its population comprises intra- and inter-state migrants. This is the highest proportion of migrants to locals in the country. Nearly 70 per cent of the workforce is of migrants.

The authors present a Dickensian picture of their work conditions: 'In a unit spanning approxi-

8 On July 4, 2019 the Economic Survey argued that a higher national minimum wage is central to addressing inequality and widespread poverty in the country. A couple of weeks later, the government of India trashed its own analysis by proposing a 'starvation wage' of Rs 178 a day—a minimum wage hike of merely Rs 2. The new minimum wage of Rs 178 per day translates to Rs 4,628 per month. It goes against the Labour Ministry's own expert committee recommendation of Rs 375–447 per day, let alone the 15th Indian Labour Conference's suggestion of Rs 692 a day, or Rs 18,000 a month. The new national minimum wage, half of what was recommended, truly portends a death knell on India's labour protection framework (Working People's Charter, 2019).

mately 1,000 square feet...more than 100 loom machines operate right next to each other. There is no alleyway, and workers—80 to 100 per shift—do not have the space to even stretch their arms in between their 12-hour shifts from 7 a.m. to 7 p.m. or 7 p.m. to 7 a.m. Multiple closed-circuit television cameras monitor their every move. The closest public toilet is a few blocks away. It is 41 degrees Celsius outside during the summer months, but there is no provision for drinking water... There are no windows. The workers move their feet and legs continuously, at breakneck speed, to ensure that the thread gets woven quickly. The workers get paid on a piece-rate basis...they "cannot afford to waste any time or relax". Their only days off...are because of electric power failures'.

Their adversity 'stretches further to the remaining 12 hours of their day in the city'. After a strenuous day, nearly 60 workers must fit into a 500-square foot room, colloquially referred to as 'mess rooms', with the noise of looms never ending. 'The workers sleep on worn-out mattresses sometimes infested with bedbugs... There are termites and occasionally rats scurrying about too... Storage boxes and bags are placed one above the other at the head of each shared space...

Each room has two toilets at one end that all the occupants use. The kitchen is usually right next to the toilets. The water for bathing, drinking and cooking comes from a common source...The few fans in each room barely lessen the heat...Some rooms...are windowless, with only a tiny door at one end of the rectangular halls...'

The vast majority of migrants are single and male, but long-term and second generation migrants sometimes bring in families. The women work from home, in extremely insecure, unsafe and extractive arrangements. The women themselves don't recognize this as work. Similar to the portrait of women home-based workers in Delhi in an earlier India Exclusion Report,<sup>9</sup> they call it timepass. For six hours

9 See Dey, N., & Mishra, V. (2019). Switches and stitches: Unpacking home-based work. *Indian Exclusion Report 2017–18*. <http://indiaexclusionreport.in/wp-content/uploads/2019/05/Chapter-4-Switches-and-Stitches.pdf>.

of work a day, involving children also, they are paid around 150 rupees a month. Most women did not even know the name of their employers. They reported wages unchanged for 10 years.

The authors describe how body blows to their work security and conditions were made by both demonetization and GST. The lockdown left them even more devastated. The power looms pulled down their shutters, and the Odia weavers were forced to stay indoors. The poorly ventilated mess rooms now had to accommodate both shifts of workers at once: more than 100 labourers were packed inside a 500-square-foot room. ‘The calls for social distancing, sanitation and hygiene, and staying indoors for safety, were far removed from both their reality and aspiration in the city. Sleeper Class tickets for the limited *Shramik Express* trains were being sold by local politicians and touts for a whopping 2,000 rupees. Seats on private buses were priced at Rs. 4,000. Food shortages were being reported across mess rooms... Less than 10 per cent of the migrant weaver population stayed back, hammering the last nail on the coffin of the industry... Back in Ganjam, meanwhile, older workers, who claim to be working as agents for owners back in Surat, have reportedly started urging workers to prepare to return when regular train services are restored...’

#### *The Muslim Ghetto: Juhapura in Ahmedabad*

The next chapter looks closely at the experience of urban Indian Muslims of life in a ghetto, through a particularly insightful portrayal of Juhapura in Ahmedabad, which, in the popular imagination, is the emblematic Muslim ghetto. The report by Sharik Laliwala, Christophe Jaffrelet, Priyal Thakkar and Abida Desai, while affirming the reality of structural State neglect and exclusion, finds that within the ghetto, there is immense diversity of class, sect and gender, which create their own tensions, exclusions and opportunities.

Ahmedabad, they report, is the most religiously segregated city of modern India. Fifty-nine per cent of Gujarati Muslims are urban. Half of Ahmedabad’s 7.5 lakh Muslims live only in Juhapura, with both deliberate State neglect and popular stigma.

But it finds that the residents themselves have built its infrastructure and thereby tried to combat its stigma.

The Sachar Committee Report observed that ‘Muslims are increasingly resorting to living in ghettos across the country’ because they fear for their security (2006, p. 14). This forces them to live with inadequate public services and with reduced opportunities for interaction and building of bonds of trust with other religious groups. Ahmedabad did suffer more than 1,500 killings in incidents of communal violence, mostly of Muslims.

The first major riot was in 1969, the same year as Mahatma Gandhi’s centenary birth anniversary, the deadliest incident of Hindu–Muslim violence since Partition. Officially, 660 died, two-thirds were Muslim, but unofficial estimates were more than twice this number. The authors believe that this marked the beginning of the end of multicultural relations in the city. But Juhapura grew first as the result of a ‘secular’ natural disaster, floods, in 1972–73. But at this stage it was not a ghetto. Flood victims resettled in Juhapura chose to create a mixed-religion neighbourhood.

It was the 1980s, when numerous Hindu–Muslim riots unfolded in Ahmedabad, Surat, Vadodara and small towns, that people began to find safety in the neighbourhood of people of their own faith. This was facilitated by the rise of the Hindu Right after the collapse of the legendary cotton textile mills of Ahmedabad. 1985 saw another major communal carnage in which 275 people died, and this was even more marked with Dalits, OBCs and Adivasis emerging as foot soldiers of Hindu nationalism. Dalits and OBCs who lived next to Muslims in old Ahmedabad, the eastern industrial belt as well as in Juhapura shifted to Hindu-majority settlements. Communal violence in the 1990s connected with the Ram Janmbhumi movement further spurred this segregation of populations.

Juhapura came to be described by Hindu residents of the city as ‘mini Pakistan’, and the wall constructed to separate Juhapura from the Hindu neighbourhood Vejalpur is still called ‘Wagah Border’.

This ghettoization was further fuelled by the State, especially through its law, The Disturbed Areas Act, 1991, which required government permission in urban riot-prone areas officially declared as ‘disturbed’ to purchase or sell land. This was used to prevent Muslims buying land and property in Hindu-majority areas.

The 2002 anti-Muslim pogrom sealed the ghettoization of Juhapura. But because Muslim middle-class professionals, judges and even police officers were subject to attacks massively for the first time, they too moved into Muslim majority-areas, most of all Juhapura. This led to ethnic homogeneity combined with economic heterogeneity. Juhapura changed after this significant influx of Muslim elites and professionals. They were able privately to develop the ghetto and, to some degree, also lobby the State. They had enough social, intellectual and financial capital to establish private undertakings, including schools, clinics and roads they needed. The rich have created ‘citadels’ of relative privilege within the ghetto. 2002 also marked the emergence of women, including from working classes, changing gender relations.

The authors conclude that the history of anti-Muslim violence and the use of law to prevent Muslims from living in mixed neighbourhoods, against the communal propaganda of ‘land-jihad’ have ‘transformed a de facto Hindu Rashtra into a de jure one with legal sanctions restricting freedoms of Muslim communities’.

#### *Sex Workers of Delhi, Kolkata, and Hyderabad*

The section on sex workers is based on a survey of 600 women and transgendered sex workers in Delhi, Kolkata and Hyderabad, conducted by sex workers of the members of the All India Network of Sex Workers collective. Both the collective and the survey derive from the liberal feminist view of sex work as voluntary sexual labour—and its findings underline that ‘sex workers can indeed exercise agency and choose sex work as a means of livelihood, dealing with men as clients, while executing an adult consensual sexual transaction’. It also includes male and transgender sex workers into the conversation recognizing that women, men

and persons from the trans community have diverse experiences within sex work, based on diversities of gender, caste, class, prevailing religious and political beliefs and so on.

The findings underline active agency and choice exercised by sex workers. One sex worker says, ‘Had I been working somewhere else, I would have been a *naukrani* (servant) but in sex work, I live like a *maharani* (queen). First, I would like to talk about choice—wanted to work, wanted to have sex, wanted to earn, wanted to also enjoy. Have learnt about women’s rights—not as a mother, as a daughter, as a wife—but rights as a woman, human rights—this movement (of sex workers’ collectives) taught me. All through my work and my association with the movement. What my family could not teach me, this movement has.’

They also underline their identities beyond the monolithic identity of sex work. ‘Sex worker is not my only identity. I am a sex worker as well as the head of a community-based organization and a member of the Slum Rehabilitation Committee. I am also a mother who loves and looks after her children, which is possible only because of what I earn through my work’.

‘What is wrong in being a sex worker?’ asks another. ‘In this work, I am the boss. I do work as I want to and go back home. I have enough time to myself; I feel loved, I feel I do good for my customer and I say no when I am not feeling like doing *dhanda*... Where else could I have such options?’

Across the three sites, women and transgender sex workers spoke of exclusion and compulsion that brought them to sex work. The majority of women entered sex work spurred by poverty, violence and abuse and exploitation in marriage. Sixty-eight per cent said they came into sex work of their own accord. Many reported adopting this profession after entering the informal workforce variously as domestic helpers, beauty parlour workers, wage labourers, petty street vendors, construction workers etc. These often were sites of sexual and other exploitation for them; and they opted for sex work mainly when they realized that sex work would give them more income than they could earn

in other work. In Kolkata, 69 per cent of the sex workers said that they came to sex work because they consider ‘sex work as work’. In Hyderabad all 200 transgender sex workers declared that no one forced them into sex work, and they freely chose the profession. But the majority of the transgender sex workers transact sex work secretly, to avoid violence from police and to ‘save oneself from double stigma and marginalization within family’. In Delhi too, 68 per cent said they came to sex work willingly as they expected better earnings than in the other work that was available to them.

The findings underlined that their choices of work were limited, because of poor education, with only 17 per cent women in sex work having had the opportunity to access some level of education; and the transgender sex workers were even more deprived.

The study finds that sex work has to be negotiated amidst violence and exploitation. ‘A symbiotic relation is being nurtured between the pimp, the brothel owner, agents, police, clients, and the sex workers which ensures continuity of business though one cannot deny that these same relationships are also inherently exploitative and violent’.

It may come as a surprise that among the respondents, a majority of women conducted sex work within marriage. In Kolkata, 64 per cent women in sex work are currently married; in Delhi, they are 69 per cent. In Hyderabad, however, only 6 per cent of the transgender sex workers identified themselves as married. The majority of women came to sex work after being married for years; they opted for sex work to earn better to take care of the family and the children. The survey reveals that of the 600 respondents, only 29 per cent said that their families were aware of their work.

Fifteen per cent of women in Delhi and a third in Kolkata came to sex work after they became widows or being separated or divorced. Many testified to choosing sex work to escape violence in the family and within marriage. ‘It was not as though exploitation and violence were absent from sex work. But women said that they greater scope and power for bargaining, negotiation and refusing vi-

olent clients, which they did not think was possible in marriage’.

One said, ‘Being married and being a mother makes it easy for us to do sex work without being doubted by our family and society. I do sex work in my home said one and rent out a portion of my house to other sisters to do sex work. They come as my friends and since the neighbours around also know that I run a small garment shop within my home, no one ever comes to know what I do. Moreover, the clients make me feel special, makes me feel loved, something I no more get from my own husband.’

The study notes many transformations that liberalization has brought to their trade. Now women fix their clients on phone and do business in a rented place, hotel, lodge or makeshift brothels located in middle-class colonies rather than in established red-light areas. The mobile revolution helped sex workers negotiate clients without *kothas*, brothels, and the red-light areas. But it also exposed them to greater surveillance; also often exposed them to unwarranted violence, harassment and exploitation. Brothels mostly houses middle-aged and elderly women, who on an average have been staying in the brothel for over 15 to 20 years. In Delhi, 93 per cent women operated outside brothels; in Kolkata, by contrast, only 26 per cent worked outside brothels.

The survey revealed that while 36 per cent of the respondents had a ration card, in Hyderabad, not a single transgender sex worker had a ration card in their name. In Delhi, they found more migratory populations in sex work, while in Kolkata women have been settled in this work in Kolkata for years and therefore have been more successful in accessing official documents.

#### *Sewage Workers*

In her chapter titled ‘Of Sewage, Struggle and the State: Caste and Contractorization in Contemporary Sanitation Work’, Shruti I. describes the predicament of sewage workers, whose deaths, she observes, ‘have reached epidemic proportions across Indian cities, though there has been little State intervention on the issue’. At least 300 sewage work-

ers died in 2017 across India, while 142 deaths are recorded between 2012–14. The union government admits to 110 deaths in 2019.

Workers died while cleaning manholes, septic tanks and sewage treatment plants in hospitals, shopping malls, residential neighbourhoods, farmhouses and apartment complexes. Although courts and the National Human Rights Commission (NHRC) have directed the full mechanization of cleaning, this still is mostly not done and each time a worker lowers himself into a sewer, he is risking his life for meagre payment. Neither officials nor employers are held criminally accountable for these deaths.

This indifference and inaction of the State is traced to ‘the fragmentation of the labour force and the predatory use of informal or daily-wage workers to supplement the contract workforce’. Their informalization renders the workers invisible and powerless to bargain collectively, while benefits employers by saving costs. This is not different even when the State is the principal employer. Therefore, just mechanization will not protect these workers; the regulation of their conditions of employment is imperative for a day to come when men don’t die drowning in excreta while cleaning sewage tanks.

‘Sewage work’ is mainly of two kinds. One is of cleaning septic tanks, which fill up with excreta flowing from water-seal latrines. The second is of cleaning underground drains that carry waste water and effluence containing solid or liquid excreta. Decomposing excreta releases hydrogen sulphide, which can be lethal if inhaled; often, men become unconscious and are asphyxiated in the accumulated sewage. Sewer lines are ‘confined space with high temperatures, a slippery floor and a high incidence of toxic gases, sharp objects and insects’.

There is a range of labour arrangements for the employment of sewage workers. At the top of the pyramid is permanent jobs, which are highly prized, because they ensure minimum wages, work security, social security, a uniform, often housing, and is sometimes heritable. This generational job security represents the institutionalizing of the caste system by the municipality; there is an ‘unstated 100 per

cent reservation for those belonging to scheduled and backward caste groups’. Housing creates a caste ghetto of sanitation workers. Though permanent jobs are often dangerous and difficult, they are what Harris-White describes as the ‘aristocracy of waste labour’. Privatization and fund constraints have reduced their numbers. They are replaced often by contract workers, or permanent workers are forced to work harder.

‘Contract’ labourers mostly work with no legal written contract, with little job security, low wages and often deductions for sick leave and holidays. But unlike casual work, their work is continuous, not requiring them to negotiate every single day or job. The law prohibits contract employment for work of a perennial nature. But governments are often the largest employers of contract labour themselves. Economic reforms from 1991 encouraged privatization and the contractorization of State services. This has resulted in making work which was already dangerous and degrading also insecure, low-paid and without opportunities for collective bargaining.

The chapter also observes the many ways that caste converges with and shapes the process of contractorization in sanitation work. Dalits continue to dominate sewage and sanitation work. Contractorization has stolen the minimal security of municipal work, reducing their wages as well by around half. Contractorization also ensures that their deaths are unaccounted for. ‘Urban local bodies regularly evade responsibility for the death of contract workers, or claim to be unable to find the contractor responsible for hiring the workers and providing safety equipment’. A worker says: ‘I work so hard, but others get paid so much more for the exact same work...there is no equality.’ Despite the Supreme Court holding that contract sewerage workers are entitled to the payment of a PF, gratuity and bonus, in practice this does not occur.

But at the bottom of the heap is casual labour (or ‘private’ cleaners). Some do this individual ‘job’ work in addition to their contract sewage work, some in addition to casual employment such as in construction, some as annual seasonal workers

and some survive only on this work. Some of this private cleaning takes place ‘in drains or pipelines that either the municipal authority services but has contracted out to daily-wage labour or refuses to service, or in septic tanks/STPs attached to private houses, apartment complexes or commercial establishments’. Many daily wage labourers engage in drainage and sewage cleaning work—of storm water drains, sewer lines or larger septic tanks—even though these are perennial tasks.

Sanitation work is unhealthy, leading to high morbidity and mortality, and reduced lifespans, with workers dying from tuberculosis, liver failure due to drinking or accidents, as workers work typically with no safety protection. Deaths often occur due to a deterioration of health over a prolonged period of time. Workers are made to enter sewers and septic tanks typically without even a safety belt and harness, boots, gloves and a mask. Workers use crude methods like lowering a lit candle or checking if cockroaches have survived. The Supreme Court has issued several directions for health, safety and compensation for sewage workers, but these are mostly ignored.

## Public Goods and Exclusion

The second part of the Report focuses, as in previous reports, on exclusion from four selected public goods. It may be recalled that the IXRs define public goods in the tradition not of economists but political philosophers, as goods, services, attainments, capabilities or freedoms—individual or collective—that are essential for every human being to be able to live a life of dignity. The IXRs define exclusion as processes created by the State that proliferate, tolerate or deepen barriers for individuals and groups for accessing public goods.

This report looks closely at exclusion from four selected public goods. These are citizenship, early childhood care and education, public employment and the protection of labour wages.

The first part of each of the chapters explains why we consider these to be public goods, or, in other words, why we believe each of these is es-

sential for every human being to live with dignity; and why the State has the duty to secure equitable access of all persons of all classes and identities to each of these public goods.

In the first of these chapters, Abdul Kalam Azad, M. Mohsin Alam Bhat and Harsh Mander explain why citizenship is best understood as a meta public good. This is because it is the source and guarantor of most other public goods within the meaning adopted by the IXRs. It is a guarantee of the widest legally available bundle of civil, political and socio-economic rights, including equal protection of the law and right to vote, and social citizenship that guarantees all members basic standards of living. An individual who enjoys citizenship status does not necessarily have *de facto* access to all these public goods, but she has an institutionally viable claim to demand what is legally guaranteed. Citizenship status facilitates the enjoyment of other public goods through the provision of rights and entitlements. If the State violates or fails to fulfil or perform its obligations, citizenship allows for institutional access, participation and redress. The authors underline importantly that beyond legality, citizenship is also a mark of belonging. Citizenship status forms an important source for what political philosopher John Rawls calls the ‘social bases of self-respect’. And according to Hannah Arendt, human dignity is possible only when a person is a member of a political community.

The second of the public goods chapters look at another very specific public good, one that is very often neglected or forgotten. This is the universal and equitable provisioning of ECD (early childhood development) services to ensure the survival and healthy growth to children. Early childhood (under six years) is the most vulnerable and the most critical period in the life cycle of an individual as it lays down the foundations for her lifelong developmental outcomes. The authors, Devika Singh, Amrita Jain and Sumitra Mishra, argue that equitable access to ECD is necessary to create a level playing field for all children as part of their very basic right to a life of dignity. From ensuring brain development and improving educational and life-

long outcomes of individuals to enabling women's workforce participation, increasing tax revenues and bringing economic benefits, ECD is one of the fundamental ways to ensure a dignified life for all and therefore qualifies eminently to be located within the framework of public goods.

In the third chapter, Jayati Ghosh argues persuasively that public employment is in itself a public good. This runs directly counter to the neo-liberal ideal of the shrunken State. High levels of public employment tend to be associated with a better quality of life for people in a society. After all, essential public services—from infrastructure to amenities to security to social services, justice, health, sanitation, education, labour rights, social protection and much else—mostly have to be delivered by governments. This is because private markets simply do not provide them, or under-provide them, and also because private provision, which is based on profitability, delivers much more unequal results. And delivering public services necessarily requires employing people. Public employment in this view may not in itself qualify as a meta public good quite in the way citizenship does, but it is a necessary condition for the State to deliver a wide range of public goods. Indeed, she believes that the proportion of public employees to population provides some indication of the extent, coverage and quality of public services provided in a country, as it is difficult—if not impossible—to deliver quality service public goods to the entire population.

And in the fourth chapter in this section, Nivedita Jayaram and Priyanka Jain make a compelling case for the protection of labour rights in general, and in particular, protection of wages as a public good. Article 43 of the Indian Constitution mandates that 'The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities'. The realization that protected wages are also crucial to basic human, dignified life has been upheld also by international covenants. Article 23

of the Universal Declaration of Human Rights lays down: 'Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity'. The declarations of the ILO also establish the right to a living wage as a human right, stating in the preamble to its Constitution that living wages are the basis for social justice, without which universal and lasting peace cannot be achieved. In addition, at a more utilitarian level, apex official bodies acknowledge that in the crisis of an alarmingly shrinking economy that we are experiencing after the pandemic, stagnation in real wages, especially rural wages, has significantly dampened the consumption capacity of the poor. This, in turn, had slowed down the economy even before the pandemic. As businesses struggle after the pandemic to resume operations in the vacuum of demand, even neoliberal economists argue for measures that ensure disposable income in the hands of people, including through raising and protecting wages.

In the final chapter of this section, which is particularly relevant considering the impact of Covid pandemic, T. Sundararaman, Daksha Parmar and S. Krithi argue why public health should be considered as a public good. In this regard, the authors also point out the Constitutional obligations which allow for treating the right to health as a public good as well, as several international treaties signed by India which aim for the same. Regarding the analysis of policies in the health sector, the authors map out the impact of market reforms in the health sector by which neoliberalism has pushed forward an understanding that the health sector should be left to the market. However, when the pandemic erupted, the country witnessed that disproportionately, it was the public health sector which steered over responsibilities in combating it, indicating the importance of treating public health as a public good. The authors point out that the right to health is interlinked with several other public amenities like availability of safe drinking water, education, social security etc. Therefore, a holistic understating of public health as a public good should also address these concerns.

## Who is Excluded?

The Report finds that in Assam, millions of mostly poorly lettered and very impoverished people are most affected by processes that threaten to produce statelessness on a scale unmatched by any democracy, causing enormous suffering and dread. They have squandered years of their lives and all their meagre belongings to pay lawyers' fees to help them negotiate the hostile and opaque maze of the bureaucracy, the quasi-judicial Foreigners Tribunals (FTs) and the courts. Among these, Bengali-origin Muslims and Hindus were the most targeted populations in the NRC process. Along with these, certain communities that share some commonalities with Bengali Hindus and Muslims of Bengali-origin were also threatened. These include the indigenous Bengali Muslims locally known as Cachari Muslims living in the southern districts of Cachar, Karimganj and Hailakandi; the indigenous Deshi Muslims whose ancestors converted to Islam from the aboriginal Koch Rajbongshi community of western Assam; the Assamese speaking indigenous Goria and Moria communities of middle and upper Assam; and the indigenous Koch Rajbongshi Hindus of western Assam.

This IXR observes that the young child under six years is overall a highly excluded or, in the language of the IXRs, adversely included population, often ignored while framing policies and making budgets. According to the 2019 Global Hunger Index, around 90 per cent of children in India between the age of 6 and 23 months do not receive the minimum required nutrition. The stunting of children under five, a direct result of chronic malnutrition, has declined by only one-third between the years 1992 and 2016, and remains as high as 38.4 per cent. This data pertaining to nutrition provides a window into the larger picture of the dismal situation of young children in India. In 2018, India reported the highest number of under-five deaths in the world at 8.8 lakh.

But while the entire segment of children under 6 is neglected, vulnerable and excluded, of course, a much greater burden of exclusion is borne by children of the poor, of informal workers and small

farmers, of Dalits and Adivasis, and of single-mothers, and disabled children, children growing up on streets or in slums, trafficked children, children who lack parental care including orphans and those without family support, children affected or displaced by natural hazards and climate conditions or by civil disturbance, children in institutions, and children living with HIV/AIDs, leprosy and other socially stigmatizing conditions.

The chapter on public employment notes that relative to its population, public employment in India is only one-tenth of that in Norway, only 15 per cent of that in Brazil and much less than a third of that in China. Clearly, India is hugely under-providing public services in a wide range of activities. There has been stagnation and even decline in the number of sanctioned posts since the mid-1990s. Employment at the managerial and supervisory levels remained mostly stable with only minor declines, but the biggest declines in employment were among 'non-executive' workers of all kinds. In other words, fewer actual workers were being handled by relatively more managers and supervisors.

The governments at both central and state levels have been very reluctant to fill the vacancies in existing posts; in 2014, nearly 7.5 lakh positions were lying vacant in the central government alone, amounting for almost one in five of all sanctioned positions. What is important to note is that 'informal' public workers like Anganwadi Workers (AWWs) in the ICDS or ASHAs in the NHM, without the status or benefits of regular government employees, actually form the majority in public employment, with serious implications on both the quantity and quality of public services, as well as for the rights of such workers. In other words, the bulk of those in public employment are adversely included, with less secure contracts and deteriorating conditions of work. Among such 'non-executive' workers, the proportion that are under contract or casual/daily work has increased significantly, with such insecure workers accounting for more than one-third of the actual workforce. Tellingly, women accounted for less than a tenth of all public workers in the aggregate. Many of these are 'voluntary' workers

such as AWWs and helpers and ASHAs, who do not receive even the legal minimum wages for their work but nonetheless see themselves as regularly employed by the government.

Although all informal workers suffer from degrees of wage underpayment and uncertainty, the Report notes that the category of seasonal and circular migrants lies in the underbelly of India's labour market. This vast and diverse group is populated largely by the most historically oppressed and stigmatized social groups of Scheduled Castes and Tribes (SC/STs) as well as religious minorities such as Muslims, who together stand at the bottom of the labour market in the country. The Report affirms that India's wage crisis has affected all sections of the working class, with one in three workers not receiving minimum wages. But seasonal, circular migrants form a large majority of this group of workers. STs, SCs and religious minorities are trapped in low-wage livelihoods, and women and children within these social groups fare even worse. There is a strong overlap between these historically marginalized groups, that are also trapped in the poorest economic quintiles in the country, and the phenomenon of seasonal and circular migration. Thus, it is the poorest, historically most oppressed groups that are now toiling under the lowest strata of India's highly unequal labour markets.

The chapter on public health notes that exclusion is multifaceted in nature. First, increasing the privatization of healthcare results in increased costs of healthcare for marginalized sections. Despite the presence of schemes like PM-JAY, there is no visible reduction in the expenditure of the poor on healthcare. Second, the authors note that the absence of primary health centres in urban locations has led to enormous crowding in public hospitals in urban locations, leading to reduced quality of overall healthcare. Here again, it's the absence of a large network of centres providing public healthcare and the presence of expensive private hospitals that ensure that the poor are devoid of any other choice. Third, the authors also point out that marginalized communities like tribals, Dalits, and Muslims face discrimination based on their identity in accessing

healthcare. On the one hand, while State apathy results in the non-construction of sufficient health centres in regions where marginalized communities reside, on the other hand, the inherent antagonism which the socio-economic elite have towards the marginalized prevents their access to public healthcare. The authors cite several case studies to strengthen this point. In recent years, the delivery of healthcare is linked to the Aadhar card. This has also led to the exclusion of urban poor, Dalits, and tribals from healthcare since they are not able to provide valid ID proofs.

## **What Failures of Law and Policy Cause these Exclusions?**

Each of the chapters then interrogates closely what failures of law and policy result in these multiple exclusions. Are these failures of design itself, or are well-designed laws and policies subverted during implementation, or by the active hostility of the State?

### ***Citizenship***

The authors identify several design flaws in law and policy, and in the case of citizenship as a meta public good, court rulings which are intrinsically exclusionary. The role of the higher judiciary, particularly the Supreme Court, has been critical in creating, enabling and failing to prevent exclusions from citizenship. The Supreme Court judgment in the 2005 Sarabnanda Sonowal case shifted the burden of proof on individuals to prove that they are citizens rather than on the State to prove that persons identified by the State are not citizens, and directed that all questions of citizenship determination must be referred to FTs. It has enabled FTs to operate with arbitrary procedures, often neglecting standard rules of evidence at the cost of due process. The Supreme Court initiated one of the most ambitious judiciary-led bureaucratic exercises in the history of the country by supervizing the updating of the National Register of Citizens, on a court-determined calendar. Since the Court was acting as the executive, it completely removed the possibility of judicial review.

The Supreme Court also willfully left unresolved a question which would determine if the NRC rules were even lawful. Even after amendments to the *jus soli* or birthright citizenship principle of the Citizenship Act, 1955, anyone born in India before 1 July 1987 is a citizen by birth; between July 1987 and before 3 December 2004 would need at least one Indian parent to be a citizen by birth; and after 3 December 2004, to qualify as a citizen by birth, neither of the parents should be an ‘illegal migrant’. But the NRC excluded even a person born in Assam before July 1987, if any of her parents was a suspect foreigner or declared to be a foreigner by the FT.

The NRC modality—ruled by the Supreme Court—kept all the people with contested citizenship as ‘doubtful voters’, or doubtful citizens identified by the police, who were before the FTs, outside the purview of the NRC process. It also excluded the descendants of people with contested citizenship from the NRC process. Consequently, a large number of people were left at the mercy of the ordinary FT process despite the existence of the more transparent NRC that the government proposed. The Court also accepted the segregation of applicants between ‘original inhabitants’ and non-original inhabitants, while nowhere defining these under the law. The NRC process also did not recognize the need for special protection for vulnerable social groups like women, children, transpeople, the destitute and orphans among others.

Midway into the NRC updating process was suddenly introduced a new verification criterion called the Family Tree. This was an extremely complicated form that required details like name, age and the relationship of all the members. Sometimes, more than a hundred people would come in one family tree, which included several families who lived in areas far from the applicant’s location. Needless to mention, the application on numerous occasions would have completely lost communication with distant relatives for years and decades. The need to fill out the details of such relatives in family trees was bound to create many mismatches. And one mismatch was enough for the NRC authorities

to demand several rounds of hearings or reject the application. This requirement especially burdened groups like transpersons, who had left their families and were living separately, single women who had been abandoned by their husbands, and orphans.

The NRC administration was embroiled in severe inefficiencies. Many tasks were contracted to companies which employed underqualified, poorly paid and untrained staff, resulting in mistakes that were sometimes catastrophic for families. Many documents were incorrectly recorded, resulting in confused hearings and unjust exclusions. There were cases where the notices were either served at the last hour or after the date of the hearing, served to wrong people and wrong destinations because of data entry errors, leading to exclusion because of official errors. There was also overwork. One investigating officer was given the responsibility to hear as many as six family tree related disputes in a day, which meant examining the citizenship status of several hundred people! The NRC authority also digitized the ‘legacy data’ that included the 1951 NRC and electoral rolls up to the midnight of 24 March 1971, but there were commonly costly mistakes in coding and exclusion of critical records.

The official process was also marred by active hostility of State agencies and actors toward Muslims of Bengali origin and Bengali Hindus as ‘Others’. The active hostility against the vulnerable population was evident in different forms and layers. For instance, the NRC update process permitted anyone to file an objection against the inclusion of any person in the draft NRC. The NRC authority allowed objections even in cases where the objector had no possibility of knowing the person against whom the objection was being made. It also permitted a person to file en masse objections. The NRC authority never questioned this transparent plan to persecute people from two of the most marginalized communities. With less than a month of the scheduled date for publication of the final NRC, thousands of people from Muslim majority lower Assam districts of Kamrup and Barpeta of these targeted communities were given the notice to appear before the hearing before officers next day in far-

away places in upper Assam, sometimes more than five hundred kilometres away.

### ***Early Childhood Care***

The Report describes many ways in which children up to six years, who need the most care and protection, remain under-represented while formulating policies and allocating budgets. There is a lack of regulation, oversight and enabling infrastructure, as well as failure to commit financial and human resources for the well-being of this segment of the population. There is piecemeal implementation, insufficient budget allocation and underutilization, and a fragmentary approach while defining children's needs and drafting laws. The National Plan of Action for Children 2016 recommended 5 per cent of budgets for the young child, which the authors point out is low. But even this is not achieved: it was 3.29 per cent in the 2019–20 budget. There are also confused and dispersed responsibilities, between the central and state governments, and within the central government; for example, while education is a state subject, ICDS is a national programme that the states have to implement. There is no convergence between various ministries when it comes to the issues of the young child.

Many laws are either inadequate or fragmented in catering to the specific needs and entitlements of the young child. For instance, three laws in India are aimed at the protection of children under six from abuse, but they exclude issues such as mental abuse, neglect and discrimination. Various acts mandate crèche facilities, but these mostly focus only on women workers and larger organizations with at least 50 employees. The entire cost of the setting of and maintaining these facilities are imposed on the employer. This could create a negative attitude towards hiring women as employers would not want to incur additional costs for paid leave. Further, poor enforcement of labour stymies implementation. The National Food Security Act, 2013 does not specify the arrangements regarding caregiving or feeding, nor the need for universal day-care facilities, which are integral to ensuring access to breastfeeding, nutrition, care and learning. Other laws such as Right to Education Act 2009, Rights

of Persons with Disability Act 2016, Registration of Births and Deaths Act 1969 etc. fail to include children under six years of age either completely or partially.

### ***Public Employment***

The Report points to an ideological commitment, spurred by neoliberal fundamentalisms, to reduce fiscal spending by restricting public employment. This has led to the downsizing of the number of government posts since 1994 relative to population. Even existing positions are often left vacant. Jayati Ghosh observes that simply filling the vacancies would go some way towards addressing the current employment crisis in India; it would also mean much more extensive and better quality delivery of public services because most such services cannot be delivered without people. An increasing number of important activities are not even counted among those regularly employed by the government, most significantly those working under various schemes. The most glaring examples come from the ICDS and the NHM, whose lakhs of workers—predominantly women—are not classified as workers and not paid even the legal minimum wages. And many permanent government positions are replaced by contract appointments, or the tasks themselves are delegated to private sector providers who employ contract or casual workers.

### ***Protection of Wages***

In India's labour market, the entrenched feature of wage discrimination functions less as unequal wages for equal jobs, and more as highly unequal pathways to access jobs with decent wages. Labour from social groups of SCs, STs and Muslims have a disproportionately lower chance of receiving minimal wages throughout their lives, being isolated in sub-segments of the labour market (where even legally mandated minimum wages may not be paid) with very high barriers to accessing better spheres of work where living wages are a possibility. This can be seen as the manifest failure of the State to correct these intense social barriers to decent jobs and wages faced by the historically most oppressed groups.

There is also high wage theft that migrant workers routinely experience from their employers. What motivates industry's strong preference for such temporary, mobile workers is that they do not have to pay living wages, not even minimum wages, in many instances. In India's contemporary capitalist economy, hiring migrant labour is a central way for capital to accumulate profits. The employer can abandon bearing standard costs of employees, such as health, nutrition, old age, education and other basic human needs of the worker and the household, appropriating all of these as profits.

The trajectory of the global capitalist economy and India's complicit neoliberal shifts have shown that the informal sector is not a leftover of the traditional, but a zone of flexibility that is actively and consciously created for modern, capitalist interests from the very top, linking formal and informal sectors in inextricable ways. Informal and migrant labour across different sectors and employment types are unable to access written contracts—with 80 per cent of the workforce not having any form of written contracts and the large majority of the remaining 20 per cent with short-term contracts of less than a year. Unlike the formal sector or relatively more standardized forms of work in the informal sector, here 'work' constitutes many different jobs and roles that the labourers might have to perform. There is a one-way record-keeping by the employer, who, after the work is performed, provides *hisaab* (an account), which workers find it hard to challenge in case of discrepancies. These mechanisms are further complicated where a standardized notion of wages is suspended. A significant example is the perverse system of advances that exists across many sectors—where labour is paid a lump sum before migrating to work in distant worksites to pay off the amount.

The Report argues that this cannot be ascribed to an absence of protective labour legislation since there are around 44 central and state laws that apply to informal workers (including migrant labour), which have extensive provisions on wages, terms and conditions of work, right to association, social security, life and accident. These vary in terms of

criteria and have their limitations based on firm size, but cover a very significant section of the informal workforce. There are many limitations to these laws, but still, they contain provisions to prevent wage thefts and low wages, and unprotected, insecure and low wages routinely experienced by migrant labour. The core problem is not the result of absent legislation, but their dilution through the 'labour reforms' agenda, and poor enforcement and grievance redressal mechanisms.

While the implementation of labour protective laws has generally been poor, another dangerous shift has been in the legislative content and position itself on the protection of labour, particularly through the changes envisaged under the proposed Labour Codes. The recently enacted Labour Code on Wages (Wage Code), for instance, completely ignores the formula that was unanimously recommended by the International Law Commission and the Supreme Court for fixing living wages that allow workers and their households to achieve minimum consumption and also meet their social and cultural needs. On the contrary, it disregards the rights of workers to adequate wages, leaving the setting of minimum wages to the discretion of administrators.

### ***Public Health as Public Good***

Regarding the policy question on public health, the authors, as mentioned before, map out the impact of market-driven reforms in public health. They also explain how the State has attempted to manoeuvre around the shortcomings of this strategy. They point out that based on neoliberal policy directives, the understanding of the State shifted in the 1990s about the provision of healthcare. It was widely accepted that the role of the State should be limited to regulation of healthcare and not provision of it, which should be left to private healthcare. This resulted in not only the limitation of services provided by public health centres but also in the cessation of hiring permanent staff in public healthcare. The net result was the poor being left with no choice but to opt for private healthcare, resulting in skyrocketing costs of healthcare. Even when private healthcare expanded as a result of these policies, it was limited to urban pockets, leading to further ex-

clusion of the vast majority from healthcare. It was a result of these problems that the State decided to implement flagship programs like the National Rural Health Mission (NRHM). But the impact of neoliberalism continued to haunt programmes like NRHM. First, its scope was limited with several areas left to the private sector. Second, despite the high workload, the employment created by NRHM was mostly contractual in nature. The delay in sanctioning the National Urban Health Mission also adversely affected public healthcare. Overall, these measures did little to check the increasing reliance on private healthcare. Another important initiative by the State was a large-scale government-funded insurance program called the Prime Minister Jan Arogya Yojana (PM-JAY). Insurance programmes in themselves do not address the severe infrastructural problems in healthcare, particularly in remote regions. What they attempt to address is reimbursement of the price of care for those who are recipients of insurance. The caregivers could be both private and public health centres. However, this policy also has numerous loopholes. First, only those hospitals which are registered under PM-JAY can provide this service, adversely impacting small-scale health centres. Second, primary healthcare, which accounts for 70 per cent of healthcare, does not fall under the ambit of these insurance policies.

## **Consequences of Exclusion from Public Goods**

Since citizenship is a meta public good, exclusion from it, or adverse inclusion—in the sense of a regime of continuous uncertainty and dread about the recognition of one’s citizenship rights—results in immense and multiple denials. The report underlines that the arbitrary and opaque NRC process has destabilized the citizenship of millions of Indians, threatening to produce statelessness on a scale unknown in any democracy. It has introduced a lingering and frightening uncertainty in their lives, about whether they would remain Indian citizens, be locked up for years in detention centres, be forced to live as doubtful or non-citizens without elementary rights to access a range of public goods including owning property or accessing social pro-

tection such as subsidized foodgrains or, indeed, be deported. As Rawls reminds us, being stripped of secure citizenship rights robs from you your human dignity.

This debilitating and humiliating instability and uncertainty mark the lives not only of those who were ultimately excluded from the NRC but also those who had to go through the maze of burdensome bureaucratic procedures to prove their citizenship. They were compelled to divert all their meagre resources, time and energy away from pursuing their lives and livelihoods and towards establishing their citizenship. This process heightened their vulnerability and engendered fear, harming their dignity and freedom. And to crown this all, neither the Supreme Court nor the Parliament has compelled the government to clarify what the destiny of possibly one to two million people in Assam will be, if they are finally declared to be ‘foreigners’.

The Report also highlights many grave, and indeed unrectifiable, consequences of early childhood deprivation, that has adverse consequences, both immediate and long-term, for neurobiological, social and cognitive development. This can result in many irreversible behavioural and psychological impairments in an individual in the longer term. Neglect during early childhood may cause social withdrawal, issues with regulating emotions, low self-esteem, pathological behaviours, low intellectual development and low academic achievement. Childhood trauma is known to significantly increase negative outcomes like drug abuse, depression, dropping out of school and involvement in violence in later life. Research has shown that early childhood deprivation can cost the equivalent to 2 per cent of its GDP since early childhood care is linked to raising adult wages.

Similarly, the Report demonstrates that low and declining public employment in relation to population, and a deterioration of the conditions of work (including job security) of many who deliver public services, contributes materially to inequality. It does this by reducing access to essential social services and making life much harder for those who

cannot afford to buy such services in the market. The direct result is that so many people in India remain excluded from the essential public services that ensure the quality of life or receive such services only very partially and inadequately. To quote from the Report, ‘The results of these gaps are only too evident. Stories abound across the country—of schools catering to several hundred children having only three or four teachers, of villages that are simply not served by agricultural extension officers, of health facilities that do not have adequate numbers of doctors and nurses, and so on. However, instead of trying to ensure that all vacant posts are filled, both central and state governments appear to have further reduced the number of those in employment.’

Once again, protection of wages emerges as a meta public good, because without assured, protected and adequate living wages, millions of workers across the country are not able to access the basic minimum consumption required for the sustenance of their households, both in cities where they work and for remittances to their families in villages. Low wages also badly hit economic growth, a reality exposed painfully in the unprecedented economic contraction after the lockdown, by squeezing demand. Secure living wages are indispensable for accessing a wide range of public goods, including the rights to food and nutrition, education, health and housing. These form the basis of a healthy and productive population. Low and insecure wages hamper the economic betterment and social regeneration of its labouring population. The large wage-dependent and migrant population thus remains trapped in the cycle of toxic work, inadequate and insecure wages and impoverishment. Insecure, risky and long hours of back-breaking work take a heavy toll on the body of the migrant worker, with high risks of TB, silicosis or musculoskeletal diseases, and ‘through a depletion of their bodies that are too exhausted to continue working as a result of toxic work conditions and poor living conditions aggravated by a lack of nutrition and access to public healthcare services’.

For women migrant workers at the destination, low wages and poor living conditions create an additional gender-based burden, in having to ensure the subsistence of their households without adequate income or public provisioning. This leaves them with little or no time for sleep, rest and leisure, and leads to low food intake and poor health. Children from migrant households grow up in a state of deprivation, condemning them to a disadvantaged start to life, with high levels of malnutrition and wasting and a high requirement to migrate for work as early as 14 to 16 years, dropping out of formal education, with little or no skills, to replace their fathers’ income in informal labour markets. This leads to the ‘intergenerational transfer of poverty, where the next generation of emaciated children—with little scope for vertical mobility and better earnings—take over the previous generation, creating a cycle where circular migrant households are kept in a state of poverty in order to facilitate cheap labour’.

The consequences of exclusion from well-functioning public healthcare are straightforward. It leads to increased expenditure in healthcare due to higher reliance on private healthcare and overcrowding in the limited facilities provided by public healthcare. The Covid pandemic has particularly highlighted the need to treat healthcare as a public good. During the initial days of the pandemic, the private sector completely shut down in fear of infection, leaving the entire responsibility of healthcare to the public sector. Even when the private sector opened later, they charged exorbitant rates to their clients, which not even the upper middle class could afford. Apart from this, very few Covid cases were reimbursed under the insurance policy of the government, pointing at yet another failed implementation. The authors argue that unless a complete rethinking is done on the privatization of healthcare and it is treated as a public good, such calamitous situations would further arise, apart from continuing systematic exclusions of the marginalized from availing healthcare.

## Taxing the Super-Rich to Institute Universal Socio-Economic Rights

A great part of the recommendations made in this and earlier editions of the IXR relate to universalizing socio-economic rights. How critical this is for the dignified survival of all people was demonstrated most starkly by the totalling lockdown. But the argument that is most frequently made against this is that the country does not have enough resources to implement them.

In the final, extremely important chapter in this IXR by one of India's best-respected economists, Prabhat Patnaik, argues that 'Resources for a set of universal, legally binding socio-economic rights, such as the right to food, the right to employment, the right to free education, the right to free health-care and the right to adequate old-age pension and disability benefits, all of which are *essential* for the functioning of a true democracy, have *got* to be found.'

This, he avers, is a question of principle. But he adds that the resources required for introducing such rights in India are amply available. These can be easily financed if the government taxes the super-rich. He says that such taxing is essential for the preservation of democracy, since democracy requires wealth and income inequalities to be kept in check, as political power in the hands of any group is highly correlated with its economic power.

Patnaik argues compellingly that a 2 per cent wealth tax together with a 33 per cent inheritance tax imposed only on the top 1 per cent of the country's population will raise enough resources to finance the implementation of the five basic economic rights mentioned here.

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# In Focus

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The Anganwadi workers make regular home visits in surrounding villages, keeping meticulous records of the health of adolescent girls, expectant mothers and children. They spot those who need facility-based care and recommend admission to the district's Nutrition Rehabilitation Centres. In most areas where food is scarce, the villagers depend on the mid-day meal served at the Anganwadi.

*Photo: Sudharak Olwe*

# Public Health and Health Services as Global Public Goods

T. Sundararaman, Daksha Parmar and S. Krithi

## 1. Introduction: The Covid-19 Pandemic and the Public Health Crisis

We are in the midst of one of the most severe crises in global public health that the world has ever faced. India is one of the worst affected countries, with the Covid-19 pandemic having devastating impacts both on the health of the population as well as on the country's economy. As of November 15, 2020, India's Covid-19 cases stand at over 88 lakhs and there are over 1.3 lakh deaths. This unprecedented health crisis is not only having an adverse impact on the health of the population, it has also created a profound negative economic impact. Though all sectors and classes are affected, existing poverty and inequality amplifies the adverse effects on the weaker sections and pushes them further into poverty. The immediate negative impact on the lives of all marginalized sections of the population—migrants, farmers, labourers working in insecure and informal jobs in urban and rural areas—is therefore more severe.

Access to medical services has been severely affected both for Covid-19 and non-Covid-19 health problems. Public hospitals have been overwhelmed with the increased number of Covid-19 cases, resulting in huge shortages of beds for Covid-19 patients as well as exacerbating shortages for all other patients. Failure to isolate and admit Covid-19 pa-

tients in time also leads to enhanced risk of infection for the entire population. (JSA-AIPSN, 2020). This crisis is even more acute for those who are already suffering from critical and lifelong illnesses that require sustained medical check-ups and interventions. This is particularly with reference to life-saving services in case of maternal and child healthcare, chronic illnesses such as diabetes, hypertension, cancer and dialysis services, where the essential medical services were suspended or cut back across most of the public and private health facilities.

The pandemic of Covid-19 knocked at our doors when India was in the third decade of its health sector reforms. Since the nineties, under the reforms, public health policy—as reflected in its implementation—has veered towards restricting public provisioning to only those services which the private sector is unable or unwilling to provide, with an understanding that the majority of health services should be left to the market. This had led to systematic neglect of public health services. But in this moment of a health crisis, this for-profit private health sector, which has grown enormously over the last three decades, was largely missing in action. They either withdrew due to fear of infection or, when they did provide services, charged exorbitant rates and restricted to a limited number of beds and services (Raghavan, Barnagarwala and Ghosh, 2020). Public hospitals and public health

facilities have emerged as the lifeline on which both the government and the people depend. This ‘market failure’ is not only in hospital care. Even in the manufacture and supply of essential health products—testing kits, medicines, vaccines and protective clothing—there have been huge market failures, and the government has had to step in at every level—in research and innovation, in import, in starting up domestic manufacture, in distribution and delivery.

In order to address the crisis, the World Health Organization (WHO) and the United Nations have declared that vaccines and, indeed, all the medicines that are required for the Covid-19 response would be seen as a global public health good. This declaration has revived an academic and policy discourse on the significance of addressing health as a public good and challenged the intellectual hegemony of market-based theories of reform. Despite these developments, the follow-through actions on the policy front have been weak and inadequate. The reason for this lies not only in the lack of political will, but the limited and incomplete acknowledgement of what establishing the right to health for all would require. What this chapter argues is that one of the most important lessons that the pandemic of Covid-19 has taught us is the need to consider all health services, and not only vaccines, as public goods.

This chapter begins with a brief description of the constitutional understanding of public health and the right to health, and then tries to understand how the term ‘public goods’ has been defined in mainstream economics. Then we examine how, despite the unequivocal constitutional interpretation of health and healthcare services as a basic right, the privatization of health services continues, driven by rising corporate power and legitimized by corresponding academic and policy discourses. The impact of these reforms on equity and access to healthcare for poor and marginalized sections is then discussed, and the case made for bringing all healthcare services out of market mechanisms. This would of course necessitate a much better form of organization and delivery of public services.

## **2. Public Health, the Right to Health and the Notion of Public Goods**

### ***2.1 Conceptualizing ‘Public Health’ in the Context of Right to Health***

The right to health is far more than the right to healthcare services. Good health is an outcome of a multitude of determinants such as food and nutrition, water supply and sanitation, education and housing, employment and social security. In short, health and sickness are deeply rooted in the conditions of life and work and the social relations of society (Deppe, 2010). Access to these determinants of health is insufficiently understood by a study of individual choices or behavioural theories. A political economy approach to health and healthcare would understand health outcomes by locating it within the social structural factors and power relations in society (Birn, Pillay and Holtz, 2017). Such an approach recognizes how social inequalities based on gender, caste, class, religion, region, ethnicity at the global, national and local level largely determine who falls sick, who has access to treatment or who dies prematurely. While people experience good or poor health at the individual level, illness and death are social phenomena that are shared by households, friends, caregivers, colleagues, healers and the larger society.

Such a broader understanding of health and healthcare is present in the constitutional obligations of the Indian government. They have been further clarified by several international treaties that the Indian state has signed. Even before Independence, the Bhore Committee declared, in the very beginning of its preamble, that ‘No individual should fail to secure adequate medical care because of inability to pay for it.’ (Government of India, 1946). In the Constitution itself, while the right to health is not given as a fundamental right, it is given as part of the directive principles which were expected to be realized in one or two decades. Later, a number of Supreme Court rulings have linked the right to health and healthcare to the right to life under Article 21, thus giving it a constitutional basis (Anand, 2019). An important component in

achieving this broader vision of right to health is the study of and intervention in the health of the populations, i.e. public health. The main objective of public health as an area of practice and as an academic discipline is to prevent disease, prolong life and promote the health of the populations. This would include all organized actions undertaken by the State to keep the population healthy. It includes activities that assure food safety, measures related to vector control, waste disposal and sewerage, provision of clean water supply, collection of vital statistics, disease surveillance, health regulations etc. It would also include the organization of healthcare services (Dasgupta, 2005).

## **2.2. Health as a ‘Public Good’—Its Changing Definition under Market Reforms**

Contemporary policy and practice in public health and the delivery of healthcare services draw on public goods literature and the presence of market failure in the health sector to justify State intervention in the healthcare sector. Certain healthcare services are considered to be public goods, characterized by the properties of non-excludability and non-rivalry. For instance, in the case of organized vector control in an urban area, even those households who do not pay their house tax would benefit. Thus, these services are *non-excludable*—all people in the community receive the benefits and the service provider cannot exclude some sections from it. The other characteristic of public goods is that these are *non-rivalrous*, that is, the use of these goods by one person does not reduce its availability for other persons. So, in an area with good vector control, if new families settle, they will get the same benefits as those who were already there without reducing the level of benefits the others were enjoying. Vector control is one such example, where health services act as a public good. Others examples could be reduction of air pollution, good sewer and drainage system, improved road safety, reduction of water pollution, measures to reduce food adulteration, etc. Common to these public health services is the property that competition does not determine prices and markets cannot, therefore, allocate resources efficiently.

A related category of healthcare services is where there are externalities through the provision of the service and all the benefits that the society gets are not reflected in the price. Thus, early treatment for tuberculosis in one patient diagnosed with the disease may save another ten from getting infected—but in a purely competitive market, this is not reflected in the price the patient pays for tuberculosis treatment.

While the above approaches are used in the case of ‘public health’ services, most healthcare services (especially curative medical care) to the individual are excludable and rivalrous. Those who do not pay for them can be excluded and the consumption of available healthcare services by some can reduce what is available for others. Therefore, they can be priced and be treated as a commodity. However, there is market failure even in the provision of healthcare services to the individual. Kenneth Arrow argues the reasons for this in his seminal paper in 1963, where he highlights the key characteristics of healthcare which differentiates health services from other private goods (1963). First is *uncertainty* in outcomes. When a patient pays a doctor or hospital for treating his or her health condition, neither provider nor patient can be certain of the outcomes. Despite excellent care, a patient may worsen. Second is *information asymmetry*. Patients are limited in the extent of choice they can make and require high levels of trust in the provider, unlike most other goods and services on the market. Third is *misalignment*: the market does not necessarily align providers’ monetary interests in what is sold with what patients need or want. For example, the provider may earn far more by doing C-section surgery, whereas a normal delivery may have been better in that case. And finally, all of these problems are worse when we factor in the role of *professional power*, for the medical profession’s authority at the doctor–patient interface is unlike most other provider–client relationships.

This conception of market failure and scope of the government influenced the post-war development of universal healthcare systems in the entire industrialized world (with the sole exception of the

USA). The characteristics of health markets and the constitutional obligation or ethical principle that universal access to health and healthcare services is a right combined to ensure that governments take the lead role, not only on various non-excludable determinants of health but even the organization of curative medical services and people's access to them.

This understanding was undermined by structural adjustment reforms. One of the devices that was used to do this was to define 'public health' and the scope of the government's role in a manner which excludes hospital care, or even all medical care, and addresses only the non-excludable determinants of health and the health services with large externalities (World Bank, 1993). While social determinants play an important role in improving health outcomes, access to quality healthcare services are an essential part of this process. Given the inequities in society, it is very important to have robust healthcare services that can respond to the healthcare needs of the poorer and more marginalized sections of the population, and this should include promotive, preventive, curative, rehabilitative and palliative care. Some of these services have to be delivered at the individual level and some at the community level, but between them, they are a continuity and every element of this is essential (Turshen, 1989).

### **3. Market-Based Health Sector Reforms**

The broad understanding that in all of healthcare services there is market failure and therefore there is a need for government intervention influenced the rise of universal healthcare systems and the legal right to healthcare in all industrialized nations (Western Europe, Japan, Canada, Australia). Part of the reason for acceptance of universal healthcare in the industrialized nations was political, due to the pressures of a strident working-class movement inside and a strong socialist camp outside, which had established universal healthcare systems. The sole exception to universal healthcare in the industrialized world is the United States of America, where government role in healthcare services is restricted

to regulation and part-payment for the very poor and a section of the elderly population.

However, this was challenged across the globe in the last two decades of the 20<sup>th</sup> century with the rise of neoliberalism. Neoliberal economics was guided by market fundamentalism that refused to accept the role of the government even in public services (Harvey, 2007). The health sector reforms that followed in the 1990s mark this change in the conceptualization of healthcare delivery.

#### ***3.1 First Phase of Market Reforms under Structural Adjustment***

The nature of health sector reforms that was promoted in the last decades of the 20<sup>th</sup> century under neoliberalism is best expressed in the World Bank's *Investing in Health*, World Development Report of 1993. While making the case for increased investment in health, it specifies that the role of the government should be limited to public health, defined narrowly to only include services that are non-excludable and non-rivalrous. Beyond this, government intervention was to be limited to a very small range of services, most of which had high externalities and hence were considered very cost-effective when provided directly by the State. Almost all the rest of health services, constituting over 90 per cent of the activity of the health sector, would be left to private markets. Government involvement would preferably be limited to shaping markets through insurance, undertaking public-private partnerships where needed and establishing regulatory measures. This agenda was promoted by the World Bank across developing countries and India was one of the countries that undertook extensive health sector reforms, much of it as part of conditionalities linked to World Bank aid.

The corresponding policy discourse helped legitimize this promotion of privatization of health services. This involved limiting the meaning of public health and the role of governments to only a small set of services and encouraging markets to take over the rest, very often with the support of the State. This academic and policy discourse had similar forms of legitimization at the popular level, attacking the earlier premise of free public health

services provided by the government. A central component of structural adjustment reform was the introduction of user fees. This was legitimized by a popular discourse which expressed sentiments like ‘people do not value what they do not pay for’ or ‘there is wastage of resources if there is no price attached to it’ and so on.

Another important component of the reforms was a cessation of hiring permanent fully trained staff. Almost no doctors or nurses were hired into the healthcare system in India between the years 1995 and 2005, especially in the poorest states that needed them the most. These were states where the doctor-to-patient ratio was already abominably low compared to prescribed standards of the WHO. In this case, popular sentiments and legitimizations were established through expressions like ‘since whether or not the public servant works, they will get a salary—so why would they work?’ or arguments such as ‘a major part of the health department expenses are going to salaries—and to be efficient we should spend more on the services’.

The reduced hiring of permanent staff was accompanied by restricting the services that were available at the primary and secondary care level and limiting the expansion of secondary and tertiary care. Patients visiting primary care services could not get appropriate services for over 85 per cent of their ailments. Since the services they need are not part of the minimalist package of services made available at the primary level, this discredits these primary care public institutions, even for the limited services that are available. On the other hand, at the secondary and tertiary level public hospitals, where such primary care becomes available, overcrowding limits access and quality. Many, therefore, may have no option but to seek the care they need in the private sector, which then is projected as a ‘free choice’. This failure is shown as a consequence of State policy that relied on public health systems which are outmoded or inherently doomed to failure. But in reality, this is a success of policies designed to promote private healthcare, as guided by the World Bank and accepted by the Indian state.

### ***3.2 Negotiation with Market Reforms in the Indian Context: National Rural Health Mission (2005–2012) and its Limitations***

Market-based reforms of the 1990s led to growth of the private sector, in healthcare services as well as in medical, nursing and technical education. But this growth was highly skewed, leading to the concentration of healthcare providers in a few states and within states in a few urban areas and near-urban districts (Baru, 2016). Public health action by governments in the 1990s was largely limited to a few major vertical national health programmes which had been funded by external aid agencies and these conformed to their understanding of what services governments should provide. But even these vertical programs were floundering since they could make no impact in states where public health systems were weak.

Over the 1990s, as the reforms progressed and the costs of healthcare skyrocketed, health outcomes stagnated and the dominant policy discourse came under increasing dispute. Political protests were also simmering and this was reflected in the anger against the ‘India Shining’ slogan of the ruling government in 2004. The new government which was elected in 2004 was established with the support of the Left parties and came with a mandate of ensuring people’s rights and livelihoods. Health, education and employment were three of the thrust areas, and the constitutional obligations of the State to ensure health for all came to the forefront.

Thus, the National Rural Health Mission (NRHM) was envisioned as a means of strengthening public health services. It had a clear political commitment to establish a network of public health facilities as part of an integrated decentralized district health system. Despite considerable political support, the strong academic discourse against public provisioning of services and an entire generation of administrators and public health scholars schooled in neoliberal theory acted as barriers. Therefore, the deep-seated policy discourse that had facilitated the earlier reforms continued to manifest in the implementation of the NRHM.

One manifestation of this was that the new employment created under the NRHM was largely contractual employees. The increase in regular positions lagged far behind. This was true in all categories—specialists, medical officers, nurses and Auxiliary Nurse Midwives (ANMs). The NRHM created one million community health workers known as Accredited Social Health Activists (ASHAs), but insisted that they were only volunteers though their workload continued to increase. Even today, they are not employed on a regular salary.

There was also reluctance to let go of the core concept of user fees (which was promoted in the earlier reforms), though by 2010 there was a readiness to withdraw it for Reproductive and Child Health (RCH) services. But above all, the main hangover of the earlier reforms made sure that the NRHM remained largely limited to the select package of RCH services and three national disease control programmes. The public service delivery improvement that happened was therefore largely limited to these services. And in all other areas, the private sector remained dominant and even expanded further. A number of public–private partnership programmes to supplement public system capacity were also attempted, some of which were better designed than others, like the dial 108 ambulance services, which became a considerable success.

The other major limitation was the stubborn delay in sanctioning the National Urban Health Mission (NUHM). Though proposed in 2005, in parallel with the NRHM, it took till 2013 to sanction this. And, finally, it must be noted that the funds released for the NRHM in the 11<sup>th</sup> Five Year Plan period was only about one-third of what was envisaged as the required funds. While the NRHM and NUHM (together known as the National Health Mission or NHM) cannot be classified as market-based reforms, even this form of State intervention was marginalized from 2010, with a shift in attention to a new wave of market-based reforms. The most important step in this direction was the rise in focus on government-funded health insurance schemes (GFHIs).

### ***3.2 Second Phase of Market-Based Health Sector Reforms***

At the global level, in the first decade of the 21<sup>st</sup> century, there was a new dimension in the health sector development discourse in academic and policy levels, in favour of an approach that was termed ‘Universal Health Coverage (UHC)’. In this approach, it is conceded that most aspects of healthcare cannot be left to the market and the government has a major role to play. But it is argued that this need not be equated with the government being the provider of services. Instead, the more legitimate role of the government is considered to be in the contracting of private providers. These private providers would be reimbursed the price of care that they provide to those who are eligible and utilize their services. The premise is that it does not matter whether the provider is public or private, as long as they are reimbursed the same price and provide the same quality of care. People would then have a choice between providers and this would build up competition, which in turn would lead to better quality of care. If public providers remain of poor quality, then most of the business/utilization would shift to private providers—and this is seen as a desirable goal. The main institutional form of shifting the role of the government to purchaser of services was through the introduction of GFHI programmes, as seen in India as well.

Given the skewed and reluctant efforts at strengthening the public services under NHM, there continued to be an increasing utilization of the private sector and out-of-pocket expenditure (OOPE) in almost all services except for care in pregnancy and immunization. This became the justification to introduce a number of state-level publicly funded health insurance (PFHI) programmes and one national government funded health insurance scheme: the Rashtriya Swasthya Bima Yojana (RSBY). The PFHIs began in Andhra Pradesh and Karnataka, but soon the idea caught on across a number of states.

By 2014, it was clear that many of these state health insurance programmes and the RSBY were not providing either financial protection or even

increased access to healthcare. Yet within the government, funds for the NHM stagnated while it increased for PFHIs. Even public hospitals managed by public sector undertaking and the Employees State Insurance (ESI) scheme and Government Employees Health Insurance schemes were encouraged to limit direct provision of services and transition to more purchasing of healthcare services from the private sector.

The National Health Policy of 2017, in one part, makes it clear that primary healthcare must be provided by the government, and even in secondary and tertiary care the role of insurance and partnerships is only supplementary. However, in the same policy document, there is a later section which is completely about how public expenditure can provide opportunities for private sector engagement in service delivery. A new body that emerged at this time, the National Health Authority, became the driver of the latter agenda (Sundararaman, 2017). This agency was created under the Niti Aayog, instead of the health ministry, with the explicit purpose of managing the Prime Minister Jan Arogya Yojana (PM-JAY) and increasingly to catalyse all market-oriented reforms across sectors.

In 2018, the government announced a large government-funded insurance programme, the PM-JAY, managed by the National Health Authority. This was to cover close to 500 million persons and incorporate all the existing states health insurance schemes within its mandate. By these estimates, the majority of India's population, including all those below the poverty line, would be completely covered by this health insurance scheme. Further, the National Health Authority mooted a number of proposals by which it could outsource different government healthcare facilities to the private sector—especially outsourcing of district hospitals and medical colleges (Dutta, 2020).

These reforms also touch upon private sector regulation, but they do not form a major part of this new UHC discourse. In India, a central Clinical Establishments Act was adopted in 2010, and is now applicable in about 11 states and all union territories. Most of the other states have some state

version of this central act, some of them from much earlier. In all these acts, the approach to regulation is complete silence on costs of care and kickbacks and ethics, and a lopsided emphasis on quality as equated to fixed infrastructure and human resource standards that does not have any flexibility to accommodate small providers and under-served areas. Along with the fact that only select hospitals are empanelled under PM-JAY, such a regulation policy leads to closure of small care providers, more so in rural and remote areas, and helps corporate control to grow.

One major problem that the second wave of market-based reforms is currently facing is that primary healthcare remains well outside such 'purchasing' of healthcare from the private sector. Primary healthcare could account for over 70 per cent of healthcare and currently there are no successful models of viable partnerships or insurance cover for primary care. There is a strong advocacy and push to aggregate small private and public providers into an integrated network and then place them under a corporate leadership. However, despite ten years of advocacy for this approach by many mainstream public health institutions and academics, and many pilots by corporate houses supported by development partners, such schemes have not taken off.

## **4. Rising Health Inequity and Exclusion**

Though these are still early days, the likely outcomes of the second phase of market-based reform are apparent in the experiences from the Covid-19 pandemic. There is every reason to be worried that the levels of health inequity and exclusion which are already high may be further rising.

### ***4.1 All-India Data on Exclusion and Cost of Healthcare***

The health surveys of the National Sample Survey Organisation (NSSO) provides one of the few sources of data on access to care across different sections of the population and the impoverishment due to health expenditure. The most recent of these is the 75<sup>th</sup> round conducted in 2017–18. This shows

sharp inequalities by rural residence, by social group and by economic class.

Table 1 shows that almost 60 per cent of hospitalization and 70 per cent of outpatient care is currently provided by the private sector. The consequences of multiple levels of exclusion is seen in the extremely low hospitalization rate of 1.7 per cent per year among the poorest section in rural areas. The urban poorest have a slightly higher hospitalization rate of 2.8 per cent per year while in the richest sections hospitalization rates are 3.8 and 4.1 per cent per year in the urban and rural areas respectively. This pattern is similar in morbidity measure but even these figures understate the problem. Detailed studies that have looked at self-reported morbidity in different population groups reveal a very high level of unmet latent health needs in poorer and more marginalized sections (Ranjan, 2019). At the macro level, an example of this is that states with very good health outcomes like Kerala have much higher levels of morbidity and much lower levels of age-standardized mortality rates than a state like Bihar. Or in other words, the poor and vulnerable seek healthcare less often, and quite often do not even perceive illness till too late.

In the case of illness and for hospitalization, about half the rural poor and the urban poorest depend on public hospitals as compared to around 38 per cent of the rural richest section and just 16 per cent of the urban richest section using public hospitals. Comparatively, use of public hospitals for outpatient care is lower at around 38 per cent for the poorer sections and even lower in the richer, particularly the rich urban sections. Thus, the data from the NSSO shows that rural areas, tribal or Scheduled Caste (SC) communities and poorer income groups are all associated with higher levels of utilization of public health services. While this higher utilization of public services by the poor as compared to the non-poor is both anticipated and welcome from the viewpoint of equity, it is a matter of concern that substantial sections across different categories of the poor and marginalized remain dependent on private healthcare services. This also explains the high OOPE costs on health in India as

a consequence of the high degree of dependence on the private sector for healthcare.

Table 2 provides an estimate of the health expenditure across different categories and social groups. On average, a single hospitalization costs almost Rs 30,000 in the private sector, more than 6 times the average cost of about Rs 5,000 in the public sector. While this difference is lower for outpatient care, a private hospital visit still costs Rs 814, about two to three times the expenditure in a public hospital. Of course, even within these categories, the richer and privileged sections have higher expenditure, possibly also indicative of underutilization of care in the poorer and marginalized sections. By government policy, the poorer sections of the population would be covered under the PM-JAY, which promises free health services under insurance schemes to the poorest 40 per cent of the population. The high healthcare expenditure even among the poorer sections shows that this has little to no impact on their actual health cost requirements. As these expenditures constitute a larger share of their incomes, a catastrophic health event means that they have a greater chance of slipping into debt and impoverishment.

Table 3 shows how the current healthcare system leads to high levels of catastrophic health expenditure (CHE) even from a single episode of hospitalization. Fifty-seven per cent of the population who underwent hospitalization in private hospitals in the previous year had OOPEs higher than 10 per cent of their total annual consumption—which is expressed as CHE 10. And more than one-fourth the population had OOPEs greater than 25 per cent of their total annual consumption (CHE 25) due to hospitalization costs in the private sector. Thus, there is a compromise in the consumption of other essential goods and services due to healthcare expenditure.

It is interesting to note that though the poorest section in rural areas have a CHE 10 of about 53.9 per cent, even richer sections have high levels of CHE, reflecting how medical prices are often determined by the client's ability to pay. Further, there

is convincing evidence from both the 71<sup>st</sup> and 75<sup>th</sup> round of NSSO surveys that even those who have insurance cover do not have less CHE (Muraleedharan et al., 2020). While CHE levels in public hospitals are far less, with a CHE 10 of about 15 per cent and CHE 25 of 6 per cent, even this does not provide complete financial protection against healthcare costs. More importantly, a lot of health needs of the poorest section remain unmet due to issues of perception, and health-seeking behaviour constrained by their incomes, and does not get reflected in surveys based on self-reporting of illness.

#### **4.2 Nature and Forms of Marginalization**

Further, such nationwide surveys do not bring out inequities in subgroups. Despite better health services in urban areas, urban poor and other marginalized sections face inadequate access. This is true in rural areas as well, with SC and tribal communities facing additional constraints, both social and economic.

The increase in India's urban population from 27 crores in 2001 to 37.7 crores in 2011 as per the 2011 census has not been matched by a corresponding expansion of public health services. While urban areas provide employment opportunities, they also serve as the 'hub of concentrated disadvantages' for the urban poor, which fosters various kinds of social, economic and political disadvantages and exclusion either intentionally or unintentionally (MoHFW, 2013). It is estimated that one-fourth of urban dwellers are below the poverty line and, in addition to the slums, low-income settlements are areas where large sections of the poor make their homes in the margins of the city. The precarity in these hostile city spaces suddenly emerged in public sight and discourse when these invisible millions attempted to migrate back 'home' during the Covid lockdown.

The urban poor are also not a homogenous category, with people facing differing levels of exclusion. Those living in slums, and construction sites, along railway lines and sewage pipes and the large numbers of homeless and street children are among the most vulnerable. Others by occupation—like

daily-wage labourers, construction workers, rag-pickers, sex workers—are also highly vulnerable. As the report of the Technical Resource Group for the National Urban Health Mission pointed out, 'the vulnerability of this diverse urban poor population derives from four interconnected factors: brutal physical and socio-economic environment, lack of social networks, social and economic isolation, monetization of basic needs, and the exclusionary attitude of the state towards the poor' (MoHFW, 2014, p. 13).

The greater dependence of this urban population on private healthcare (as seen in the NSSO data in Table 1) has meant that they face substantially higher expenditure on health both for hospitalization and outpatient care (Table 2). There is also a higher margin between health expenditure by the poorest (about Rs 26,000 per hospitalization) as compared to the richest section of the population (About Rs 41,000 per hospitalization) depicting how income mediates access to healthcare through markets. This pattern is present in outpatient care as well. Despite a large number of private doctors and flourishing corporate hospitals, access to primary healthcare services is limited, with the large tertiary public hospitals overcrowded with cases ranging from basic to specialist health needs. Private healthcare at exorbitant prices becomes the only option for even the poorer sections.

The rural population, on the other hand, faces a lack of access to specialized healthcare, particularly in faraway and isolated communities. As compared to urban areas, there is a greater dependence on public hospitals for healthcare, particularly in hospitalization cases, and to a lower extent for outpatient care in rural areas (Sundararaman and Ranjan, 2020). Even among the better-off sections, there is a greater dependence on public hospitals in rural areas (Table 1). While the lower presence or use of private health facilities leads to lower health expenditure than in urban areas, it also shows a lower access to healthcare facilities.

This is even more so in the case of tribal populations, with 90 per cent of the population living in

rural areas and very often residing in difficult terrains and harsh environments. Hospitalization rates are lowest among scheduled tribes, at just 1.8, as compared to the population average of 2.9 per cent, per year (Table 1). Dependence on public health services is also far greater, with almost 65 per cent hospitalization in public hospitals (as compared to 42 per cent among the general population). Lower socio-economic determinants with respect to education, income, housing, connectivity, water and sanitation also worsen the conditions faced by tribal communities.

The report of the Expert Committee on Tribal Health in India provides a comprehensive picture of tribal health and healthcare in India (Government of India, 2018). In their assessment of the tribal health situation, the Committee finds that malnutrition amongst children under six years of age is very high in tribal populations as compared to other social groups, and this results in excess child deaths (Chatterjee, 2007). Tribal communities are also faced with continuing episodes of communicable diseases like malaria and tuberculosis, in addition to the onset of chronic diseases ranging from cancer and diabetes to mental illnesses and addictions. Cases of various injuries due to accidents, snake and animal bites and vulnerabilities because of living in conflict situations require specific forms of healthcare services.

However, as seen earlier, despite three decades of health policies that have favoured private sector in healthcare, there is almost no penetration of markets or private healthcare in these areas. Even within public services, there is a huge gap in health infrastructure and the skilled human resources that are needed for healthcare. The social background of students who study medicine, the curriculum and aspirations they develop in the educational institutions and the conditions of work in tribal areas lead to lower willingness of health professionals to be located there. The quality of care is itself exclusive in how it treats tribal people as patients. Cultural gaps between the providers and the population necessitate health facilities that are staffed by qualified and sensitized health workers who understand

the unique and complex determinants of health status of tribal population and treat them with respect and dignity (Sheikh et al., 2012).

A similar situation of inequity in access to healthcare exists for Dalits. Apart from the economic barrier, Dalits also face discrimination while accessing health services. For instance, in a study on discrimination amongst Dalit children in selected villages of Rajasthan and Gujarat, discrimination in the way medicines were dispensed was observed. Practices of untouchability—like refusal to touch Dalit patients or visit their homes—continue along with reduced time and responsiveness to their health requirements. Lack of sensitization and poor quality of care also create barriers to access healthcare. In this case, discrimination in the access to healthcare services led to either complete exclusion of Dalits or partial denial of services to the community members (Acharya, 2010).

This differential treatment of Dalits, where Dalit patients experience more apathy, denial and avoidance by healthcare providers was observed in an ethnographic study in 2014 in Meenkera village of Bidar district in Karnataka as well (George, 2019). Caste is also deeply embedded within rural power structures and, as dominant castes control considerable positions in rural public health facilities, there is a normalization of discrimination in medical interactions. Just the location of health facilities in the dominant caste areas restricts the accessibility and utilization of these services by Dalits (ibid). With 51 per cent, more than half the SC population, dependent on public hospitals for hospitalization (as compared to 36 per cent among forward castes), these forms of discrimination in public services means a larger denial of care, extending across public and private health systems.

These forms of discrimination and exclusion are persistent in healthcare access of minority religious groups as well. Studies have found that Muslims are much more vulnerable to ‘medical-poverty trap’, given their higher OOPEx on seeking medical care and treatment (Chowdhary, 2015, p. 169). The NSSO 71<sup>st</sup> round data also shows that Muslims were more likely to be impoverished by incurring

higher CHE and falling below the poverty line than other religious groups (Sangar, Dutt and Thakur, 2019). Mistrust in the public health facilities acts as one of the major barrier for Muslims in accessing government health services. Further, there is also widespread prevalence of stereotypes and myths about Muslim communities amongst the health-care providers (Contractor and Barai-Jaitley, 2018). Apart from this, there is limited availability of public health facilities in the slum areas where Muslims reside, increasing their dependence on private health facilities with high costs. The widespread poverty, rising unemployment and poor housing and sanitation conditions result in adverse social determinants of health and health outcomes for the community (Nambiar, Ganesan and Rao, 2015). In recent times, the rising incidences of communal violence and riots in India have led to the further marginalization of Muslims, with instances of overt exclusion on communal grounds, exacerbating their deprivations and insecurities of life and well-being.

Even within these communities, other barriers limit access to healthcare. A study based on the 71<sup>st</sup> round of NSSO data observed that Muslims incurred higher OOPE on maternal care (US\$158) during hospitalization as compared to Hindus (US\$153) (Kumar and Kumar, 2020). In the case study in Karnataka, it was observed that while childbirth and deliveries of women belonging to forward castes were attended by gynaecologists and medical officers, childbirth of Dalit women were largely left to the ANM or staff nurse (George, 2019). As these examples show, in the Indian context, gender intersects with other stratifications of caste, ethnicity and religion and further exacerbates inequity in access and utilization of healthcare (Ravindran, 2012).

Discrimination based on gender is clearly reflected in the OOPE of households on accessing healthcare for men and women. Studies have highlighted that OOPE is comparatively higher for men than women across all socio-economic groups (Saikia, Mordhvaj and Bora, 2016). The NSSO data (Table 2) shows that less money is spent on hospitalization for women. While true across the public and private sector, in the private sector, hospitals

average expenditure on men for a hospitalization visit was about Rs 32,000 while it was only around Rs 25,000 for women. Despite suffering from higher morbidity in comparison to men, the money spent on women's healthcare is significantly lower than men. It is also important to note that there is a high prevalence of untreated morbidity amongst women and often they forego their treatment given the competing pressure of work and care, as well as due to lack of access to income (Sen, Iyer and George, 2002). In addition, many women are conditioned to suffer ill health silently and they do not pay much attention to their health because of being overburdened with both paid and unpaid work (ibid). Social norms like restrictions on mobility out of home, no power to take decisions for visiting hospitals, and having to seek permission or wait for another family member to accompany them act as further barriers to their access to healthcare.

Lack of access to financial resources has meant that majority of women, and in particular women from the poor and marginalized sections of society, are dependent on public health facilities for accessing care and treatment. In recent years, under the NHM, there is an increased utilization of public health services for reproductive health needs and specifically for institutional deliveries (Ved, Sundararaman, Gupta and Rana, 2012).

The second phase of reforms and growth of medical insurances schemes have resulted in adverse consequences for poor and marginalized women in certain cases. For instance, there have been several media reports which show how private health providers resort to unnecessary hysterectomies amongst women belonging to vulnerable communities (Chatterjee, 2019). Thus, many private hospitals submitted claims for a disproportionate number of hysterectomies, which were unnecessary to a large extent (Nandi and Schneider, 2020). These are instances of provider-induced demand in order to make profits. The growth of insurance schemes acts as a major driver for unscrupulous practices in the commercialized private health sector, which is largely unregulated in India.

The access to healthcare for all under insurance schemes hits other snags when it is linked to digital health systems. In the second wave of reforms in India, under the aegis of better governance, the delivery of a number of welfare services such as Public Distribution System (PDS), Janani Suraksha Yojana (JSY), Liquefied Petroleum Gas (LPG) subsidy and insurance schemes has been linked to the Aadhar or Unique Identification Authority of India (UIDAI) card. In health services as well, there are many instances of tuberculosis, or HIV services or services for chronic illnesses and hospitalization not being provided due to the inability of the marginalized to provide a valid ID. But in the absence of official documents testifying to their identity and residence, large numbers of the urban poor, tribals and Dalits are excluded from the direct benefits of these schemes. This insistence on an ID is a collateral of the push by the government to digitize the delivery of healthcare, which in turn is a consequence of the policy shift towards health insurance and the government role being redefined as a purchaser of care.

What we see is that across sections, different forms of exclusion and health inequity continue or increase under a policy approach that tries to build a healthcare system based on market principles. An enhanced role for government but as a purchaser of care within the health market would increasingly be dominated by corporate providers. Differences in social status or other forms of marginalization can act to create exclusion with both the public provider and the private provider. But the big difference is that denial of healthcare with the public provider is a justiciable right, and there is a strong public perception of access as an entitlement. In contrast, there is no such right with the private provider and its enforceability even if included as part of the contract is negligible. Even the National Human Rights Commission refuses to hear petitions of denial of care in the private sector. A policy of shift to purchase of care from private providers and undermining the role of public provision is thus more likely to lead to increasing levels of health inequity and exclusion of the poor and marginalized from essential health services.

### ***4.3. Lessons from the Pandemic***

The forms of exclusion and weaknesses of the current market-based health system strategies became apparent when the Covid-19 pandemic broke out. The system was unable to cope with the crisis or respond effectively. In the first few months of the pandemic, most private healthcare facilities shut down their services or were unwilling to help in addressing the challenges presented by the pandemic. It was expected that since the public health facilities were treating Covid-19 cases, the private sector will at least take care of non-Covid patients. However, fear of infection, lack of infection control measures and an eye to the profit-loss baseline meant that the private health services were unable or unwilling to respond to the health crisis. Even the use of the insurance model, by bringing Covid-19 treatment reimbursements as a part of the PM-JAY scheme, by the government was barely successful. The proportion of Covid hospitalization cases that availed of this financial cover was less than 3,000 till May. Data on what fraction of this was from the private sector is not available in the public domain. In fact, in this period of greatest need, there has been a major reduction in all claims under PM-JAY throughout the lockdown period, particularly in the private sector. Despite the fact that the private health sector claims to have state-of-the-art technology and higher number of beds and ventilators, it is estimated to have handled less than 10 per cent of total Covid-19 cases (Raghavan, Barnagarwala and Ghosh, 2020).

During the later months, many private hospitals did start providing for Covid-19 care, but usually without using insurance cover and at exorbitant rates. Some states made a belated effort to regulate prices and even to enforce Covid-19 care in private hospitals. For instance, the state of Maharashtra on 21<sup>st</sup> May came out with a notification to all charitable hospitals stating that 80 per cent of their operational bed capacity will be regulated by the rates provided by the state till 31<sup>st</sup> August 2020 (Asthana and Bisht, 2020). However, despite various regulations enacted by the state government to cap the prices of certain treatment, private hospitals are continuing to overcharge patients and refuse to

admit patients who are not profitable—for instance, elderly persons (Marathe, 2020).

In all these months, the government and people had to fall back on the public sector for all its healthcare needs and, not surprisingly, the public hospitals were unable to cope. In most states, the government's approach to coping with the increasing need for beds was to repurpose a number of its largest and well-functioning public hospitals for exclusive Covid-19 care. This, in effect, meant refusing care for all non-Covid-19 patients. The lakhs of poor who were using these hospitals for essential healthcare services now had nowhere else to go. The alternative option (that was considered initially)—of government requisitioning private hospitals, many of which are underutilized, and bringing them under a public authority instead of emptying out their public hospitals—was quickly abandoned for the cheaper alternative of discharging the poor patients in government hospitals and repurposing these beds for Covid-19 care.

Thus, there was no form in which the huge private sector, whose growth had been encouraged and subsidized by government policy, could be brought to serve the public good. In contrast, however underfinanced, understaffed and weak its service delivery, it was the public services that were required to save the day. But this logic is true even where there is no crisis when it comes to ensuring the constitutional goals of health rights and health equity.

## **5. Reversing Market Reforms: Reclaiming Public Services as Public Goods**

The experience of the pandemic and the failure of market-based reforms of the last decade should lead to an understanding that the scope of the government cannot be restricted to setting the price or regulating markets. The State must intervene in shaping the organization and financing of health services in such a manner that market forces are ring-fenced from influencing clinical or public health decision-making—even for those who can afford to pay. And when the goal is universal healthcare and

the commitment is to prevent exclusion, the role of the government not only in financing but in the organization of service delivery becomes even more central. Such an organization of healthcare services must be based on a principle that the production of healthcare as a service is not as a commodity to be sold for profits but organized for its shared use, in the spirit of solidarity. People who are using health services are not 'consumers' of a product but willing participants in the creation and production of good health for themselves and all others. Their participation at both the individual and collective level is important (Sundararaman, 2017). Here, the concept of a public good is widened to mean 'the common good', and associated with value-based goals of social equity, social justice and environmental sustainability (Labonte, Shreckher, Sanders and Mius, 2004).

The main recommendation for healthcare policy is therefore a renewed emphasis on strengthening public health services at all levels of care. But this has to be organized with much greater attention to community engagement and participatory decision-making. Further, public health systems must be designed to anticipate and respond effectively to future pandemics (Sundararaman, 2020). Active involvement of representatives of weaker sections and marginalized communities becomes essential. While there is a case for purchasing healthcare to close critical gaps and supplement public health services, the major share of providers and public funds should go to public provisioning of services and not to purchase healthcare.

At the individual level, such an understanding means that the clinical decision that a doctor takes for his patient, and the treatment protocols followed, should not lead to any change in the income of the doctor or the profits of the hospital that they work for. At the systemic level, where the organization of health services delivery includes governments purchasing care from empanelled private providers, care should be taken to ensure that such hospitals or healthcare facilities are not organized on the principle of profit maximization. There are nations which have achieved substantial progress

towards universal healthcare like Japan, South Korea, Germany and France, where the majority of providers are legally private enterprises from whom the government purchases services. But in these nations, all payments to providers are made by a single payer or a limited number of publicly administered institutions with strict laws that restrict profits and dividends. In effect, the delivery of healthcare has not been left to market supply and demand. There is a need to think about ways of de-privatizing healthcare and expanding the space for public health services.

One clear policy recommendation that emerges is to completely discourage user fees and fee for service approaches to payment. Whereas there is a role for group incentives, a simplistic understanding of pay for performance could do more harm than good. Creating a workforce environment that favors the spirit of public service over profit maximization at both the individual and hospital level is not an impossible task. For the public sector, the major areas for reform are who has access to professional education, what the curriculum prepares them for and workforce policies that promote a positive working environment. For the private sector, in addition to the above, one would need strict regulation of both ethics and rates charged, strict action against kickbacks and commissions, legal provisions against profiteering including the practice of payment of dividends in return for investment. There is also space for affirmative action to support not-for-profit dedicated private healthcare providers, enabling them to provide affordable care.

Even at the level of global innovation, manufacture and supply chains for essential medical products, the organization of production must pay heed to this principle. One long-standing demand of civil society organizations and people's health movements is that the costs of research and development of new products must be transparent, paid for by separate mechanisms and delinked from the price of the medical product that is manufactured. This is required not only to prevent exploitative profiteering but is essential to develop, manufacture and supply the medicines, diagnostics, vac-

cines and medical equipment that public health, including medical care, requires. Active intervention is required to support domestic manufacturers and to retain an adequate level of public sector manufacturing. Public financing of research and development is also essential for aligning such activities with public health priorities.

The Covid-19 pandemic has also clearly shown that future pandemics can cause significant health, social and economic impacts that are transnational in nature. Immense solidarity across nations is required to prevent and respond to such public health challenges. This would include efforts directed at cross-border functions, strong disease surveillance systems, research on the causes and treatment of diseases, the development of new diagnostics and medicines, research for a vaccine, information sharing for treatment, outbreak preparedness and standards and guidelines for the organization of care and epidemic response (Lee and Yang, 2020). Further, unless every country has the epidemic preparedness to quickly identify and respond to an epidemic, given the increasing interconnectedness of the world, everyone is at risk. There is therefore an urgent need for the Indian government to strengthen multilateral institutions, especially the WHO, and reduce the role of multi-stakeholder institutions that allow corporate penetration into the priorities and decision-making of global health institutions.

Unfortunately, the Indian government, as also many governments worldwide, is perceiving in the pandemic an opening to push through privatization of more public services. This can be understood only in the context of the weakening of civil liberties, liberal thinking and democratic institutions due to authoritarian governments using this opportunity for further repression and control. The growth of the public sector and democratic institutions has historically been a response to the power of people's struggles and the building up of democratic societies. And as the militarization of the Covid-19 response weakens these institutions, corporate power and its political representatives seize the occasion to push through a large number of undemocratic and anti-people reforms.

Under these circumstances, the struggle for health and healthcare services as a right can progress only to the extent that it is able to forge solidarity with the struggle to sustain and build democratic institutions. The struggle for building a democratic and inclusive society can draw immense strength from strengthening the public discourse, where there is a consensus for strengthening public health services, and the acknowledgement of health and healthcare as public goods.

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**Table 1: Healthcare Utilization Pattern during Hospitalization and Outpatient Care in India**

	Hospitalization rates: #	Hospitalization – Proportion in each sector		Morbidity Measure (PAP)##	Out-patient Care Proportion in each sector	
		Public	Private		Public	Private
<b>Total</b>	<b>2.9</b>	<b>42.0</b>	<b>58</b>	<b>7.5</b>	<b>30.2</b>	<b>69.8</b>
<b>Rural-urban</b>						
Rural	2.6	45.7	54.3	6.8	32.6	67.4
Urban	3.4	35.3	64.7	9.1	26.2	73.8
<b>Gender</b>						<b>100</b>
Male	2.8	41.0	59	6.7	29.9	70.1
Female	2.9	43.1	56.9	8.3	30.4	69.6
<b>Social Group</b>						
ST	1.8	64.7	35.3	5.1	41.8	58.2
SC	2.7	51.4	48.6	7.0	34.4	65.6
OBC	2.7	38.9	61.1	7.1	32.1	67.9
GEN	3.6	36.4	63.6	9.4	23.9	76.1
<b>Economic Class</b>						
<b>Rural</b>						
Poorest	1.7	53.5	46.5	4.8	37.3	62.7
Poor	1.8	50.5	49.5	5.4	31.8	68.2
Middle	2.4	48.6	51.4	6.5	29.7	70.3
Rich	2.9	43.7	56.3	7.0	33.1	66.9
Richest	4.1	37.6	62.4	10.5	32.4	67.6
Total	2.6	45.7	54.3	6.8	32.6	67.4
<b>Urban</b>						
Poorest	2.8	48.2	51.8	6.5	37.6	62.4
Poor	3.2	43.0	57.0	8.7	29.5	70.5
Middle	3.6	34.1	65.9	9.3	25.6	74.4
Rich	3.6	28.3	71.7	10.3	21.0	79
Richest	3.8	15.8	84.2	11.0	16.6	83.4
<b>Total</b>	<b>3.4</b>	<b>35.3</b>	<b>64.7</b>	<b>9.2</b>	<b>26.2</b>	<b>73.8</b>

#Hospitalization rates: Episodes of hospitalization per 100 population in last 365 days.

## Morbidity measure—proportion of ailing person (PAP) per 100 in last 15 days.

Source: Calculated from 75th Round NSS data (2017–18)

**Table 2:** Out-of-Pocket Expenditure in Rupees: Per Hospitalization and Outpatient Care Episodes in India

	Hospitalization		Outpatient Care	
	Public	Private*	Public	Private*
<b>Total</b>	<b>4701</b>	<b>29021</b>	<b>385</b>	<b>814</b>
<b>Rural-urban divide</b>				
Rural	4628	26830	385	773
Urban	4874	29020	384	876
<b>Gender</b>				
Male	5349	32450	385	824
Female	4046	25249	384	805
<b>Social Group</b>				
ST	3059	27906	346	782
SC	4396	27447	512	760
OBC	4479	25904	313	836
GEN	5837	34005	421	815
<b>Economic Class</b>				
<b>Rural</b>				
Poorest	4023	22531	350	714
Poor	4818	30205	630	808
Middle	4344	22902	336	769
Rich	3928	24967	329	725
Richest	5948	30932	338	815
Total	4628	26830	385	772
<b>Urban</b>				
Poorest	4699	25779	408	830
Poor	3568	27161	424	835
Middle	5208	32871	334	910
Rich	5599	33319	360	804
Richest	7699	41616	370	984
Total	4874	32391	384	876

\* Private includes for profit private provider and trust/NGO.

Source: Calculated from 75th Round NSS data (2017–18)

**Table 3:** Catastrophic Health Expenditure during Hospitalization in India, CHE-10 and CHE-25

	CHE-10 for Hospitalization		CHE-25 for Hospitalization	
	Public	Private*	Public	Private*
<b>Total</b>	<b>15.1</b>	<b>57.6</b>	<b>6.3</b>	<b>29.4</b>
<b>Rural-urban divide</b>				
Rural	16.5	62.3	6.9	33.6
Urban	11.6	50.4	4.7	22.9
<b>Gender</b>				
Male	16.8	59.5	7.3	31.4
Female	13.4	55.4	5.3	27.2
<b>Social Group</b>				
ST	14.0	57.4	4.0	31.5
SC	14.5	60.9	6.5	30.3
OBC	15.5	57.6	6.5	30.1
GEN	15.5	56.0	6.6	27.8
<b>Economic Class</b>				
<b>Rural</b>				
Poorest	25.9	74.1	12.1	46.7
Poor	16.6	69.5	5.9	40.9
Middle	15.2	62.7	6.6	33.1
Rich	13.1	59.7	5.3	28.5
Richest	13.2	54.6	5.4	28.2
Total	16.5	62.3	6.9	33.7
<b>Urban</b>				
Poorest	16.0	66.5	6.8	34.4
Poor	11.5	53.0	4.0	22.4
Middle	9.8	50.2	4.3	24.2
Rich	7.1	45.5	2.6	18.8
Richest	7.7	38.7	4.2	15.7
<b>Total</b>	<b>11.6</b>	<b>50.4</b>	<b>4.7</b>	<b>22.9</b>

\* Private includes for profit private provider and trust/NGO.

Source: Calculated from 75th Round NSS data (2017–18)

# Vulnerable Groups



Powerlessness amid the power looms of Surat.

*Photo:* Manish Shukla for Aajeevika Bureau

# From Fibre to Fabric: Everyday Confrontations with Disaster, Danger and Death by Odia Loom Workers in Surat City

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Reviewed by Chirashree Dasgupta, Coen Kompier, Jens Lerche

## 1. An Introduction: Hanging by a Thread

Half-torn posters advising ‘*Ghbrasho Nahi, Savdhani Jaroor Raakhiye*’ (Don’t Panic, Stay Safe) cover the cracks on the compound walls; the number paint at the entrance has paled over time. The indomitable *khat-khat* sound of fibre spinning into yarn in the background that pierced the morning calm at Kismat Colony for decades has gone silent. The name of this neighbourhood in north Surat sums up the aspirations of its many inhabitants: groups of young migrant men from Odisha’s ecologically sensitive, low-income Ganjam district, who resigned to their fate in the country’s textile capital—even before the Covid-19 pandemic rendered them stranded, starving and unemployed since March 2020.

Sixteen-year-old Bikash Gouda was one among them. He had travelled more than 1,600 kilometres from his home in Landajuali village in Ganjam to work in a power loom unit on Ved Road in the city of Surat (Subramanian, 2018). With no work available for him in his coastal village and no money to sustain his family, the Class 8 dropout unquestioningly followed his father and older brothers to the world’s fastest growing city (PTI, 2018, December 7.). On April 25, 2018, it had been barely 24 hours since the teenager had entered the gruelling world of loom work. Just as he pushed the starter on a machine, a high-voltage current passed through his

body, killing him instantly. His father and two older brothers were working on adjacent looms when they saw Gouda’s body freeze, and then turn blue.

Six months later, 39-year-old Suriya Sahu, a power loom worker in north Surat, sustained grievous injuries in a worksite accident. In between his 12-hour work shift in October 2018, a 100 kilogram-heavy beam from the warping machine fell over him (Aajeevika Bureau Legal Records, 2018). The father of four from Polasara Block in Ganjam, he had been living with his wife and older daughter in Surat in a rented room a few metres away from his worksite. Sahu broke his spine and sustained nerve injuries. After a botched-up surgery that he underwent in a local private clinic, he had to return home—permanently disabled and permanently unemployable.

Cut to March 2020, when nearly 600,000 Odia migrant workers engaged in the power looms were rendered unemployed overnight.<sup>1</sup> After Prime Minister Narendra Modi imposed a nationwide lockdown to flatten the soaring Covid-19 curve, textile and power loom units pulled down their shutters, old dues remained unpaid, food and ration began to run out, borders were sealed, and there was little to no time remaining for the labourers to stake their claim. In the midst of this chaos in May 2020, 36-year-old Satyawan Swain, an Odia weaver in

<sup>1</sup> Rough estimate made by Aajeevika Bureau based on their COVID-19 relief and advocacy efforts in Surat.

the Anjani Industrial Estate, was allegedly thrashed by police authorities, as he had gone to look for railway tickets on the special *Shramik Express* to return to his wife and five-year-old son back in Baruda village in Ganjam (Mehta, 2020). Hours after, Swain suffered a cardiac arrest and succumbed to his injuries.

Thus, even as Gouda, Sahu and Swain ventured into the power loom industry decades apart from each other, their final journeys from the looms in Surat back to their families in Ganjam have striking similarities: unexplained, damaging, hopeless and invisible.

### ***1.1 Telling the Tale***

Set against the backdrop of the highly celebrated Gujarat Model of Development, this chapter teases out a ground-up, fine-grained account of labour migration of Odia workers from Ganjam into the million-dollar power loom industry in Surat. It traces the community's historical compulsions at the source to the labour processes, socio-economic relations and inhuman work and living conditions at the destination. Hinged on the relationships between social identity, labour markets, inequality and extraction, the chapter further strives to delineate the active violence meted out on the Odia loom workers by the collusion of state and capital forces under the garb of 'ease of doing business' (Rajagopalan, 2019). Even as it continues to unfold, the Covid-19 pandemic has further deepened the inequalities and exposed existing vulnerabilities.

The chapter mainly draws its evidence from the work undertaken by Aajeevika Bureau's Surat Centre since December 2015. The Centre, which is situated in the central loom district of Katargram in north Surat, has since its establishment reached out to over 25,000 migrant workers employed in the textile and loom industries. It provides a space for negotiations to increase wages or win compensations for waged labour and creates networks to supply relevant information on welfare schemes, work availability and social support by engaging the state, employers and labour. Amid the nationwide lockdown, the Centre also played an active role in undertaking relief efforts and attending to

grievance calls, as well as supporting migrant workers to return home safely. In a span of three months, the Centre directly reached out to more than 8,000 Odia labourers. The Centre also backs a workers' collective, the Pravasi Shramik Suraksha Manch (PSSM), which comprises migrant workers employed in the power loom and textile industry in Surat and its adjoining areas. The looms the Manch members labour on are spread across Surat and its outskirts—in small factories in Pandesara, Udhna, Limbayat, Bhestan, Sachin, Katargam, Ved Road and Anjani. Furthermore, to tie together field practice with discourse, in-depth interviews and focus group discussions were undertaken with loom workers, employers, relevant government officials and other key leaders across Surat between December 2017 and March 2020.

### ***1.2 Visible Work, Invisible Bodies***

Even as the path from Odisha to Gujarat has begun to emerge as a corridor for hectic labour mobility over the past six decades (Tripathy & Dash, 1997, p. 129; Tumbe, 2019), the economic trajectory of the two ends exhibits major contrasts. With only 6 per cent of India's land mass and barely 5 per cent of its population, Gujarat, for instance, has managed to account for 7.6 per cent of the country's Gross Domestic Product (GDP) and 22 per cent of its exports ('Gujarat clocks 22% growth', 2018). Its annual Gross State Domestic Product (GSDP) growth from 2001 to 2013 (growth has slowed down since) averaged nearly 10 per cent, which was faster than the GDP growth in the same period (Bhalla & Jha, 2017). Between 1980 and 2013, Gujarat grew at an average rate of 5.1 per cent (Ghatak & Roy, 2014, p. 15). If Gujarat were a country with a 10 million-plus population, this would be the third-fastest growth rate in the world, after China and South Korea (Bhalla & Jha, 2017). Textile production has been one of the fulcrums of its economy, with the sector growing at a staggering rate of 18 per cent per annum since 2004, at times defying the national trend (Raychaudhuri, 2016). There is a long industry value chain that works up to this downstream segment of sari outlets, starting from yarn factories to power looms, as well as dyeing, embroidery and printing units. This economic up-

turn experienced by Gujarat goes hand in hand with strong policy backing from the Bharatiya Janata Party-led governments at the state and Centre, as well as the endless supply of cheap, distressed, informal labour pouring in from various parts of the country (Jain & Sharma, 2018, p. 69). Unlike the expanding prosperity of these growth centres in the state, however, the landscape of migrant labour has remained a hotbed of chronic poverty and distress. The share of labour in gross value, for instance, is dismally low, among the lowest in the country, and has been falling since the 1980s and 1990s (Sood, 2012, p. 130). Similarly, Hirway and Shah argue that the share of wages in the net value addition has dropped in Gujarat at the rate of 3.25 per cent per year from 1999 to 2008 (2011, p. 60). The real wage rate for casual work in Gujarat is among the lowest in the country. While the state enjoys a 20 per cent higher per capita income than the national average, rural and urban wages lag by 20 and 15 per cent respectively (Chandrashekhar & Ghosh, 2014). Breman argues that the nature of Gujarat's growth is predatory, with the state facilitating and underwriting capitalist accumulation at the cost of labour (2013, p. 95). For instance, the government has given out sales tax subsidies worth Rs. 52.5 billion and capital subsidies worth Rs. 7.69 billion to the industry in under 15 years between 1991 and 2005 (Hirway & Shah, 2011, as cited in Jain & Sharma, 2018, p. 92). Yet, in November 2016, as demonetization was announced, Gujarat's unemployment rate, according to data from the Centre for Monitoring Indian Economy, rose from 2.2 per cent to 5 per cent in December 2016, reaching 9.5 per cent in February 2018 and 7.4 per cent by October 2018 (Mishra, 2019). In addition, the state's spending on basic services and public goods such as health, nutrition and safe water remained below the national average. As per the National Health Profile Report 2018, for instance, Gujarat's spending on health to its GDSP ratio is among the lowest in the country, an abysmal 0.72 per cent (TNN, 2018). There has also been a conscious thrust by the state government to not monitor compliance with labour laws to reassure the industry of an investor-friendly climate (Jain & Sharma, 2018, p. 92). Such iniquitous

efforts and arbitrary claims have rendered the much celebrated 'Gujarat Model of Development' to be exclusionary, with the state's poverty and inequality reduction rates trailing way behind the national average.

Located at a distance of nearly 1,600 kilometres, an estimated 35-hour-long train journey away, Odisha is among the poorest states of India, with 32.59 per cent of its population below the poverty line (Niti Aayog SDG India Index Baseline Report, 2018, p.20); the national average stands at 21.92 per cent (ibid., 2018, p. 21). As the 11<sup>th</sup> most populous state in India, Odisha is home to 42 million people, of which 14 million are reportedly poor (World Bank Poverty Growth and Inequality Report, 2016, p. 1). Even as poverty has declined sharply in both the rural and urban areas of the state since 2005, some of the districts in its south and west continue to be among the poorest in the country (ibid., 2016, p. 2). In terms of Human Development Index, Odisha ranks 22<sup>nd</sup> out of 25 major states in India (State Bank of India Report on Sub-National Human Development Index, 2019, p. 2). The state's economy has been on a rollercoaster ride over the past two decades. Despite a flurry of populist schemes that have enabled the state to take rapid economic strides, massive cyclonic storms as well as deceleration in mining and manufacturing (Dash, 2020) have taken the gloss off its trajectory to reveal glaring structural anomalies. As per the Odisha Economic Survey 2018–19, Odisha's unemployment rate stands at 7.1 per cent, trumping the national average of 6.1 per cent (2019, p.19). The unemployment rate, as per the survey, is more pronounced in urban areas of the state (8.4 per cent) compared to rural areas (6.9 per cent) (ibid., 2019, p. 21). Moreover, the majority of workers are self-employed (57.4 per cent) followed by casual labourers (27.2 per cent) (ibid., 2019, p. 22). Since the turn of the century, the predominantly rural-agrarian economy has been in the news for an alarming number of farmer suicides. Nearly 83 per cent of the Odia population resides in the rural areas (Census of India, 2011) and two-thirds of them are currently dependent on agriculture and allied activities (Odisha Economic Survey 2018–19, p. 37). The situation on the ground has remained

particularly volatile on account of Cyclone Phailin in 2013–2014, drought in 2015–2016, pest attacks on rice fields in 2017–2018 and Cyclone Fani in 2018–2019, which severely affected crop production (Dash, 2020).

In this story of glaring lopsided growth, migration has remained the main means of sustenance for a major percentage of the rural households ('Only 20 per cent migrants', 2020; Sharma et al., 2014, p.2). In the case of the highly vulnerable Ganjam district, for instance, the official government-run website explicitly states that most of the 'educated youths of poor households are migrating to various cities of Gujarat, India for breadwinning' (Ganjam District website, 2019). Since the last two decades, the coastal region of Odisha has been witnessing a large-scale migration of men and youth to various parts of India to work in catering, hospitality, plumbing, construction, textile and other allied sectors. Informal estimates suggest that Odia migrant workers in Surat constitute one of the largest groups of migrant workers—1.5 million migrants, of which an estimated 700,000 are from Ganjam district alone (according to Aajeevika Bureau Surat Centre). The annual remittance from Surat by migrant workers is estimated to be Rs. 17 billion, mostly done through informal money remittance mechanisms (Sharma et al., 2014, p. 109).

Thus, several thousands more, like Bikash and Suriya, court danger and death nearly every day, through electrocution and burns, asphyxiation and falls, loss of fingers and crushed limbs, and many other ways. Their jobs remain characterized by lower wages,<sup>2</sup> irregular income and employment,

2 On July 4, 2019 the Economic Survey argued that a higher national minimum wage is central to addressing inequality and widespread poverty in the country. A couple of weeks later, the government of India trashed its own analysis by proposing a 'starvation wage' of Rs. 178 a day—a minimum wage hike of merely Rs 2. The new minimum wage of Rs 178 per day translates to Rs 4,628 per month. It goes against the Labour Ministry's own expert committee recommendation of Rs. 375–447 per day, let alone the 15th Indian Labour Conference's suggestion of Rs 692 a day, or Rs. 18,000 a month. The new national minimum wage, half of what was recommended, truly portends a death knell on India's labour protection framework (Working People's Charter, 2019).

frequent retrenchment and a pronounced absence of any social security. Amid the Covid-19 pandemic, the fissures and schisms that existed have got accelerated and further exacerbated (Das, 2020).

## 2. Historical Trajectories and Contemporary Compulsions

This section foregrounds the particular exclusions of the Odia migrant workforce in Surat's power looms by linking their historical trajectories with their contemporary compulsions, special vulnerabilities with invisibilized intersectionalities, lived experiences with state imaginations, labour with living, and Ganjam with Surat.

### 2.1 On the Brink of Survival: To Surat, from Ganjam

With its billion dollar-strong diamond polishing, textile, ship-building and petrochemical industries, Surat is touted as the world's fastest growing city in the 2019–2035 period (Oxford Economics, 2018), and glowingly referred to as the 'El Dorado' of Gujarat, the '*lambi minar*' (tall tower) (Saiyed & Mohanty, 2019). Strategically located along the west coast of India, between Ahmedabad and Mumbai, the mercantile city has historically served as a crucial trade link between Southeast Asia and West Asia (Haynes, 2001, p. 172; Subrahmanyam, 2000, p. 25). The urban economy and the linkages with the subcontinental hinterland—that burgeoned in the 17th and 18th centuries—were formerly controlled by a coalition of Muslim, Hindu and Parsi commercial interests (Nadri, 2009, p.80). However, it was the 20th century that marked a significant shift from trading to manufacturing, transforming Surat into one of the major industrial bases in west India (Haynes, 2001, p. 175). The textile production industry, which grew from ongoing structural and technological changes in the artisan family-run handlooms in the 1950s, played a key role in this transition. Workshops hiring wage labourers, known as *karkhanas*, became more prevalent, not replacing the dependent household units but developing alongside them. In these workshops, five to as many as fifty looms existed under one roof (Haynes, 2001, p. 179). Furthermore, the city

experienced a major boom in the 1980s with the shutting down of the mills in erstwhile Bombay and Ahmedabad. This forced a large part of the industrial labour hailing from as far as Uttar Pradesh, Bihar and Odisha to northern Maharashtra, Rajasthan and Andhra Pradesh, to move out of the formal sector and find work in a more precarious niche in the informal sector of the urban economy. Breman argues that the rise of Surat as a focal point of the informal sector activity is a direct consequence of the crisis in the formal sector economy (1996, p. 64). In fact, on account of the huge influx of a cheap migrant workforce, Gujarati workers constituted only one-fifth of the total workforce in the textile industry (Barik, 1987, p. 168).

Over the years, the city's population has grown from less than 0.5 million in 1971 to nearly 5 million inhabitants in 2011 (Census of India, 2011), of which 58 per cent comprises intra- and inter-state migrants (UNESCO Report, 2013, p. 6), the highest proportion of migrants to locals in the country. In terms of its wage workforce, nearly 70 per cent is constituted by migrants (Shastri, 2017).

In the matter of scale, the power loom and textile production industries continue to remain the largest recruiters of migrant labour in the city, and a significant contributor to Gujarat's economy. The industry has an estimated Rs. 50,000 crore annual industrial turnover, according to a July 2018 report by the Federation of Gujarat Weavers Association and its subsidiary, the Pandesara Weavers Association ('Gujarat clocks 22% growth', 2018). The country's textile capital produces what is popularly called 'art silk', accounting for around 40 per cent of the total synthetic fabric produced in the country (Jain & Sharma, 2018, pp. 81–82). This art silk is used to make Indian garments, mainly saris, which are sold in bulk to wholesalers across the country and overseas. At present, the textile city is home to Adivasi migrants from southern Rajasthan, Madhya Pradesh, Maharashtra, Telangana and Andhra Pradesh. However, in terms of history and numbers, Odia weavers, mainly from the economically backward coastal Ganjam district, continue to play a crucial role.

Present-day Ganjam features among the top 20 districts identified with a high level of male inter-state out-migration intensity in the country, as per Report of the Working Group on Migration published by the Union Ministry of Housing and Urban Poverty Alleviation (2017, p. 21). According to the Ganjam District Human Development Report (2013, p. xiv), more than 3,00,000 skilled and semi-skilled workers migrate every year to other states. However, Odisha government's official figures stand at a mere 4,966 labourers (Pradhan, 2016). This is because almost all Odia migrant workers from Ganjam district reach Surat for employment via an informal network and not through a licensed labour contractor, as per the provisions of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. In 2005, the number of official migrants from Ganjam was only 456 (Das, 2020). Thus, there are no official figures.

The most populous district in Odisha, Ganjam constitutes around 9 per cent of the state's population. Nearly 80 per cent of the district population, which forms part of the poorest southern agro-climatic region of the state, lives in rural areas (Census of India, 2011). As per a report published by the National Institute of Rural Development, the average wage income per household in Ganjam was Rs. 2,046 per annum, standing much lower than the state average of Rs. 2,830 (NIRD, 2010, p. 6). Besides recording the lowest coverage of the issuance of job cards, Ganjam district also showed the lowest performance with only 3.4 per cent of the households getting employment for 100 days as per the NREGA scheme (*ibid.*, p. 8).

In the past decade, the district has further reported a major ecological decline with more frequent and intense floods and hurricanes. An August 2017 report titled 'Labour Conditions in Surat Textile Industry' by the People's Training and Research Centre (PTRC), a Vadodara-based non-governmental organization, states that although Ganjam is considered a 'developed district' in Odisha, the 'shrinking natural resources, decreasing agricultural land and regular floods and drought have im-

pelled the migration' (Patel, 2017; p. 38). Over the past decade alone, the coastal district, comprising Brahmapur, Asika, Sorada and Chhatrapur regions (Mohanty, 2019), has suffered monumental losses due to extremely severe cyclonic storms such as Phailin (2013–2014), Hudhud (2014), Titli (2018) and Fani (2018–2019). Stressing the condition of infertile lands as a core factor that pushes migration, Mohan Swain, a loom master working in Ved Road in Surat, said, 'Continuous floods and cyclones have made most lands infertile...it is a dead investment. Moving out remains the only option. At least we earn money to send back home even if it comes at the cost of living away from our families in such conditions' (2018).

Swain first came to Surat in the 1990s to work on the *sancha* (weaving) machine. Since then, he has brought his cousins, nephews and neighbours to the textile city. Like Swain, most Odia migrant labourers own no to very little land back in their native villages. Among the migrants' families, Sahu and Das state, the average land–person ratio (acre of land per person) is found to have ranged between zero and 1.33 acres, with the average size of landholding per person being 0.256 acres (2010, p. 3).

While charting out the migration history of the Odia labourers along with the power looms of Surat, Professor B. C. Barik in 'Industrial Development and Migrant Labour: A Study of Unorganised Sector Labour in Textiles Industries of Surat', has stated that the Odisha to Gujarat corridor began with the newcomers coming in to work as gardeners according to the traditions of their caste and were taken on as such by industrialists (Barik 1985, p.8; Sahoo, 1985, p. 7). Elaborating on the emergence of this corridor, Dr S. K. Mohanty, retired deputy commissioner of Surat Municipal Corporation (SMC), recounted, '...the coastal districts of Odisha located along the Andhra Pradesh border had already been home to the handloom industry. This meant that the Odia migrants were also already familiar with the work on fabric' (2019). With the polyester industry burgeoning in the western state, there was a pressing need for cheap, casual labour. 'The Odia migrants gradually began to fill in this void and found

some security of working in a factory despite the low wages, long work hours and toxic work conditions. They even began to bring their relatives and friends from the villages, since having some work was preferred over complete crop failure and starvation,' added Dr Mohanty (2019). The share of the distress-driven Odia migrants in the workforce increased rapidly at the start of the 1980s, numbering nearly 90,000 (as indicated in Breman, 1996, p. 62). At present, a rough estimate provided by the Surat Odia Welfare Association (SOWA), a city-wide cultural organization, suggests that there are nearly one million Odia migrants, of which nearly 70 per cent are engaged in the power loom and textile industry (Padhi, 2019). Official records provided by the Powerloom Service Centre in Surat run by the Union Ministry of Textiles, however, pegs the number of Odia loom workers between a mere 150,000 to 200,000 (Subramanian, 2018). Without classic employee–employer relationships, the absence of industrial documentation, work and living contracts as well as invisibility in government records, we are left with inaccurate and wavering statistics of Odia migrants labouring in the city.

## ***2.2 Driven by Compulsion, Reproducing Tradition***

While the migration exodus spans diverse caste hierarchies, a large number of the workers from Ganjam belong to the Other Backward Class (OBC) and Scheduled Caste (SC) communities (Sahu & Das, 2010, p. 19; Subramanian, 2018). Less than 1 per cent of the Odia migrant population in Surat belongs to the Adivasi and Scheduled Tribes (ST). Inadequate resources to cover long distances, coupled with the inability to leave behind their land and community for long periods, have pushed these highly vulnerable groups into undertaking foot-loose, cheap labour in the neighbouring districts and states instead. In Surat, those migrant workers belonging to privileged castes such as Brahmin, Karan and Kshatriya, often find it difficult to opt for 'lower level' jobs as they tend to denigrate their social status at their native locations. Thus, by migrating out to the cities, they can conceal their job status back home, even while working as wage labourers

or in jobs that do not ‘match’ their social positions (Sahu & Das, 2010; p. 19). ‘My family doesn’t know that I work and live in such conditions with so many people,’ said 38-year-old Dipankar Sahu, an OBC, who migrated to Surat’s looms at the age of 16 (2018). He lives in a mess room with 60 other workers in the industrial Ved Road neighbourhood in north Surat. ‘The factory is very noisy and dirty. Even in my living room, the prayer area faces the toilet. The water used for bathing and drinking is taken from the same blue drum...but do I even have a choice?’

Despite not always belonging to the bottom-most rung of the existing social hierarchies back in their villages, the migrant workers in Surat are still trapped in deplorable living conditions, with highly suboptimal access to facilities such as dignified housing or sanitation. Robust social networks that have formed due to the distinct historicity and scale of this migration stream both aids the process of migration and consequently, provides access to various services in the destination; as well as works to reproduce existing source-based caste hierarchies in cities. For instance, migrant labour scouting, selection, recruitment and absorption into the power loom and textile markets of Surat is a multi-staged process that begins amid chronic poverty and distress in the source villages. At the destination, it is these networks which often enable the workers to find work in the looms and a room to live in. However, in certain cases, room managers hailing from the same caste or region lay out clear demarcations on who can find a place to live and who cannot. Thus, existing ethnic identities, mediated by social networks, have a significant bearing on the experiences of migrants at the destination. In the very popular Kaka Mess (run by former loom worker Trinath Sahu alias Kaka), for instance, workers without prior reference are strictly prohibited; preference is given to residents from Balichai village in Ganjam district; no SC members are allowed. ‘We all pray, eat and live together here just like the village. In case I let in workers from the lower castes, I will lose business,’ said Kaka, who has been in Surat for the past four decades (2018). ‘Since I know the families of the residents living in

my room, if anyone disappears without paying rent here, my brother simply lands up at their doorstep back in Balichai. They cannot get away.’

### **2.3 The Invisible Factory**

The Odia loom workers live and work in the city’s textile corridor, clocking in 12 hours of work for 365 days of the year. Over the years, the migrant flow into the city has been predominantly male, as is revealed in the city’s shifting demographic trend. When Surat began to grow exponentially, for instance, its sex ratio began to plummet from over 900 females per 1,000 males in the 1960s to around 750 today (Tumbe, 2019).

A small number of workers, more significantly those who are long-term or second-generation migrants, have brought their families to the city and live mainly in informal settlements, or *bastis*. A single male worker’s wage is insufficient to run a household in the city. A pressing concern among the migrant families is that women’s access to work is itself limited (and wages depressed) by their inability to work alone, by the presence of children and by the demands of fuel and water collection. Odia women, thus, are employed as home workers, for *dhaaga* cutting (pulling extra threads from saris) or *diamond* sticking (diamonds refer to shiny sequins and beads that have to be pasted on dress materials) for nearly six to eight hours every day (Subramanian, 2019), in addition to completing long hours of unpaid care work. As they are defined as ‘housewives’, this production does not upset the patriarchal reproduction relations within the family. Furthermore, the work is treated as ‘time pass’, thus, preventing the women from even demanding a just wage.

Thirty-five-year-old Renuka Pradhan’s one-room home in Mina Nagar in north Surat, for instance, turns into her working space at 10 a.m. every morning. Bundles of colourful saris, delivered at her doorstep, are placed near the kitchen sink, the doorway, and even pushed under the *khatiya* (cot). Pradhan swiftly unpacks a bundle to pick out a bright pink-and-blue polyester sari that she hangs over a water pipe outside her room. ‘I spend around five to seven minutes on each saree. In case I pull

too much thread and end up damaging the fabric, I will have to reimburse the entire cost of the saree to the contractor. I have to be very careful' (as quoted in Subramanian, 2019).

At the rate of Rs. 2 per saree, Pradhan earns up to Rs. 150 every day. According to the provisions of the Gujarat Minimum Wages (April to September 2019; revised every six months to match prevailing inflation rates), unskilled workers employed in 'manufacturing readymade garments or its accessories and tailoring establishments' are entitled to earn around Rs. 315 per day for an eight-hour shift. However, the home-based work done by Pradhan and other women from Odisha is tallied on a piece rate and they typically receive nearly 50 per cent less than the state-stipulated minimum wage rates. Women working in factories here who undertake the same dhaaga cutting work earn an average of Rs. 5,000–7,000 per month and might even get social security benefits, such as overtime pay and workers' insurance, whereas the home-based workers earn not more than Rs. 3,000, in addition to bearing the working costs. Considering their very marginal position in the textile industry and complete invisibility in official records, there are no estimates of the number of women engaged in home-based work. It is precisely this non-separation of the domestic and factory spheres which then forms the precondition for the exploitation of the dhaaga cutters and diamond stickers.

Furthermore, Odia children in the households, growing up amid poverty and food insecurity in the city, face hardships early on. Sahu and Das have argued that an Odia migrant is able to spend little on his children's education (2010, p. 10). This is because the families must spend exorbitant amounts on basic facilities, even when they save on rent by living on shaky ground, leaving little to invest in their children. Right outside Pradhan's house, for instance, the dangling water pipes have been turned into makeshift ropes to hang the saris. Manju Goliya and her 13-year-old daughter Sheela are busy pulling out the extra threads. Sheela, like several other girls helping their mothers in the neighbourhood, had to drop out of school in 2018 as her Odia-medium

school, run by the SMC, taught only till Class 7 and a private education was too expensive. Across Surat, for instance, there are only 13 primary level Odia-medium schools (from Class 1 to 7). Of these, six are private schools and the remaining are run by the SMC. However, with classes only up to Class 7, most children are compelled to drop out soon after. This is more likely in the case of girl children like Sheela, who support their mothers in unpaid work to run the household. In the case of dhaaga cutting or sequins work, none of the women workers have signed any written contracts. Yet, they have very strict everyday targets, which compel them to pull their children in to help early on.

According to Gouri Gangoli, former principal of an SMC-run Odia-medium school in Surat, those children who are able to continue schooling have two options: to join the Gujarati-medium board in Class 8 at an SMC-run school, or enrol in a private Odia-medium school (2019). Having been schooled in Odia medium up until then, it becomes challenging to catch up in a Gujarati-medium classroom. 'In case they continue in a private school, which is also more expensive, they have to return to Odisha to take their Class 10 board exams as the Gujarat state hasn't made any local provisions for conducting the board examinations in the Odia medium here,' added Gangoli, who has helped plan and design the curriculum for the Odia-medium board from the late-1990s.

Consequently, several Odia children have been compelled to drop out of schools. They end up in the same hazardous, low-paying industrial settings as their parents, providing another generation of cheap and flexible labour to the industry. Meanwhile, their parents can no longer keep up with the industry's productivity demands or migrate due to deteriorating health. The current lack of state and employer provisioning, in addition to bringing exorbitant costs to migrant households and destroying workers' bodies, results in intergenerational transfer of poverty (Jain & Sharma, 2018, p. 65).

Thus, the migrant poor, as the case of Bikash Gouda at the beginning of this chapter showed, require children and adolescent boys to join the la-

bour force early on. Gouda's brothers continue to labour in the same power looms in which they saw him die in front of their eyes.

### 3. Contemporary Dynamics of Exclusion and Exploitation

This section explores the everyday lived experiences of the Odia migrants in their work and living spaces, focusing on the power loom industry in Surat. Drawing from personal narratives of the workers, discussions in the PSSM union meetings and Aajeevika Bureau's practice on the ground, the section argues that whether from the vantage point of the industry or of the workers, it is the interests and the security of migrant labour that continues to get jeopardized, exacerbating their vulnerability in the urban labour market.

#### 3.1 Cog in the Wheel

In a unit spanning approximately 1,000 square feet in the industrial Mina Nagar area of north Surat, more than 100 loom machines operate right next to each other. There is no alleyway, and workers—80 to 100 per shift—do not have the space to even stretch their arms in between their 12-hour shifts from 7 a.m. to 7 p.m. or 7 p.m. to 7 a.m. Multiple closed-circuit television cameras monitor their every move. The closest public toilet is a few blocks away. It is 41 degrees Celsius outside during the summer months, but there is no provision for drinking water and the men carry it in from nearby *chai* (tea) stalls. There are no windows.

The workers move their feet and legs continuously, at breakneck speed, to ensure that the thread gets woven quickly. 'Every minute counts in here. In fact, every second,' said loom master Simanchala Sahu, founder member of the Pravasi Suraksha evam Sahayta Manch, the loom and textile workers' union (2018). The workers get paid on a piece-rate basis—Rs 1.10 to Rs 1.50 for every metre. So, Sahu said, they 'cannot afford to waste any time or relax'. Their only days off in a month in the central loom district area are because of electric power failures. Over 360 hours a month, the loom workers of Surat produce around 90 per cent of the polyester used

in India—churning out nearly 30 million metres of raw fabric and 25 million metres of processed fabric every day, according to the PTRC Report (2017, p. 19). Meanwhile, even after clocking in as many hours, a worker earns Rs. 10,000 to Rs. 18,000, of which at least Rs. 4,000 is spent on rent, food and other living expenses. The remaining money is sent to their families back home in Ganjam, mostly through the informal cash transfer kiosks dotting the streets of the industrial corridor. 'The workers do not sign any written work contracts, the wages are also paid in cash,' said Sahu (2019). For every 1,000 rupees to be remitted, the worker pays a fixed transfer fee of Rs. 10 to the kiosk manager. The cash is deposited in the worker's bank account in the village. Every time a worker goes back home for a break during the festive or marriage season, it is not certain that they would have the same job to return to. 'I go home once every two years in June during the festive season. Since I must save up for the tickets and travel all the way back to my village, I usually spend at least a month with my family then,' said Sahu (2018). 'Despite working in this loom for more than 10 years, I can't be fully sure if I will have the same job when I come back. There is so much competition in the market.' Sahu is not eligible for any paid leave, even with 22 years of work experience. He must forego his pay for the days he is unwell or away, and, arrange for a substitute in case he doesn't want to lose his job.

The looms are also a site of alarming number of minor, major and fatal injuries among workers, many of them Odia migrants. The PTRC report says 84 fatal events that killed a total of 114 workers were reported between 2012 and 2015 in registered textile processing units in Surat. During the same period, 375 workers were seriously injured. This data was obtained after filing Right to Information applications at the Directorate of Industrial Safety and Health, Gujarat. The city also houses many unregistered power loom workshops, and the number of deaths and accidents could be underestimated. No comprehensive official data is available on any of this (Subramanian, 2018). In addition to fatal injuries and deaths, an alarming number of workers reportedly suffer from varying levels of

deafness, mainly due to continuous exposure to the high-decibel loom machines. According to a medical examination undertaken by Aajeevika Bureau's Surat Centre in 2018, a staggering 95 per cent of workers reported hearing loss. The reports were certified by Christian Medical College and Hospital in Vellore.

A key loophole that fosters such exploitation rests in the very license registration of the power loom unit. A majority of the power looms in the city are believed to be registered under the provisions of Shops and Establishments Act 2019, instead of the Factories Act 1948, which offers a slightly more expansive range of protections and rights for workers. This is despite the fact that most power looms will also come under the scope of the Factories Act as they employ more than 10 workers (over 2 shifts), use horsepower, and are manufacturing units. Incidentally, the tax from Shops and Establishment Act registration goes directly to the local authority, while the tax paid under the Factories Act is a state-level tax—as a result, the local authorities have an incentive to register power looms as establishments and not factories. Thus, unlike the provisions under the Factories Act, employers registering their units as 'establishments' evade the responsibility of providing mandatory social security and health insurance to their workers. They do not maintain a written record of their workers and pay them in cash (as against a bank account transfer). There is no clear employer–employee relationship that gets documented. By doing so, they are also able to violate the wage norms prescribed under the Minimum Wages Act 1948, and in the case of worksite accidents and deaths, they are also able to completely disassociate themselves from the said worker.

Likewise, the obsolete machinery, and cramped, hazardous working conditions are also a serious violation of the provisions of the Factories Act. Yet, there is a serious paucity of industrial inspections—in fact, the right of a Factory Inspector to enter workplaces at will has all but disappeared. According to a senior official at the Labour Department (interviewed in 2019), there are only three government labour officers in the entirety of Surat

District (whose administrative limits encompass but go far beyond the city itself). Inspections are as a result done on a target basis and are randomized, and under Ease of Doing Business, there are no more inspections without complaints already made to the department.

This brazen exploitation further gets reproduced and multiplied even at the household level, where the home-based Odia women workers labour in extremely insecure, unsafe and extractive arrangements. For starters, the women's work is not even recognized as labour by their families—and the women themselves—because it is done inside the house. In several cases (based on interviews conducted in 2018–2019), the women workers did not even know the name of their employers despite working day in, day out for the same company, leaving little to no room for negotiating their wages. 'I have been working on the same wage for the past 10 years,' said Ratna Goliya, a 36-year-old home-based worker in Vishram Nagar in north Surat. She earns Rs 2 per sari; barely making Rs 150 at the end of a six hour-long workday. Her husband, who works in the power loom three lanes away, brings the pile of saris to her at the end of his shift every day. He also collects her wages at the end of the month. 'I do not know the name of the maalik (employer) or the company. The money gets used directly to run the household—pay rent, buy groceries, pay school fees, the list is endless,' said Goliya (2019). In other cases, the saris, fabric and sequins get delivered to their household by contractors every morning, who collect the completed pile of work from the previous day. 'Every time I have tried to ask the contractor to increase my wage, he tells me that I am anyway working from my home, and the work requires no real skill. It is almost like time pass work,' said Asha Pradhan, 29, who lives with her husband and three children in an informal settlement in Mina Nagar. Yet, even a small error comes at a big cost. Pradhan, for instance, said that she had to incur a massive pay cut when some saris got stained during the heavy showers in 2016. 'The height of the ceiling in my room is very low and there is very little space to lay out the sari. So, most of us work outside by hanging the saris on ropes

or wires. There are open drains right outside and rats are on the move...we have very little choice' (2018). The summer and monsoon months prove to be an additional burden. The women workers complained about having severe backaches, finger injuries and reduced eyesight as a result of long hours of labour. Yet, with no backing, or even recognition for that matter, from the employers, state and their own families, they continue to toil under these circumstances without any bargaining power. Having work, in itself, is considered a privilege.

With little to no bargaining power, very little progress is made in cases involving accidents and deaths of migrant loom workers, said an official from the sanitary department at SMC. 'The workers' families are far away in their villages and their relatives or friends in the city are also workers employed in the looms. They are too busy to keep visiting the police station or following up. They also fear losing their jobs,' he said. 'There is no official documentation of the number of injuries and deaths. The case gets closed almost immediately' (2018).

In most cases, illnesses and injuries are treated by local, often uncertified doctors, or sometimes at private hospitals. A few reach the government dispensary or civil hospital, but only after other avenues have not resulted in a cure. The main reason for this is the long hours entailed in consultation, investigation, diagnosis and treatment due to which the workers are compelled to give up wages for an entire day to seek care at a public health facility. Many of them also struggle to understand, communicate and read signage in Gujarati or Hindi, which further acts as a deterrent in seeking proper treatment.

Usually, if there is a death at the loom, a police case is registered. But this is a legal and medical formality, and arrests are very rare. Union members also allege that the post-mortem reports are often fabricated (Interviewed in June 2019). To claim compensation, the family must approach the labour department. If it's for an injury, the worker's job is at stake since this can antagonize the employer. Most resign to an out-of-court settlement (Subramanian, 2018).

When 36-year-old Siba Sethi was electrocuted to death in a worksite accident in Diamond Nagar in November 2017, efforts were made by members of PSSM to take the legal course under the provisions of the Workmen's Compensation Act 1923. Video footage, recorded on a mobile camera, was available to prove that Sethi, a power loom worker from Purunagarh in Ganjam, had indeed died inside the factory premises. After weeks of compiling documents and reaching out to his family in the village in Odisha, the case hit a roadblock. Sethi's bereaved family, including his young widow and four toddlers, had no resources to pursue the matter. In fact, his widow did not even know where her husband had been working for the past 15 years. Her brother, who worked with Sethi in the looms, warned her that any action against the employer would also render him unemployed. Thus, after an initial monetary settlement, the employers were let off scot-free.

Similarly, four days after young Bikash Gouda died, on April 29, his employer paid the family Rs. 2.10 lakhs as compensation, clearly stating that no further claim could be made. Had the legal course been followed, he would have been eligible to receive a monetary compensation as high as Rs 10 lakh. However, since three other jobs were at stake, the family agreed to a severely compromised settlement (Aajeevika Bureau Surat Centre, 2018).

### **3.2 Homes Without Walls**

The adversity for the Odia workers doesn't end with dismal work conditions. It stretches further to the remaining 12 hours of their day in the city. After a strenuous day, nearly 60 workers must fit into a 500-square feet room, colloquially referred to as 'mess rooms', enduring power cuts, filth and noise (Subramanian, 2018). Located mostly within the industrial corridor, the high-decibel *khat-khat* sound of the shuttle machines after a 12-hour shift cannot be turned off. It is audible even as the workers lie on their makeshift beds. The mess rooms are usually owned by local businessmen, who rent them out to the managers—most of them from Ganjam district. The managers pay a monthly rent of Rs. 15,000–Rs. 20,000 to the owners, and in turn collect Rs.

2,500 every month from each worker for rent and meals (Bhagwan, 2019).

The workers sleep on worn-out mattresses sometimes infested with bedbugs. The bloodstains of crushed bugs are visible on the grimy walls. On some walls, the workers have scribbled their names in Odia. There are termites and occasionally rats scurrying about too. During the summer, the workers prefer to sleep on the bare floor or on a plastic sheet because the mattresses are shared and get damp with sweat, leaving behind a stench (Subramanian, 2018). Storage boxes and bags are placed one above the other at the head of each shared space. In addition to three sets of clothes on average and a few personal items, these contain a thin blanket for cooler nights, some cash and pictures of gods.

Each room has two toilets at one end that all the occupants use. The kitchen is usually right next to the toilets. The water for bathing, drinking and cooking comes from a common source. Supply is intermittent, and water is stored in a tank or plastic drum in most mess rooms, so the workers are unable to bathe every day (Thomas et al., 2020, p.48). The few fans in each room barely lessen the heat. In the main city, where Mahavir Mess is located, power cuts are rare, but on the outskirts, in areas such as Anjani and Sayan, the Dakshin Gujarat Vidyut Company Limited switches off electricity for four to six hours once every week. Mahavir Mess also has three windows, which makes it a sought-after option. Some rooms—in Kashinath Bhai Mess in Fulwadi in north Surat, for instance—are windowless, with only a tiny door at one end of the rectangular halls, which allows in a bit of air and light (Subramanian, 2018).

Among the Odia migrant workers, illnesses are common, as are stress and alcoholism. The complete lack of access to basic public services like sanitation, health, education for their children and the public distribution system further deteriorates their existence (Sahu & Das, 2010, p. 2). In February 2018, Krishna Subhas Goud, a 28-year-old loom worker, died from the tuberculosis he had contracted 18 months earlier. Goud lived in a mess room in Fulwadi, which he shared with around 35

other workers. When he became ill, he had gone back to Ganjam and started the standard TB treatment. But with his money running out, he had returned to Surat, where it became difficult for him to continue the treatment; it was difficult to even get restful sleep in the packed room. Since Goud died in the room and not in the loom unit, his employer refused to pay compensation, but with the workspace and the living rooms so closely interlinked, it becomes difficult to tell the exploitation apart.

The state, however, has clearly marked the borders between ‘work’ and ‘home’. According to an official from the Powerloom Service Centre in Surat, compensation and insurance benefits only apply to injuries or deaths reported inside the factory. ‘The power loom sector is extremely decentralized,’ said the official, who was overseeing the Union Ministry of Textiles’ Group Insurance Scheme for Powerloom Weavers in Surat. ‘Not even 10 per cent of the workers have been registered under the insurance scheme’ (2018). The scheme was launched in July 2003. The worker pays an annual premium of Rs. 80 (with Rs. 290 added by the government and Rs. 100 from the Social Security Fund). He or his family can claim Rs. 60,000 in the case of a natural death, Rs. 1,50,000 in the case of an accidental death, Rs. 1,50,000 for total permanent disability, and Rs. 75,000 for partial permanent disability. However, the rooms they live in do not fall within the ambit of the scheme (2018).

Furthermore, home-based workers do not make the cut in the very conceptualization of the insurance scheme. ‘Insurance and compensation benefits can only be provided to those workers who have sustained injuries inside the registered factory space,’ said another senior official from the Powerloom Service Centre (2019). ‘Even though it is known that women workers are a part of the industry, it is very difficult to document their work hours, conditions and injuries since they work inside their households for flexible time periods.’ Thus, even as women workers complained of deep cuts, bruises and permanent damage to their backs and eyes—all sustained because of long hours of underpaid work—there is no mechanism to prove any correla-

tion between their injuries and their employment, and thereby seek compensation.

### ***3.3 Grappling with Structural Readjustments and Distorted Production Relations***

Apart from poor and dangerous work conditions, even after four decades, the loom workers grapple to cope with the various structural readjustments taking place in the textile city. Their voices remain muffled and their labour invisible in public and policy discourses. For instance, in December 2018, Odisha Chief Minister Naveen Patnaik paid his maiden visit to Surat as part of the cultural celebrations that witnessed a massive turnout of Odia migrants (TNN, 2018). Incidentally, Patnaik's own Assembly constituency of Hinjilicut is a part of Ganjam district. In the run-up to the Odisha Mahotsav 2018 festival, WhatsApp groups were flooded with forwards, posters were pasted across the industrial pockets of the city and requests were sent out to the loom owners' associations to declare December 17 as a holiday for the five lakh Odia loom workers in the factories to attend the event. 'Surat has been built with the support of its Odia population, majority of who power its loom and textile industry. It was important to celebrate their contribution and culture,' Vijay Kahar, one of the organizers of the festival, said (2018).

While the minister's basket of promises included direct flights and additional trains to connect the 1,600 km distance between Odisha and Gujarat, and a state-of-the-art community centre in the city, there was little mention of the high incidence of unemployment, financial distress and insecurity brought about by the overnight announcement of demonetization in 2016, and the roll-out of the Goods and Service Tax (GST) a few months after, in July 2017 (PTI, 2018, December 16). Surat's power loom workers were left bleeding. During demonetization, for instance, the workers, who earned their wages in cash, had to incur heavy losses as they skipped their work to find a spot in the serpentine queues outside the banks to exchange their 500-rupee notes (Gupta, 2017). They even dropped their valueless notes at money transfer kiosks, bearing a loss of at least Rs. 50 for every 500-rupee note exchanged.

In another major blow, several workers were rendered unemployed due to the harsh impact of GST on the informal and highly disaggregated power loom units. According to the Federation of Gujarat Weavers Association (FOGWA), nearly 100,000 looms and textile units in Surat had been abruptly shut down or sold to scrap, and over 40,000 Odia loom workers were rendered jobless.

The erstwhile looms dotting the streets of Ved Road, Katargam, Sachin, Pandesara and Udhna continue to be shifted to the city's outskirts in Anjani, Diamond Nagar and Sayan. 'Nearly 60 per cent of the workers employed in the looms have come from Odisha,' said Devesh Patel, president of the Ved Road Weavers Association. 'In the aftermath of GST, several looms in central areas such as Ved Road had to shut down, rendering the labourers unemployed' (2019). Women's home-based work did not merit any input tax refund under GST, as 80 per cent of the raw materials used are power and labour, which does not come under the input credit net.

In addition to losing their livelihoods, the Odia migrants claim that there is nothing to do back in Ganjam, which has left them with little bargaining power in the textile city. Since the worker is not entitled to any casual leave with pay, staying in Surat without a job outside illness and/or personal leave can prove to have serious consequences, a form of 'involuntary unemployment' (Sahu & Das, 2010, p. 6). Thus, as the power loom units remain closed intermittently due to power cuts, shortage of raw materials and poor market clearance, the wage labourers are prone to face 'no-work' situations. As they work on a piece-rate basis in most cases, they also remain unemployed on holidays declared by the employer. 'So much has changed in the past two years after most of the loom units shut down without any notice,' said 26-year-old Mahesh Swain (2018), who quit the looms in November 2018 to set up his own *vada pav* stall in the industrial Ved Road neighbourhood. His friends were compelled to move to Kerala, Karnataka and Andhra Pradesh to find jobs at brick kilns and construction sites. 'There was no adequate pay hike, making it very difficult for us to survive. I used to find work for

barely two days a week. The owners kept telling us there is a *mandi* in the market—a major financial slump. I couldn't sustain myself,' said Swain.

In their paper, Sahu and Das have stated that as many as 83 per cent of the Odia migrant workers in Surat feel insecure about the continuity of their jobs, for they hardly know when they may be thrown out by their employers (2010). In their paper, of the 57 migrants who had visited their native villages, 47 per cent weren't allowed to continue their jobs after returning to the city. Getting work at the same unit is possible only if the looms are vacant. Workers are denied permission to rejoin even if they were absent from work for two to three days consecutively on account of illness. This leaves a worker unemployed for certain periods of time until he can find a new job.

Apart from the lack of work opportunities back in their villages, the majority of the Odia migrants also feel that the migration influx, exacerbated in the past decade, has led to an excess of labour supply. Having to run the loom machines non-stop, 24x7, the employers take advantage of this situation to the maximum. To find a worker for a loom or a factory owner at Surat is not as difficult as for a worker to find a job. This has serious implications on the number of workdays, wage fixations and benefit entitlements for a worker. Since there are many who are ready to work at lower wages for the same quantum of work, mill owners keep substituting low paid workers for the high paid ones and try to get rid of the latter on the smallest of pretexts. In other words, given the competition among the swelling number of aspiring migrants to get absorbed into the labour market, hardly any worker feels sure about the continuity of work since he has no idea when the employer will throw him out.

Among those workers who have been retained in the aftermath of the GST, the work burden per worker has nearly doubled; the wages, however, haven't kept pace. While previously in the power looms a single worker would run around eight loom machines and be paid per piece, today, those who have been retained are forced to run up to 20

machines on their own. Their wages, though, have increased by an average of barely 30 per cent, based on interviews we conducted in 2019. 'Even the owners know that we have very little choice. The employer said that I was actually very fortunate because I was taking back a few extra thousands—he made it sound like a promotion,' said Shashi Matia, 23, who works at a loom in Singanpore Char Rasta on Ved Road. 'We ended up agreeing to their terms knowing very well that just having the job was enough for now' (2018). Even after working for several decades, none of them received any other benefits from their employers, including paid leave, medical aid, clothing, meals, overtime wages, assistance for children's education, transport allowance, house rent allowance or a bonus (Simanchal Sahu, 2019). Furthermore, the women workers continue to work on dated wages with no room for bargaining. 'Even 10 years ago, I was earning only Rs. 2 per sari. Every time I have tried to negotiate with the contractor to increase my wage, he tells me that I am anyway working from my home, and the work requires no real skill. But what about the price of light bills and room rents that have been increasing over the years?' asks Resham Samal, 32, whose husband Rajesh is a power loom worker in Vishram Nagar (2019).

Thus, irrespective of staying as single migrants or with their families in the city or working on daily or piece-rate basis, Odia migrant labourers earn poorly and live miserably. They often earn through jobs characterized by low wages, irregular income and employment, frequent retrenchments and a pronounced absence of any social security. And trapped between the two worlds of a difficult earning and abysmal living environment in the city and responding to the financial needs of families back home, they continue to negotiate with uncertain terrains of urban labour markets and uncaring living spaces. In order to deal with their dual responsibilities of surviving at Surat and supporting their families at native villages back in Ganjam, most of them settle for a compromised life, living in in silence, indignity and despair.

## 4. The Unfolding Covid-19 Pandemic

When Prime Minister Narendra Modi's government abruptly announced a lockdown on March 24 as Covid-19 infections rose, millions of informal migrant workers across the country—who were left with no jobs, money or food—began flocking the railway stations and bus stands to find a seat back to their villages; some even undertaking the journey on foot. March, the month of *Thakurani* festivals in Ganjam, is also when many workers make their annual trip home (Mohanty, 2020). In Surat, the situation began to erupt out of proportion when Lockdown 2.0 was announced in April. For weeks together, with the power looms pulling down their shutters, the Odia weavers were forced to stay indoors in the poorly ventilated and space-starved mess rooms. This time, the room had to accommodate both shifts of workers at once: more than 100 labourers were packed inside a 500 square feet room. The calls for social distancing, sanitation and hygiene, and staying indoors for safety, were far removed from both their reality and aspiration in the city. Sleeper Class tickets for the limited *Shramik Express* trains were being sold by local politicians and touts for a whopping 2,000 rupees. Seats on private buses were priced at Rs. 4,000. Food shortages were being reported across mess rooms. Consequently, thousands of workers staged protests across the different industrial corridors of the city, to demand their right to return home, with some even clashing with the police. Between May 2 and May 17, around 440 trains were run from Surat to different states, each of them carrying around 1,800 labourers, apart from hundreds of buses that operated from Surat (Saiyed, 2020). Less than 10 per cent of the migrant weaver population stayed back, hammering the last nail on the coffin of the industry (TNN, 2020; Mohanty, 2020). Fuelled by the severe shortage of workers, in addition to the rising production cost and the textile traders not buying grey or unfinished fabrics, several units have shut down for an indefinite period across the city. Asish Gujarati, president of Pandesara Weavers Association (quoted in TNN, 2020) said that out of 1,000 units, only 40 were operational in Pandesara GIDC, and most owners had begun to weave the fabrics (using

only the existing yarn stocks) themselves due to the shortage of workers. Back in Ganjam, meanwhile, older workers, who claim to be working as agents for owners back in Surat, have reportedly started urging workers to prepare to return when regular train services are restored (Das, 2020). These deals are being brokered informally, to dodge the Inter-State Migrant Act, 1979 that would mandate official registration and protection of the Odia weavers at their loom units in Surat.

## 5. The Resistant Fold: Weaving Little Pockets of Freedom

Employed in an industry where serious injuries and accidental deaths, exploitation and isolation are a part of the everyday, several Odia power loom workers are finding little pockets of resistance in their personal and professional spaces to survive. This includes full-blown trade union-led strikes to demand increased wages and better work conditions, worker collectives to negotiate and obtain fair compensations for victims of worksite mishaps, informal job networks to find secure and safe work, and even dance classes to combat urban loneliness and labour alienation. Through case studies and the experiences of various migrants and loom workers in the textile city, this section will explore the ways in which the community weaves resistance to state and market forces, and other 'intimate exploiters' (Mosse et al., 2005, p. 3026) into their day-to-day routines.

### 5.1 *Up in Arms*

As a city that rests on the shoulders of its industrial workers, Surat has a long history of labour and trade unions; informal estimates indicate that there are approximately 200 trade unions, 66 related to the textile and power loom industries (Aajeevika Bureau Surat Centre records). Between 1978 and the 1990s, five large textile mills in Surat's industrial South-East Zone were shut down and their space was taken up by several power looms (Khare, 2013). In the large mills, the labour unions were strong, and there was no difficulty in mobilizing the labour force to pressurize mill owners for workers' rights. But the shutting of the mills broke the back

of these unions (ibid.). Early trade unions such as Surat Textile Mill Kamdar Union, Surat Silk Mill Kamdar Union and Textile Market Staff Union, all founded in the 1970s, remain remotely active even today (Aajeevika Bureau Surat Centre documentation, 2020). In the past decade, unions such as Dakshin Gujarat Kamdar Association and Surat Jari Labour Union (Mehta, 2011) have taken to the streets in different industrial pockets to demand a rise in wages, safer work conditions, and higher Diwali bonus (TNN, 2015). The labour union members have stopped work and taken to the streets, most often to be clamped down by the police and employers. Given the high informalization of the entire industry and the mobile nature of the migrant population, organized unions have had limited interest and negligible success in organizing this group of deregulated and vulnerable workforce (based on interviews in 2018 and 2019). Most resistances that have largely sparked in individual industrial areas, thus, have been fragmented and informal. During Diwali 2019, for instance, Odia loom workers employed in Diamond Nagar staged a protest to demand an increase in their piece rate wages by 10p/metre. Some workers also pasted posters in Odia that warned others to stop work at once in loom units across Diamond Nagar. The strikes continued for three weeks until the owners accepted the demands and agreed to pay 40 per cent more than the daily wage to bring back the workers almost a week. The success of the Diamond Nagar workers motivated the workers at Anjani to make demands which eventually ended in a similar way with assurances from the owners. However, once the workers ended the protests and were supposed to be paid, they were not paid according to the promised rates (Aajeevika Bureau Surat Centre, 2019).

Such informal solidarity groups have historically also been linked to their source regions. Following the demolition of the Babri Masjid on December 6, 1992, Surat had witnessed one of the worst communal riots in its history during which 150 people were killed and over 20,000 had to be given shelter in relief camps (Jhala, 2018). According to Dr S. K. Mohanty (2019), who was working as the deputy municipal commissioner in Surat that year, as the

riots unfolded and rumours fuelled more violence, nearly 7 lakh Odia labourers, mostly single males, fled back to their home states in large groups. As single males, they were particularly vulnerable, with little access to food and money. Their overnight exit crippled the power loom industry for the next six months. 'Despite constant appeals from the power loom owners, the workers refused to return to Surat,' said Dr Mohanty (2019), adding that the Gujarat government was compelled to constitute a special committee led by Surat MP Kashiram Rana, secretary S. K. Nanda and other officers, to visit Odisha to convince workers to return. According to Dr Mohanty, who facilitated personal meetings in Ganjam district for two weeks as a committee member in April 1993, the weavers agreed to return to the factories under three conditions: a) provision of paid train tickets to return, b) registration of ration cards in Surat to access subsidized grains and goods, c) and salary advances and complete assurance of safety upon resuming work. Subsequently, the Southern Gujarat Chamber of Commerce and Industry (SGCCI) organized meetings between labour leaders and the Surat police commissioner, where the police committed itself to protecting the workers. Special trains, linking the 1,600-km distance, were arranged to ferry the large groups of workers back to Surat. It took at least two months thereafter for normalcy to be restored and the power loom factories to once again start functioning at 90 percent of the installed capacity (Jhala, 2018). The Odia weavers' protests were a stark reminder for the government and the industry to realize that violence and hatred against the migrant labour force would take a direct toll on the economy.

### ***5.2 Forum for the Protection of Migrant Labour Rights***

Armed with the resolve to effect sustained change and fuelled by the desire to build a strong workers' solidarity network, the PSSM was established in 2015. Backed by Aajeevika Bureau, the forum comprises 80 textile and power loom workers in Surat City, mainly migrants from Odisha. The members belong to different hierarchies in the industry, in terms of experience, wages and castes. Through a process of intensive engagement and

rapport building, PSSM has an outreach of over 20,000 workers across Surat. The objectives of the Manch include collectivizing of migrant workers, undertaking legal literacy and awareness drives and building an emergency response to attend to cases of worksite accidents, deaths, payment disputes and wage thefts. Through weekly meetings, WhatsApp group chats and interactions on the field, the Manch aspires to build solidarity among community members to work jointly for their own welfare and rights as migrants and labourers.

In the case of worksite accidents, the Manch has played a crucial role in arbitrating monetary compensations for the bereaved families, to be paid by the employer. Thus, when Bikash Gauda died in the factory, the PSSM members reached the power loom unit and negotiated with the employer to provide some compensation to his family. They also ensured that photo footage of the accident site was taken on their smartphones as ‘evidence’. This role becomes crucial considering the informal nature of the agreement between the worker and the employer; there is no official contract or documentation to establish the relationship. In several cases, according to PSSM members, the employers would manage to destroy evidence and not take any responsibility for mishaps. Once initial financial support has been provided by the employer, which is often used to perform the final rites and provide immediate support to the family, the case is taken up by Aajeevika Bureau. The legal aid team reaches out to the family members to further pursue the case under the provisions of the Workmen’s Compensation Act 1923.

In addition to intervening and engaging with the employers, the PSSM members also provide social support to the families of the workers. Founder member Pramod Bisoyi, who came to Surat more than three decades ago, said, ‘In the span of one year, I conducted 27 funerals...the workers’ families are often too poor [to travel to Gujarat] to attend the funerals.’ (Subramanian, 2018).

### **5.3 Recruited by Trust**

As we have seen, the role of women in Surat’s textile industry, who work from their homes, is not iden-

tified as formal employment. This means they are not under the purview of any labour laws, such as the Factories Act 1948, that safeguard the rights of industry-employed workers. In the absence of any institutional safeguards and social support mechanisms, 30-year-old Ranjita Pradhan, a migrant from Buguda Block, Ganjam, has earned the title of the only ‘woman Odia agent’ in Vishram Nagar. ‘It was very difficult to work with male contractors, who would not pay us on time. They would even cut our wages without any reason,’ said Pradhan, who started as a home-based worker 14 years ago (Subramanian, 2019). In 2014, Pradhan directly approached the owner of a garment factory on Ved Road and promised him ‘good quality work’ if he could directly contract the work to her. Ever since, she has subcontracted diamond sticking work from three garment factory owners to nearly 40 women in the neighbourhood. As per their unwritten work contract, Pradhan delivers one kilogram of sequins and fabric glue to the women workers every fortnight. The dress materials reach them every morning. Each home worker ends up sticking up to 2,000 sequins per day, earning an average of Rs. 200 every day (one rupee for every 10 sequins).

‘They trust me because they know that even I am one of them,’ said Pradhan. ‘The work requires the women to bend their backs and work for hours together to fill up the intricate patterns. They end up with back pain and eye strain. And after a long day, they also must finish all the household chores. They get paid nothing for it.’ Pradhan ensures that she pays the wages directly to the women workers (Subramanian, 2019).

### **5.4 Building Little Pockets of Freedom**

Every day, for the past decade, Dhobi Guru clocks in 12-hour shifts in a power loom located on Ved Road in Surat. The 27-year-old migrant from Ganjam works 365 days a year, with breaks only when there is an unexpected power cut in the industrial neighbourhood. But over the last three years, in the midst of this gruelling daily schedule, Guru is briefly transported to a different world, where the deafening *khat-khat* sound of the loom machines is replaced with thumping electro beats, where the

packed power loom unit gives way to a large open studio and rhythm and style take over. Guru is a student of Really Dance Academy, a dance class located on Ved Road in the country's polyester capital. Most students are Guru's work companions, toiling in nearby loom units, earning as little as Rs 7,000 to Rs 10,000 a month. 'I leave all my work tension at the doorstep,' said Guru, who enrolled for the class in 2015. 'Once I am in the class, I am transported to a new world. I feel fresh' (2018).

Set up and run by Sushant Pradhan, 29, a former loom worker from Ganjam, the academy has trained more than a hundred young workers since it opened. Pradhan offers lessons in hip-hop, Bollywood, dubstep, B-boying, locking, popping, electro, house and contemporary dance. Unlike other dance classes run in the city, Pradhan's dance academy is tailor-made for his students, who alternate between shifts from 7 a.m. to 7 p.m. or 7 p.m. to 7 a.m. in the looms. Employed in an industry where lakhs of workers risk serious injuries and accidental deaths, the dance class has opened a little window of hope. 'The workers have been doing the same job every day for several years. Many get addicted to alcohol and drugs, and spend their wages on it,' said Pradhan. 'But for my students, dance is their biggest addiction. It helps them find their own voice' (2018). In January 2018, the loom workers-cum-break dancers had the opportunity to perform as background dancers in a regional film.

## **6. Recommendations and the Way Forward**

Recognizing the fact that the Odia weavers comprise an important part of Surat's economy, it is important to recognize universal principles that can inform the design and implementation of policies and schemes such that they are able to address their particular needs for safe, secure and dignified work and living conditions. Drawing mainly from Aajeevika Bureau's field insights and narratives documented on the ground, this section chalks out relevant recommendations, at the source and destinations ends, to seek state and employer liability, responsibility and accountability to pave the way

forward for Odia weavers toiling in the country's textile capital.

### **6.1 In Surat**

1. Provision of identity cards to the workers by the state will be an important first step to ensure that the Odia workers are able to establish their identity as workers and their occupations are recognized as legitimate categories of work. It will also provide a much-needed foundation to bring them within the jurisdiction of labour laws, introduce legislations to improve their working and living conditions and advocate for further benefits such as social security.
2. Establishment of an 'Odia Help Desk' in some obligatory institutions such as hospitals (SMMIER Hospital and Medical College, New Civil Hospital, urban health care units), bus stands (City Bus Stand), railway stations (Surat, Udhana) and also labour department offices for easy access of basic services by the Odia communities. It is important to also have important documents translated into Odia to ensure complete accessibility and inclusion.
3. Constitution of the Gujarat State Social Security Board as per the provisions of the Unorganized Workers' Social Security Act 2008 and enabling self-registration of workers under the State Social Security Board.
4. Institution of a welfare board for power loom sector workers through a tripartite arrangement between the state, employers and the workers. On the lines of welfare boards in other similar occupational categories, this institutional arrangement would receive overall funding from the state, supported by cess/taxes collected from the employers and a membership fee collected from the workers. These will be an appropriate platform to provide welfare benefits and economic security to informal workers.

5. Facilitating financial inclusion for workers so as to ensure contributory savings from employers and workers. These may be linked to the welfare board registrations, with provisions for continuing the same account, as long as the worker is in the same occupational sector. Necessary safeguards with reference to withdrawal of savings may be introduced to ensure that workers do not have a perverse incentive to leave their jobs in order to access the savings amount.
6. The following minimum working conditions need to be recognized, notified to employers and implemented on a mandatory basis:
  - a. An 8-hour working day (rather than the current 12-hour day) with a half-hour break
  - b. One paid day of holiday per week
  - c. No payment below the statutory minimum wage
  - d. Provisions for adequate safety equipment at the workplace and compensation in the case of accidents
  - e. Provision of basic amenities at the workplace such as safe drinking water and toilet and sanitation facilities
1. Ensuring transparency in textile supply chains so that the downstream workers, including Odia home-based workers are also recognized as legitimate workers, and their relationship with the principal employer established so that they can demand their work-related rights.
2. Ensuring registration of power looms under the Shops and Establishments Act and Factories Act respectively, depending on the size of the workforce. Frequent inspections and random checks to ensure that those looms that are bigger in size have in fact been registered under the Factories Act and are adhering to all relevant regulations.
3. Considering the high prevalence of worksite accidents and deaths, it is important to ensure the smooth and effective facilitation of the provisions under the Workmen Compensation Act. Accordingly, local police authorities should be trained to become more sensitive to migrant labourers. They should be held accountable for not registering cases of worksite mishaps.
4. Instituting mechanisms to ensure collective bargaining for workers in order to ensure that labour rights are recognized and labour legislations are implemented.
5. Local authorities must reach out to migrant pockets in cities through workers' platforms and civil society organizations, conduct local-level enumerations and ensure provisioning of public facilities in these areas on a fast-track basis.
6. Adequate rations must be provided to all persons occupying urban spaces on a priority basis; all docility-based eligibility barriers must be eliminated. This is particularly necessary for workers living in the mess rooms, as well as in migrant settlements in far-flung urban peripheries which might fall outside the jurisdiction of urban local bodies.
7. As elaborated above, particularly with the Covid-19 pandemic, many migrant workers were being removed from their worksites, or forced to live in unhygienic, cramped and rented rooms which are unsuitable for survival. These workers must be provided the option of safe shelter homes that have provisions for family rooms, separate toilets for women, as well as security for single women migrants, and allow migrant groups to live together with their communities. They must ensure food and healthcare access and must regularly be monitored by government and civil society representatives.
8. Urban health centres must be made sensitive to migrant communities, be flexible

with timings, must cater to different linguistic groups, and remove all burden of documentation from migrant communities. Outreach in migrant clusters through Accredited Social Health Activist (ASHA) and Auxiliary Nurse Midwife (ANM) workers for health screenings are essential steps for their inclusion in existing systems.

9. Police cooperation must be sought to identify and respond to spikes in harassment and domestic violence as a result of lockdown. Police must reach out and remain accessible to migrant women in informal settlements for this purpose.
10. Odia labourers largely depend on employers and landlords for accessing basic facilities in their living spaces. The provision of these facilities as well as standards for their adequacy and quantity must be set through executive orders, which can form the basis of future legislations. Informal landlords might be incentivized to do this through subsidies from the state for renting to migrant workers in return for formalizing their rental arrangements. In the case of small and petty employers who cannot provide for workers, or workers who are engaged on a piece-rate basis or as home-based workers, the state must step in through extending public provisioning in such clusters.

## 6.2 For Government of Odisha

The following recommendations can be undertaken for improving living, working as well as social conditions of migrant workers based at Surat.

1. Strict adherence to the provisions of the Inter-State Migrant Workmen Act, whereby all migrant workers' details are recorded in their source districts. The Odisha government should take an initiative for making provisions for 'Pravasi Identity Card' before migration and this facility must be accessible at the gram panchayat or block level. The database of registered migrants must be linked to the concerned depart-

ments of the state/Centre, in order to avail the benefits of different schemes of the state and central governments.

2. Migrant Welfare Board can be introduced as an initiative to secure the socio-economic surroundings of a migrant worker, under which basic health benefits, social inclusion along with social security, child education and marriage, higher studies, death benefits etc. can be covered..
3. Dialogues and visits can be undertaken between the source and destination governments in order to ensure access to basic facilities (living, health, education etc.) at the destination by migrant workers on producing their Pravasi Identity Cards.
4. Provision for registration of migrant workers at the destination centre. The same must be communicated to the source state with an obligation for further inclusion at source. Source as well as destination governments should be careful on protection of the fundamental rights of migrant workers.

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# Paradoxes of Ghettoization: Juhapura ‘in’ Ahmedabad

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*Reviewed by Hilal Ahmed, Mohsin Alam, Raphael Susewind*

*‘A Hindu selling property to a Muslim is not okay. A Muslim selling property to a Hindu is also not okay.’*

— Vijay Rupani, Chief Minister of Gujarat

*‘...as 2002 ends and 2003 begins, I bury you and feed you to the crows [...] my Ahmedabad! Orphaned to the core!’*

— Saroop Dhruv, Educator, poet and activist (2003, p. 106)

Home to more than 7.5 lakh Muslims, Ahmedabad houses over 50 per cent of this population in just one locality: Juhapura. Comprised of a cluster of various sub-areas such as Sankalit Nagar, Maktampura, Gyaspur, Makarba, Sarkhej and Fatehwadi—often having ambiguous and overlapping administrative boundaries—over 4 lakh Muslims live in Juhapura, amidst substandard public infrastructure and suffering from a stigmatized public perception.<sup>1</sup>

In effect, Ahmedabad has become the most religiously segregated city of modern India. Out of the 11 cities examined in the book *Muslims in Indian Cities*, Ahmedabad and Mumbai emerge as

clear cases where the relevance of Muslims in the city has declined, combined with ‘higher level of violence with political—and even sometimes cultural—obliteration’ (Gayer & Jaffrelot, 2012, pp. 318–319). Ahmedabad showcases an even stronger manifestation of ghettoization compared to Mumbai—and ten other Indian cities—according to the segregation index developed by Raphael Susewind.<sup>2</sup>

But what is a Muslim ghetto in India? This category has even been granted official recognition in the Sachar Committee Report, whose authors

<sup>1</sup> For a general history of spatial segregation in Ahmedabad in general and Juhapura in particular, see Jaffrelot and Thomas (2012). Facing ghettoisation in riot-city.

<sup>2</sup> Ahmedabad’s municipal boundaries score 0.57 on this segregation index whereas the score of the conglomerate that includes areas beyond the municipal limits is 0.62 (0 being the least segregated zone; 1 being the most segregated place (Susewind, 2017)).

claim that ‘Fearing for their security, Muslims are increasingly resorting to living in ghettos across the country’ (2006, p. 14). This ubiquitous process of ghettoization has severe effects on the community through ‘inadequacy of infrastructural facilities, shrinking common spaces where different SRCs [socio-religious categories] can interact and reduction in livelihood options’ (ibid.). However, the notion of ghetto is not specific to India—in fact, the word comes from the name of a tiny island in Venice where Jews were forced to live in the Middle Ages. Like Gayer & Jaffrelot (2012), we use Loïc Wacquant’s definition of a ‘ghetto’ as ‘a bounded, ethnically [or religiously] uniform sociospatial formation born of the forcible relegation of a negatively typed population’. They further elucidate (p. 22):

Building upon this basic definition, the concept of ‘ghetto’ can be further elaborated by pointing out five major characteristics of these spaces of relegation: an element of social and/or political *constraint* over the residential options of a given population; the *class and caste diversity* of these localities, which regroup individual of different social backgrounds on the basis of ethnic or religious ascribed identities; the *neglect* of these localities by state authorities, translating into a lack of infrastructures, educational facilities, etc.; the *estrangement* of the locality and its residents from the rest of the city, due to lack of public transportation as well as limited job opportunities and restricted access to public spaces beyond the locality; the subjective *sense of closure* of residents, related to objective patterns of estrangement from the rest of the city.

Despite the unmatched scale of ghettoization in Juhapura, aided by the State’s deliberate neglect, its residents have somewhat developed the place on their own, redeeming Juhapura from its stigmatized identity.<sup>3</sup> Although this contrarian claim is not true for the way the Hindu community perceives Juhapura, the impression that Juhapura is not

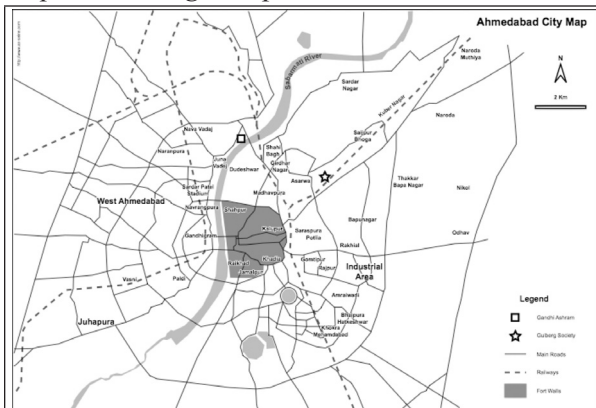
merely a safe locality but also a developing, ‘cosmopolitan’ place and a ground for unity is gaining momentum among Muslims, as evident from the inflow of Muslims from Saurashtra (for whom Juhapura is a gateway to Ahmedabad), for instance. In this chapter, we examine this paradox by offering responses to these key questions: What are the ways in which Muslims living in Juhapura resist the problems caused by ghettoization—and even, sometimes, benefit from this segregation? How do the signifiers of unity and division such as sectarian identification, class, caste and gender play out within the ghetto? We try to go beyond the feelings of victimization that prevailed after the 2002 pogrom to analyse the trajectory of India’s largest Muslim ghetto, without, in any way, minimizing or ignoring the impact of sociopolitical and cultural exclusions affecting this locality.

This chapter is organized into five sections. First, we provide a history of Juhapura, coeval with incidents of large-scale anti-Muslim violence in postcolonial Ahmedabad, which resulted in segregated living zones. We particularly examine the development of Juhapura in light of State-enforced discriminatory laws such as the Disturbed Areas Act 1991 and the post-2002 migration of middle-class and wealthy Muslims to the ghetto. In the second section, we show how elite migration to Juhapura has allowed its residents to *negotiate* with the state and bring limited improvements to the delivery of public services, despite the majoritarian character par excellence of the State in Gujarat. However, as we show in the third section, the arrival of rich, educated Muslims in Juhapura has not necessarily resulted in the emancipation of poor, lower-caste Muslims. Here, we focus on the creation of class and sect-specific ‘citadels’, representing fractured solidarities within Juhapura, to highlight the non-linear nature of citizenship in Juhapura. Lower-class Muslim women have crucially resisted elite and orthodox tendencies within Juhapura, signifying a merger, even if limited, of class, caste and gender in Juhapura. Then, we suggest a few recommendations to improve the state of religious fragmentation within the society of Ahmedabad as well as to enhance Juhapura’s public infrastructure and political

3 See Jamil (2017). *Accumulation by Segregation*, chapter 5.

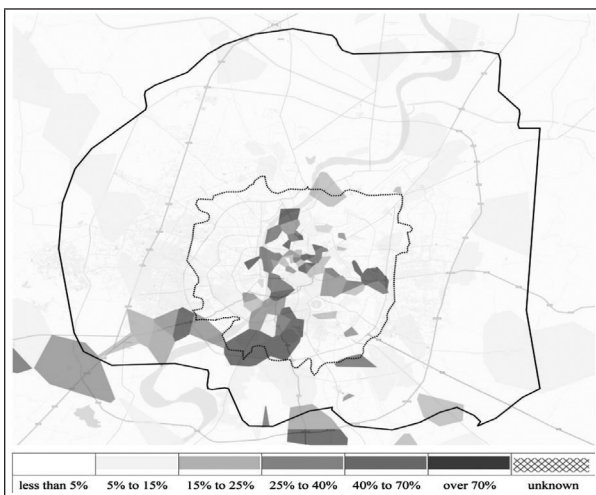
representation. Finally, after summarizing our findings, we conclude that the current state of affairs in Juhapura is a result of the post-1990 transformation in the nature of the State in Gujarat from a de facto Hindu *Rashtra* (Hindu Nation) towards a de jure one, with legal mechanisms facilitating discrimination against Muslims. In the post-2014 environment of nation-wide hegemony of Hindutva politics, this legally sanctioned form of Hindu *Rashtra*—‘the Gujarat Model’—has been replicated across India, alongside deepening of the Hindutva ideology.

Map 1: Locating Juhapura



Source: Jaffrelot, C. & Thomas, Charlotte (2012). Facing ghettoisation in riot-city (p. 47).

Map 2: Muslim Pockets in Ahmedabad and Outside



Source: Susewind, R. (2017). Muslims in Indian cities (p. 1290).

### Box 1: A Historical Muslim City

The old and previously walled part of Ahmedabad, its cityscape dotted with prominent Islamic monuments and architecture, became India’s first UNESCO World Heritage City in 2017. Although this moment was one of pride for its Muslim residents, a year later, the Chief Minister of Gujarat, in a bid to erase Islamic influence on Ahmedabad’s history, wanted to rename it ‘Karnavati’ after Karnadev Solanki, a Chalukya ruler.<sup>4</sup> In some sense, this failed move represents the central dilemma Muslims in Ahmedabad face: whether to take pride in the city’s rich history or to be bothered by their current status as ‘second-class citizens’.

Unlike their present peripheral status, Muslims in Ahmedabad historically enjoyed a privileged position. During the age of Muslim kings, beginning in 1411 AD, Ahmedabad was established as Gujarat’s capital not only for political reasons but also due to its unique socio-economic model of the Mahajan system, where local elites cooperated with each other and took care of the community.<sup>5</sup> Muslims, occupied key aristocratic positions alongside the Bania-Brahmin elite, apart from being traders. Ahmedabad’s linear trajectory of development meant that from the late 16<sup>th</sup> to the early 17<sup>th</sup> centuries, the city was one of the ten most populous cities in the world, with the population at one time reaching a peak of four lakh people.

The decline of Ahmedabad began with the end of the Mughal era in the mid-17<sup>th</sup> century when the Marathas, locally known pejoratively as *ganim* (meaning, raiders), wreaked havoc in the city. In turn, its population declined to less than 80,000 people. Later, the British rule, starting in 1818, brought peace to

4 For the myth-making phenomenon in relation to renaming Ahmedabad to Karnavati, see Laliwala (2018). Does renaming Ahmedabad ‘Karnavati’ have anything to do with the city’s history?

5 For more on the Mahajan system, refer to Mehta (1982). The Genesis and growth of Mahajans in Ahmedabad.

*the city and allowed its traders to flourish—in fact, Ahmedabad’s elites supported British colonial power during the rebellion of 1857–58. Yet, the political erasure of Muslims from the local elite associations that begun with the Maratha period could not be stymied. Mahatma Gandhi’s nationalist movement, which was initially based in Ahmedabad from 1915 until 1930 due to the city’s Mahajan culture and its proximity to Gandhi’s idea of trusteeship, did not feature any influential local Muslim voice.*

*Although popular leaders such as Rauf Valiullah and Ehsan Jafri provided political representation to the Muslim community in the post-Independence era, the community’s socio-economic decline, with the injury of Partition and the rise of Hindu nationalism with frequent large-scale episodes of anti-Muslim violence, was hard to ignore.<sup>6</sup> For example, post-Independence, according to official records, Ahmedabad has witnessed more than 1,500 murders during incidents of ethnic violence, mostly of Muslims—a majority of which took place in the 1969 and 2002 riots.<sup>7</sup>*

*Despite these trends of marginalization in urban Gujarat, more Muslims in Gujarat live in urban areas than in most other parts of India. In 2011, as against the national average of 40 per cent urbanization among Indian Muslims, roughly 65 per cent of Gujarati Muslims lived in urban areas. In 2001, it was 59 per cent of Gujarati Muslims. This characteristic is particularly startling even if we account for the fact that Gujarat is one of the most urban states of India: in the 2011 census, urbanization was recorded at 43 per cent in Gujarat vis-à-vis the national level of 31 per cent. At 65 per cent, however, Gujarati Muslims are 23*

*per cent more urban than the whole of Gujarati society. Movement towards urban areas among the Muslims in Gujarat can be attributed to a desire of safety, leading to the creation of gated urban communities like Juhapura. After the 2002 riot, as the 6 per cent increase in the rate of Muslim urbanization from 2001 to 2011 shows, Muslims moved from villages where they were in a minuscule number to cities. For instance, villages near the city of Ahmedabad were emptied of Muslims as they left, mostly for Juhapura, Vatva, Citizen Nagar and Chandola Lake area, among other places. In some sense, these migratory trends and the stark neglect of Muslims in urban Gujarat complicate the Ambedkarite idea of the city as a place for emancipatory social mobility to break free from traditional hierarchical structures, such as caste. In the rest of this chapter, we explore whether Muslim migration to gated zones like Juhapura is merely for safety or not. What does this say about the Ambedkarite idea of mobility, which considers the city as an emancipatory space, while the village is ‘a sink of localism, a den of ignorance, narrow mindedness and communalism’? (cited in Jafelot, 2005, p. 110).*

## **1. The Journey towards Juhapura through Ethnic Violence<sup>8</sup>**

Public imagination has demonized Juhapura’s reputation, generalizing it as a space where the rejects of society live. However, the ghetto comprises of smaller and overlapping localities such as Sarkhej, Makarba, Gyaspur, Fatehwadi, Town Planning Scheme (TPS) 85, Sankalit Nagar etc. In reality, Juhapura is only a small part of the ghetto, but it has come to be used as an umbrella term to lump all these different localities together and signify the Muslim ghetto in Gujarat in public perception.

6 Both these leaders met a cruel end. Rauf Valiullah, a Rajya Sabha member from the Congress Party, was murdered by the Lateef gang in 1992. Ehsan Jafri, who represented Ahmedabad in the Lok Sabha twice, was killed during the 2002 anti-Muslim pogrom.

7 As per Varshney-Wilkinson’s dataset, Ahmedabad witnessed over 1,100 murders during Hindu-Muslim violence between 1950 and 1995. If we add figures from 2002 riot, the number jumps to more than 1,500 (2006).

8 A note on the terminology is needed here. We have chosen to use the term ‘ethnic’ over ‘communal’ since anti-Muslim violence relates with the establishment of a Hindu *Rashtra*, the Hindu nationalist version of the ethnic nation-state. We borrow this usage from a recent work by Raheel Dhattiwala (2019)..

Sarkhej, located in the western outskirts of Ahmedabad, is a township whose initial history is concomitant with that of the Gujarat Sultanate (1407–1573 AD). Its most well-known moment in medieval history comes in 1451 AD: at the time of the establishment of the Sarkhej Roza compound—comprising of a mosque, a lake and several tombs including the mausoleum of Shaikh Ahmed Ganj Baksh—the spiritual guru of Ahmed Shah I (d. 1442) suggested that the city of Ahmedabad should be built nearby. Ahmed Khattu (d.1446), an advisor of Ahmad Shah I from Patan, was buried here. Later, Mehmud Begda (d. 1511), a successor of Ahmad Shah I, and his family were honoured in the same compound with magnificent tombs after their deaths. Although Ahmedabad came under Mughal rule in 1573, later on, in 1583 or 1584, the battle between the Mughal Empire led by Abdul Rahim Khan-e-Khana and Muzzaffar Shah II of the Gujarat Sultanate took place at Sarkhej.

This locality was a human settlement cum production centre, especially of crafts and indigo, coeval with small production centre-oriented villages such as Usmanpura, Kocharab and Vasna. However, the centrality of Sarkhej in the sociopolitical history of Gujarat did not result in the establishment of large settlements until the 20<sup>th</sup> century, for two reasons. Firstly, the focus of the Gujarati Sultanate, as well as of the Mughal Empire, the Marathas and the British that followed it in ruling the state, was on developing the urban core in the old, walled city of Ahmedabad. In this urban core, Ahmad Shah I built the Bhadra Fort, Jama Masjid and Manek Chowk to mark the walled parts of Ahmedabad as the city centre. Secondly, the distance from the city centre to Sarkhej was accentuated by the difficult task of crossing Sabarmati River through the water route. The expansion of western Ahmedabad, on whose periphery Sarkhej is located, began only after 1892, with the construction of the Ellis Bridge over the Sabarmati in Ahmedabad.

### ***1.1 The Making of Juhapura: Secular Beginnings Clash with the 1969 Riot***

The residential set-up of Juhapura, including Sarkhej within its limits, picked up pace from the

early 1970s. This colony for slum dwellers was developed just after Ahmedabad's first major incident of Hindu-Muslim violence in 1969 (though the violence had little relation with Juhapura's initial set of residents). Although minor incidents of violence in Ahmedabad had occurred prior to the 1969 riot, this large-scale rampage, occurring in the same year as Mahatma Gandhi's centenary birth anniversary, was then an outlier in Ahmedabad's history but it would have important consequences on the living patterns of communities in Ahmedabad.<sup>9</sup>

The 1969 carnage in Gujarat has been linked to socio-economic factors such as the declining importance and ultimate closure of cotton textile mills in Ahmedabad. This reasoning gives only a partial picture of the rioting. In fact, the three-day rally in December 1968 by the head of the Rashtriya Swayamsevak Sangh (RSS), M. S. Golwalkar, sowed the roots of the riot. It was held in Maninagar, from where Narendra Modi has been elected multiple times. Later on, in June 1969, a few months after a Hindu police officer in Ahmedabad accidentally pushed a copy of the Quran to the ground, the Jamiat Ulema-e-Hind allegedly provoked Muslim sentiments in a conference it organized. In early September 1969, during the annual Ramlila festival, a copy of the Ramayana fell to the ground when a Muslim police officer tried to control the crowd. Although the Muslim side was willing to apologize, Hindu leaders organized themselves under the Hindu Dharma Raksha Samiti to lead anti-Muslim demonstrations. In mid-September 1969, Balraj Madhok, a Bharatiya Jana Sangh (BJS) leader, made a provocative speech in Ahmedabad. A few days later, a group of Muslims and Hindus had a scuffle near the Jagannath Temple. After this, uncontrollable clashes began.<sup>10</sup>

9 Rioting between Hindus and Muslims in Ahmedabad was first recorded in the early 18<sup>th</sup> century. In 1714, during the festival of Holi, a minor riot broke out between Hindus and Muslims of Ahmedabad as a group of Hindu men sprinkled *gulaal* on a passer-by Muslim according to the *Mirat-e-Sikandari*. Later on, during Eid-al-Adha in 1716, violence could have occurred between Hindus and Muslims on the issue of cow slaughter. For more on this 'pre-history of communalism', refer to Achyut Yagnik and Suchitra Sheth, 2011.

10 The government commission set-up to inquire into the causes of 1969 riot led by Justice P Jaganmohan Reddy

The 1969 riot was the deadliest incident of Hindu–Muslim violence since Partition.<sup>11</sup> Officially, 660 people were killed, including 430 Muslims while unofficial figures ranged from 1,000 to 2,000 (Shah, 1970). A total of 1,074 people were injured, 592 Muslims among them; over 48,000 people were rendered homeless and property worth 42 million rupees was destroyed in Ahmedabad alone, of which 32 million rupees’ worth belonged to Muslims (Reddy, 1970, pp. 179–182). The riot also spread to neighbouring districts.

A unique feature of the 1969 rioting involved the participation of neighbours in violence against each other.<sup>12</sup> This characteristic was particularly pronounced in working-class chawls as Dalits and Other Backward Classes (OBCs), attracted by the Hindu right-wing doctrine of Hindu unity against the Muslim enemy, for the first time attacked their Muslim neighbours. In a city with over 1.25 lakh mill workers (‘TLA five decades’, 1971; Spodek, 2012, p. 195)—roughly 7 per cent of its population—this change marked the beginning of the destruction of the multicultural fabric of Ahmedabad.

Nevertheless, the growth in Juhapura’s human settlement in the early 1970s was somewhat unconnected to the 1969 riot. In 1973, heavy flooding in the Sabarmati River destroyed over 2,000 houses, mostly slums on the riverbank. In turn, the Ahmedabad Study Action Group (ASAG), Ahmedabad Municipal Corporation (AMC), Oxfam and Housing and Urban Development Corporation Limited (HUDCO) designed a planned housing colony called Sankalit Nagar in Juhapura with some 2,250 houses to accommodate the flood victims. This original expansion tells that Juhapura’s journey did not begin as a ghetto. It was more like the previously intermixed areas of the fortified walled city of Ahmedabad or its eastern industrial belt with a working class population. In fact, the government and various NGOs gave slum dwellers the option

to choose their neighbours, as opposed to building separate colonies for Hindus and Muslims (as has become the rule lately<sup>13</sup>). Most of them did not consider religion while making their choice (David, 2002, p. 6). Apart from Muslims, the original residents of Sankalit Nagar came from Hindu low castes (Bhois, Thakores, etc.) and Dalits. Floods, a ‘secular’ natural disaster, could not break inter-religious community bonds. Several housing societies of Juhapura still carry the legacy of its previously intermixed nature in their names, such as Gandhi Smriti, Samir Vihar, Prachina and Sardar Smriti.

### ***1.2 The Making of a ‘Muslim Place’ in the 1980s–1990s***

The 1980s was a particularly tumultuous period in Gujarat’s political history, with continuous Hindu–Muslim riots in cities like Ahmedabad, Surat, Vadodara and small towns, especially in central and northern Gujarat. Consequently, the intermixed social fabric of Juhapura transformed after each riot as Hindus left the area and more Muslims moved in: the former left the place as they felt insecure in the minority pockets they occupied whereas the latter moved in precisely because they felt safer in a Muslim-dominated area.

The rise of the Hindu right wing—in the wake of the economic collapse of the cotton textile mills<sup>14</sup> and the Congress Party’s backward caste-oriented politics—enabled an ethno-religious turn in Gujarat’s politics. Madhavsinh Solanki, a lower-caste Kshatriya Chief Minister of Gujarat, along with Jinabhai Darji, another lower-caste Congress leader, had engineered a formidable coalition comprised of Kshatriyas, Harijans (Dalits), Adivasis, Muslims, or KHAM, representing over 60 per cent of the state’s population. In the early 1980s, Madhavsinh

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has a detailed report on the subject.

11 Howard Spodek (2012) calls it a ‘communal pogrom’. See *Ahmedabad: Shock City of Twenty-Century India*, p. 180.

12 A good memoir on the 1969 riots is Kureshi, H. (2018). *Agnipariksha: an ordeal remembered*.

13 The exact opposite occurred when slum dwellers living on the banks of Sabarmati were rehabilitated in the late 2000s due to the Sabarmati Riverfront gentrification project: Hindus and Muslims, who previously stayed together, were relocated separately on religious lines. For more on this phenomenon, see, Desai (2014). Municipal politics, Court sympathy, and housing rights.

14 On the collapse of Ahmedabad’s cotton textile mill industry, refer to Jani (1984). *Bekar mill majur behaal mill major*. Also, see, Breman (2004). *The making and unmaking of an industrial working class*.

Solanki's government announced 27 per cent reservation in public jobs and education for OBCs. Due to this socially progressive political mobilization, the Congress Party swept the 1980 and 1985 state elections. In turn, the upper castes and upwardly mobile agrarian, Shudra communities such as the Patels (also known as Patidars) became infuriated and shifted their political support to the emerging Bharatiya Janata Party (BJP).

This shift first resulted in caste violence between the anti-reservationist upper castes and Patels on the one side and the Dalits on the other in 1981. The BJP, to benefit politically and deepen its roots in Gujarat, propagated the idea of Hindu unity vis-à-vis the KHAM alliance of the Congress Party. The BJP, along with the Sangh Parivar, portrayed Muslims in a stereotypical manner as an underclass of gangsters and criminals who were taking away jobs from Dalits and OBCs. By the mid-1980s, the casteist nature of violence had transformed into an ethno-religious battle between Hindus and Muslims, highlighting the resilience of upper-caste and Patel hegemony in Gujarat's politics. The rioting from February to July 1985 left 275 people dead in the city of Ahmedabad (Spodek, 1989, p. 765). A repeat of this scale of violence was seen the very next year, leaving over 100 people dead in Ahmedabad. Dalits, who had been attacked by the upper castes and Patels in 1981 in casteist violence, were now attacking Muslims (Shani, 2007, p. 140–147). In some sense, Dalits (as well as OBCs and tribals) emerged as the foot soldiers for the Hindu nationalist movement in Gujarat.

During this period, Dalits and OBCs who lived next to Muslims in the old city, the eastern industrial belt as well as in Juhapura shifted to other parts of Ahmedabad—a phenomenon not unique to Ahmedabad.<sup>15</sup> By the early 1990s, OBC Hindus and

Dalits living in Juhapura had left the area. Some of them moved to the nearby areas of Vasna, Vejalpur and Guptanagar (David, 2002, p. 6). In a sense, this migration was a result of a 'neighbourhood churn'. Because of this churning, the existing population would be residing next to strangers and not among those with whom they had shared friendly bonds for a long time. Due to this feeling of alienation or estrangement amidst a politically charged environment, they may decide to move out. This was one of the main reasons for the Hindu population moving out of Juhapura.<sup>16</sup> Similarly, as the tolerance for Muslim neighbours declined, Muslims had no choice but to move to the city's periphery, to areas like Vatva and Juhapura.

The instances of ethnic violence reappeared in the early 1990s, at the peak of the Ram Janambhoomi movement to establish a Ram Mandir in Ayodhya at the site of the Babri Masjid by the Vishwa Hindu Parishad (VHP). L. K. Advani's rath yatra in September–October 1990 to canvass support for this movement began from Somnath Temple in Dwarka, Gujarat. This was a site of injury to Hindu pride as Mohammed Ghazni, a sultan of the Ghaznavid Empire, had destroyed the temple in the past, and it was chosen strategically for asserting Hindu pride. This ended up causing tremendous disturbances. For instance, in April–October 1990, over 30 people were killed in the city of Ahmedabad (Galonnier, 2013). The riots that followed the destruction of the Babri Masjid in December 1992 spread to urban Gujarat, including Ahmedabad and Surat (which had previously not seen large-scale ethnic violence). In the month of December alone, 58 people were killed in Ahmedabad (ibid).

Simultaneously, a demonizing vocabulary to refer to Juhapura emerged. The area was routinely termed 'mini Pakistan', bringing in the two-na-

15 For instance, regarding United States, a detailed literature exists about 'white flight', referring to the moving out of white population as people of colour move in the neighbourhood. Recent research suggests that to be the case in modern Britain too: as more Pakistani Muslims move in to a neighbourhood, the white population is less likely to buy the house in that neighbourhood or the already existing population would decide to move out. See, Pyce (2019). White British homeowners more likely

to move out if Pakistanis buy houses nearby.

16 It is a different matter that the lower-caste Hindus and Dalits who moved out of Juhapura were not accorded the luxury of staying in elite localities such as Paldi, Navrangpura, Ghatlodia, S. G. Highway, Satellite: in fact, many Dalits now reside in an upwardly mobile space like Chandkheda on the outskirts of Ahmedabad on the way to Gandhinagar. See, Banerjee and Mehta (2017). Caste and capital in the remaking of Ahmedabad.

tion theory to describe Ahmedabad’s geography. A physical wall built to demarcate the boundaries of Juhapura from its Hindu neighbourhood Vejalpur is still referred to as the ‘Wagah Border’, or sometimes as Ahmedabad’s very own ‘Berlin Wall’<sup>17</sup> (see photograph 1). Juhapura emerged not only as a place where riot victims sought refuge but where Muslims moved to pre-empt the possibility of becoming a victim. Its all-Muslim nature was purely for safety concerns in the 1990s—an identity which, since then, has continued to solidify itself, as more Muslims consistently migrated towards the ghetto.

**Image 1: The Wall of Juhapura**



*Walls or ‘borders’ demarcating Juhapura from its neighbouring Hindu locality is a commonplace phenomenon, demonstrating the mistrust and distance between the two religious communities. Apart from these higher than usual walls, the entry and exit points of Juhapura, as well as their residential quarters, are dotted with police stations—in turn restricting the geographical spread of the ghetto.*

*Credit: Christophe Jaffrelot*

**Box 2: De Jure Hindu Rashtra in Gujarat through the Case of the Disturbed Areas Act 1991**

*The ghettoization process in Gujarat has*

*been fostered by a law that actively promotes housing segregation among its urban populace. The Disturbed Areas Act 1991, which replaced the original law passed in 1986, allows the state government to declare riot-prone urban areas as ‘disturbed’, by which sale of property requires additional permission from the collectorate’s office.*

*The original aim of the act was noble: to stop distress sale of properties in riot-prone localities in the aftermath of numerous incidents of religious violence in the 1980s and 1990s. In practice, this well-intentioned law has been misused with the justification of stopping the Muslim takeover, real and imagined, of Hindu-dominated localities. More than 40 per cent of Ahmedabad’s geography, including localities used as entry and/or exit points from Juhapura, come under the purview of this law. It has been effectively used by the state government to prevent the ‘horizontal’ geographical expansion of the Muslim population, pushing them to ghettos like Juhapura on the outskirts of Ahmedabad.<sup>18</sup> In practice, it is very difficult for Muslims to obtain administrative permission to buy any accommodation in mixed neighbourhoods coming under this law—even in places where they used to live and/or that their family had left in the past because of communal violence.*

*The Disturbed Areas Act, which restricts the spatial mobility of Muslims and prevents inter-community interactions, marks a fundamental transformation in the nature of the state in Gujarat. The state in Gujarat is not only filled with Hindu right-wing elements, representing a deepening of right-wing ideology, it is also invested in granting a legal recognition to Hindutva politics. In effect, the de facto nature of Hindu Rashtra—as manifest in acts of deliberate state neglect—mutates to a de jure Hindu Rashtra with anti-Muslim laws like the Disturbed Areas Act.*

<sup>17</sup> The first recorded reference to this ‘border’ is available in *Times of India*, ‘The great wall of Vejalpur’, 16 February 1994. The first academic reference to this physical wall is found in Breman (1999). Ghettoization and Communal Politics..

<sup>18</sup> For more on this subject and its recent misappropriation by the state government, see Jaffrelot and Laliwala (2018). The segregated city.

*In recent times, the de jure Hindutva nature of Gujarat's state has only strengthened. For instance, in mid-2019, the Gujarat government modified the logic behind the Disturbed Areas Act through an amendment: from preventing distress property sales to maintaining a 'demographic balance' in the so-called disturbed localities. The state government gave further discretionary power to top-level bureaucrats and prescribed a jail term of six years in case of non-compliance with the law (Dabhi, 2019). Anxieties over Muslim expansion in Paldi, an upscale locality in Ahmedabad dominated by Jains and Hindus, motivated this change.<sup>19</sup>*

### **1.3 Juhapura's Post-2002 Pogrom Trajectory**

The 2002 anti-Muslim pogrom resulted in a 'proper' ghettoization in Juhapura. The scale of the violence in 2002 was unprecedented. It was a reaction to over 50 *kar sevaks* (devotees wishing to build a temple of Lord Ram) being burned to death in a train coach near Godhra railway station, allegedly by a Muslim mob. The rioting that followed was not merely a case of anti-Muslim violence but was an ethnic cleansing.

Small towns and villages, especially in the central and northern Gujarat region, too were affected, besides cities such as Ahmedabad and Vadodara. This reach of violence in rural Gujarat, especially in the tribal zones of Dahod, Chhota Udaipur, Panchmahal and Banaskantha, confirmed the militant indoctrination of tribals through the Vanvasi Kalyan Ashram, a branch of the RSS. Official figures put the death toll at a little above 1,000—mostly Muslims—whereas unofficial estimates claim over 2,000 people died in this carnage ('Nanavati Commission Report', 2019). There were widespread accusations of state complicity. More than one lakh houses, and a thousand hotels along with hundreds

<sup>19</sup> In August 2019, the state government withdrew the permission granted to Varsha Flats, a redeveloped housing scheme by Muslims. Varsha Flat residents have approached the Gujarat High Court which had earlier stayed the eviction of residents. The Ministry of Home Affairs, though, has sought clarifications from the Gujarat government on the proposed amendments. See Dave (2020). Gujarat: Disturbed Areas Act amendment held back by MHA.

of religious places (mostly mosques and dargahs), were either damaged or destroyed.<sup>20</sup> The impact was so large that Ahmedabad alone had to accommodate over one lakh Muslims in refugee camps, which were marred by dismal State services. Much has been said about the causes of the 2002 pogrom as well as its electoral implications for the BJP, but little is known about its far-reaching consequences on Gujarati society. (Jaffrelot, 2011; Spodek, 2012).

Middle-class and elite Muslims—doctors, lawyers, business persons, academics, politicians, judges, police officers—in cities like Ahmedabad and Vadodara were attacked on a large-scale for the first time. Relatively affluent Muslims with greater social capital, despite having connections with the State authorities, were not safe. Even a former Member of Parliament like Ehsan Jafri was helpless: he was mercilessly killed at Gulberg Society in Ahmedabad by a mob of more than 5,000 Hindus. Muslims in elite societies of Paldi, too, were assaulted on a large-scale for the first time by an angry mob, allegedly led by the late Haren Pandya, an ex-MLA from Ellis Bridge constituency. At this point in history, elite Muslims of Ahmedabad realized the importance of safety over the status of living in posh, inter-religious localities: consequently, they migrated to Juhapura in large numbers.

Apart from the relief colonies built in Juhapura by Islamic reformist organizations to accommodate riot victims, a large-scale migration of Muslim elites from Ahmedabad and nearby smaller towns and villages to Juhapura took place. In a way, this migration added economic diversity to the ghetto and made it a 'class-blind' locality (although, as we will show, Juhapura has its own set of class divisions). This ethnic homogeneity coupled with economic heterogeneity fits our definition of a ghetto and the framework of ghettoization developed by Loic Wacquant, which sees the ghetto as a composition of four elements: 'stigma, constraint, spatial confinement, and institutional encasement' (2004, p. 1).

<sup>20</sup> The most comprehensive report on the 2002 pogrom remains the Human Rights Watch's 'We Have No Orders To Save You: State Participation and Complicity in Communal Violence in Gujarat'.

## 2. Paradoxical Development through ‘Negotiating’ Elites

Our fieldwork shows that middle-class and elite migration, which has particularly increased in the last 15 years due to a real estate boom, has allowed Juhapura residents to privately develop their locality (to a limited extent) and negotiate their civic demands with the state more effectively. In fact, despite no incidents of large-scale anti-Muslim violence after 2002, Muslims—including the middle classes and elites—continue to shift to Juhapura.

### 2.1 Self-help in the Era of a *de jure* Hindu Rashtra

In our definition of a ghetto, we have highlighted the indifference of the State to the locality’s development of essential infrastructural facilities. Juhapura fulfilled this criterion even more evidently under the BJP government, as one of the obvious objectives of the 2002 pogrom was to drive Muslims out of the prominent localities of urban Gujarat. This form of Hindutva politics has been supplemented, as we have discussed above, by the establishment of a *de jure* mini-Hindu Rashtra where religious minorities had no place, which saw Muslims being forced to resettle at the periphery, in quasi-no man’s land areas like Juhapura, where the state would ignore them. This strategy of obliteration of the other in Gujarat has slowly been nationalized, as evident from the Sangh Parivar’s fight against ‘land Jihad’ elsewhere in India

The state apathy that Juhapura faces in these circumstances has forced its residents to build and improve basic infrastructural facilities on their own. This counter-hegemonic process has been facilitated by the post-2002 arrival of middle-class and elite Muslims, who possess some intellectual, financial and social capital. In some ways, Juhapura became a privately-developed city. Some of these private initiatives were linked with ideas of piety and religious charity, as the role of NGOs will testify below.<sup>21</sup>

21 On the issue of a new-found piety among riot victims who shifted to Juhapura, see Jasani (2008). Violence, reconstruction and Islamic reform: Stories from the

These private initiatives are particularly important because Juhapura was included within the official municipal limits of Ahmedabad only in 2006 (Das, 2015). Until then, various parts of the locality were divided under five panchayats that fell under the purview of the Ahmedabad Urban Development Authority (AUDA), restricting the growth of public infrastructure in the ghetto due to concerns over clearance of land as ‘non-agricultural’ land. The inclusion of Juhapura in the AMC, however, did not make private initiatives redundant, as the local power centres held the residents of Juhapura responsible for any lack of public infrastructure. For instance, Surendra Patel, ex-chairman of AUDA (1996–1997, 1998–2005), ex-Rajya Sabha member, and currently the Treasurer of BJP Gujarat, told us, ‘Juhapura has innumerable unauthorized constructions with illegal electricity lines. Residents do not even pay property taxes to the government. In that case, you [Muslims] must change your mentality to bring development’ (Patel, 2019).

*Images 2 and 3: F. D. School and a private charitable hospital*



*Credit: Christophe Jaffrelot*

The issue of encroachments allowed the state to neglect its duties of providing essential infrastructure or privatizing these services. Surendra Patel cited an instance when a real estate developer was pressured to open a private school by the state: ‘Ed-

Muslim ‘ghetto’. Regarding the changes in the discourse of Islamic activists post-2014 with the rise of BJP in Juhapura, see Laliwala (2017). Faithful and secular: Islamic Activists in Juhapura, Ahmedabad.

ucation is a problem among the Muslims, which I realized while working for Juhapura. I remember that once a builder was opening a big complex in Juhapura. I stopped the opening and told him to open a school on a floor of the complex to get the permission. He had to do it' (2019).<sup>22</sup>



Credit: Christophe Jaffrelet

In this context, Juhapura residents had to create their own facilities—a form of ‘privatization by design’, which fits the framework of ‘Vibrant Gujarat’ that privileges privatization. Some of the newcomers possessed the necessary intellectual, financial and social capital to enable the constructions of these facilities. This capital is behind the creation of over 30 primary schools in Juhapura, including Crescent School, F. D. High School, New Age School, Shanti Niketan and Model School. The combined capacity of these schools, however, is not more than 3,000 students at the Class I level. For instance, Crescent School, which started classes in 2008, serves just over 2,000 students in its classes from junior kindergarten until the 12<sup>th</sup> standard, with a staff of 90 teachers. Its fees of Rs. 1,400 per month for English medium and Rs. 1,200 per month for instruction in Gujarati makes it an institute that targets middle-class families.

While some of the lower middle-class and poor Muslims can benefit from these undertakings, there

22 We could not independently verify this instance by locating the school’s premises or its promoters. Patel has been associated with such capitalistic privatization in his role as an eminent urban planner in Gujarat while developing the (in)famous Sabarmati Riverfront in Ahmedabad leading to forced eviction of over 10,000 poor households—now, private commercial and residential spaces in addition to public amenities such as parks, walk-ways, cycle-paths will come up on the banks of Sabarmati. See, Mathur (2012). On the Sabarmati Riverfront.

is still a real deficiency of schools serving the poor population of Juhapura. V. K. Tripathi, an educationist based at the Indian Institute of Technology, Delhi, calculated in 2013 that Juhapura had at least 6,000 children reaching school-going age every year, given a population of at least three lakh Muslims with a birth rate of 2 per cent. He added: ‘Only 2,800 children are admitted to class I, of which only 360 (13 per cent) [are admitted] in four government primary schools. This is far below the national average. The teacher to student ratio in government schools is dismal, poorer than 1:50. The non-grant schools (all Gujarati medium except three which were English medium) admit around 2,400 students at class one level’ (Janmohammed, 2019).

On top of inadequate infrastructure, a few Muslim charity-based private schools in Juhapura are inspired by the idea of religious, morality-infused education. They wish to impart the knowledge of Arabic and the Quran apart from lessons in ethics and good behaviour at school. While they do not compromise on the secular syllabus set by the government, in a way these schools merge the site of imparting secular knowledge with religious forms of knowledge; in other words, the madrassa meets the site of the school. One of the authors, Sharik Laliwala’s dissertation on this specific subject opines on the changing face of Islamic activism in Gujarat:

Islamic activists [...] have gone beyond the traditional way of building morality among Muslims through mosques, madrassas and *ishtemas*. Now, they focus on building capacity and skills among Muslims by starting educational institutes which combine secular syllabus with Islamic education. By doing that, these activists are challenging the understanding that scientific knowledge or temperament belong only to seculars professing rationalism.

(Laliwala, 2017, p. 36)

Several respondents who wish to remain anonymous on this particular issue note that while the private schools infuse a religious language into their curriculum, they do not provide quality education. Indeed, the aspirational middle-class and

elite residents of Juhapura prefer to send their children to well-known schools in Ahmedabad such as Mount Carmel, St. Xavier's Loyola Hall, Udgam, Delhi Public School and Anand Niketan, which is evident from the visibility of some of these schools' buses in the area.

## ***2.2 Lobbying the State: A Mixed Space of the Private and the Public***

The arrival of middle-class and elite Muslims during and after the 2002 pogrom not only contributed to new infrastructural facilities, including the establishment of new schools, but also resulted in the creation of more effective lobbies. These lobbies have been utilized to either negotiate with or put pressure on the state government and the municipal corporation—two entities which have neglected Juhapura given the Hindu nationalist bent of the state in Gujarat.

One of the first examples of these elite pressures occurred in 2010. Syeda Saiyidain Hameed, a member of the Planning Commission who collected testimonies of Muslim women victims of the 2002 pogrom, raised the issue of poor educational facilities in the annual meeting of the Planning Commission. Montek Singh Ahluwalia, the Deputy Chairman of the Commission, pointed out that the 'Muslim population in Gujarat was 9.1 per cent but enrolment data showed that only 4.7 per cent of primary school children and 4.8 per cent of upper primary school children were Muslims' (Siddhanta, 2010). Narendra Modi, who was then CM of Gujarat, in the same meeting showed his dissatisfaction at Hameed joining protests in Juhapura. A month later, in June 2010, Saurabh Patel, the Minister of State for Planning in Gujarat, wrote a letter to Ahluwalia criticizing the commission's focus on Juhapura and accusing Hameed of 'build[ing] an entire case of activist-manufactured data' ('Saurabh contests plan', 2010). Despite levelling these criticisms, the first municipal school in Juhapura was budgeted for in 2013 by the AMC (Sharma, 2013). A government secondary and higher secondary school serving 700 students was built only in 2016. While the area in total has seven grant-in-aid schools, it

still does not have a public college (Yagnik, 2016). Private schools coupled with the existing public education system are still inadequate to cater to the educational needs of Juhapura's residents.

The case of education shows that the arrival of middle-class and elite Muslims migrants to Juhapura has resulted in the mushrooming of some private initiatives and some level of effective lobbying. Nevertheless, as seen above, the outcome of these developments have has limited.

This mix of private and public 'achievements' is also obvious in health-related infrastructure. The first Urban Healthcare Centre (UHC) was inaugurated by Anandiben Patel, the then CM of Gujarat, in 2015. It clearly came very late in the day and is inadequate to serve a population of over 4 lakh Muslims. Therefore, healthcare is mostly undertaken by private clinics and charitable hospitals, such as Iqra Hospital and Amena Khatun Hospital. Besides, free healthcare camps have been organized by NGOs. For example, recently in March 2019, Hamari Awaaz organized a free healthcare camp for women in Juhapura. However, the public distrust of the emergency-related services at Juhapura's private hospitals forces residents to visit the V. S. Hospital in Paldi or Jivraj Mehta Hospital in Vasna for emergencies—both of which are at least 3–4 kilometres away from Juhapura's nearest entry/exit point.

The issue of healthcare in Juhapura is exacerbated by the high levels of air pollution. Juhapura is located near a sewage treatment plant run by the government. This plant releases effluent into Sabarmati River's waterbody, worsening the air and water quality in the locality. The frequent passage of trucks on the National Highway 947, which passes through Juhapura, only adds to the air pollution. Since the ghetto is not very far from the Pirana waste dump, pejoratively known as the 'mountain of Ahmedabad' given its large and continually growing size, there are minuscule chances of the air pollution ever getting better.

Concerns exist about banking services, too, which had been largely absent until 2005. Bank

branches, mostly of public banks such as Bank of India, Dena Bank and State Bank of India, have come up only in the last decade—broadly coinciding with the arrival of professionals and elites in Juhapura. This trend points to a larger pattern of Muslim marginalization in the formal banking system in Gujarat, as Muslims are least likely to get a loan from banks, forcing them to procure funds from relatives or by other institutional or non-institutional means.<sup>23</sup> The poor population relies on microfinance initiatives. According to a survey conducted by the NGO Saath in the poorer localities of Juhapura such as Fatehwadi, Sankalit Nagar, Ekta Maidan and Ronak Park, roughly 400 households have benefitted from their microfinance scheme. Most of these households' earning members are active in vocations such as, inter alia, carpentry, automobile repairing, autorickshaw driving, plumbing, seasonal product making, weaving and casual labour.

The role of NGOs in the health and finance sectors suggest that the increasing presence of elites and Muslim professionals has left a mark on the civil society of Juhapura as well. New actors, such as Action for Juhapura Infrastructure Movement (AJIM), Ahmedabad Task Force (ATF) and Zubeda Seva Ghar, have added weight to civic participation and helped in mounting public pressure on the state. Zubeda Seva Ghar, for instance, helps the residents of Juhapura to fill and submit admission forms to schools under the Right to Education Act (RTE), as well as aiding in getting voting cards, ration cards, Maa Amrutam cards for free healthcare, scholarships, passports and PAN cards issued. The ATF is active on issues of encroachment removal, cleanliness and education.

On the other hand, AJIM has expressed its concern for Juhapura through a legal and rights-based approach. In 2017, AJIM approached the Gujarat High Court with a complaint against the AMC for not providing adequate basic infrastructure—street lights, traffic management, road infrastructure, re-

moving cattle stray, etc. The High Court gave a favourable verdict and instructed the AMC to ensure the provision of basic services in Juhapura. It observed in its verdict that the 'local authority is bound to see that the life of the persons residing in the city is made meaningful, complete and worth-living' (2018, p. 39). Invoking Article 21 (the article on right to life) of India's Constitution, the court gave 30 directives to the AMC to ensure, inter alia, construction of roads, maintenance of traffic and a solution to the cattle menace.

NGOs also combine private initiatives with lobbying efforts. In March 2018, social activists associated with AJIM and other organizations met Gautam Shah, the then Mayor of Ahmedabad, to present the concerns of Juhapura residents. As a result of AJIM's legal actions and civic pressure, Juhapura is seeing some improvement in public infrastructure. At the Vishala Circle and Juhapura Cross Road, traffic police booths have been installed. These developments are in line with AJIM's vision to ensure basic services in all parts of the ghetto in a few years' time in Juhapura.

In June 2018, before any concrete plan for the traffic problem had been put in place, AJIM convenor Dawood Kothariya, frustrated by state inaction, personally managed the traffic in evenings at the Juhapura Cross Road during the month of Ramzan (Kothariya, 2019). Moreover, AJIM and Zubeda Seva Ghar actively help Juhapura residents fill the forms necessary to get themselves registered on the electoral roll. Gulmoin Khokhar, a member of Zubeda Seva Ghar, claims to have helped file 1,700 voter registration forms before the state election in Gujarat in 2017. AJIM claims to have helped over 1,500 residents, mostly from Fatehwadi, in applying for voter IDs in 2018 alone.

The social capital of elites has created a space for dialogue with the state government, which until now had shied away from engaging with Muslims. For example, in 2017, the Mega EduFest, an educational and career fair, was organized in Juhapura. Nearly 75 schools, tuition classes, universities and counselling agencies advertised their amenities to interested parents, guardians and children at the

<sup>23</sup> According to the Indian Human Development Survey (2011-12), out of eight major religious and caste groups, Muslims were least likely to get a loan from a bank in Gujarat, on par with the Adivasi population of the state.

fair. Although most of the institutes that participated specifically catered to Muslim children, there were a few exceptions, like Gujarat Vidyapith. Talks by eminent members from the Muslim community and educators were also organized. Bhupendrasinh Chudasama, the Education Minister of Gujarat, spoke at this event. A year later, the second edition of the Mega EduFest took place, on a bigger scale. In the second edition, politicians from both Congress and BJP were invited. In a way, such festivals also help with the utilitarian goal of acquiring government permissions to set up schools. Asif Pathan, an educationist and a co-organizer of EduFest, admits that the presence of the Education Minister will definitely create pressure on municipal officers to grant permission for a new school or on the education department to allow an increase in the intake of students in existing private schools (Pathan, 2019).

The state's increasing yet inadequate presence in Juhapura is a recent phenomenon: highlights include Narendra Modi coming for the Ummat Property Show in 2014; opening of an UHC, an anganwadi, a few municipal schools, a new municipal ward-level office for Gyaspur-Maktampura; and Gautam Shah's visit to Juhapura on an autorickshaw in 2016 ('Mayor inspects Juhapura', 2016). Moreover, a new flyover at Anjali Cross Road where Paldi and Vasna intersect—which is also an entry point to Juhapura—will reduce travel time and improve traffic management during peak hours. Recently, a proposal to build an English-medium government school has been sent by the District Education Office (DEO) to the Commissionerate of Schools (Dave, 2019). Some parts of Juhapura such as the Agriculture Produce Market Committee (APMC) Market and Gyaspur will soon be connected to the Ahmedabad Metro Rail project through a depot station at Gyaspur and a metro stop at APMC Market. The positive impacts that connection to the metro brings can be seen in the area around the metro station in road infrastructure and electricity and drainage lines. Other than that, a housing scheme for the Economically Weaker Sections (EWS) is about to be completed in Makarba, though as we highlight in the upcoming section, it may end up

creating more troubles rather than helping poor Muslims.

In late July 2019, Kirit Solanki, Member of Parliament from Ahmedabad, raised the issue of building a few kilometres-long flyover at Vishala Circle, where Juhapura's boundaries begin, in the Parliament. He insisted on constructing this overbridge to reduce the traffic of heavy transport vehicles in the ghetto and ease the movement of goods to and fro the Saurashtra-Kutch region. Moreover, Solanki wrote a letter urging Nitin Gadkari, Union Cabinet Minister for Road Transport and Highways, to solve this problem. Gadkari went on to acknowledge his letter and has promised necessary action from the National Highways Authority of India (NHAI).<sup>24</sup>

However, relative improvements have not removed the tag of 'ghetto' from Juhapura or the pejorative public usage of 'mini Pakistan' when referring to it. The state's anti-Muslim bias, too, has not gone away. A recent study comparing Juhapura with the nearby Yogeshwar Nagar, a Hindu-dominated slum, reveals that the Muslim ghetto receives far fewer municipal services, despite having a more economically mobile and socially influential population (Sahoo, 2016). More importantly, it must be acknowledged that the majoritarian nature par excellence of the State in Gujarat that has forced Juhapura's residents to engage in lobbying efforts in the face of State hostility against Muslims; it is not a celebratory act of mutual engagement but one which is born out of helplessness and increasing marginalization. In fact, the gesture of inviting the BJP politicians to events in Juhapura does not evoke full-fledged support from civic groups. For example, Waqar Qazi of Urja Ghar, an organization actively spreading constitutional knowledge among schoolkids to inculcate active citizenship among Muslims of Juhapura, expresses his dismay at the penetration of the BJP in Juhapura. He opines: 'Juhapura residents have started cosyng up to the

<sup>24</sup> His speech is available on YouTube. Bharatiya Janata Party (2019, July 31). Dr. (Prof.) Kirit Premjibhai Solanki raising 'Matters of Urgent Public Importance' in Lok Sabha. Retrieved May 15, 2020, from <https://www.youtube.com/watch?v=qJaF1BjtAKg>.

BJP because its opinion makers have allowed [it to happen]. If BJP politicians come to the EduFest, of course a resident may become inclined to support the party. For the party, it's an open access to Juhapura!' (Qazi, 2019).

To sum up: Juhapura has changed after it witnessed a significant influx of Muslim elites and professionals who are in better positions to privately develop the ghetto and lobby the State. In some sense, it gave the ghetto an economically heterogeneous character while further solidifying its ethnically homogeneous constitution. These elites and middle-class professionals shifted to Juhapura for two important reasons. Firstly, as we discussed above, during the 2002 carnage in Gujarat, wealthy and influential Muslims were attacked on a large-scale for the first time. Hence, the question of safety became more important than before; naturally, migration to Juhapura followed. Secondly, the real estate boom—riding on the back of worldwide easy money inflow starting in 2004–2005 and India's economic growth—was also seen in the Muslims-dominated localities of Ahmedabad, in line with Gujarat's fast-paced urbanization. Since the spatial movement of Muslims is limited, it was Juhapura where a big portion of this money ultimately became visible. After the migration, given their relatively better social, financial and intellectual capital, these elites could negotiate with the state for improved public delivery, though it was a negotiation constrained by the majoritarian ideology of the state in Gujarat. This form of lobbying by citizens is forced by the state's abdication of its duties to provide for a dignified life to its citizens. The success of lobbying efforts, though visible, has been limited to certain parts of Juhapura which house the relatively better-off Muslims, signifying the non-linear character of citizenship in the ghetto.

In the next section, we focus on how the elites compare with the non-elites in the ghetto by looking at the creation of class and sect-specific colonies in Juhapura and the resilience of gender-based activism, mostly by lower-class women, in resisting conservative elements and elitism in Juhapura.

### 3. What Muslim Community?: The Carving Out of 'Citadels'

Marcuse, a theoretician of urban sociology who studied differentiation within American ghettos, describes what he calls a 'citadel' as 'a spatially concentrated area in which members of a particular population group, defined by its position of superiority, in power, wealth or status, in relation to its neighbours, congregate as a means of protecting and enhancing that position' (1997, p. 247). Juliette Galonnier has applied this category to the Muslims of Sir Syed Nagar in Aligarh while Ghazala Jamil has examined similar patterns in Delhi's Muslim neighbourhoods. Jamil, for instance, notes that 'different classes within Muslims are treated differentially in the discriminatory process. The resultant spatial "diversity" and differentiation this gives rise to among the Muslim neighbourhoods, creates an illusion of "choice", but in reality, the flexibility of the confining boundaries only serves to make these stronger and shatter-proof' (2017, p. 27). The idea of the citadel is also more and more relevant in the case of Juhapura, where internal spatial differentiation on socio-economic (and sectarian lines) can be seen emerging in the form of an aspirational class who are given a voice through discourses on privatization and 'Vibrant Gujarat'. This kind of socio-economic differentiation has somewhat united the elites, while restricting the scope of 'class-blind' solidarities, in Juhapura.

Juhapura, as we saw above, now accommodates a thriving middle class and elite section of the Muslim community, adding an economic variety to ghettoization. These class divisions are visible in the internal boundaries of sub-localities in Juhapura, through which the various classes distinguish themselves from each other. For example, elites and upper-middle-class Muslims reside in societies mostly located at the roadside of the national highway, parts of Makarba, and on both sides of the TPS 85 main road. Juhapura's lower class and lower-middle class, on the other hand, stay in Sankalit Nagar, Fatehwadi, Gyaspur and in some parts of Makarba. On top of the already existing elite neighbourhoods such as Prachina Society, Samir Vihar,

Zainab Park, Sardar Smriti and Khurshid Park, various large-scale real estate projects such as Al-Burj (a scheme of roughly a dozen multistoried blocks), Al Muqaam, several properties on the TPS 85 road, and the still developing Himalaya Falaknuma project have come up in recent times.

The data collected by Abida Desai show that a square yard costs Rs. 50,000–60,000 in a large number of localities (about 15), including Samir Vihar and Prachina—even Rs. 70,000 in Sardar Smriti. The price is less than half these amounts (ranging from Rs. 20,000–30,000 per square yard) in a dozen of the intermediary neighbourhoods (see Appendix 1). Desai’s data on Muslim-dominated areas other than Juhapura in Ahmedabad show that the prices of Juhapura’s upscale colonies are quite similar to other Muslim-dominated middle-class localities such as Shah-e-Alam and Dani Limbda (see Appendix 2). Only two Muslim-dominated elite localities, i. e., Paldi and Navrangpura, have a somewhat higher land price than posh colonies of Juhapura. For the elites, Juhapura emerges as a lucrative option not just for living but also for investing. In the poorest localities of Juhapura, a square yard is worth less than Rs. 15,000. We will show that despite increasing gentrification, a large underclass of poor Muslims reside in Juhapura. The land rates in poor localities compare with Vatva, Narol and Naroda—three localities which are on the periphery of Ahmedabad, with a significant population of industrial working class and casual labourers, followed by riot victims and people displaced by the gentrification of Sabarmati’s riverfront.

These figures reflect a formidable socio-economic differentiation, which is a logical corollary of the transformation of Juhapura from a slum into a ghetto in the last two or three decades. In fact, real estate inflation has stemmed from a rise in demand vis-à-vis accentuating spatial constraints: Juhapura cannot expand geographically, not only because of the wall, the highway and the roza mentioned above, but also because of the colony housing police officers near Makarba—an indirect way to keep an eye on a ‘suspicious’ community. In 2014, a few months before becoming the prime minister of India, Narendra Modi inaugurated the Ummat

Property Show in Juhapura. This show, a joint partnership between Hindu developers and Muslim financiers and builders, showcased properties meant only for Muslims. Moreover, new party plots such as the Kadri party plot, Lokhandwala party plot and Ghazala party plot have developed in Juhapura in the last five years as sites for social gatherings, showing the growth of the population as well as the presence of wealthy residents.

Images 4, 5 and 6: *The Two Faces of Juhapura*

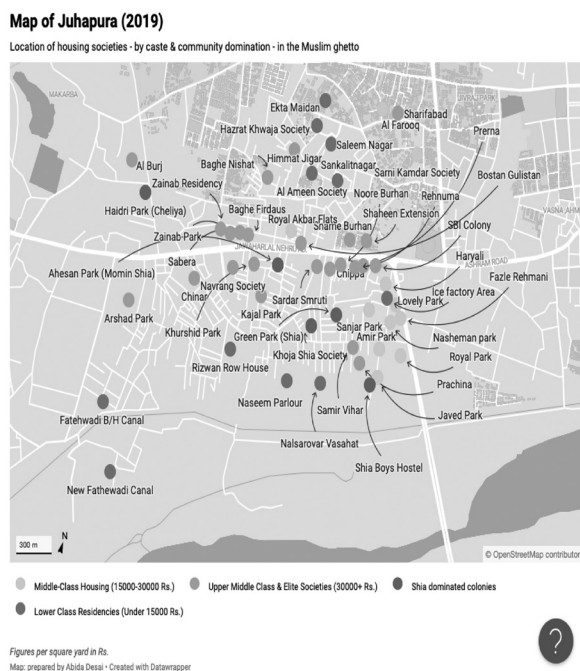


Credit: Christophe Jaffrelot

There are growing signs of elites flourishing in Juhapura besides development of real estate. For instance, Nadeem Jafri, an entrepreneur based

in Juhapura, saw an opportunity in the absence of any competition in the supermarket business. His enterprise, Hearty Mart Super Market, launched in 2004 in Juhapura near Vishala Circle, caters to the growing Muslim middle class and elites for their daily grocery needs. The success of the store has motivated him to open another outlet in Juhapura, albeit a few kilometres away from the first one. Now, he also faces competition from a new player, the 1 Mart, which has opened shop next to Hearty Mart's new outlet. Similarly, in the restaurant and food business, alongside existing players like Moti Bakery and Magic Chicken, new start-ups such as Fishtry, Hop Meal, Hyderabad Hut etc. have begun. An established player like Moti Mahal has launched a new branch inside Juhapura. Consequently, food delivery platforms such as Zomato and Swiggy—which earlier did not serve Juhapura residents—have now slowly begun to penetrate the locality.

*Map 3: Socio-economic Differentiation: Lower Class, Middle Class and Elite Muslims and Sectarian Differences in Juhapura's Colonies*



Source: Abida Desai

Middle-class and elite Muslims are coming to Juhapura in large numbers for many different reasons, as we have seen. First, safety remains a prior-

ity in the context of a rising sense of insecurity due to the continuous campaigns ranging from reconversion attempts by the Sangh Parivar to 'anti-love Jihad' activism and mob lynching in the name of cow protection. Second, to find a place in mixed neighbourhoods has become more and more difficult, because of both law and the undeclared fight against 'land Jihad' that Hindu vigilantes are waging. Thirdly, protecting one's culture in the context of the growing Hinduization of the public space has become a priority for some families. This last motivation is precisely one of the root causes in the making Marcuse's 'citadels' in Juhapura, socio-topographical constructs which combine cultural and socio-economic features.

However, the search for identity for Juhapura residents does not end with internal reorganization on class lines. In fact, it only begins with a renewed vigour as Muslims who used to live in walled parts of Ahmedabad broke their socio-communal bonds by shifting to Juhapura. In turn, they had to anchor themselves to new markers of identity beyond ethnic connections with their shift. For instance, Waqar Qazi delineates this feature of Muslims living in Juhapura:

Old [city] of Ahmedabad has its own culture. [In] *polis* [housing colonies of Old Ahmedabad], people had their social bonds since [a] long time. Juhapura broke these social connections. Who would serve in your weddings? [In] *polis*, your neighbours did. In Juhapura, you have to hire servers. So, this culture [of social networks] is missing [in Juhapura].

(2019)

This characteristic is another paradoxical trait of ghettoization in Juhapura, where an ethnically homogenous community destroys the old connections of society, leading to a new search for identity on not just class but also on sectarian lines. Rampant sectarianism is manifest, as shown in Map 3. Shias, who are numerically minuscule in Gujarat, have separate housing societies as a result of discrimination against them and their need to distinguish their identity from other Muslims. The Cheliya com-

munity—a Shia community with Sufi traditions, mainly occupied in the restaurant business—have societies such as Haidri Bagh in Juhapura, whereas Khoja Muslims—a trading community that follows the Aga Khan—can be found in Karimi Society.

Sectarianism is most visible in mosques. For example, Deoband and Tabligh *jamaat* oriented Muslims believing in reformism based on originalist/fundamentalist religious discourse have penetrated Juhapura from the 1990s—in fact, they have only deepened their network with each successive riot (Jasani, 2008, pp. 431–456). They have developed over a hundred mosques and at least a couple of huge madrasas with accommodation facilities in Juhapura. Their emphasis on praying directly to Allah, not seeking an intermediary in the form of a Sufi saint buried at a dargah, seeks to demolish the hold of aristocratic upper-caste (*Ashraf*) Sufi families over the Muslims. In turn, frustrated Sufi Muslims in Gujarat have begun to rally around political power by joining the BJP to protect their dwindling privileges among Muslims.<sup>25</sup>

Another element of differentiation—on which we have not sufficiently focused—is of caste within Muslim societies. In Juhapura, colonies meant for specific jatis such as Chhipa Society, Mansuri Society etc. can be found. Moreover, a quick look at the names of residents in elite housing colonies (for instance, Sardar Smriti or Prachina) reveals that most of them come from Ashraf castes such as Saiyeds, Pathans, Mughals, Bohras, Memons, Khojas and upwardly mobile OBC Muslim castes such as Chippas and Mansuris. On the other hand, some of the gender-based activists we interviewed are not only from a low-caste background [mainly Ansaris] but they are also migrants who came to Gujarat in search of a better life from other parts of India. To our mind, a separate, full-scale study must be devoted to the caste question within Juhapura’s Muslims.

The trajectory of Juhapura somewhat calls to

25 For more on the Sufi support to BJP in Gujarat and its implications on intra-Muslim relations, see Laliwala (2019). Good Muslims of BJP: Sunni-Shia convergence in favour of BJP in Gujarat.

mind that of Pakistan’s: first, the Muslim League mobilized Muslims against Hindus; but after Pakistan was created, Sunni activists criticized Shi’ism and Ahmadiyahs as practising wrong versions of Islam, though many influential Shias and Ahmadiyahs led the movement for Pakistan. Then, the Deobandis started to say the same thing about the Barelwis, showing that the quest for a core identity is as vain as peeling an onion!

Nonetheless, the making of sectarian, caste and class-based ‘citadels’ needs to be qualified because of the growing assertiveness of women in Juhapura, especially those from lower-class and lower-caste backgrounds.

### 3.1 Towards a Merger of Class and Gender?

After 2002, the gender dynamic in Juhapura witnessed a significant shift as the riot robbed the community of many menfolk, and women stepped in to fill their ‘traditionally masculine’ roles. From demanding clean drinking water, organizing protests and working on rehabilitation to demanding accountability from the government, the women of Juhapura successfully managed to skew the notion of gender roles in the ghetto. Waqar Qazi, activist and founder of Urja Ghar, remarked that Juhapura owes most of the positive changes brought amongst its residents to the women of the community (2019).

Women activism did exist prior to the 2002 riot, a case in point being the Mahila Patchwork Design Anya Udhog Co-operative Society, started by Roshanben Shaikh in the late 1970s. Roshan, who moved to Sankalit Nagar in Juhapura with other slum dwellers affected by the 1973 floods, was offered support by Kirti Shah, the architect of Sankalit Nagar. With his help, she was able to enrol herself in the National Institute of Design in Ahmedabad and learned handicrafts and fashion designing. Building on her skill set, she mobilized the poor Muslim women from Sankalit Nagar to form this collective to make and sell handicrafts and patchwork products—in turn creating a means of income and employment for women in the ghetto. This initiative, now run by her daughter Farzana Shaikh, has seven self-help groups (SHGs) with over 270 members. Many women associated with

these SHGs, Farzana tells us, became assertive after suffering in the riots and are now able to earn Rs. 1,500–2,000 per month (2019).

Such activism for women empowerment, and more importantly, their participation in the public sphere, received a boost after the 2002 riots as women attended public interactions, meetings, dharnas and workshops in and outside Juhapura. In some sense, it has resulted in growing signs of cultural modernization, leading to assertion of more women in the public spaces. For instance, one can see more women, including those observing hijab, driving cars and two-wheelers in Juhapura. ‘It was a women’s movement; they led it! Women came together to become the torchbearers and travelled throughout the country to spread what was happening (in Gujarat)’, says Zakia Soman, founder of the Bharatiya Muslim Mahila Andolan (BMMA) (2019). While some women fought to escape the purdah, others led democratic protests in burqas, exemplifying multiplicity in the fight against patriarchy. Although the women had to fight against resistance from the society around them, often coming from their own families, the changes they delivered were perhaps the most radical.

More specifically, Muslim women from lower-class backgrounds participating in rights-based activism in Juhapura highlights two key elements of activism in Juhapura. First, activism from lower-class Muslim women signifies a merger of class and gender on issues of affordable housing, skill development, basic infrastructure facilities, women’s rights, etc. Second, the combination of class with gender in activism is a result of the failure to produce solidarities between various classes, especially between elites and the non-elites. In a sense, the citadels for the socio-economically well-off Muslims not only provide a way for elite Muslims to secure a lavish lifestyle while maintaining the status quo but also allow them to remain aloof from the rest of the ghetto. On this point, Zakia Soman offers, ‘Middle-class Muslim women do not want to align with lower-class Muslim women. Giving back cannot be about *Zakaat* [charity for poor Muslims] and Islamic schools but [should be] about democratization among Muslims’ (2019).

Assertion by the subaltern population in poor sub-localities of Juhapura highlights this fractured unity. For instance, residents of Fatehwadi do not receive drinking water from the AMC despite the area’s inclusion in municipal boundaries in 2006. The middle-class and elite societies of Juhapura either do not face these concerns or are financially capable to build private borewells whereas Fatehwadi residents have to rely on private tankers as well as borewells controlled by local strongmen. Rukaiya Shaikh, a resident of the locality since 2005, paid Rs. 10,000 as a one-time installation fee to a local strongman to develop a borewell, even though the actual construction was done by Rukaiya’s husband, who is a plumber. On top of that, she pays Rs. 300 per month to avail this facility. In 2018, frustrated by their constant water problems coupled with harassment by the local water mafia, residents of Fatehwadi, including Rukaiya, sought the help of Hamari Awaz, an NGO run by Kausherali Saiyed to organize a *Paani Andolan* (Movement for Water). Later that year, in October, Kausherali organized a ‘Jal Vimarsh’ dialogue with Fatehwadi residents, in which Professor Sandeep Pandey, a Magsaysay Award winner, local politicians and NGO workers participated. Though this mobilization has not resulted in any success yet, during the general elections in 2019, Hamari Awaz put up one of its grassroots workers, Shahinbanu Shaikh, as an independent candidate to contest from the Gandhinagar constituency, under which Juhapura falls.

A few kilometres away from Fatehwadi, TPS 84a awaits final government approval. As part of the scheme, an 18-metre-wide road has been planned through Alif Row House, a colony of mostly lower-class and lower-caste Muslims staying behind the posh Al-Burj housing scheme. In turn, this road will destroy over 100 houses—each having a carpet area of roughly 35 square yards—as the government maintains the colony to be an illegal one. Here, too, Hamari Awaz has intervened to lead a *Vasvaat Andolan* (Movement for Housing) and assisted the residents of Alif Row House to draft replies to the eviction notices served by the state government. Like Paani Andolan in Fatehwadi the movement for housing in Makarba, its convenor

Kausherali Saiyed tells, is led by women, attesting to the mix of class and gender in Juhapura.

Muslim women mobilized for the Vasvaat Andolan under the local leadership of Sabina Ansari, who is from the low-caste *Julaha* community of weavers and whose ancestors migrated from Uttar Pradesh to Ahmedabad to work in the textile mills. She, along with her Ansari, Shaikh and Mansuri women neighbours living in Alif Row House, who are otherwise homemakers or housemaids in the elite residencies of Juhapura, have been most vocal on the question of housing rights. Sabina complains that officials from the government had first visited them around 2015 to conduct a survey claiming that their colony would be made legal; and thus they would finally get water and sewage facilities. However, a few months later, they were served eviction notices (2019). In January 2019, Hamari Awaz led a 11-kilometre long walking march from Alif Row House to AMC's headquarters in the old city of Ahmedabad in which over 100 women from the colony took part. Though they were not allowed inside the headquarters, the state government has now amended the plan and reduced the width of the road to 12 metres from 18 metres.

Next to Alif Row House, the state government is currently building a housing scheme for EWS. Sabina claims that though she and her neighbours applied for housing in this project, their applications were rejected. She added that mostly non-Muslims have been allotted houses.<sup>26</sup> Kausherali calls the TPS 84a a classic case of crony capitalism and land grab from the poor at a prime residential location (2019). Indeed, the colony is divided on class lines: Sabina Ansari told us that the trustees of Shafilala Dargah, located at the entrance of the colony, do not wish to engage with the colony residents and have been in talks with municipal officials to save their land. Similarly, the builder of the colony, who stays in a nearby elite colony, or the residents in the houses where Sabina's neighbours work as housemaids, have not come out in support (2019).

Women are leading a few key initiatives in

personal fronts too, such as relationship problems and cases of separation. Juhapura has more than a dozen sharia *adalaats* (courts) run by women. Regular workshops for women's health, education and skill development are also set up by various organizations, and more than 15,000 women have successfully started their microfinance businesses. Even as women in Juhapura are leading the fight against triple talaq and discrimination of women in religious places, while fighting for access to water and education, there still is not a place for women in any active social body unless they are co-opted. Mehrunissa Desai, a member of the Ahmedabad Muslim Women's Association (AMWA), remarks that Muslim women need a special quota within social organizations to do more. (2019)

Noorjehan Dewan, an activist formerly with the BMMA and now works with Act Now for Harmony and Democracy (ANHAD), has worked on the issues of divorce, women's rights, menstruation health, domestic violence, rape and education for over a decade. She expressed her concern about the high dropout rates that challenge education for girls in the ghetto. Despite increasing focus on women's rights issues, the ground reality in Juhapura is very far from the ideal scenario (2019). Juhapura has no all-girls' college, which makes it significantly harder for girls to access higher education. Although many organizations offer counselling services, advocate for education and conduct skill development workshops, lack of access remains a significant barrier for progress. Mehrunissa Desai, however, draws attention to the changing perception of education in the ghetto. She explains that in the past, maulanas used to sermonize that the maximum a girl should be educated was till the tenth standard. Now, they subscribe to the idea of girls studying as much as they want. Desai goes a step further, claiming that contrary to popular perception, Islam is a feminist religion. She says the religion champions women's rights and that she uses Islam as the basis to fight for rights, merging the language of rights with religious imagery (2019).<sup>27</sup>

26 We have not independently verified this claim with the AMC.

27 See Laliwala (2020). How Muslims are creating a new vocabulary of secularism for Indian democracy.

Image 7: A Shia Colony



Credit: Christophe Jaffrelot

#### 4. Recommendations

After attempting to understand Juhapura and its paradoxes, here we look at a few ways to possibly unravel the problems it is plagued with. While these recommendations are in no way comprehensive solutions for the multitudes of problems residents face every day, they constitute the first stepping stones in the right direction.

We recognize politics as the primary means of social justice. Therefore, first and foremost, the reorganization of municipal ward boundaries by AMC and the boundaries of Vejalpur Vidhan Sabha constituency by the Election Commission of India is necessary. Gerrymandering by the state government cages the Muslim voter base within set boundaries to diminish the value and efficacy of their votes. A lack of strong political leadership, facilitated by procedural undermining of democratic outcomes, hurts Juhapura in seeking solutions for its multitudinous problems. Restructuring boundaries will effectively reflect Muslim votes in truth, allowing Juhapura residents a better chance at representation, which may ensure that their problems, particularly about access to civic amenities, are given a voice at the legislative assembly level. Political representation is a necessary, though not sufficient, condition for improving the substance of social democracy. Kausherali Syed, a social worker in Juhapura, believes the same: ‘Till we have 18

Muslim representatives in [the] Vidhan Sabha, not much will change (2019)’.

An inter-linked hurdle for Gujarati Muslims is the difficulties imposed by the Disturbed Areas Act on the freedom of their movement within the state. A senior BJP worker, who wishes to remain anonymous, alluded that the act has been used for electoral gains (2019).<sup>28</sup> He remarked that the act, coupled with the delimitation order downsizing the number of municipal wards from 64 to 48 in 2015, have been used to segregate wards in such a way that no Muslim candidate could effectively form a majority and get fair representation in the Legislative Assembly (‘Delimitation order announced, 2015). Murtuza Khan Pathan, the Congress candidate from Vejalpur constituency in the state election in 2012, agrees with this (2019). If the act is removed, the Muslim population would be able to disperse and, perhaps, more MLAs from the community may emerge.

Apart from restricting the representation of Muslims by pushing them to Muslim-exclusive enclaves or ghettos, the act effectively turns them to second-class citizens with limits on their fundamental rights, such as the freedom to buy and sell properties in major parts of urban Gujarat. We acknowledge that this law enables de jure Hindu Rashtra in Gujarat, contradicting the secular, plural character of the Indian Constitution which guarantees equal rights for everyone and special protection rights for religious and cultural minorities. In 2018, Danish Qureshi and Nishant Varma, two social activists based in Ahmedabad, filed a PIL in Gujarat High Court urging the judiciary to declare this law as unconstitutional. While the matter was still subjudice, the Gujarat government decided to amend the law and make it more stringent (and almost impossible) for a Hindu and a Muslim to buy or sell properties from or to each other in urban Gujarat (‘Disturbed Areas Act’, 2018). It is clear that the state in Gujarat stands steadfastly behind this law. Therefore, the abolition or even dilution of the act remains highly unlikely. In that case, only the court of law remains a sound avenue to strike down

28 In an interview with the authors on February 17, 2019

or read down this legislation, though introducing private members' bills to revoke the law may be a useful symbolic gesture to kick-start a mainstream debate on the subject.

Another issue the chapter covered was that of the TPS sprouting up in Juhapura. These schemes generally involve a voluntary giving up of some parts of one's private property to build wider roads, parks, healthcare facilities, sewage systems, street lights, educational facilities etc.<sup>29</sup> In August 2019, the Government of Gujarat approved the first TPS, TPS 85, in Juhapura. Its finalization had been pending for almost a decade. Yet, the other TPSes in the pipeline, particularly TPS 84a, will end up destroying a significant number of illegal colonies occupied by poor residents. As we noted, there are allegations of crony capitalism and land grab by the builders in an alliance with municipal officers. The AMC must address these concerns and should consult the residents of the colonies which will be affected before approving the schemes.

A plan to build 75 flyovers in Gujarat was announced in February 2019, of which Ahmedabad bagged the lion's share with 20 flyovers. The government allocated 2,000 crores to ease traffic flow and all flyovers will be built with state government funds. Moreover, the state also proposed a budget of Rs. 250 crores to address traffic at railway crossings by proposing to build 37 railways flyovers and underbridges ('75 flyovers', 2019). A flyover for Juhapura, which appears in a dire need of one, remained overlooked, until very recently. The main road which passes by the area is a part of the National Highway and hence sees a lot of traffic from heavy-duty vehicles such as trucks and carriers. Not only is this road plagued by heavy traffic, the traffic often leads to several life-threatening accidents. AJIM members approached the mayor several times

29 A major criticism of TP schemes is that they are a hurdle to the welfare of people since there would not be any compensation for voluntarily giving up the land. These schemes are part of a capitalistic regime where the process of land acquisition accompanied by discussion with the stake-holders and adequate compensation is avoided.

regarding the issues of lack of traffic police, narrow roads and the need for a flyover, Daud Kotharia, one of its members, said, but to no avail (2019). In July 2019, Kirit Solanki raised the requirement of a flyover in Juhapura in a zero-hour debate in Lok Sabha, and the Government of India has begun a preliminary study to look into this possibility.

Lack of public infrastructure in Juhapura is not limited to the need for a flyover on its main street. The municipal authorities must build pucca roads and supply drinking water in poorer sub-localities of Juhapura such as Fatehwadi and Ice Factory Road in Gyaspur. Other than that, the lack of street lights in parts of Fatehwadi raises a serious concern over the safety of commuters, especially women. Slowly, the infrastructure for electricity and sewage has developed in Fatehwadi—the most backward part of Juhapura—which is a much delayed but welcome change. In the same sub-locality, the supply of drinking water by the AMC is abrupt and most poor residents have to rely either on a community borewell or private tankers. Gautam Shah, incumbent mayor, in early 2018 insinuated that the reason they do not get services was because Juhapura residents do not pay taxes. He informed this to a group of civil actors from Juhapura. However, an informal survey by AJIM found that around 90 per cent residents do pay taxes, according to Daud Kothariya, who attended the meeting with Shah (2019).

'Civic amenities neglect is the result of [a] discriminatory mindset,' says Zakia Soman, an activist who has worked in Juhapura (2019). This stigmatization results in isolation, which makes it easier to overlook the ghetto and its problems. Inter-community dialogue and education on civil and constitutional rights is hence essential to weave Juhapura back into the Ahmedabad cityscape. One such initiative was the Ekta Maidan, situated between Yash Complex and Zalak Apartments on the Juhapura boundary (also known as the 'Border'). It was meant to be a symbol of Hindu-Muslim brotherhood. But, as a resident remarked, it now seems more like a reminder of a hollow promise:

‘I remember going to meet one of my friends, Subhasbhai, on Diwali days,’ Bapu said. ‘He used to live in Gokuldharm, across the road. He came to my house every Eid. But now Ekta [Maidan] seems to have lost its charm.’

(Shaikh, 2016)

To promote Hindu–Muslim unity and, more importantly, to prevent violent episodes of ethno-religious conflicts, everyday civic engagement between communities is crucial, according to Ashutosh Varshney’s oft-quoted research (2013). However, Ahmedabad remains an exception to this rule as sufficient evidence exists to show that neighbours with strong social bonds participated in violence against each other in the 1980s, 1990s and the 2002 pogrom (if not in the 1969 riot). Hence, though we recommend building new initiatives to cultivate religious harmony, we are uncertain about its actual impact in preventing ethnic rioting, given the biased role of the state during riots and the deep penetration of the Hindutva ideology inside the minds of people in Gujarat.

Likewise, we recommend that the Muslim community must look internally at some of the paradoxes highlighted in this research. For example, lower-class Muslim women are asserting themselves in Juhapura without the support of elite, well-off Muslims. Not only are their issues different from those of elite Muslims, but their vocabulary of expression is also quite unique: these women, as we highlighted, use the vocabulary of rights and often take to the streets. This fractured state of unity needs to be addressed by influential political and civic actors among Juhapura’s elites. Again, here, the mindset of the Muslim community’s financial and political elites as well as its intelligentsia needs to change to accommodate the concerns of lower-class and lower-caste Muslims and women. This form of solidarity will not only enhance the numerical strength to tackle Juhapura’s problems but also, as we noted above, democratize the character of the Muslim community.

## 5. Conclusion: a Model for Hindu Rashtra?

Juhapura, presumably the largest Muslim ghetto in India, is remarkably complex. In its early phases, Juhapura was primarily a refuge which grew when victims of floods were resettled in its midst. However, the locality expanded mostly in relation to the anti-Muslim violence in Ahmedabad, India’s ‘riot-city’ par excellence. Gradually, it attracted poor Muslims, along with a limited number of elite Muslims, who fled the mixed neighbourhoods of the old city and its industrial belt throughout the 1980s and 1990s.

The 2002 pogrom made a difference to the composition of the ghetto. For the first time, middle-class and elite Muslims were systematically targeted on a massive scale in different parts of the city. In turn, they left mixed residential areas of West Ahmedabad to find refuge in the only place where Muslims were in a majority and where there was enough land to build new, lavish houses: Juhapura. This migration flow transformed the slum-like character of Juhapura into a ghetto, a social construct where the rich and poor gather together because of their ethno-religious identity and the stigma it carries. Thus, Juhapura became an area developed purely on the grounds of ethnic homogeneity by a vulnerable community in search of safety, with its own set of economic divisions.

Paradoxically, this process has resulted in some development as the newcomers have enough social, intellectual and financial capital for initiating private undertakings, including the building of the schools, clinics and roads they needed—and which were to some extent accessible to the poorer Muslims. Besides, this new elite are in a better position to lobby the state administration for getting the public facilities the taxpayers of Juhapura are entitled to. They also created NGOs which were committed to both social work and lobbying as pressure groups. Yet, this transactional relationship with the State to ‘negotiate’ for better public facilities in Juhapura, as we noted above, has not resulted in full-scale development of public services in the ghetto,

given the state's anti-Muslim bias and majoritarian character.

However, internal boundaries within Juhapura are represented by citadels where rather affluent Muslims are carving out large colonies for themselves. Moreover, the price of land and real estate is increasing quickly because of the ratio between demand and supply of square yards: applicants are many, whereas the availability of land is limited. As a result, the poor are pushed to the periphery of Juhapura, forming new slums or crowding into old ones such as Fatehwadi, Gyaspur and parts of Makarba and Sankalit Nagar around elite citadels.

Besides this socio-economic differentiation, sectarian identities also undermine the unity of Juhapura. If the post-2002 trauma had temporarily fostered solidarity among the Muslim minority, the gradual relaxation of the threat has allowed schisms from within to surface. However, the new assertiveness of women from poorer backgrounds, which took shape in the aftermath of the pogrom, has created changes in different parts of Juhapura. It is not only a form of resistance against socio-economic and sectarian differentiation within the ghetto but also a quest for social democratization, merging identities of class and gender. We have not adequately studied the caste angle (*Ashraf, Ajlaf, Arzal* differentiations) within Muslims, which is a crucial avenue for future investigations.

While the last sections of the chapter highlight the inner life and dynamics of Juhapura, showing that the citizenship experienced by Muslims in a ghetto is not linear for different sections of the population, the first section has described a state-facilitated process of exclusion which continues to prevail even today. In Ahmedabad, Muslims are marked 'unwelcome' through the technique of anti-Muslim violence (repeatedly used by the Sangh Parivar since the late 1960s), state hostility, marginalization and cultural deepening of the Hindutva ideology. This modus operandi of driving Muslims out reached its culmination point in 2002. Moreover, two other factors have played a consolidating role: first, it is almost impossible for Muslims to live in Hindu-dominated colonies due to the vig-

ilante groups that operate with a certain level of State backing and which fight against 'land jihad', something that has been observed elsewhere in India as well (Vatsa, 2017). Second, the State has adapted, amended and implemented the Disturbed Areas Act 1991 in such a way that Muslims cannot live in mixed neighbourhoods. This law not only covers an increasingly large number of localities in Ahmedabad, but it has also been used in Bharuch, Godhra, Himmatnagar, Kapadvanj, Surat and Vadodara. In this sense, Gujarat, the first laboratory of Hindutva politics, has transformed a de facto Hindu Rashtra into a de jure one with legal sanctions restricting freedoms of Muslim communities.

The making of Muslim ghettos across India reflects a sociopolitical development: the making of a de facto Hindu Rashtra (Jaffrelot, 2019). The anti-Muslim bias of the Indian state has been particularly legitimized with the recent nation-wide rise of Hindu nationalist politics, especially in North Indian states such as Uttar Pradesh, Haryana, etc. In this new dispensation, or the so-called 'new normal', religious minorities—mainly Muslims—are not welcome in mixed and Hindu-dominated neighbourhoods. The poor (and low-caste) Muslims have faced the brunt of these changes, through rising hate crimes leading to mob lynching in multiple parts of India. This craze for obliterating the Other is not only directed towards Muslims' accommodations, but also their very presence in the public space. For instance, in Gurgaon, Muslims have been prevented by vigilante groups and the state government of Haryana from offering Namaaz out in the open, whereas Hindu processions are allowed and the RSS runs shakhas in public gardens and university campuses across the country. Whatever the method, the objective remains the same: to render Muslims invisible (Ali, 2008; Dayal, 2018; Chatterjee, 2018).

After solidifying its national position in the 2019 general election, the BJP has begun to emulate the de jure model of Hindu Rashtra, on the lines of its successful implementation in Gujarat. For instance, the recently passed Citizenship Amendment Act 2019 offers Indian citizenship to individuals

from all religious groups, except Muslims, from Afghanistan, Bangladesh and Pakistan, inserting an ethnic criterion to qualify for India's citizenship (Jaffrelot & Laliwala, 2019). When this law is read alongside the proposed National Register of Citi-

zens (NRC), or its diluted counterpart, the National Population Register (NPR), purportedly meant to drive out 'infiltrators', it exemplifies the transformation par excellence of India into a legally sanctioned, or in other words, de jure, Hindu Rashtra.

**Appendix 1: Land Rates per Square Yard in Juhapura, 2013–2014 and 2019**

No.	Name of the Housing Society	2013–2014 (INR)	2019 (INR)	Lower: 0–15,000; Middle: 15,000–30,000; Upper Middle+Elite: 30,000+	
				Class (Lower Class, Middle, Upper Middle/Elite)	Dominant Community (Shia/Sunni)
1	Fazle Rehmani	15,000	22,000	Middle Class	Sunni
2	Lovely Park	15,000	30,000	Middle Class	Sunni
3	Sanjar Park	12,000	30,000	Middle Class	Sunni
4	Hariyali	20,000	30,000	Middle Class	Sunni
5	Nasheman	22,000	30,000	Middle Class	Sunni
6	Samir Vihar	40,000	50,000	Upper Middle Class and Elite	Sunni
7	Prachina	50,000	60,000	Upper Middle Class and Elite	Sunni
8	Javed Park	22,000	30,000	Middle Class	Sunni
9	Royal Park	22,000	30,000	Middle Class	Sunni
10	Amir Park	22,000	30,000	Middle Class	Sunni
11	Union Park	30,000	42,000	Upper Middle Class and Elite	Sunni
12	Amane-Gulistan	35,000	50,000	Upper Middle Class and Elite	Sunni
13	Prerna	35,000	50,000	Upper Middle Class and Elite	Sunni
14	Rehnuma	35,000	50,000	Upper Middle Class and Elite	Sunni
15	Chhipa Society	35,000	50,000	Upper Middle Class and Elite	Sunni
16	SBI Colony	35,000	50,000	Upper Middle Class and Elite	Sunni
17	Noor-e-Burhan	35,000	50,000	Upper Middle Class and Elite	Sunni
18	Shaheen Extension	35,000	50,000	Upper Middle Class and Elite	Sunni
19	Sham-e-Burhan	35,000	50,000	Upper Middle Class and Elite	Sunni
20	Sardar Smruti	55,000	70,000	Upper Middle Class and Elite	Sunni
21	Near Moti Bakery	30,000	40,000	Upper Middle Class and Elite	Shia/Khoja
22	Ehsan Park	18,000	23,000	Middle Class	Shia
23	Khurshid Park	60,000	70,000	Upper Middle Class and Elite	Sunni

24	Zenab Residency	17,000	27,000	Middle Class	Sunni
25	Zenab Park	35,000	50,000	Upper Middle Class and Elite	Sunni
26	Sabera	35,000	50,000	Upper Middle Class and Elite	Sunni
27	Baghe Firdaus	30,000	45,000	Upper Middle Class and Elite	Sunni
28	Kajal Park	20,000	35,000	Upper Middle Class and Elite	Sunni
29	Chinar	35,000	48,000	Upper Middle Class and Elite	Sunni
30	Arshad Park	30,000	40,000	Upper Middle Class and Elite	Sunni
31	Fatehwadi B/h Canal	7,000–8,000	10,000–15,000	Lower Class	Sunni
32	Al Burooj (per flat)	45,00,000	60,00,000	Upper Middle Class and Elite	Sunni
33	Royal Akbar	22,000	30,000	Middle Class	Sunni
34	Bostan Gulistan	25,000	40,000	Upper Middle Class and Elite	Sunni
35	Bagh-e-Nishat	25,000	40,000	Upper Middle Class and Elite	Sunni
36	Himmat Jigar	22,000	35,000	Upper Middle Class and Elite	Sunni
37	Al-Farooq	20,000	30,000	Middle Class	Sunni
38	Ekta Maidan	7,000–8,000	10,000	Lower Class	Sunni
39	Sharifabad	25,000	40,000	Upper Middle Class and Elite	Sunni
40	Sankalitnagar	7,000–9,000	10,000–15,000	Lower Class	Sunni
41	Green Park	35,000	50,000	Upper Middle Class and Elite	Shia
42	Park Land Khoja	35,000	50,000	Upper Middle Class and Elite	Khoja/Shia
43	Shia Boys Hostel		40,000	Hostel	Shia
44	Nalsarovar Vasahat	5,000	12,000	Lower Class	Sunni
45	Naseem Parlour area	5,000	15,000	Lower Class	Sunni
46	Haidri Park	25,000	50,000	Upper Middle Class and Elite	Shia-Cheliya
47	Ice Factory area	7,000	10,000	Lower Class	Sunni
48	Rizwan Row House	7,000	15,000	Lower Class	Sunni
49	Saleem Nagar	7,000	15,000	Lower Class	Sunni
50	Hazrat Khwaja Society	7,000	15,000	Lower Class	Sunni
51	Al Ameen Society	7,000	15,000	Lower Class	Sunni

**Appendix 2: Land Rates in Muslim-dominated Localities (Excluding Juhapura) in Ahmedabad**

		Lower: 0–15,000; Middle: 15,000–30,000; Upper Middle+Elite: 30,000+	
No.	Name of Locality or Colony	Current Prices (per square yard except for Flats, Shed Houses) (INR)	Class (Lower Class, Middle Class, Upper Middle Class and Elite)
<b>Shah e Alam</b>			
1	Opposite Shalimar Theatre	30,000	Middle Class
2	Mohammadi Society	60,000	Upper Middle Class and Elite
3	Rajasthan Society	60,000	Upper Middle Class and Elite
4	Near Mira Cinema	60,000	Upper Middle Class and Elite
5	Flats Near Shah e Alam gate (2 BHK)	20,00,000	Middle Class
<b>Dani Limbda</b>			
1	Shakti Society	50,000	Upper Middle Class and Elite
2	Danilimbda Village	50,000	Upper Middle Class and Elite
3	Sardar Society	70,000	Upper Middle Class and Elite
4	Vinay Kunj	70,000	Upper Middle Class and Elite
5	Nirbhay Nagar	70,000	Upper Middle Class and Elite
6	Kirti Society	70,000	Upper Middle Class and Elite
7	Memon Society	70,000	Upper Middle Class and Elite
<b>Jamalpur</b>			
1	Jamalpur Business Area	80,000–1,00,000	Business Area
<b>Vatva</b>			
1	Saiyed Wadi (NA/NOC clear)	15,000–20,000	Lower Class
2	Canal area - Aluminium Shed Houses	5,00,000	Lower Class
3	Canal area - Brick Shed Houses	7,00,000	Lower Class
4	Flats - Baghe Burhan, Classic Park	35,00,000–45,00,000	Upper Middle Class and Elite
<b>Narol</b>			
1	Interior Plots	10,000–20,000	Lower Class
2	Front Side Plots	30,000–40000	Upper Middle Class and Elite
3	Aluminium Shed Houses	4,50,000–5,50,000	Lower Class
4	Duplex -35 square yard - Brick Shed	7,00,000–8,00,000	
<b>Naroda</b>			
1	Naroda Patia - Aluminium Shed	4,00,000–5,00,000	Lower Class
2	Naroda Patia - Bricks Shed	5,00,000–7,00,000	Lower Class
3	New Flats	35,00,000–45,00,000	Upper Middle Class and Elite

<b>Paldi</b>			
1	Aashiana Flats	50,00,000–60,00,000	Upper Middle Class and Elite
2	Tagore Flats	50,00,000–60,00,000	Upper Middle Class and Elite
3	Rajnagar Society (Flats)	65,00,000–70,00,000	Upper Middle Class and Elite
4	Kashmira Society (Flats)	65,00,000–70,00,000	Upper Middle Class and Elite
5	Faiz Mohammed Society - Residency Flats	75,00,000–80,00,000	Upper Middle Class and Elite
6	Varsha Flats (New)	80,00,000+	Upper Middle Class and Elite
<b>Navrangpura (Muslim Society)</b>			
1	Old Flats near Railway Track	50,00,000–70,00,000	Upper Middle Class and Elite
2	Old Flats inside	80,00,000–1,00,00,000	Upper Middle Class and Elite
3	Road facing Old Flats	1,50,00,000+	Upper Middle Class and Elite
4	New Flats	3,00,00,000–5,00,00,000	Upper Middle Class and Elite

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“Every time I walk through the 11th lane, I feel horror and helpless. I have walked there for many years, asking myself, ‘Who are these women? They live in the heart of my world. What do I really know about them?..’, asks the photographer as we walks through Kamathipura sex workers’ colony.

*Photo: Sudharak Olwe*

# The Grudging Inclusion of Sex Workers in India

**Mona Mishra, Sutapa Majumdar and Akhila Sivadas**

*Reviewed by Rachana Mudraboyina, Ayesha Rai, Prabha Kostiswaran*

## 1. Abstract

This paper argues that sex workers in India continue to live in hiding through different kinds and levels of exclusion. The authors bring to bear their own understanding and analysis of this complex issue through their first-hand interactions with sex workers as activists, advocates, researchers, and as members of various organizations and networks of sex workers in India.

Tracing the history of sex workers and their subsequent transformation within the changing social, legal, economic and development contexts, the paper draws from primary survey data in three urban sites (north Delhi, Hyderabad and Kolkata) and first-person narratives of women in sex work, recorded between January–April 2019 across diverse locations. Data collection at all three sites have been done by sex workers themselves, in part to ensure their inclusion in the very process of writing this paper and also, therefore, to ensure capacity development of sex workers, if only to a limited degree.

The paper further describes some attempts at addressing the exclusion faced by sex workers and good practices that recognize the dignity of sex workers as workers. Finally, the paper describes the long-standing demands of sex workers from the institutions of the State and from society.

The paper finds that sex workers have rarely been offered inclusion in social, political and economic spheres. They have had to assert inclusion through different strategies, sometimes covert. Data shows that sex workers in north Delhi have employed the strategy of maintaining anonymity to improve their access to State welfare entitlements and public spaces. Sex workers in Kolkata report achieving a high degree of inclusion, which can be attributed to the strength and support they derive from the sex workers' collectives that they have developed and are a part of. Transgender sex workers in Hyderabad report the highest levels of exclusion, which can be attributed to multiple axes of stigma, sex work being just one of them. Across sites, they have seized different opportunities in the areas of HIV prevention, gender equality and human rights—as etched out later in the paper—to work collectively for both inclusion and recognition of their work and life experiences.

## 2. Introduction

At a panel discussion with sex workers, the moderator, a well-known human rights activist, asks the panellists if they have any regrets about having chosen sex work, whether they have any complaints, and if they feel they could have done something else, chosen differently.

‘The only regret I have is that maybe I should have joined this trade earlier, then I would not have gone through the struggles that I have.’

‘Had I been working somewhere else, I would have been a *naukrani* (servant) but in sex work, I live like a *maharani* (queen)’.

‘First, I would like to talk about choice—wanted to work, wanted to have sex, wanted to earn, wanted to also enjoy. Have learnt about women’s rights—not as a mother, as a daughter, as a wife—but rights as a woman, human rights—this movement has taught me. All through my work and my association with the movement. What my family could not teach me, this movement has.’

‘Don’t have any regrets because I have challenged and broken binaries—binaries of sexuality, gender—and found diversity.’

The legal-sexual puritanism which deems sexual transactions outside of marriage as unworthy, amoral or even criminal is at the heart of the concern that a sex worker can only have been forced or tricked into the occupation; and if not—if she has indeed chosen sex work by her own volition, as her means of livelihood—then that she may have not chosen correctly or that she must regret her choice in hindsight.

Notions of morality and decency clash for primacy over justiciable rights. Abolitionists<sup>1</sup> argue that sex work is not only demeaning for women in and of itself, but worse, it leads to the trafficking of women and girls and hence sex trade as a whole should be abolished. Sex workers’ movements, on the other hand, fight for social dignity and equality in the eyes of the law.

<sup>1</sup> Abolitionists argue that governments should take action to stop all forms of sex work

Political and philosophical complexities surrounding the sale and purchase of sex have been increasingly better understood over the years and attitudes towards sex work have become less rigid. These changes occurred with parallel changes in economics, politics, religious practices, gender relations and law enforcement processes.

One of the main critiques of sex work is that it cannot be a choice, and certainly not a feminist choice because it is a female occupation in the service of men. Some radical feminists, whose influence grew over the 1960s, 70s and 80s, believed that men have systematically oppressed women, and that sex work epitomized this oppression. This view built on the traditional gendered discourses on sex work, which saw sex workers as weak and as victims and men as perpetrators. This view, that sex work constitutes a form of involuntary sexual objectification, influenced early lawmakers in India, as we will see later in the paper.

Liberal feminists, on the other hand, believed that sex work is voluntary sexual labour—and hence sex workers can exercise agency and choose sex work as a means of livelihood, dealing with men as clients while executing an adult consensual sexual transaction.

More recently, intersectional feminism (Smith and Laing, 2012) takes the liberal feminist agenda further by including male and transgender sex workers into the conversation. Within this paradigm, women, men, and persons from the trans community each have different experiences with sex work, contingent on the various intersecting aspects of gender, caste, class, prevailing religious and political beliefs and so on. This view asserts that sex workers are not a monolithic community, as much as the notion of ‘choice’ is not all that straightforward. For instance, even when a woman opts to work at a construction site, she transacts sex with the site manager but often with less agency than she would have had as a self-identified sex worker. As a sex worker from Sultanpuri, Delhi observed:

‘Why are sex workers or bar girls looked down upon when they are working to earn

for their families? As a citizen I am entitled to get all the rights that other citizens get, and it would be unjust to deny us these rights. Sex worker is not my only identity. I am a sex worker as well as the head of a community-based organization and a member of the Slum Rehabilitation Committee. I am also a mother who loves and looks after her children, which is possible only because of what I earn through my work.’

—A Female Sex Worker, Sultanpuri, New Delhi. Interview taken on Aug 29, 2019.

The conflation between sex trafficking and sex work—which as we will see later, emerges out of the legislative framework itself—is a singularly important source of exclusion. Sex trafficking may involve threat or the use of force, abduction, deception or other forms of coercion to exploit individuals, and is therefore is a human rights violation. This may include forced labour, sexual exploitation, slavery and more.

Sex work is quite the opposite: it is a consensual transaction between adults where the act of selling or buying sexual services is not a violation of human rights but an assertion of choice.

‘I was standing in the middle of the road with a child and we both were starving for two days at a stretch and there I met a man who took me to a nearby tea stall and brought milk for my child. I met the same man the next day and this time he gave me some cash and told me that he will take care of me. I followed him wherever he took me and here I am today, ten years down the lane, talking to you sitting in a house which I call my own. I am happy today. Yes, the society gives me a bad name, but I feel loved and feel free in sex work.’

—A Female Sex Worker, G. B. Road, New Delhi. Interview taken on Sept 8, 2019.

Testimonies show that the growing feminization of poverty in different contexts has also contributed to the indignities sex workers face. Most women say that poverty, destitution, having to sup-

port large families, alcoholic husbands and managing a family as a single mother were all factors that shaped their decision to take up sex work.

Sex work is probably the oldest recorded profession in history (Kotiswaran 2011, Ditmore 2011, Sahni et al 2008, Shah 2014, and Phadke 2011). Historically, in the Indian context, the spaces of prostitution have been demarcated as exclusive spaces of commercial transaction which involved sexual contact—*kothas* or the brothels, and the red light areas, but beyond this there exist diverse geographical locations where sex works flourishes, some of which have emerged with the neoliberal economic reforms. There is a stark difference though between the historical era and the present times, as far as the position of sex workers is concerned in India. Sumanta Banerjee (1998, p. 20) argues that though there is a creation of new spaces, the present-day women engaged in prostitution are pushed to the margins and are reduced to being mere sexual entertainers, unlike their sisters who held the status of temple dancers and courtesans in previous historical epochs. In fact, in the modern capitalist society, ‘women in prostitution represent the ultimate alienation’ (Peterson-Iyer, 1998) and are deemed as outcasts from society and set apart by strict moral boundaries that were previously loosely defined. Victorian conceptions of morality, which characterized sex as shameful, have alienated women in prostitution from society.

In southern India, the devadasi system involves the dedication of girls to a deity. The role of devadasis traditionally included performing music and dance (in the classical style) and providing sexual services to patrons of the temple. The Hindu Religious and Charitable Endowment Act of 1927 made this practice illegal in Mysore.<sup>2</sup> As a result, no longer able to rely on temples for support, many women entered the sex trade.<sup>3</sup> Analysts have concluded that the laws abolishing the devadasi system led to

2 Similar legislations were enacted in Bombay (1934), Madras (1947), Karnataka (1982) and Andhra Pradesh (1988).

3 Some studies indicate that the devadasi system continues despite legislation; the National Commission for Women has estimated that there are over 48,000 devadasis in India.

a loss of power, status and economic rights for the devadasis.

### 3. Definitions

**Sex worker:** The term ‘sex worker’ is used to refer to all adults (eighteen years or older) who sell or exchange sex for money, goods or services. It is used to refer to people who sell or exchange sex even if they do not identify as sex workers or consider the activity to be ‘work’. The term is used to refer to sex workers including consenting female, male, and transgender people who receive money or goods in exchange for sexual services, either regularly or occasionally.

**Prostitution/prostitute:** Prostitution is a term that was commonly used in legislation enacted in the 19th and 20th centuries to refer to sex work. The terms ‘prostitution’ and ‘prostitute’ have negative connotations and are considered by advocates of sex workers to be stigmatizing (Benoit, Jansson, Smith, and Flagg, 2018).

**Transactional sex:** Transactional sex involves the exchange of sex for goods or services. Usually, the person providing sex has other sources of income. People engaging in transactional sex usually do not identify themselves as sex workers or define their conduct as sex work.

**Transgender:** Transgender is a term used to describe individuals whose gender expression or gender identity differs from conventional expectations based on the physical sex into which they were born. The term ‘transgender people’ in this paper refers primarily to people who were born biologically male but who identify as female, or who have characteristics that are usually considered female.

**Trafficking:** This is defined in the Palermo Protocol (2000) as a) the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over

another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs; b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used; c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article; and (d) ‘Child’ shall mean any person under eighteen years of age.

#### *Population Size of Sex Workers in India*

Estimating the number of sex workers is difficult because of definitional issues, varying degrees of self-identification and the conflation between sex trafficking and sex work. According to an oft-quoted 2012 report by Fondation Scelles, there are an estimated 40–42 million sex workers around the world.

Estimates for the number of sex workers in India vary. By 2008, the United Nations was recognizing that in India, an ‘estimated 30 lakh (or 3 million) sex workers were victims of both social stigma and legal ambivalence whereby at the individual level, sex work is legal but the associated stigma makes it impossible for them to lead a life of dignity’ (*To Prevent and Combat Trafficking*, 2008).. More recently, anti-trafficking campaigners peg the number at about 20 million sex workers (Nagaraj, 2017) in India. However, the National AIDS programme’s last population size estimate exercise undertaken in 2004 revealed that India has approximately 1.25 million sex workers in urban India (*To Prevent and Combat Trafficking*, 2008).

Mobility and invisibility of sex workers are important factors which contribute to the widespread stigma and discrimination against sex work. Many sex workers do not want to identify themselves as sex workers and hence avoid enrolling into HIV

prevention and care programmes. They also do not operate from a fixed, single site for a long period of time. More importantly, it remains a challenge to identify underage and trafficked women who face the worst kind of human rights violations and are most vulnerable to HIV infection.

#### **4. Sex Workers Further Tainted as Vectors of HIV**

In India, the first people identified with HIV were women sex workers in Chennai in 1986. The women had been picked up under the Immoral Traffic Prevention Act, 1986 (ITPA) and had been remanded to a vigilance home for a period of detention, which is standard practice even today. While at the home, the women underwent a series of medical tests and treatments. In 1986, the ELISA test for HIV had just been discovered, and Dr Sunithi Solomon, at the time a microbiologist at the Madras Medical College, decided to send the samples for an ELISA test to the Christian Medical College Hospital (CMC), Vellore, where the test was available. The samples from three of the women tested positive. Acquired Immuno Deficiency Syndrome (AIDS) had officially arrived in the country! A rush of newspaper articles about AIDS followed, but the keynote message was consistent: prostitutes were the cause of AIDS in India, a view endorsed by the then Director General of the Indian Council for Medical Research (ICMR), Dr A. S. Paintal. The upshot was an immediate crackdown on red-light areas, and street and lodge-based prostitution across the country. Large numbers of sex workers were arrested and detained in remand homes and tested for HIV without their consent. Those found positive continued to be held in detention long after their sentence periods had expired.

Dr Shyamala Nataraj, one of the pioneers in the AIDS response in India, recalls her first meeting with a sex worker in 1989, when she gained access to the Madras Vigilance Home, where the very first people in India who had tested positive for HIV were detained. About 23 HIV+ young women sex workers were being held in the remand home in the city. Many had completed their sentence periods but

continued to be held because of their HIV+ status. The women had no access to their families, lawyers or the press. The only people who could meet them were government doctors who monitored their condition weekly and social workers from a government-approved NGO who provided some counselling services. They were housed separately from the other residents—in an abandoned bungalow on the grounds, which had been earmarked for demolition. There were hardly any windows, many of the doors had crumbled, and the roof threatened to cave in any moment.

She goes on to recount one of her visits in May 1990. ‘I was waiting, tense with anticipation, to meet with the women in the office of the superintendent of the home. I had been granted permission based on a proposal to help to rehabilitate the women. Suddenly, the silence was broken by a loud yell from the female clerk as she went out into the veranda to summon the girls. ‘AIDS, you AIDS, come here,’ she boomed at the bungalow, about 100 metres away. A few minutes later, a thin line of young women shuffled by, their heads bowed, while some of the regular inmates, standing well apart, watched. Once inside the office, the infected women huddled together against a far wall, while the superintendent introduced me. Suddenly, a woman in her mid-twenties broke loose from the group, and charged towards me, ‘I won’t come and talk to anybody...all sorts of people come and ask us all sorts of things...I should have been free 10 months ago... why are they not letting me go? Look at me, see my hands and legs, do I look like I have AIDS? Do you people think we are cows or sheep for you to come and interview us again and again? Let us go, otherwise I will escape, or I will kill myself.’ Suddenly, her anger drained, she burst into sobs, wheeled, and ran back the way she had come. A few women followed her; others sobbed silently where they stood.’

—Excerpt from a conversation, September–November 2019

In June 1990, the Tamil Nadu government passed a government order that the state would ‘look after’ all HIV infected women ‘until a cure was found’. This meant that the detentions would

continue indefinitely. Shyamala recalls that most remand home staff as well as doctors welcomed the announcement. ‘So what if the girls are confined? They are better off where they are, no threat to themselves or to anybody else. Besides, we can constantly monitor their health condition. They don’t understand how serious their problem is or how dangerous it can be to go back to prostitution.’ The general view in the government, and among most NGOs at the time, appeared to be that sex work was immoral, and women sex workers were vectors of dangerous diseases such as AIDS.

Convinced that locking up a few infected women was not a solution to avert an epidemic, Shyamala, along with two feminist lawyers, Bhagirathy Narayana and Geeta Ramaseshan, challenged the detention of the women in the Madras High Court. ‘We argued that the detention was illegal, without the consent of the women, and gender discriminatory. No attempts had been made to detain the men who had infected the women, and who presumably were free to infect others. The prosecution responded that the women were being ‘looked after’ in remand homes with their consent, and submitted documents to the effect, with the women’s thumbprints affixed in lieu of a signature. To verify the government’s claim, the Court appointed a special commissioner, Sheila Jayaprakash, to meet with the women. Her report confirmed that the women did not wish to remain under state custody, and that they had been told to ‘sign’ a form, which they could not read, because it was an administrative requirement.’

The case was still being heard when the police raided Kamathipura, the red-light area in Mumbai, and ‘rescued’ over 3,000 women from different states. The respective state governments were requested to arrange for the women to return to their families. Only the Tamil Nadu government responded. A train, christened the ‘Mukthi’ (Salvation) Express, was sent to Mumbai to bring them back. When the train arrived in Chennai, the government bundled the women to Puzhal, an open-air jail on the city’s outskirts, and tested them all for HIV. Many women tested positive and were promptly sent to remand homes across the state.

By the time the final hearing of the case commenced, over 600 women sex workers were under detention in Tamil Nadu on the grounds of being HIV+. In November 1990, the Madras High Court ruled that HIV status was not grounds for detention and ordered that the women be released. The precedent-setting ruling applied to all detained women and set the stage for a rights-based approach to HIV prevention and care for all people in India.

As a result of this exposure to the situation of sex workers, Shyamala went on to establish the South India AIDS Action Programme (SIAAP), which was only the third such NGO in India after the Chennai-based AIDS Research Foundation of India, established by Dr S. Sundaraman and the Bombay-based Indian Health Organisation (IHO), established by Dr Gilada.

## **5. Sex Work in India’s AIDS Response**

Soon after the reporting of the first HIV/AIDS case in the country, the Indian government recognized the seriousness of the problem and took a series of important measures to tackle the epidemic. A high-powered National AIDS Committee was constituted in 1986 itself. In 1992, the first National AIDS Control Programme (1992–1999) was launched country-wide, with an emphasis on reaching groups such as sex workers, who were by then considered at high risk of HIV infection and therefore a possible vector for the spread of the infection through their clients into the general population. In 1992, the All India Institute of Hygiene and Public Health was contracted by the World Health Organization (WHO) to conduct research among sex workers in Kolkata. The research showed that the prevalence of HIV was low, at 1 per cent, but that sexually transmitted infections (STIs) were common: nearly 80 per cent of sex workers reported symptoms. Not surprisingly, condom use was negligible, at 1 per cent (Evans and Lambert, 2008).

The second phase of the programme (1999–2006) played a major role in trying various models for improving the reach and effectiveness of micro community-based interventions targeted at groups

such as sex workers, gay men, and people who inject drugs. Based on learnings across models, the third phase of the national AIDS Control Programme<sup>4</sup> (2007–12) expressly stressed on ‘community ownership’ as a specific approach to ‘increase programme sustainability’ with an ambitious target of reaching one million female sex workers and their partners with HIV prevention services. This was prompted by the alarming predictions made by UNAIDS in 2003 that ‘Asia could contribute up to 40 percent of all new infections globally’ (AVAHAN, 2008). Within the region, India presented a worrisome scenario, with government surveillance data of 2002 indicating HIV prevalence of over 1 per cent in 51 districts across India.

This set alarm bells ringing. How was India, with her lack of medical expertise, scientific laboratories, research facilities and other infrastructure on the one hand, and her cultural taboos, poverty and malnutrition on the other, going to deal with this, if it reached epidemic proportions?

Sex workers and their collectives become central interlocutors in the HIV programme of India, beginning gradually and then growing in confidence and competence. They embraced the HIV programme both because they had a threat perception vis-a-vis HIV infection, but also because they felt they had the key to make things change for themselves and the larger community. Finally, through these ‘value led interventions’ (DMSC and TAAH, n.d.), they also felt heard. Their contribution to reducing HIV infection in India is discussed later in the paper.

## 6. Legal Framework

Provisions of the Suppression of Immoral Traffic Act, or SITA, passed by Parliament in 1956 following India’s accession to the United Nations International Convention for the Suppression of Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949, and its 1986 version—the ITPA—

have one thing in common. The various provisions of these laws were carefully drafted so as not to punish the sale of sex per se or prostitutes. They mirror the intent of the 1949 UN Convention on Trafficking, which mandates that State parties are to punish persons profiting from the prostitution of others, especially women and children, and therefore, to inhibit prostitution from being carried out on an organized scale.

In its 2012 submission to the Inter-Ministerial Group constituted by the Ministry of Women and Child Development (MWCD) of the Government of India, the Lawyers Collective illustrates this as follows (Lawyers Collective, 2012):

**Section 3** of the Act prohibits keeping or managing or acting in or assisting in the keeping or management of a brothel or offering premises for use as a brothel but does not criminalise working in a brothel as a sex worker

**Section 4** punishes persons living off the earnings of prostitution of another person but does not criminalise a sex worker for making a living from prostitution

**Section 5** penalises procuring or inducing a person for prostitution but does not criminalise a sex worker for engaging in sex work.

**Section 6** criminalises detaining a person in a brothel or premises for prostitution but does not condemn a sex worker for being present in premises for prostitution.

The *only* provisions that condemn sex workers’ conduct are Sections 7(1) and 8, which prohibit the carrying on of prostitution in public and/or notified areas and soliciting for prostitution, respectively. Both these sections are meant to contain public nuisance, which may result from the activities in question. It is therefore clear that the law penalizes acts that are incidental to prostitution, but not prostitution per se.

The ITPA has seen disproportionate and misguided application against sex workers. Studies conducted over the years have revealed that Section 8 is the most used provision of the Act (Sen

<sup>4</sup> <http://siteresources.worldbank.org/INTHIVAIDS/Resources/375798-1151090631807/2693180-1151090665111/2693181-1155742859198/India20V3.pdf>

and Nair, 2005). The obvious reason for this is that sex workers are the easiest targets for the police. Once arrested, most plead guilty to the charge of soliciting, doing away with the need to investigate, produce a witness and hold a trial. Statistics reveal that over 60 per cent of cases registered under the ITPA are against female sex workers under Section 8; over 90 per cent of such cases result in conviction and more than 80 per cent of the complainants are men. This finding makes a mockery of the Act, which was meant to protect women. Instead, it has been used to arrest, prosecute and convict women at the instigation of men.

Raids are executed by the police for many reasons, including complaints lodged by NGOs, who intend to rehabilitate sex workers, and church and evangelical groups, who want to end this work. However, rehabilitation programmes often undermine the very purpose for which they have been instituted, with a high rate of violence experienced by women in rehabilitation homes and high incidences of their return to sex work (Pai, Seshu, and Murthy, 2018).

In 2005, the then Department of Women and Child Development (WCD) of the Ministry of Human Resource Development, Government of India, proposed changes to the ITPA ('The Immoral Traffic (Prevention) Amendment Bill, 2006'). Notwithstanding the protests, the WCD introduced the Immoral Traffic Prevention Bill in Parliament on 22nd May 2006. The bill included several contentious provisions, including a new Section 5C that penalizes persons visiting brothels, i.e. clients of sex workers.

The clause reads as follows:

5C. Any person who visits or is found in a brothel for the purpose of sexual exploitation of any victim of trafficking in persons shall on first conviction be punishable with imprisonment for a term which may extend to three months or with fine which may extend to twenty thousand rupees or with both and in the event of a second or subsequent conviction with imprisonment for a term which

may extend to six months and shall also be liable to fine which may extend to fifty thousand rupees.

Owing to large-scale protests by sex workers and civil society activists, and the stringent criticism on legal, political and public health grounds, there was a divergence of opinion within the government. Consequently, the ITPA Amendment Bill lapsed in February 2009.

### ***6.1 Supreme Court Panel Established, Calls for Amendments to the ITPA***

Soon after, a Supreme Court panel was established in July 2011, headed by advocate Pradip Ghosh. Panel members included advocates and representatives of sex workers collectives in India. The panel was appointed while dismissing a criminal appeal and affirming the conviction of the accused, Budhadev Karmaskar, for brutally murdering a sex worker in Kolkata in 1999. The appeal was converted into a public interest litigation to investigate various aspects of sex workers' rehabilitation and to provide them with a dignified life. The panel has prepared fifteen interim reports till now.

In its report the Panel said:

The most apparent problem for sex workers was their lack of legal status in the country. As sex workers are criminalised, it is difficult for them to acquire proof of identity such as ration cards or voter ID cards, owing to lack of proof of residence. The local district authorities do not recognise the identities of sex workers and their children, even though every citizen of India is entitled to basic human and fundamental rights. Consequently, sex workers cannot access the schemes meant for their rehabilitation, even if they want to. Similarly, sex workers have no access to credit facilities offered by the state because of their inability to open bank accounts, due to lack of supporting documentation (*Budhadev Karmaskar vs State of West Bengal*, 2011).

The panel has also recommended that rehabilitation be made a right for those who seek it and recommended that a scheme should be made to

protect, rehabilitate, provide livelihood alternatives and prevent re-trafficking of sex workers. The scheme should allow for monetary provisions of up to Rs. 50,000 for sex workers to eke out alternative work. ‘The Panel was quite surprised to learn that there existed no exclusive scheme for rehabilitation of sex workers who wish to leave sex work, either at the central and/or at the state levels,’ said the report, noting that all rescued sex workers, irrespective of whether they seek help or not, are sent to state-run shelter homes, keeping them away from their families and friends.

The panel has also called for recommendations to amend the existing ITPA. This includes the recommendation that Section 7 of the Act be amended to include the clause that sex work will not be illegal if conducted near a public place like a temple, hospital, educational institution, etc., in cases where these public places have come into existence subsequent to prostitution having started.

Some of the other recommendations include changing the definition of brothel (Section 2a), not penalizing those living on the earnings of a sex worker (Section 4), deletion of the section on soliciting (Section 8), and the doing away of the section on the removal of a prostitute from any place (Section 20), among others.

### ***6.2 Support from the National Legal Services Authority (NALSA)***

While the hearings of the Supreme Court Panel were still ongoing, in December 2012, representatives from sex worker collectives from five states met with Justice Altamas Kabir then patron-in-chief, NALSA, to share their concerns. Justice Kabir stated that every single ‘crisis’ and violation that the community faced at the hands of healthcare providers or the police should be communicated in writing to the Legal Services Authority, thus paving the way for a more intense engagement with the Authority. In 2015, the then Chief Justice of India, Shri H. L. Dattu, set up the Justice Sikri Committee, which was mandated to examine the role NALSA could play in strengthening the legal and social protection of women in sex work and those vulnerable

to trafficking. This resulted in package of schemes called NALSA Schemes, one of which was for sex workers. The scheme, Victims of Trafficking and Commercial Sexual Exploitation Scheme 2015, proposed strengthening social inclusion and social development of marginalized communities.

### ***6.3 Anti-Trafficking Bill 2018***

Despite the above developments, the MWCD moved the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill in 2016 and again in 2018, when it was finally passed in the lower house. The bill (2018) creates a law for investigation of all types of trafficking, and rescue, protection and rehabilitation of trafficked victims and establishment of anti-trafficking units to rescue victims and investigate cases of trafficking. The bill classifies certain purposes of trafficking as ‘aggravated’ forms of trafficking. These include trafficking for forced labour, bearing children, begging or for inducing early sexual maturity. Aggravated trafficking attracts a higher punishment.

Kotiswaran (2018), while analysing the anti-trafficking law, highlights the inherent ambiguity within the bill that on the one hand undermines the economic bargaining power of sex workers, and on the other, contributes to persistent societal discrimination against them. She further states that the lack of clarity over the legal status gives unprecedented power to police and the state machinery against sex workers, leading to the highest form of exclusion.

Nayak (2018), commenting on the anti-trafficking bill of 2018, states that the bill fails in a major way in addressing the changing forms of labour and its related events of exploitation within the larger ambit of informal labour markets. She argues that with the expanding market, millions of workers migrate and look for work outside their existing locations and engage in both skilled and unskilled labour activity within the informal labour market. So, it is important that the anti-trafficking bill addresses the vulnerability of all other forms of labour and not just sex work, which is presently being done with an intention to criminalize most of the activities within prostitution.

Pai et al (2018, July 14) argue that the anti-trafficking bill which validates raid and rescue operations in fact rarely addresses the issue of trafficking, and instead, results in mass human rights violations, negating the very agency of adult sex workers. They further argue that without a sustainable and economically viable rehabilitation model, women in sex work are pushed to greater uncertainties of life, including extreme forms of economic vulnerability.

Tripti Tandon (2018), who has worked for several years for the rights of the sex workers, states that the bill is founded on baseless claims and does nothing that it promises. The new bill of 2018 is neither clear nor comprehensive and does nothing for the actual victims of trafficking. She says that the bill is deeply flawed and irrational and labels it as an all-time low in the criminal justice system.

While these are some of the glimpses of various takes on the anti-trafficking bill, on the ground, women bear the real brunt of such skewed legislation. Since early 2020, in Pune, sex workers of Budhwar Peth (Torgalkar, 2019) have been regularly harassed and intimidated by the police in the name of checking documents, and the area raided under the ITPA, adversely affecting their livelihood. Many adult sex workers have been forcefully sent to shelter homes even if they do business by their own will. While this is just one incident, sex workers across country are being targeted by the state machinery and a blanket moral policing has become a regular phenomenon, denying every right of the sex workers.

As Sahni and Shankar (2017) argue, while it is absolutely necessary to stop underage and forced prostitution, the same can be done not merely by legislation but by addressing deep-seated social and structural inequalities, by the collective intent of the community and continuous awareness and sensitization of the pimp, middle men and brothel owners—which has been successfully done by various organization like Durbar Mahila Samanwaya Committee (DMSC), Sampada Grameen Mahila Sanstha (SANGRAM), Veshya Anyay Mukti Parishad (VAMP), Aashodaya Samiti and many others.

## 7. Interventions For and By Sex Workers

Ironically, interventions for and by sex workers began with the National AIDS programme, which started off viewing sex workers as the vector of the disease and evolved to seeing sex workers as equal partners in the fight against AIDS. According to WHO, globally, female sex workers are 13.5 per cent more likely to be living with HIV than other women of reproductive age; in Asia, female sex workers are almost 30 per cent more likely to be living with HIV. Modelling studies indicate that decriminalizing sex work could lead to a 46 per cent reduction in new HIV infections in sex workers over 10 years and eliminating sexual violence against sex workers could lead to a 20 per cent reduction in new HIV infections.

Based on this evidence, two broad types of interventions were carried out. Health interventions included condom programming; behavioural interventions; HIV testing and counselling; HIV treatment and care; Pre-Exposure Prophylaxis (PrEP); prevention and management of viral Hepatitis, TB and mental health conditions; and sexual and reproductive health interventions.

The second type of interventions came to be called structural interventions, which included campaigns for supportive legislation, policy and funding' addressing stigma and discrimination; community empowerment; and addressing violence. This second group of interventions addressed issues of exclusion and dignity of sex workers.

### 7.1 Antecedents to Sex workers' Collectivization in India

In 1958, 24-year-old Husna Bai<sup>5</sup> was the first to challenge the validity of the SITA Act 1956 in the Allahabad High Court. Filing on the very day the Act came into force, she stated openly that her profession was prostitution, and therefore demanded that the new law violated her right to livelihood and 'frustrated the purpose of the welfare state es-

5 De, R. (2018). *A people's Constitution: the everyday life of law in the Indian republic*. Princeton, NJ: Princeton University Press.

tablished by the constitution in the country'. Her petition was dismissed within months, but only on technical grounds.

In the process leading up to the writing of the Constitution, women's groups across political affiliations were broadly of the view that the freedom of India, now imminent, must be a time to consider 'social and moral hygiene' of the society. In view of this, even though the Constitution guarantees equal rights irrespective of gender, special provisions for the 'emancipation of women' were retained. Meanwhile, abolitionist groups based in London such as the Association for Social and Moral Hygiene, also lobbied hard to include their views in the Indian Constitution.

Husna Bai's petition gave rise to a nationwide discussion on the rights of sex workers within the Indian Constitution. On the day she filed her petition in Allahabad, 450 women formed the Allahabad Dancing Girls Union to fight SITA. As news spread, within a week a similar petition was filed in the Delhi High Court by Mahroo and Ram Pyari, two prostitutes in Delhi. This was the beginning of collectivization as a bargaining tool for the sex workers' movement in India.

### **7.2 Collectivization as Good Practice**

The National AIDS Control Programme of 2002 was the first to recognize the Sonagachi model of collectivization, which brought down HIV prevalence among sex workers from 11.5 per cent in 1998 to 1.66 per cent in 2016 across 49 sites in West Bengal, as a successful model for HIV prevention.

The Durbar Mahila Samanwaya Committee (DMSC) was the first sex workers' collective of India, established in 1995 in Sonagachi, one of the oldest and largest red-light areas of Kolkata. It began from an HIV prevention project (Reza-Paul et al., 2019) and organically developed into a sex workers' collective. It is exclusively managed by sex workers and their children to create solidarity, collective strength and bargaining power among the sex worker community and other marginalized groups. It has a membership of 65,000 female, male and transgender sex workers.

Sampada Grameen Mahila Sanstha (SANGRAM) in Sangli, Maharashtra is a rights-based organization, which has been operating for over 25 years with a strong presence in the global sex workers' movement. They have been advocating for decriminalizing sex work, demanding that consensual sex between two adults should not be conflated with sexual exploitation or sex trafficking and arguing that the will and agency of the people involved in the act should be recognized. The Veshya Anyay Mukti Parishad (VAMP), established by SANGRAM in 1996, is now a collective of 5,000 women involved in sex work in Maharashtra and north Karnataka.

Sex workers from DMSC visited sex workers in Mysore to discuss the possibility of establishing a collective. More than a hundred Mysore sex workers visited Sonagachi to witness the highly successful experiment there. Several community meetings were held, and finally, in December 2005, a democratically elected board was constituted—and the Ashodaya Samithi, or Dawn of Hope, was born.

### **7.3 Self-Regulatory Board: Sex Workers Themselves Address Trafficking**

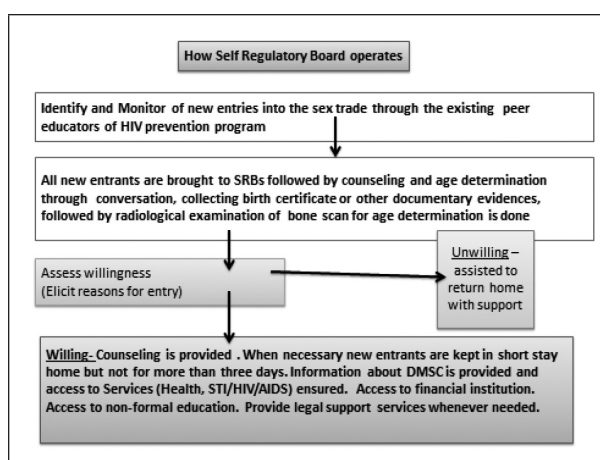
In the year 2000, DMSC established a multi-stakeholder, sex worker-led institution called the Self-Regulatory Board (SRB), which mandated itself with the task of screening new entrants into the red-light area, with a view to reducing all kinds of violence, including trafficking in sex work.

It adopted two important guiding principles. One, that the SRB would be based on broad-based partnerships between sex worker organizations, NGOs and representatives from the local government. And two, that the method of recruiting trafficked girls will be humane—non-threatening, non-coercive and non-stigmatizing—while respecting privacy and confidentiality of trafficked and underage girls.

The composition of the SRB is key. It usually consists of 9 to 10 members. Five of them are sex workers, with equal representation from central and local committees of sex workers and children of sex workers. The remaining members are comprised of

a local elected representative, a district medical officer, a representative of the Social Welfare Board from the Ministry of Women and Social Welfare, one lawyer from the local Bar Council and one local eminent citizen (a professor, schoolteacher or representative of a local women’s organization).

Accordingly, the rescue operations undertaken by the SRB respect the agency of the women and her ability to take decisions for herself. She is provided with support and security in choosing future options. For those who choose to stay in the trade, the SRB arranges for services to enable and empower them.



The Functioning of the Self-Regulatory Board- DMSC, Sonagachi, Kolkata

On an average, about 650 to 750 new entrants are screened by the SRB every month. This approach to anti-trafficking has led to a significant decline in the proportion of minor girls in the red-light areas of Kolkata—from over 25 per cent in 1992 to a mere 1.3 per cent in 2014. Accordingly, the median age of sex workers has gone up from 22 years in 1992 to 28.5 years in 2014 (Steen, Jana, Reza-Paul, and Richter, 2015). The Supreme Court Panel, in its final report in 2016, has recommended that SRBs be established in all major cities of India.

#### 7.4 Sex Workers Financial Cooperative

Sex workers were unable to open bank accounts for lack of ‘proof of residential address’, and faced humiliation when banks insisted they should bring their ‘husbands’ along. As a result, most sex workers entrusted their day’s earnings with brothel own-

ers (‘madam’) or with pimps, or with their lovers, for safekeeping—all of whom often duped them. Sex workers were sometimes even robbed of their money by the local goons or by extortive police officers. Most sex workers, therefore, choose not to save cash, spending the day’s income that day itself. At times of need—such as illness, marriage, children’s education—they are forced to borrow money from local money lenders at extremely high interest rates (as high as 300 per cent) or from informal funds with unfair lending practices. This landed sex workers in deep financial debt, making them even more vulnerable to exploitation. To earn more and faster to pay back debts, they engaged in risky and unsafe sexual practices, increasing their vulnerability to HIV.

To address these multiple vulnerabilities and achieve financial stability and economic security, a few sex workers at DMSC Kolkata got together to register the Usha Multipurpose Cooperative Society in 1995. Apart from being able to save their money safely, and access cheap credit, sex workers received a passbook, which served as their first proof of residential address, thus helping them to access citizenship and entitlement documents such as voter IDs and ration cards.

The society encouraged self-sufficiency, social security and economic independence among sex workers. This also enabled many of them to develop entrepreneurial skills and has created alternative employment for out-of-work and elderly sex workers. Usha has enabled sex workers to send their children to schools and colleges. As a result, many of the girl children of sex workers are pursuing higher education and career building opportunities.

Starting with only 14 members, the success story of Usha Cooperative has created history in the last 30 years, proving its worth not only in building economic security of sex workers but also in encouraging safer sex practices among sex workers. Most importantly, it has established sex workers’ identity as citizens and strengthened their capabilities to improve health and quality of life for themselves and for their family members. With more than 30,000 members currently, USHA has an an-

nual turnover of about USD 5 million. This cooperative has been documented by the United Nations Population Fund (UNFPA) as one of the global best practices in HIV prevention.

### **7.5 Improving Sex Workers' Access to Government Schemes through the 'Single Window' System**

The Centre For Advocacy and Research (CFAR) has been working closely<sup>6</sup> with sex worker community-based organizations (CBOs) to enable them to collectively assert and advocate for their due rights and entitlements so that their marginalization, vulnerability to violence, a life of indignity and denial of social protection are addressed at multiple levels.

The community-led Qualitative and Quantitative Assessment on Access to Key Schemes and Programmes conducted by CFAR in Bengaluru, Anantapur, Pune, Belagavi, Salem and Madurai in 2012 and 2013 revealed the disjuncture between the high levels of demand and the rigid criteria for service provisioning. A key challenge in facilitating access to schemes and service for sex workers who had migrated from their hometowns was the mandatory requirement of Aadhar to apply for most schemes. Applying for an Aadhar card remains a problem as they often are not able to provide any proof of residence. Schemes, like widow pension, were denied to them on the grounds that they could not furnish any proof, such as the death certificate of their spouse. The assessment also noted that the delivery of services was greatly contingent on the empathy displayed by individual government officials.

The survey helped bring consensus on the need to address anomalies, barriers and poor delivery stemming from the social and systemic biases against sex workers. In 2014, the MWCD committed to the 'Single Window System' across the country to address social inclusion of all women, especially the marginalized. It also directed the state governments to necessarily ensure convergence of all government departments and various state and

national commissions to build up a strong social inclusion programme for marginal communities. The presence of strong CBOs in the community made it easier to aggregate demand and channel it to the relevant departments. Intensive training programmes conducted by CFAR and CBO representatives—in seven districts in the four states of Maharashtra, Karnataka, Andhra Pradesh and Tamil Nadu—for Community Coordinators of Single Window helped in identifying sex workers hitherto excluded from accessing schemes, as well as assisting them in applying for government schemes and following up on applications.

In Karnataka, the Chethana Scheme of the government has increased non-conditional financial assistance to Rs. 20,000. Under the Sakala Services Act, 2011, the e-governance department of the Karnataka government has set up Aadhar centres at the CBO premises. The Rajiv Gandhi Housing Corporation Limited now includes sex workers as a separate category for receiving benefits. For sex workers applying for pension, the revenue department has allowed them to use the address of their CBOs in the pension application form so that they are no longer subject to residence inquiry visits by officials.

In Andhra Pradesh, champions within government system have facilitated the establishment of single-window systems for sex workers. Together with a local CBO, officials in Anantapur district collectorate decided to keep sex workers applications in a separate blue-coloured file. This ensured that all departments handled them with sensitivity. As one official remarked '...all government departments know about the blue file and are aware that it has come through Varadhi or Single Window Initiative'. Admission of sex workers' children into Kasturba Gandhi Balika Vidyalayas, a residential schooling facility for adolescent girls has been ensured. The district Rural Development Authority has ensured inclusion of sex workers in self-help groups. The norms for Balasadans, established under the Integrated Child Protection Scheme, have been relaxed to provide year-round residence to female children of sex workers. Through the Society

<sup>6</sup> Excerpted from the report, *Evaluation of the Single Window Initiative* (2017). CFAR, Amaltas India, unpublished.

for Social Audit Accountability and Transparency, sex workers have become part of the social audit processes in Andhra Pradesh.

### **7.6 A Sex Worker has the Right to Refuse: Supreme Court, 2018**

In November 2018, the Supreme Court ruled (Singh, 2018) that ‘even if the allegations that a woman is of immoral character are taken to be correct, the same does not give any right to any person to commit rape on her against her consent’. In effect, this means that the Courts have determined that a sex worker has the right to say no. ‘Even assuming that the prosecutrix was of easy virtue, she has a right of refuse to submit herself to sexual intercourse to anyone,’ the Bench said.

This ruling came while convicting four men of gang raping a woman in Delhi in 1997 and sentencing them to 10 years’ imprisonment for the crime. The four men, in their statement argued, had that the victim was of bad character and indulged in prostitution. They contended that they were falsely implicated in the rape case because they had complained against her.

### **7.7 A Sex Worker Cannot be Charged for Trafficking Offences: Calcutta High Court, 2019**

In a landmark judgement (*Manoj Shaw v. The State of West Bengal*, 2019) in August 2019, the Calcutta High Court ordered that a sex worker, who is exploited for commercial sex practices should not be charged as accused for the offences under ITPA, 1956 until and unless cogent materials on record proves that she was also involved as a co-conspirator in the crime.

The court held that sex workers are themselves victims of crime and should be provided with all remedial measures available under the law, including witness protection programme, grant of interim compensation and/or rehabilitative measures and protective custody.

This court order is an indictment of the current practice of police harassment of sex workers, who are taken into custody, brutalized behind bars and further exploited under the existing legal regime.

### **7.8 Two National Networks of Sex Workers Established**

Since 1998, the idea that sex workers across India, in all their diversity, must come together under one common forum, was discussed and debated. The aim was to assert strength in numbers and become a voice to reckon with in national and international forums. Accordingly, a group of sex workers’ organizations came together informally to undertake several important campaigns and movements to raise their issues both at state and regional levels.

As a result, some of the member organizations came together to register as a legal entity of sex workers’ collectives, and thus, the legal entity All India Network of Sex Workers (AINSW) came into being in 2011. All board members of this network are themselves presently or formerly involved in sex work (AINSW, 2019)

Through this same process another group of sex workers’ organizations came together to register as a network, creating another legal entity, the New Network of Sex Workers (NNSW) in 2020.

Both these networks are a platform for community-based organizations led by sex workers, both female and transgender. The networks are active at the regional and global levels—as members of the Asia Pacific Network of Sex Workers as well as the Global Network of Sex Work Projects (NSWP)—to influence regional and global policies and programmes

### **7.9 The Transgender Community and Sex Work**

India’s 2011 census recorded half a million transgender people, through estimates from community leaders working with transgender groups peg the number at about 2 million. While the national average for India has a relatively low HIV prevalence rate of 0.2 per cent (‘HIV and AIDS in India’, 2020), that rises to 7.4 per cent among transgender women. Eighty-seven per cent of trans women in India earn money either as sex workers or by begging (Withnall, 2019) on the streets.

The Hindu concept of *ardhanarishwara*—an androgynous deity that comprises the merged forms

of Shiva the destroyer and his female consort—forms the religious foundation for the acceptance of transgender people in India. They have existed in the Indian historical records since the 9th century BCE. They held prominent positions in society, such political advisors to kings and administrators. But this pious reverence of transgenders has failed to acknowledge their demands to be regarded as full citizens of a modern democracy, transgender representatives allege.

A colonial law, Criminal Tribes Act of 1871, which particularly targeted them, was the beginning of their fall from grace. Even though the Act was repealed in 1952, the damage it caused is still visible.

### **7.10 NALSA Judgement 2014**

Soon after transgenders were, for the first time, recognized as the third sex in the 2011 Census, came the path-breaking Supreme Court judgment of 2014, popularly known as the NALSA judgement. It recognized the marginalized status of transgender people saying, ‘Our society often ridicules and abuses the transgender community and in public places like railway stations, bus stands, schools, workplaces, malls, theatres, hospitals, they are side-lined and treated as untouchables, forgetting the fact that the moral failure lies in the society’s unwillingness to contain or embrace different gender identities and expressions, a mindset which we have to change.’ The Supreme Court’s directive on recognition of a third gender meant that every sector and department—be it education, health, finance, social welfare, police, law, and justice—had to engage with issues of the transgender community. However, social bias continues, and transgenders are denied education and jobs, forcing many of them into the sex industry.

### **7.11 Infirmities in the Transgender Bill, 2019**

The much-awaited Transgender Persons (Protection of Rights) Bill, was passed by the Lok Sabha in August 2019. However, the transgender community termed the day as ‘Gender Justice Murder Day’. The bill was drafted without any substantive consultation with the community and was passed despite huge opposition from civil society activists.

The hope now is that the bill does not receive the approval of the upper house without the necessary amendments.

Rachana Mudraboyina, a trans activist and one of the founding members of the Telangana Hijra Intersex Transgender Samiti and the founder of Trans Vision, says, ‘History has, time and again, betrayed the transgender community. Erased our stories, stories of the state, majoritarian forces killing, raping, and stripping us naked. Our identities and bodies mutilated to such an extent, that the word violation would be short-changing the narrative. The unfairness with which history has dealt its hand would only be corrected through an active effort of the state, to recreate a discourse, the primary requirement being consultations with the community.’

According to this bill, a court order will decide where a trans child will live—whether with the biological family or the community family<sup>7</sup>—which demonstrates the State’s poor understanding of the notion of ‘family’ as it applies to transgender communities. The bill says that there will be just one committee at the national level, which will include a maximum of five representatives from the transgender community. This is an unfair representation for the transgender population. The penalty for rape is just six months to two years, when it is life imprisonment for raping a woman. Even endangering their life is punishable by a maximum of two years in prison. The community has raised the concern that the crimes against them are considered and penalized as ‘petty’ crimes.

## **8. Survey Undertaken by Sex Workers**

The latest survey of sex workers was conducted in Delhi, Kolkata and Hyderabad. While in Delhi and

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<sup>7</sup> Community family could be defined like a unit which functions like a biological family in circumstances when the biological family do not want to take the responsibility of the family member. In particular for the trans community in India, many a times the biological family is hesitant to accept a child not born as a boy or a girl and it is then that the trans community adopt and accept the child as their own and thus the child becomes part of the community family.

Kolkata, members of AINSW conducted the survey with female sex workers, in Hyderabad, the survey was conducted with transgender sex workers. In total, 600 sex workers took part in the survey, with an equal representation of 200 sex workers in each site. All sex workers were based in urban locations and worked as brothel-based, home-based or street or lodge-based sex workers. In Hyderabad, all transgender sex workers were interviewed in their homes, which is also the site where sex work is done. In Delhi, the majority of the sex workers were interviewed in various hotspots, like places around prominent government hospitals in East Delhi, parks and lodges, followed by brothel and homes. In the course of the survey, we realized that a number of sex workers convert a portion of their house to solicit clients when the children and husbands are away in school and work or may go to a friend or acquaintance's residence to service clients in return for a payment to the owner of the house. In Kolkata, all women in sex work were interviewed in hotspots. The uniqueness of this survey lies in the fact that the entire survey was conducted by trained community researchers who were also sex workers themselves and reached out to other women in sex work who otherwise are difficult to find. Thus, the survey offers a rich insight into the everyday life of the sex workers.

The rationale for selecting three locations was methodological—to capture diversity, that is, to record the everyday practices of sex workers working from various sites such as brothels, hotspots, homes, hotels, lodges, parks and streets—and also to know if sex workers across regions had similar experiences to share and whether, through this survey, we could open up a new conversation towards protecting the rights of sex workers, moving beyond the politics of right and wrong. Not surprisingly, the three sites came up with similar realities of exclusion, stigma, and marginalization—both in terms of the work that they do and how the State and the society at large react to their presence. The survey also highlights strong voices of agency and resistance that sex workers either independently or collectively display to challenge the hegemonic mainstream society. Once being part of the insti-

tution of family and marriage and representing the ideal image of 'morally sanitized women', these women and transgenders in sex work soon realized that sex could be reproduced as a form of 'labour' and 'service' and 'care work' in exchange for cash and kind and has a very lucrative market value.

'What is wrong in being a sex worker?' asks a member of AINSW. 'In this work, I am the boss. I do work as I want to and go back home. I have enough time to myself; I feel loved, I feel I do good for my customer and I say no when I am not feeling like doing *dhandra* (sex work) ... Where else could I have such options?' (a sex worker, Sonagachi, Kolkata, 1st October 2019).

Some of the major findings from the survey are explored below.

- 1. Entry into sex work—choice and a result of exclusion:** Across the three sites we had women and transgender persons sharing various tales of exclusion and compulsion that brought them to sex work. While the majority of women entered sex work because of poverty, poor socio-economic conditions, violence and exploitation in marriage and other areas, we also found that a considerable number of women—408 in number, or 68 per cent—came to sex work on their own. The second finding was that these women, who either came on their own or due to their circumstances, did so after venturing into the informal labor markets—working as domestic helpers, beauty parlour workers, wage labourers, petty vendors, construction workers etc., which were also the sites of exploitation for them. It was definitely economic reasons that brought them to sex work, as they realized that sex work would give them more income than they could earn in other work. In Kolkata, of the 200 sex workers who were interviewed for the survey, 137 (69 per cent) women said that they came to sex work as they consider 'sex work as work'; in Hyderabad, all 200 transgender sex workers shared that no one forced them to

sex work and they are engaged in sex work by their own choice. Though they came on their own to do sex work, the survey highlights that the majority of transgender sex workers do sex work secretly to avoid violence from police and save oneself from double stigma and marginalization within the family.

In Delhi too, 135 (68 per cent) women shared that they came to sex work willingly as they hope to earn more money in sex work than any other work that they did. These numbers strikingly tell us a couple of things about exclusion. One: with limited access to education—we found that only 104 (17 per cent) women in sex work have access to some level of education, while transgender sex workers remained deprived of even primary education—and opportunities to develop skills, women chose to be in sex work solely for better incomes; second: sex work, in spite of its violence and exploitative characteristics, provides a safety net to women for whom it is difficult to find otherwise. A symbiotic relationship is nurtured between the pimp, the brothel owner, agents, police, clients and the sex workers, which ensures the continuity of business, even if one cannot deny that these same relationships are also inherently exploitative and violent.

- 2. Sex work thrives on the institution of marriage:** In both Delhi and Kolkata, we found that the majority of women involved in the work are also currently married. We found women who came to sex work after being married for years in the hope of earning a decent livelihood to take care of their family and children. In Kolkata, while 128 (64 per cent) women in sex work are currently married, in Delhi, the count is 138 (69 per cent). In Hyderabad, the picture is different, with only 12 (6 per cent) transgender sex workers identifying themselves as married and in the business of sex. We also found that 29 (15 per cent) women

in Delhi and 65 (33 per cent) women in Kolkata came to sex work after they were widowed or got separated or divorced. A good number of respondents did express that they came to prostitution to escape violence within the family and marriage. Though many continued being exploited in sex work, women said that they have the scope of escaping this violence by the sheer power of bargaining, negotiation, avoiding violent clients and intelligent management of the intermediaries, all of which was not possible in marriage.

As we found that most women got into sex work after marriage, we wanted to further understand whether marriage was a reason for entering sex work and if it helps in the thriving of sex work in general. In a very affirmative response in one of our conversation with a group of women in Delhi, they said, ‘Being married and being a mother makes it easy for us to do sex work without being doubted by our family and society.’ ‘I do sex work in my home,’ said one, ‘and rent out a portion of my house to other sisters to do sex work. They come as my friends and since the neighbours around also know that I run a small garment shop within my home, no one ever comes to know what I do. Moreover, the clients make me feel special, makes me feel loved, something I no longer get from my own husband.’

- 3. Sex work and consumption of newly found spaces:** While it is true that liberalization created several new spaces of consumption and absorbed a huge number of males, females and transgender persons into sex work, it was not very easy to adjust to these new spaces and continue working. With mobile revolution, on the one hand the sex workers found a new lease of life by not being labelled as sex workers, but on the other, the same technological advancement kept them under constant surveillance. Liberalization in-

deed invisibilized the traditional spaces of prostitution—kothas, brothel and the red-light areas, leaving sex workers to fend for themselves, often exposed to unwarranted violence, harassment and exploitation.

While exploring various sites of work, we realized that even the traditional sites of sex work have been transformed a great deal, with urbanization and the expansion of market economy. Now, women fix appointments with their clients on phone and conduct business in a rented place, hotel, lodge or makeshift brothels located in middle-class colonies rather than in established red-light areas. Many sex workers shared that they go out of the city with their customers and the reason given to the family is always a visit to a religious place. Very ironically, religion, which ostensibly bars women to transact in sex outside marriage (while tacitly supporting sex work in some cases, as in the case of devadasis), becomes the strongest alibi for women in the business.

Brothels mostly house middle-aged and elderly women, who on an average have been staying there for over 15 to 20 years. These women usually have regular customers visiting them. In terms of number, we found that the younger women in the age group of 18–35 years of age mostly work as home-based and street-based sex workers than from brothels. While in Hyderabad, all 200 transgender sex workers in the age group of 21–35 years did sex work in their homes and rented homes. In Delhi, of the 125 (63 per cent) respondents who belonged to the age group of 18–35 years of age, 116 (93 per cent) of them operated from places other than brothels such as rented rooms, lodges, hotels, parlours and various hotspots in the city. In contrast, Kolkata presents a very different picture. While 156 (78 per cent) respondents belonged to the active age group of 18–35 years of age, only 41 (26 per cent) respondents worked

outside the brothel, while 115 (73 per cent) respondents were brothel-based sex workers—the reason being the strong presence of DMSC that offered them safety in the red-light area.

Thus, women in sex work are increasingly using varied urban locations which are not labelled as locations of sex work and are very much a part of everyday life. The only reason for this shift is to minimize stigma and exclusion. These women are relatively better positioned in the socio-economic hierarchy and need not overtly ‘look’ and ‘identify’ as sex workers and can continue serving clients as they choose to in their desired location. For example, a woman may choose to involve in a sexual transaction in exchange of money or kind in a morally sanitized space like one’s own house, clinic, beauty parlours, office, work space, hotels and resorts, over phone and internet—in fact, in every place which is not thought of as spaces of sex work. It is very intriguing that every space around us could be transformed into a space for sexual production and sexual consumption. It is only wise on our part to accept that consumption of sexual services has become a lifestyle activity where various economic forces interact with each other for the sustenance of the global capitalist market and the expansion of the global capitalist economic structures (Brent & Hausbeck, 2007, p. 427).

- 4. Interface between sex work and informal labour markets:** Women, men and transgender persons have their presence in both informal labour markets and the market of sex. As mentioned earlier, sex workers mostly hide their identity not because they are ashamed of what they do, but to escape violence and stigma from the rest of society, including the State and the police. Though in a way it is accepted and acknowledged that transgender persons usually indulge in sex work, for women, it

is a challenge to operate using a fake identity and under a false name. The survey reveals that of the 600 respondents, only 171 (29 per cent) respondents shared that their family was aware of them being sex workers. While combining Delhi and Hyderabad, 60 (15 per cent) respondents said that their families are aware of their work. In contrast, in Kolkata alone 145 (73 per cent) respondents said that their families and children are aware of their work as sex workers—here we see the shift due to the presence of a strong CBO and collective of sex workers, who take pride in the work they do.

The survey further reveals that 429 (72 per cent) respondents in sex work are doing sex work secretly for varied reasons, out of which 143 (33 per cent) claimed they were working as construction workers, wage labourers, health workers and office workers as these are jobs more accepted in society. While such mainstream jobs shield the identity of women as a sex worker, the women themselves prefer to be identified this way to avail various social security entitlements which as sex workers they would be denied. Hence, the fear of exclusion compels women to hide their identity to survive.

- 5. Denied the basic minimum, yet the sex workers rise to the occasion:** This chapter previously highlighted the various forms of exclusion that transgender persons and women in sex work experience in relation to the basic entitlements and services that every citizen of the country are entitled to and which women, men and transgender persons in sex work struggle to access. The survey across the three locations reveals that on a majority, sex workers are not even aware that they can access such provisions and entitlements as is being accessed by others. The condition is worse where the sex workers are yet to be part of a collec-

tive or associated with NGOs and some form of support groups. Lack of information, misinformation, stigma, poverty and illiteracy are some of the important reasons that hinder access to basic provisions and entitlements.

The survey specifically aimed to understand whether sex workers had basic documents like ration cards, voter IDs and bank accounts; whether they had access to financial and health, public and legal services; to what extent they are accepted in social, religious and cultural functions in the family; and whether they have access to places like hotels, parks cinema halls and malls, like anyone else. Interestingly, though the sex workers shared that they have access to a couple of provisions, but is a difficult task to access and utilize them. Moreover, nowhere have they identified themselves as sex workers, not even when they got a bank account in their name. This shows how sex workers must hide their identity to avoid stigma and exclusion from society. In terms of access to documents, the survey highlighted that while overall 213 (36 per cent) the respondents had access to ration cards, in Hyderabad none of the transgender sex workers had ration cards in their names. In Delhi, 67 (34 per cent) respondents said that they had ration cards and in Kolkata 146 (73 per cent) respondents had ration cards in their names. This difference can be attributed to both the relative strength of collectivization in the two locations. Another reason for such variance is the permanency of the residence in these locations. In Delhi, we found more migratory population in sex work, while in Kolkata, women have been staying for years together to be able to access better documentation.

These results are very interesting as when we compared the survey results with a couple of more similar studies conducted by the UNDP in 2007 and the University of Pune and SANGRAM

in 2011, we found that even after a decade's time, the condition of the sex workers in terms of access to documents remains more or less the same, and in some cases, the numbers have even gone down. For instance, the same UNDP study shows that close to 43 per cent people in sex work did not have ration cards in their name, across 8 states where the study was located. In 2019, things have not improved significantly—across 3 states, 63 per cent of respondents reported not having access to ration cards. Further, 351 (59 per cent) respondents had voter cards in their names, of which 280 (80 per cent) have been casting their votes regularly, higher than the national average, indicating their interest in political processes and an assertion of their citizenship rights. In contrast to female sex workers, we found that of the 200 transgender respondents in Hyderabad, only 6 (3 per cent) respondents have voter cards and cast their votes regularly. This indicates that despite changes in the legal framework protecting transgender persons, their daily lives do not reflect their visibility and acceptance as citizens. The right to vote could be directly linked to the vote bank politics of the specific party in power and a gate pass for residing in the area and continuing work. In Delhi, 143 (72 per cent) respondents had voter cards and 121 of them (85 per cent) cast their votes regularly. In Kolkata, 182 (91 per cent) had voter cards and 133 (73 per cent) cast their votes regularly. Women in G. B. Road, Delhi, during the course of the survey, shared: 'Just before the election, our business doubles up and we see many politicians coming to our doorsteps for votes and promising us a list of services for us but once the election is over and the leader wins, we never see him coming back to

our area...' We saw many middle-aged and elderly women without work, suffering from acute skin diseases, blindness and arthritis, living in pain without treatment.

In terms of access to birth certificates, while overall 107 (18 per cent) had birth certificates in their names, none of the transgender persons had certificates of birth in their name. When asked about access to health services, around 359 (60 per cent) respondents have visited government hospitals at least once in their lifetime and a similar number—368 (61 per cent) respondents—have gone to private practitioners and private clinics. They could never disclose their identity as a sex worker for the fear of being denied treatment. Though provisions like health cards for sex workers would encourage frequent visits to government hospitals, as shown in the UNDP report, still after twelve years, only 8 per cent of respondents have access to health cards issued by a government hospital or health department, while the number was 9 per cent in 2007.

In terms of access to financial services, 332 (52 per cent) respondents shared they have bank accounts in their names. Area wise, Hyderabad had 6 (3 per cent) respondents, Kolkata has 132 (66 per cent) respondents and Delhi had 174 (87 per cent) respondents who had a bank account in their name. Apart from having one's own bank account, sex workers are also save money through alternative modes of savings such as investing in insurance, cooperatives and committees. This is an encouraging finding and we can see a progressive change in the savings pattern, as was highlighted in the UNDP study on sex workers in 2009, where overall 65 per cent respondents didn't have a

bank account and 52 per cent respondents reported having taken loans and keeping money with family members, which in many instances never came back to them. Women are now saving better, and as mentioned earlier, the control over their earnings is another reason why many women chose to be in sex work, which they could not do otherwise.

Almost all sex workers said that they take part in various social and religious occasions and periodically visit temples, hotels, parks, cinema halls and restaurants, but they visit all these spaces not as sex workers—which clearly show the level of stigma and exclusion associated with their profession.

## 9. Recommendations to the State

The survey in several ways establishes the fact that sex workers have been mostly excluded from basic services, and wherever an attempt has been made to include sex workers, it has been done so only grudgingly by the state welfare machinery. The confidence with which sex workers shared about their lives clearly shows that sex work is here to stay, and it is high time that sex work is understood and accepted as any other service (Sander, 2008). Instead of attempting to eradicate or abolish prostitution, what is required is to make rational decisions and accept the fact that sex work could be a well thought-out decision for many to earn a living and sustain their life and family. Sex as an emotion is natural and if one wants to utilize this emotion to earn one's living and if one is good at it, we as rational beings should be open to such possibilities and ensure that such workers are able to survive (Persak, 2014).

Sex workers, over the years, have been raising some very basic demands and submitting their recommendations through networks, CBOs, NGOs—both independently and collectively—so that they are treated with dignity and are given all rights and privileges due to a citizen, not just on paper but

something that they can access easily. The foremost demand or the recommendations that the sex workers are making is to accept their work as 'work' and 'labour' ('Sex workers demand labour rights', 2007) within the larger informal market networks in the country.

They also recommend the removal of the criminalized environment that ITPA continues to inflict on them and state that the removal, amendment and reading down of specific punitive laws and policies targeting sex workers are imperative. This has been previously discussed in detail in the section on the Supreme Court Panel and their recommendations.

Sex workers demand that the State provides them with safe working environments and ask for a supportive legal framework that opposes regulation of any sort which labels them as criminals. They ask for occupational health and safety and the right to participate in the process of developing workplace health and safety standards.<sup>8</sup> They also demand for equal protection under laws against rape and other form of violence (UNCEDAW, 1992). They ask for hassle-free processes in the government departments so that they are able to obtain all documents that would ensure them social entitlements like any other citizen of the country. They recommend that government should involve sex workers in every stage of decision and policy-making processes (Veshya Anyaya Mukti Parishad, n. d.) that impact their lives.

Sex workers recommend that not only should sex workers be given labour rights, but they should be ensured minimum wages for the work they do, along with access to all quality health and social benefits. The network members also believe that trafficking into sex work can be stopped by community intervention and self-regulatory board mech-

8 As mentioned in the *ILO Recommendation Concerning HIV and AIDS and the World of Work* (2010) (No 200), Geneva: ILO and referred in the submission to the Supreme Court Panel by National Network of Sex workers, India. (2014, November 8). Conditions conducive for sex workers to live with dignity in accordance with the provisions of Article 21 of the Constitution of India. *SANGRAM*. Retrieved August 16, 2020, from <https://www.sangram.org/upload/resources/Submission-on-Sex-Work-TOR-3.pdf>.

anisms. Such self-regulatory boards should be encouraged by the government as they work as shadow legal systems to address violence and forced entry into prostitution. Another major demand and recommendation that sex workers have been raising is pension for their sisters above the age of 45 years, who usually do not find business in sex work. Along with sex workers, they have been also raising demand for pension for many other forms of labour which are hazardous in nature—like manual scavenging, tannery work, firecracker manufacturing etc., to name a few.

The recommendations are many, but underlying all demands and recommendation is an effort to ensure the right to equal citizenship, eliminating all forms of discrimination from sex workers' lives. Hence, it is necessary that the state adopts an inclusive approach to ensure the rights of the sex workers and involve each sex worker—male, female and transgender—in all decision-making processes.

Unless offences against sex workers are omitted, ITPA enforcement will be misdirected against sex workers (as noted in the report of the Supreme Court Panel), while persons who exploit or abuse the prostitution of others remain out of bounds. The Act can be fit for purpose if it deletes provisions that do not fulfil the intended purpose of eliminating exploitation, abuse and trafficking for prostitution. This line of thinking is in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children ('Trafficking Protocol') supplementing the United Nations Convention on Transnational Organized Crime, 2000.

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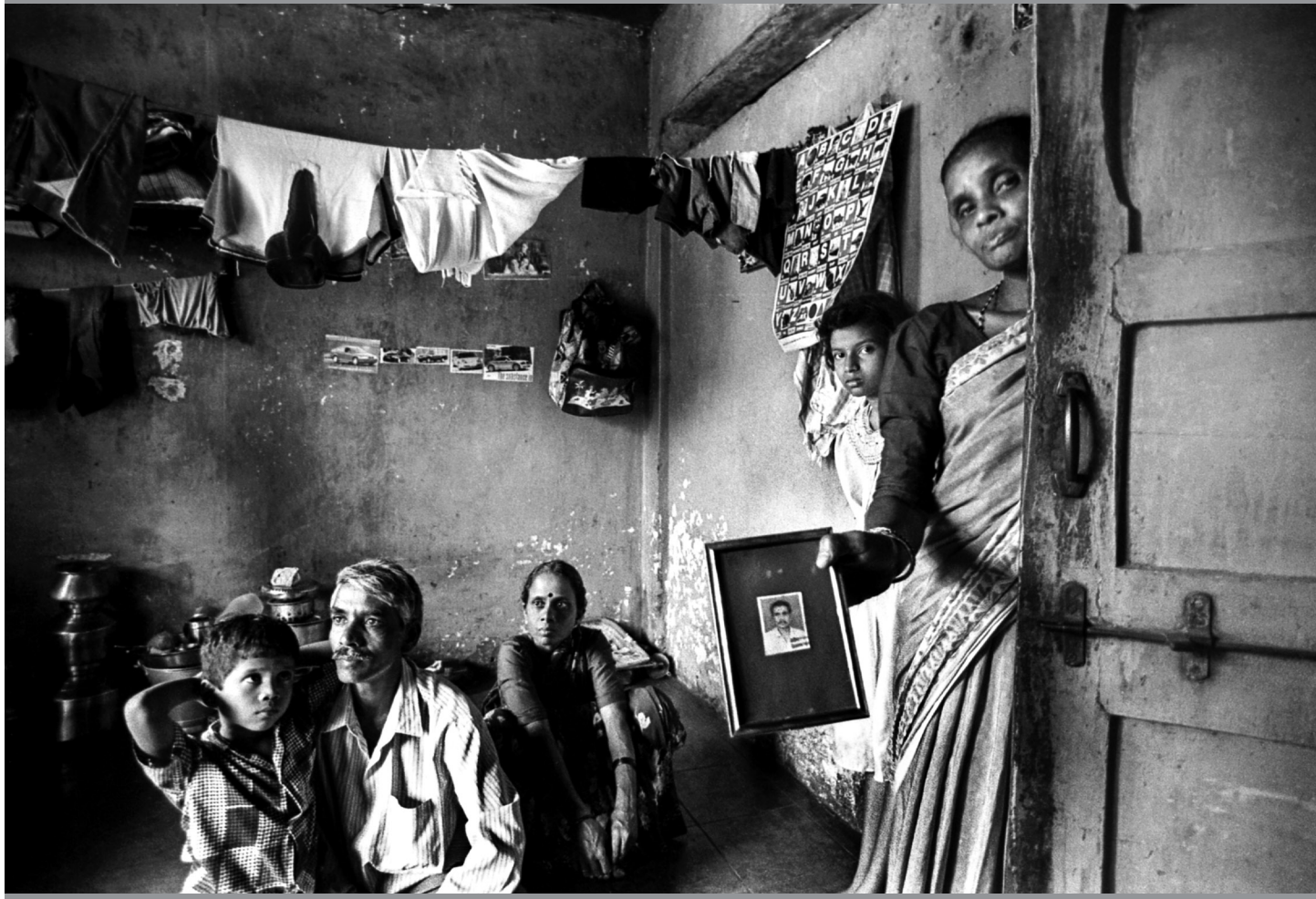
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About 40,000 conservancy workers, also known as sweepers, are employed by the Brihanmumbai Municipal Corporation. They are either completely ignored or looked down upon with disgust by the rest of society. They have to work in the midst of filth, with no protective gear, not even access to water for washing off the slime. And when the husbands die (usually at a young age), the despised job passes to the widows. The despair continues.

*Photo:* Sudharak Olwe

# Of Sewage, Struggle, and the State: Caste and Contractorization in Contemporary Sanitation Work<sup>^</sup>

Shruti I.

*Reviewed by* Tanika Sarkar, Paul D'Souza, Andres Hueso

## 1. Introduction

In September 2017, after 10 sewage workers in the National Capital Region of Delhi died within 35 days of each other, the home page of the Delhi Jal Board website shared a video it had produced on the occupational health and safety of its sewer workers (Vishwakarma, 2017).

The video opens with the slogan '*Apni suraksha, apne haath!*' (Your safety is in your hands!). It follows a sewer worker clothed in full protective gear (a helmet, gas mask and full-body protective suit), walking past a group of co-workers. This group is sitting on the ground and gossiping,

and they look up and laugh as he walks past. One exclaims, 'As though there are windstorms and typhoons that happen in the sewer! I've spent half my life in the sewers and have never worn any of this.' In a tone typical of government-sponsored advertisements, the worker in safety gear informs his misguided colleague that a person died in the sewers last year as a result of exposure to toxic gases, and this is a necessary precaution. 'Always be fully prepared, put on the mask before entering the sewer,' he advises, as the other worker nods, enlightened by this new information. The advertisement, after listing all the various safety precautions that sewer workers and supervisors should take, closes

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with the words: ‘By introducing health and safety equipment into your working practices, you can ensure your own safety. Returning home safe, and the happiness of your family, is in your hands.’

Nearly two years later, after three more deaths in the Delhi Jal Board sewer lines, Arvind Kejriwal, Delhi’s chief minister, announced that the state government would provide safety equipment to sewer workers. He said: ‘Please do not be careless. You all are being given safety equipment for free. I hope and trust that we do not hear any sewer deaths at least in Delhi in future’ (Penkar, 2019).

The framing of this advertisement, and the language repeatedly used by the State to talk about the deaths of sewage workers, raises several issues that this chapter will consider. What conditions made the release of such an advert necessary? How does the State conceive of its relationship to the sanitation worker, particularly when it claims to be providing equipment ‘for free’? How does this relate to the working conditions of sanitation workers? What stereotypes and biases continue to exist about the sanitation worker?

This chapter will focus on these questions, allowing us to understand how sanitation workers have been marginalized, through examining their unique relationship to the State. In this very advertisement, the State appears to see its role as an agent of education in relation to sewage workers. It is telling that they do not claim to be either an agent enforcing laws on sewage cleaning, or a provider of health and safety equipment. The onus of ensuring compliance with health and safety standards appears to be squarely placed on workers and contractors. In doing so, the State absolves itself of any responsibility towards workers who regularly clean excreta in hazardous and dehumanizing conditions—often in public sewers and drainage lines. In their eyes, workers ought to protect themselves from their own deaths. *Apni suraksha, apne haath.*

## 2. Background

The deaths of sewage workers have reached epidemic proportions across Indian cities, though

there has been little State intervention on the issue.<sup>1</sup> Data by the Safai Karamchari Andolan (SKA) recorded over 300 deaths in 2017 across India, while 142 sewer workers died between 2012–2014 (Mondal, 2018; Ashraf, 2017). The Ministry of Social Justice and Empowerment stated that 110 deaths had occurred while cleaning septic tanks and sewers in 2019 (Nath, 2020). A scan of newspaper reports from the last few years tells us that workers have died cleaning manholes, septic tanks and sewage treatment plants in a variety of urban locations—from hospitals and shopping malls to residential neighbourhoods, farmhouses and apartment complexes.

However, it is equally important to remember that this spate of deaths is not without precedent. All India Central Council of Trade Unions (AICCTU) data estimates that at least 75 workers have died in 34 such incidents between 2008 and 2018 in Karnataka (Krishnan & Rozario, 2018). Six

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1 In early September 2017, the media was reporting 39 deaths in 100 days. More workers died in late September 2017 in Noida and in Gurgaon. Dutta, S. (2017, September 4). 39 deaths in 100 days: how manual scavenging continues to exist in India despite it being illegal. *Swachh India NDTV*. Retrieved May 27, 2020, from <http://swachhindia.ndtv.com/39-deaths-in-100-days-how-manual-scavenging-continues-to-exist-in-india-despite-it-being-illegal-10184/>; see also Sewage workers deaths: three dead, one critical while cleaning sewer in Gurugram’s Khandsa. (2017, September 30). *Indian Express*. Retrieved May 27, 2020, from <http://indianexpress.com/article/delhi/lessons-unlearned-3-dead-1-critical-while-cleaning-sewer-in-gurugrams-khandsa-4868270/>. Nor have these deaths been restricted to Delhi—there have been numerous documented deaths in Mumbai and Bangalore, among other Indian cities. See Nair, M. R. (2017, February 20). Why death continues to stalk Mumbai’s sewer workers. *Hindustan Times*. Retrieved May 27, 2020, from <http://www.hindustantimes.com/mumbai-news/why-death-continues-to-stalk-mumbai-sewer-workers/story-qY0tdhIOhaPpDfnV5aykcL.html>; Johari, A. (2018, January 7). In Mumbai, death of four sanitation workers in a manhole puts illegal contract system under scrutiny, *Scroll.in*, Retrieved May 27, 2020, from <https://scroll.in/article/864005/in-mumbai-death-of-four-sanitation-workers-in-a-manhole-puts-illegal-contract-system-under-scrutiny>; and Chatterjee, S. (2018, January 7). Bengaluru’s shame: 3 men killed in a manhole in posh residential colony. *News Minute*. Retrieved May 27, 2020, from <https://www.thenewsminute.com/article/bengaluru-s-shame-3-men-killed-manhole-posh-residential-colony-74335>.

sewage workers died in ten days in Delhi in 2009 (Khandekar & Datsidar, 2009), and several court petitions in the Madras, Gujarat and Delhi High Courts were filed through the 2000s, asking for judicial remedies and stringent guidelines to prevent the deaths of sewage workers.<sup>2</sup> The courts and the National Human Rights Commission (NHRC) dispensed guidelines for safety and orders for the full mechanization of cleaning, but even where state governments have appeared to take these deaths seriously, the remedies taken have largely been superficial. These responses have ranged from ‘ordering the full mechanisation of cleaning drains’ to announcing compensation for families and municipality jobs for the next of kin (‘Delhi L-G directs full mechanization’, 2017; Halder, 2017). These announcements came alongside proposed measures that would better hold contractors liable for the deaths of workers in sewers (‘Contractors to face music’, 2017). The Delhi Jal Board, the principal employer of sewer workers and whose sewer lines were the sites of the deaths, has distanced itself, repeatedly claiming that they did not hire the workers who died (‘Delhi sanitation’, 2017). The Board only suspended a junior engineer and filed a case of culpable homicide—but they made it clear that the deaths were not their responsibility.

How should we understand the persistent lack of State and employer accountability? This chapter seeks to contribute to existing literature on the working conditions and deaths of sanitation workers by focusing on labour market transformations and their relationship to caste. It argues that the current inertia of the State in responding to the deaths of workers is inextricably linked to the fragmen-

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2 See *People’s Union of Civil Liberties v. Govt of NCT of Delhi and Ors* in Civil Appeal No 4911 of 2008 [Special Leave Petition (CIVIL) No 5145 of 2006]; *Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers and Ors* in Civil Appeal No 5322 of 2011 [arising out of Special Leave Petition (CIVIL) No 12345 of 2009]; *PUCI-Karnataka v. State of Karnataka and Ors* in Writ Petition No 30221 of 2009; *R. N. Narasimhamurthy v. State of Karnataka* in Writ Petition No 41076 of 2010; *Praveen Rashtrapal, I.R.S. (Retd.) v. Chief Officer, Kadi Municipality and Ors* in Public Interest Litigation SCA 8989 of 2001; *A. Narayanan v. Chief Secretary, Government of Tamil Nadu and Ors.* in Writ Petition No 24403 of 2008.

tation of the labour force and the predatory use of informal or daily-wage workers to supplement the contract workforce.

This chapter also takes the view that the continuing failure of legislation and regulation in this area is no accident, or a mere problem of implementation. The fragmented structure of employment is pervasive in India today, and structures of informalization operate in order to render workers invisible and unable to bargain collectively, while conferring benefits on and cutting costs for principal employers. The lack of accountability for worker injury and death is fundamentally linked to this, and is unlikely to change even where the State is the principal employer. It is for this reason that understanding the forms and nature of sanitation work is important—for the mechanization of this work to be a meaningful solution, employment in this sector must become regulated. As long as the State argues that the responsibility for safety is the worker’s, or continues to privatize cleaning and places the burden of sanitation upon residents, there will be little that prevents workers from labouring in dangerous and degrading conditions.

### 3. Who is the Sanitation Worker?

There are an estimated 1.2 million sanitation workers in India, most of whom are Dalits or from denotified tribes.<sup>3</sup> While this chapter largely considers sewage and drainage work, this category falls within employment in sanitation and is affected by the conditions of the sector as a whole. This section will explore the types of work involved in sanitation work, describing the labour that is undertaken and the relevant terminology. It will then provide an overview of the link between caste and sanitation work, as well as migration into urban sanitation work. It will close by considering some of

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3 Denotified tribes are those tribes that once were classified under the Criminal Tribes Act 1871 as ‘criminal tribes’. This act authorized the government to classify a criminal tribe on the basis that they were ‘addicted to the commission of non-bailable offences’. Upon Independence, India repealed this act; recategorizing the erstwhile Criminal Tribes as Denotified Tribes. In 1959, the Habitual Offenders Act brought many of these groups under state surveillance once more.

the debates in and around the terminology used by considering the distinction often made between the ‘manual scavenger’ and ‘sewer worker’ in law, and suggest that the construction of these categories are often not as neatly distinct as they first appear.

### ***3.1. Types of Sanitation Work***

Sanitation or ‘conservancy’ work usually refers to the work of sweeping the streets, clearing garbage, segregating waste and disposing it at various waste depots. Often, this includes drain cleaning. ‘Storm water drains’ are surface-level drains carrying excess rainwater and groundwater, but are frequently clogged with sludge and litter. The poor infrastructure of drainage often results in untreated sewage finding its way into storm water drains, causing water pollution. Storm water drains have catch basins to prevent the accumulation of solid waste, and must be periodically cleaned and desilted. Smaller pipes are cleaned with a jetting pipe that flushes out the debris and solid waste to the next catch basin. Drainage workers enter the larger pipes to repair them and remove sediment, which is shovelled out and passed to another worker at the surface or placed in buckets that are then lifted up. In this work, there is an unavoidable contact with sewage, particularly when drains are blocked completely. Though jet machines are used to clear blockages, often these are ineffective (where the drains are too small or the streets too narrow for a jetting and suction machine to enter), and workers are made to plunge into the drains to clear them.

The other drains that are cleaned are ‘open drains’. These are surface-level channels that carry sewage, sillage and effluents from households in small canals on the side of the road that frequently must be desilted and cleared of excreta and other organic matter. As most areas in India do not have uniform access to underground drainage, and many are reliant on septic tanks connected to water-seal latrines, people construct unauthorized connections to storm water drains or open drains. These drains carry the open flow of sewage, with direct connections to septic tanks. Open drains are desilted with tools and sometimes by hand, and cleaning involves direct contact with excreta.

‘Manual scavenging’—a practice outlawed in 1993—refers to the clearing of human excreta with one’s hands or with hand-tools such as buckets, brooms, shovels, with the waste sometimes loaded onto baskets and then deposited at specific locations. This is typically done in ‘insanitary’ or ‘dry’ latrines that do not have a flush or water supply, and often require daily emptying. It also includes the clearing of excreta in ditches and drains. Workers are also often engaged to clean public latrines, and where these toilets do not have a running water supply, they are forced to scavenge the excreta by hand.

‘Sewage work’ typically refers to the practice of cleaning underground drains that carry waste water and effluence containing solid or liquid excreta, or of cleaning septic tanks (where waste from a water-seal latrine is collected, necessitating emptying when it is full). The sewer lines that are underground are often poorly constructed in India, with a small diameter and increasingly made of cement. The line is a confined space with high temperatures, a slippery floor and a high incidence of toxic gases, sharp objects and insects. Large quantities of sewage present extreme occupational hazards from the inhalation of hydrogen sulphide, which is produced from decomposing organic matter, and sometimes cause workers who enter the sewer to asphyxiate. This also leads to other health hazards such as cardiovascular degeneration, musculoskeletal disorders, infections, leptospirosis, skin problems and respiratory illnesses. There is also no lighting underground, forcing workers to scrape the excreta with their hands as they are unable to aim tools correctly. The lack of greasing on the lines has made blockages all the more frequent. The cleaning of septic tanks is similar, except that it is an underground pit rather than a line, and often requires the worker to enter it in order to clean it where a jetting and suction machine cannot be used. The most neglected category of sewage work are in the Sewage Treatment Plants (STPs)—sometimes privately built and maintained—and the municipal authority treatment plants. The workers at risk in STPs are those required to maintain the infrastructure, clear out the sludge and ensure the uninterrupted flow of

untreated sewage. When there are blockages, they are also required to descend into the chamber to clear them.

Though there is a wide range of existing material on sanitation work, our fieldwork demonstrated the need to expand the understanding of the sewage worker beyond that of the worker who is immersed in sewage through a manhole or in a septic tank. Workers in sewage treatment plants are often not a target of intervention efforts, along with sanitation workers who clean open drains and storm water drains—despite suffering from similar occupational hazards and poor working conditions. In non-metro cities, there is often no distinction for the urban local body between the workers who service the drains and the workers who sweep the streets. As a result, this chapter situates sewage work in the context of sanitation work carried out as a whole, and attempts to understand how the infrastructure of sewage disposal impacts a wide variety of workers.

### **3.2. Caste and Migration in Sanitation Work**

There is a great deal of evidence that links the practice of manual scavenging to caste in the Indian subcontinent—dating to texts such as the *Narada Samhita* and *Vajasayeni Samhita*, which relegated the work of scavenging to slaves (Ramaswamy, 2005). These texts demonstrate that the work of cleaning human excreta has long been linked to coercion. The Brahminical social order assigns labour to individual castes along the axis of work that is ritually ‘pure’ or ‘polluting’, and within this logic, removing human excreta is considered the most polluting occupation and, as a result, has been imposed upon Dalit castes. The introduction of underground sewerage systems, the widespread building of dry latrines in cantonment towns and the construction of railways across the subcontinent in the colonial period reorganized how Dalits were engaged to perform scavenging and sweeping tasks, and several of these practices continue today.

The colonial administration brought in Dalits from the countryside to assist in constructing railroads and in other menial jobs. At this time, there was a crisis in the countryside—the commercializa-

tion of land, destruction of artisan trades, famines and widespread indebtedness caused many Dalits, prohibited from owning land, to migrate to urban areas (see Prashad, 2000). The construction of dry latrines resulted in many entering the occupation of manual scavenging in the cities. While many of these castes had not been engaged in sanitation work in the countryside and were agricultural labourers, municipal recruiters would often exclusively hire Dalit castes (as from the ‘sweeper’ caste). In this way, urban municipal governments intervened to institutionalize the link between caste and sanitation work, and have relied upon the caste system to keep urban sanitation systems going.

It is crucial to recognize that the association of Dalits with manual scavenging is a modern one that is built on the edifice of historical caste oppression; it is also a distinctly urban phenomenon. As urban areas have higher concentrations of latrines and less open defecation than rural areas, the numbers of sanitation workers in urban areas have continually risen with time. Chaplin notes that while urbanization provides job opportunities, the existence of dry latrines in cities means there is a concomitant rise in manual scavenging until these are replaced and municipal toilets and sewers are properly maintained (2002). Wherever there has been a shortage of sweepers and scavengers in urban areas, municipal authorities have drawn on Dalit migrants from rural areas to meet the shortfall. Caste and kinship continue to play a strong role in both entering sanitation work and passing on the occupation to one’s children, as we will see. Darokar’s research in Maharashtra also reveals that people from Other Backward Castes (OBCs) are entering conservancy work, often those who are educated and unemployed, due to the desire for a stable government job with the possibility of promotion to a supervisory position.

The large majority of sanitation workers are also migrant workers from another state. In our field sites in Karnataka, most workers were from Andhra Pradesh or Telangana but had settled in Karnataka for two or more generations; in Mumbai, many sanitation worker households are from Guja-

rat, Haryana or Karnataka but have been in Mumbai for more than 70 years. Seasonal labour is also sometimes brought in to clean drainage lines before the monsoon months.

### 3.3. *Manual Scavenger or Sewage Worker?*

Much of the discourse on manual scavenging presupposes that it persists as a result of a failure to implement the laws that prohibit it—were the law to be implemented properly, we would see an end to the deaths and the practice of manual scavenging and ‘hazardous’ sewage work. This chapter hopes to problematize this understanding by focusing on how broader labour market structures enable the continued practice of manual scavenging, and argues that advocacy must be persistent on these issues.

In 1993, the Employment of Manual Scavengers and Dry Latrines (Prohibition) Act was enacted by the Congress government at the Centre, with the stated objective of declaring the employment of manual scavenging an offence. However, there were a series of conditions that rendered the law impotent. Among these was the condition that state governments would notify the construction and maintenance of dry latrines illegal *only if* there are adequate facilities for the use of water-seal latrines in that area.<sup>4</sup> In effect, the law’s vision was on replacing dry latrines with underground sewer lines or septic tanks; the liberation of manual scavengers was a secondary concern compared to the construction of water-seal latrines. The question of who would clean and maintain these latrines and drains was not within its contemplation. State governments were directed to make schemes for low-cost sanitation and the conversion of dry latrines into water-seal ones, but the framework of the law was such that ‘the State can defer the project of abolition of manual scavenging, indefinitely. And such deferral shall be legally protected’ (Mandal, 2008, p. 97). Under the Rules to the act, the committees set up to monitor the schemes were required

<sup>4</sup> See Section 3(2)(ii) of the act. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. *Legislative Department*. Retrieved June 26, 2020, from [http://legislative.gov.in/sites/default/files/A1993-46\\_0.pdf](http://legislative.gov.in/sites/default/files/A1993-46_0.pdf).

to have representatives from urban development, environmental engineering and public health departments—the representation of Scheduled Castes (SCs) or Safai Karamchari commissions was never considered. In this way, manual scavenging was envisioned primarily as a public health or sanitation issue.

The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act of 2013 was intended to remedy many of the defects of the previous act, particularly the loopholes that it gave states with regard to notifying the act. Significantly, it also includes sewage workers within its scope, as it came after several High Court judgments on the working conditions of sewer cleaners. However, it remains ambiguous on the relationship between manual scavenging and sewage work. What separates one type of work from the other? Is sewage work the modern iteration of manual scavenging, as many activists argue? Or is it a different kind of work, analogous to manual scavenging but not the same? The act gets around these questions by defining not *what* manual scavenging or sewage work is—the activities and processes involved—but rather by defining *whom* the manual scavenger or sewage worker is. What separates a worker handling excreta from the manual scavenger is the use of ‘protective gear’ (Section 2(g)(b)), but the definition of what would constitute protective gear is woefully inadequate. The Rules to the act merely require the non-exposure of skin, though it does provide that breathing equipment to avoid the inhalation of toxic gases and sensory equipment to detect the level of gas must be made available. Sathyaseelan notes that this is a gaping hole in the law, which would allow for little substantial change in working conditions as long as gloves or ineffective protective clothing is provided (2013, p. 33). Further, it would continue to fail to protect workers who come into regular contact with sewage through storm water or open drain cleaning. It also seems to imply that the mere distinction is based on the type of excreta cleaned—whether it is from a dry latrine/pit or having come through a water-seal toilet or sewer—outlawing one, and seemingly regulating the other.

Another peculiar definition within the act is that of ‘hazardous cleaning’ (Section 2(d)). Under Section 7, the act states that no person, local authority or agency can employ a person for hazardous cleaning of a sewer or septic tank. Read alongside section 2(g)(b), the only explanation for what constitutes hazardous cleaning is that hazardous cleaning or manual scavenging ceases to be such upon the use of undefined protective gear. The definition of manual scavenging as the handling of excreta without protective gear, and its relationship to other kinds of hazardous cleaning, is unclear upon reading the act.<sup>5</sup> In practice, this will make claims of sewage workers under the act impossible to mount. The large exemption of ‘protective gear’ also flies in the face of several court orders prohibiting the employment of individuals to enter manholes and sewer lines and fully mechanizing the process.

The Rules to the 2013 act do, however, mandate the inclusion of activists working on the issue of manual scavenging and manual scavengers themselves (of which there must be the representation of women) in survey committees. In this sense, the 2013 act marks a symbolic step forward compared to the 1993 act. Its impact on sewage workers will depend upon seriously invoking the provisions in the Rules for the precise safety equipment that is to be provided, and holding private employers of septic tank cleaners liable, along with urban local bodies. The act does not account for the myriad types of work that sewage workers do (restricting this to sewer lines and septic tanks), and the different ways in which sewage workers are employed; this renders accountability all the more difficult.

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5 The National Advisory Council (NAC) proposed a wider definition of manual scavenging in its recommendations, suggesting: ‘persons engaged in or employed by an individual or urban local body or any public or private agency, for manually cleaning, carrying or disposing or dealing in any other manner with human excreta in a latrine, a tank, a drain, or a sewer line on open spaces including railway tracks’. This expansive definition is worth remembering in that it says ‘in any other manner’, and does not state that protective gear will disqualify work from being manual scavenging.

## 4. Forms and Conditions of Employment

This section, derived from secondary literature on sanitation and sewage workers and based on fieldwork conducted by researchers at the Centre for Equity Studies, will detail the current working conditions of sanitation workers. It will focus on the modes by which they are employed and trace the structural conditions that have caused contract labour in public services to become the rule rather than the exception.

### 4.1. Permanent Employment

Permanent jobs are extremely coveted, as they often ensure the provision of a minimum wage, job security, social security benefits and a uniform, among other things. The income level of households rises where more family members are permanent workers (Shinoda, 2002, p. 259). In some sense, working for the municipality replaced some elements of the ‘customary rights’ associated with sweeping in the cities: it performed the function of job security, and like customary rights, a permanent job can be passed on to future generations in the family. In this way, while it continues to ensure generational job security, it also ensures a regular supply of labour to the municipality by institutionalizing the caste system, with the municipality continuing to absorb workers from the same caste. As Solanki (2016) notes, despite the widespread opposition amongst upper-caste Indians to reservation policies for Dalit and Adivasi people, in the case of municipal sanitation jobs there is an unstated 100 per cent reservation for those belonging to scheduled and backward caste groups.<sup>6</sup>

In Bombay, the municipal corporation provided housing and the possibility of transferring jobs to sanitation workers’ children if they retired or died while in service, in order to incentivize more to enter the occupation. This system of Preferential

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6 See Solanki, 2016, p. 111. This too is often not fully implemented—in 1997, the Delhi government introduced a 5 per cent reservation in its *beldar* (manual worker) staff for the recruitment of the kin of deceased sewer workers, but between 1997–2001 only 23 persons were recruited under this category. See *Hole to Hell*, 2006, p. 34.

Treatment (PT) was instituted by the colonial administration and formalized by the Indian government. Solanki observes (2016, pp. 113–114):

Through housing, the colonial state thus created a ghetto of conservancy workers often belonging to the same caste, sub-caste and region. The strategy that underscores the Preferential Treatment policy is that it simultaneously provides benefits to scheduled castes and is an attempt at paternalistic and tokenistic social justice [...] Preferential Treatment works as a tool to replicate the experience of humiliation and keep Dalits confined to a whirlpool of dirt.

A conservancy job and municipal housing became a sign of upward mobility. Solanki notes in an interview with a young Brihanmumbai Municipal Corporation (BMC) conservancy worker that many who have graduated from college continue to do conservancy work. He argues that a lack of social and cultural capital is a reason for this—Dalit youth lack the connections to secure well-paying jobs in the private sector, while conservancy work remains a viable option because of their caste. ‘This is a permanent job and a salary with which I can sustain myself,’ his interviewee states (*ibid.*, p. 120). The practice of PT ‘creates a link between occupation and inheritance, an important and enduring feature of the caste system’ and ensures that Dalit labour continues to be employed in hazardous tasks that are considered ritually polluting (*ibid.*, p. 121).

Where there is more than one child, the job is transferred to one child and the Provident Fund (PF) and other financial assistance is given to the other child, to either buy a house or another PT job. This practice of transferring conservancy jobs for money is widespread, and there is fierce competition for them. Solanki’s research indicated that the current price of a PT job with a house in Mumbai is 12 lakh rupees, and without a house, 6 lakhs (*ibid.*). He also points out that over the years, the amount that a family has paid as rent for the house is more than equivalent to the cost of the house—as a result, there is a demand among some conservancy

workers for the State to transfer home ownership to them, allowing them to leave conservancy.

The link between caste and occupation was further institutionalized in Bombay with the requirement of caste certificates as a prerequisite for permanent employment in the BMC as a sanitation worker. Darokar’s (2008) study on the demographics of sanitation workers in six administrative regions in Maharashtra identified 2,753 households engaged in sanitation and scavenging-related work, out of which 87.7 per cent were SC households. A small percentage (0.9 per cent) of Scheduled Tribes (STs) were engaged in this work—including the Kunchikorves, a denotified tribe from coastal Karnataka, whose members we were able to interview. The first generation of Kunchikorves migrated to Bombay from the western parts of the erstwhile states of Bombay [what is now Karnataka] and Mysore, and a few were employed as sanitary workers in the BMC. Most Kunchikorves today continue as contract conservancy workers or in other informal sector jobs; those Kunchikorves who have permanent jobs run moneylending networks (Shinde, 2016, p. 94). Shinde’s ethnographic study of the Kunchikorve tribe in Dharavi demonstrates the lengths to which members attempt to secure the documentation to prove their denotified tribe status, in order to secure work with the municipal corporation, to inherit the jobs of their kin or to be eligible for promotion.

Though permanent jobs are also often dangerous and difficult, they remain the ‘aristocracy of waste labour,’ given that it offers security of employment, a much higher wage and other benefits (Harris-White, 2017, p. 422). Ongoing processes of privatization and restrictions on the funding available to urban local bodies has reduced both the size of the permanent municipal sanitation workforce as well as prospects for contract or daily wage labourers to gain permanent positions. Harris-White writes of a decline of 40 per cent in workforce size, with no supplementary change in technology (*ibid.*). This shortfall is often made up by contract workers, or by forcing directly paid employees to work harder. This process has also often ‘passively

masculinized’ the workforce (Harriss-White, 2017, p. 422), as failures to replace permanent female staff have left the permanent workforce consisting almost entirely of male workers. The permanent workforce has some capacity to unionize and demand better working conditions—but in rural areas, they are confronted by the lack of revenue to increase wages,<sup>7</sup> and in metropolitan areas, threatened with replacement by contract or casual labour.

#### 4.2. Contract Labour

For ‘contract’ labour, often the nature of the ‘contractual’ employment is unclear. Beyond simply being a form of outsourced work, there is rarely a legal written contract between the workers and their contractor, and sometimes no clear tender between the contractor and the municipality. There is little formal job security, and therefore, they can be removed from their jobs without notice, on the wishes of the contractor. As Praxis found in Delhi, there are often other oral norms (such as the deduction of pay when workers take sick leaves) (2014, p. 52), or as we found in Mumbai, a practice where wages are calculated by deducting payment for agreed holidays such as Sundays. None of these practices are standardized or regulated by the municipality, who is the principal employer. As such, the conditions of work vary, depending on the private contractor in question. However, despite being an oral or verbal agreement, the work is *continuous*. The money for the work comes from the municipality, and the terms of employment are clear—the workers generally know what tasks are expected of them, the amount of money they can expect at the end of the month, and the number of days they will work. As such, the work is fixed in practice—unlike casual labourers, contractual sanitation workers do

not have to negotiate every single day or for every single job that they receive.

Many contract workers enter the profession in the hopes that they will secure a permanent job, and others because of a lack of other employment opportunities. It seems the hope that this form of employment would lead to a permanent job with the urban local body was not always in vain. For example, Shinoda’s survey of sweepers in eight local bodies in Ahmedabad district in 1991 indicated a pattern of mobility from temporary to permanent jobs for scavengers (2002, p. 250). Though this was more pronounced for men than it was for women—who are more often forced into private scavenging and have struggled to secure permanent jobs which are monopolized by men—overall, younger people tended to be temporary workers and older workers tended to have permanent status. The question is whether this pattern of mobility continues. Preliminary data seems to indicate that it has not, and that workers can continue in temporary contract jobs for a long period without a change in their employment status. Shinde notes that many young Kunchikorve contract workers believe that privatization has slowed down the pace of permanent recruitment in the BMC, adversely affecting their chances at securing a permanent job, but they continue to do contractual work in the hopes that through the PT policy, they will be able to secure a permanent job (2016, p. 107).

The Contract Labour (Regulation and Abolition) Act 1970 was enacted precisely to avoid these dangers of contractorization. It applies to every employer who employs more than 20 contractual workers, and where the work is of an ongoing or ‘perennial’ nature. The act applies where the work is either performed for 120 days in a year, or if it is seasonal work that is performed for more than 60 days in a year. Though this was a law that ostensibly only regulates contract labour, it was conceived to prevent the use of contract labour and abolish it where possible. Court judgments from this time confirmed the intent of the law as such, expressing dismay about the rampant use of contract labour in the public sector (Gujarat Electricity Board, 1995):

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<sup>7</sup> *Thamate* in Karnataka has spoken out strongly against the orders made to gram panchayats that stipulate that their revenue must be directly spent on their employees—thereby making the rate and frequency of pay to safai karmacharis dependent on the revenue of the gram panchayat. See Salaries of safaikarmacharis employed by gram panchayats to be paid directly by state government. (2018, March 5). *Thamate*, Retrieved May 27, 2020, from <http://www.thamate.org/media/milestone-salaries-of-safaikarmacharis-employed-by-gram-panchayats-to-be-paid-directly-by-state-government/>.

The only ostensible purpose in engaging contract labour instead of the direct employees is the monetary advantage by reducing the expenditure. Apart from the fact that it is an unfair labour practice, it is also an economically short-sighted and unsound policy [...] The economic growth is not to be measured only in terms of production and profits. It has to be gauged primarily in terms of employment and earnings of the people. Man has to be the focal point of development.

The key drawback of the law is that it relies on government orders to prevent the use of contract labour in an industry. But governments are often the largest employers of contract labour themselves. In the 1980s, contract workers began to be hired in Mumbai for sanitation purposes, but since sanitation is a statutory duty of the urban local body and not incidental to its function, contracts were given out for the clearing of 'debris', which effectively came to mean refuse. The BMC's defence was that they were using contractual labour to carry out functions beyond that of their statutory duty (since clearing debris was not one of their functions). After a court case against the use of such labour for the cleaning of drains and scavenging was won, the BMC stopped employing contractual labour until 2004 (*Sangh v. BMC*, 2000).

However, economic reforms that began in 1991 entrenched a shift towards privatization and the contractorization of state services. The numbers of permanent jobs available in municipal corporations have declined or remained unfilled, while urban local bodies have relied on contract labour to make up the shortfall. Government duties are now discharged through contracts given out to the private sector—marking worse rates of pay, no job security for those employed and little to no social security protection. This is in line with a general trend since the 1980s, which has seen a decline in workers' bargaining power, the number of strikes and workers involved in them, as well as a stagnation in real wages during the 1990s (*Das, Choudhury, & Singh*, 2015, p. 11).

After 2004, the BMC in Mumbai adopted a pattern of hiring known as the 'Hyderabad pattern'. To keep contractual labour from the purview of labour laws, or the ability to claim regular employment, each contractor would hire under 20 workers and put them on contracts below the 280-day period, beyond which they would be ordinarily entitled to regularization. Around the time that such evasions of labour law were becoming more and more commonplace, these were being legitimized by courts through judgments that diluted the substance of the Contract Labour Act and made it extremely difficult to enforce. The effect of these judgments has been to render the use of the Contract Labour (Regulation and Abolition) Act virtually unusable in the struggle to win permanent employment or equal wages for contractual workers.<sup>8</sup> They did the same to the Industrial Disputes Act 1947, which allows for contract workers to demand a permanent position where they have worked continuously for 240 days.

Further, states have amended the Contract Labour Act. For example, in Maharashtra, it only applies where employers have over 50 workers (not 20). Milind Ranade of the Kachra Vahatuk Shramik Sangh (KVSS) told us (2017):

The biggest defaulter [of the CLA] today is the government and other state institutions. This is a planned state of affairs. On paper, things are said to be provided, but essentially the goal is to break and fragment the Indian worker [...] The government speaks of 'Skill India', but the S is silent.

Most of the empirical evidence on rise of contractual labour is restricted to the manufacturing sector, and the contractorization of public services is under-studied. Despite this, qualitative interviews with workers and unions all indicate an agreement that securing permanent jobs is extremely difficult, that the numbers of these jobs are declining and the

<sup>8</sup> In *Hindustan Steelworks Construction Ltd. v Commissioner of Labour & Ors* 1996 LLR, 856 (SC), the liability of the principal employer to make up for the shortfall in wages paid to contract workers who perform the same work as regular workers was at issue, and the Court did not place any liability on the principal employer.

move is towards different forms of privatization. These have taken different iterations across the country. The Dattak Vasti Yojana or Slum Adoption Scheme is a BMC scheme which is a ‘community led sanitation programme, with the active participation of slum dwellers in those slum pockets where cleanliness services were not provided’ (‘Frequently asked questions’). The BMC did not see providing sanitation services in working-class areas as its responsibility—and has shifted the burden of doing this work upon the people themselves. Harris-White points out that this is a deliberate state policy, which focuses urban services upon wealthy areas and reduces the cost of reproduction of local capital, while intensifying the costs of social reproduction for working classes by depriving them of waste-disposal services (2003, p. 234).

Rather than being a community-driven effort, non-governmental organizations (NGOs) registered under the Societies Registration Act take on the contract for ensuring that a certain area will be cleaned through a lottery system. The municipal corporation provides some money for facilitating this (for safety gear, equipment etc.). In practice, these NGOs are petty contractors, who use the money they receive from the BMC to pay those that clean under this scheme a very low wage, with no protection provided. In this way, they make a profit and the BMC does not have workers that it is responsible for; rather, it has ‘volunteers’. The KVSS mounted a case to render the workers permanent, and won the case in the Supreme Court—yet six months after the decision, only 291 workers (out of 2,700) were actually absorbed. Ranade spoke of arbitrary eligibility criteria being imposed to determine regularization, such as spelling errors on a worker’s Aadhaar card, which were used to deny permanent employment. A sanitation worker associated with the KVSS told us that the BMC’s attitude was: ‘*Safai kamgaar, aap toh marne ke liye paida hue ho*’ (Sanitation workers, you are born to die) (2017).

As this demonstrates, caste fundamentally inflects and shapes the process of contractorization in sanitation work. It is Dalits who have been his-

torically drawn into scavenging and sweeping, and exclusion from other sectors of the labour market is inextricable from their caste. Through institutional practices and societal discrimination that perpetuate the full reservation of jobs in scavenging to scheduled castes, Dalits continue to be the group employed in scavenging and sanitation work. The move to contractual forms of employment, therefore, directly affects the Dalit sanitation worker by eroding the bare minimum level of security they were able to secure for themselves through taking on municipal jobs. Caste shapes the ideologies of work and status in urban India, creating ‘compartmentalized labour markets, with non-competing groups whose options are severely constrained’ (Harris-White, 2003, p. 33). Sanitation is a prime example of such a sector, where caste discrimination has been institutionalized. As a result, contractorization in this sector serves to lower pay and working conditions for Dalits—and in the case of sewage workers, it ensures that their deaths are unaccounted for. Urban local bodies regularly evade responsibility for the death of contract workers, or claim to be unable to find the contractor responsible for hiring the workers and providing safety equipment.

The standards of work for contract workers are extremely poor. The wage difference compared to permanent workers is stark—contract workers with the BMC would receive a daily wage of Rs. 550 a day (Rs. 14,300 a month for 26 days of work), while permanent workers receive between Rs. 25,000–28,000 a month. Contract workers in Mumbai also reported deductions made to their wages in the name of Provident Fund (PF) and Employees’ State Insurance Corporation (ESIC) contributions, but they never received a PF slip book from their employer with which they can verify or claim benefits for these deductions. While their conditions of work are far worse and unregulated, causing a greater incidence of injuries and risk to their health, they are not eligible for sick leave or pay. In fact, contract workers were sometimes made to pay a Rs. 150 fine for missing a day’s work.

Permanent sewerage workers with the Delhi Jal Board also earned more than twice as much as contract employees: contract employees earned between Rs. 4,000–8,000 a month (depending on the contractor) in 2014, but permanent workers could earn above Rs. 20,000. They also reported pay cuts if they took leave for injuries incurred during work and for days when they did not work, including Sundays and national holidays. Some workers also reported not receiving payment for over a month, and that whenever their contractor's agreement with the Board was up for renewal, they had to suffer a period of unemployment (Praxis, 2014, p. 45).

In Bangalore, we found that many contract workers migrated to the city and entered sanitation work through networks of kinship relations—a family member who was a permanent member got them the contract job, and they, in turn, have brought other family members with them over the years. They are paid via a large contractor who has the tender for several zones in the city, and have identity cards and the provision of some safety equipment. The wage difference compared to permanent workers is still large—they are only entitled to minimum wages (Rs. 13,865 per month) compared to permanent workers, who earn Rs. 21,000 a month, along with other benefits. One worker said: 'I work so hard, but others get paid so much more for the exact same work...there is no equality.'<sup>9</sup> These workers were also being paid via 'open cheque', which means that they have to go to the bank to collect their pay and do not receive a payslip. Without a payslip, they also do not know what deductions are being made against their pay. Workers told us that the government was allocating the contractor Rs. 21,000 a month for each employee, but that they were not receiving this full amount.

We were also told that contract workers in the Bangalore Water and Sewerage Supply Board (BWSSB) sewage treatment plants could not even access the meagre protections that the contract BWSSB labour could demand.<sup>10</sup> Classified as 'industrial workers', they are left outside the purview

of minimum wage laws. The STP workers went on strike in December 2017, demanding minimum wages and regularization on par with permanent employees, who were paid Rs. 40,000–50,000 a month, compared to their wage of Rs 8,760 a month (excluding deductions for ESI and PF) (Suraksha, 2017). The working conditions in STPs are extremely hazardous, and a worker in a BWSSB STP died in early 2018 due to long-term health deterioration (E. N. and Paul, 2018). Contract workers also reported discrimination and untouchability practiced against them by residents whose houses they were sent to clean, and demands were made to clean blockages for free.<sup>11</sup>

In Gangavathi, a town in Karnataka, contract drainage workers are employed to regularly dredge and desilt the drains. There were 50 drainage workers in total, who had cycled through several private contractors and had been paid directly by the municipality, before their current contractor took them on. Though the contractors changed, the workforce remained the same. They reported that their current contractor was far better than their last one, and that they preferred the contract system to direct payments from the municipality.<sup>12</sup> Direct payments were often deferred, and when paid, they received cash payments in envelopes where half or more of the payment could be missing, depending on the whims of the government official in charge. They also reported that where septic tanks were full, some of these workers would go to clean them,<sup>13</sup> and though they receive some safety equipment (such as gloves and vests that were not replaced when worn out), they are often made to work half-days without pay. There are 75 permanent workers (*kanishtavetana*) in the town, with much better treatment and pay, and there was another category of workers titled 'equal pay' workers (*kshemavridhi*), who won the right to the same pay as the permanent workers, but did not receive the additional benefits. The *kshemavridhi* workers claimed that the generations of workers before them were per-

9 Interview with worker (2017, November 14)

10 Interview with worker (2017, November 14).

11 Interview with worker (2017, November 15).

12 Interview with worker (2017, November 17).

13 There were two jetting machines in the town, one owned privately and the other owned by the local body.

manent, but that there was no likelihood of them being offered permanent jobs even after many years of service. The drainage workers were largely between the ages of 40–50; many said that if there were no restrictions on the retirement age, they would work until death. The workers told us that no new permanent employee positions were being given, not even to the kin of workers who died; but if a worker had been working for 20–30 years, they could be granted permanent employment. None of the workers in Gangavathi were migrants. Some of the older workers said that they used to farm, but when the *nagarasabha* (local body) went door to door recruiting workers and promising a permanent job, they left farming to do this work.

Despite the Supreme Court holding that contract sewerage workers are entitled to the payment of a PF, gratuity and bonus, in practice this does not occur. In Bangalore, the workers had made a demand for medical benefits and a PF, which was rejected by their contractor. Across our field sites and in secondary literature, contract workers express that they do this work in the hopes that they will one day be able to secure a permanent job. There is little incentive for the government to make permanent jobs available, however—the contractorization of work both reduces the amount of money that the municipality has to spend and the investments they have to make to provide safe conditions for work and life. In this way, the government continues to rely on caste to supply its sanitation workforce. The contractorization of sanitation work is categorically illegal, given that sanitation is perpetual work. Yet, the use of private contractors in sanitation across the country is rife—and is likely to become all the more institutionalized given that the Swachh Bharat Mission’s objectives overtly state that they hope to involve the private sector in ‘maintenance costs’ (‘Guidelines for Swachh Bharat’). The government also introduced a draft notification to amend the Contract Labour (Regulation and Abolition) Act in 2017, which would classify permanent jobs as ‘core’ and ‘non-core’, widening the types of jobs for which contract workers can be hired (‘Amendment in the contract’, Ramachandran, 2018). The current emphasis on making labour ‘flexible’ de-

pends on turning a blind eye to contractorization; and the restrictions on local urban body funding to pay municipal workers creates a situation that justifies the use of poorly paid contract workers.

### **4.3. Casual Labour (or ‘Private’ Cleaners)**

Understanding the working conditions and dynamics of employment for casual labourers—who take on an individual ‘job’, usually on a daily-wage basis—is by far the most difficult. A variety of workers take on ‘private’ cleaning through a multiplicity of arrangements. These include sanitation workers ordinarily employed with the municipality; other workers who survive off of regular private cleaning jobs; informal daily wage casual labour who rely on septic tank or sewer line cleaning jobs alongside other forms of employment such as construction, painting work etc.; and seasonal migrants who come to cities to clean drains and pipelines for a specified period of time. These are the predominant arrangements that CES researchers observed on the field and found in the literature, though there may be more ways through which private cleaning is arranged.

Some of this private cleaning takes place in drains or pipelines that either the municipal authority services but has contracted out to daily-wage labour or refuses to service, or in septic tanks/STPs attached to private houses, apartment complexes or commercial establishments. In Mumbai, we were told that seasonal labour is brought in to clean the municipal sewer and drainage lines before the monsoon season in the months of March, April and May—this cleaning takes place overnight. Many workers referred to these sewer line cleaners as ‘Salem labour’, as the workers were said to be Dalit men from Salem in Tamil Nadu. Seasonal migrants are often hired through a contractor from another town or place, and while they receive assured employment for the months that they are brought in, this workforce is casualized as it is routed via subcontracting from the municipality and based on a daily wage for a short period of time. In Bangalore too, activists said that migrant labour (from the Madiga caste or North-Eastern migrants) was brought in to clean underground lines on fortnightly

or monthly contracts, via a contractor from a different city, as they could be paid a far lower wage.

The low status of municipal sanitary workers and low wages of contract workers create abusive and difficult working conditions. Harriss-White (2017) argues that this reinforces incentives for sanitary workers to privatize provision. Occasionally, this can come with additional bargaining power for a higher one-off wage, though it provides a far lower standard of safety and job security. The outcome is that privatized informal provision of sanitation services substitutes State provision in working-class areas, while many wealthier neighbourhoods will have access to both (Harriss-White, 2017, p. 234). Permanent and contract labour alike resort to private cleaning or the selling of waste to earn additional income. Contract workers in Gangavathi told us that they are forced to take on this work due to low wages and delayed payment, and usually are paid around Rs. 50–100 for these jobs (Interview on November 17, 2017).

A range of daily wage labourers engage in drainage and sewage cleaning work—whether these are storm water drains, sewer lines or larger septic tanks. Field observations from Mumbai indicated that even in the routine cleaning of storm water drains, which are frequently blocked with solid waste from open drains, the labour that was called on to clean them were casual labourers. They were paid a daily wage, sometimes for a few days at a time to clean drains in one locality, or a particularly large drain over a few days. The labourers claimed to be picked up for a number of jobs from a local bar every morning (Interview on 14 October, 2017). The contractors would look for labour for drain and septic tank cleaning, as well as metro line construction, which also involves entering deep holes. One respondent told us that he was an alcoholic, and would arrive at the bar at 8 in the morning. When he could find work from a visiting contractor, they would give him money upfront to buy a quart-and-a-half of liquor, and make the rest of the payment at the end of the day's work. He claimed that he was unable to clean storm water drains without drinking beforehand, and once cracked his collarbone fall-

ing into the gutter. He also said that he was a Muslim but did not go by his given name in Mumbai as 'Muslims do not do this kind of work.' But he distanced himself from the workers who cleared septic tank and underground sewer lines, saying that he would not do such work as he knew that eight men had asphyxiated after being taken to clean a manhole in the middle of the night.<sup>14</sup> We met another worker who was recruited on a daily basis from the same bar, who identified himself as a Harijan from Tamil Nadu. He told us that he regularly entered 20-foot deep manholes to clean them, and that his parents did the same work. When he received work for around a week, he would be paid Rs. 200 every day and a bonus of another Rs. 200 at the end of the week. This sustained him during the four-day intervals that he usually had to survive between jobs.<sup>15</sup>

We also interviewed workers recruited for septic tank cleaning in the labour *chowks* (market areas) of Delhi, who also told us that the rates of pay were variable depending on the location of the sewer line or septic tank and its size. One worker told us that the total payment for one job could be Rs. 2,000, split between the workers.<sup>16</sup> He was from the Valmiki community and had regularly done sewer line cleaning until his nephew was badly affected by the gas in the sewers, and he now prefers to avoid it. Other contractors at chowks spoke of being 'given the contract' to clean the sewer line of an entire locality periodically by Delhi Jal Board officials. We were also told that civil society organizations had identified 'casual' manual scavengers operating in many neighbourhoods in Bangalore—cleaning for cinemas, hotels and lodges, and walking around the locality to offer their services (Obalesh, 2017).

It is important to study further how casualization and the practice of subcontracting out municipal functions leads to the systemic unaccountability that we find in the deaths of sewage workers. The interplay of caste with casualization here remains important—Dalit workers are more regularly sought out for manual scavenging by contractors, and once they enter sanitation work it appears im-

14 Interview with worker (2017, October 14).

15 Interview with worker (2017, October 14).

16 Interview with worker (2017, October 23).

possible to leave. Those workers who are not Dalit are keenly aware of the humiliation and stigma associated with the work, but performs it because they are poor and vulnerable, or refuse to perform aspects of the job that they see as degrading.<sup>17</sup>

Harriss-White writes that in waste work, ‘[i]nformality is more a political process here than it is a binary state that exists in opposition to formality, a process in which laws incentivizing business are more likely to be enforced whereas laws adding to its costs are flouted. Formal contracts and behaviour are incompletely state-regulated and politicized’ (2017, p. 430). In this sense, to cast ‘formalization’ as the solution ignores how deeply informal practices of contractorization are embedded into the State’s function of sanitation, as well as the abdication of this function. Casual labour is employed both by the State and the private parties that it contracts to, in order to offset the risks of hazardous work, as well as to cut costs. As a result, the mere movement of casual workers into contract or permanent labour positions is unlikely to change the dynamics of sanitation work, where the privatization of municipal sanitation functions and restrictions on paying municipal employees continues.

#### **4.4. Health and Safety Standards**

In 2015, the BMC found that 1,386 sanitation workers had died in the last six years. Many workers die from tuberculosis, liver failure due to drinking, or accidents while sweeping the streets (Borpujari, 2017). There is significant occupational morbidity and mortality among sewage workers, but their working conditions have largely remained unchanged for over a century. We witnessed a jetting machine being used to accumulate all the blocked

debris, but a worker entered the 6-foot deep drain with no safety protection to haul out the debris with his hands. Workers who enter sewer lines, sewage treatment plants and septic tanks are exposed to hydrogen sulphide, which is fatal upon inhalation. Apart from this, there are associated comorbidities with more long-term effects—as a result of these hazardous conditions experts believe that the life expectancy of sewer workers is ten years less than the national average (Praxis, 2014). In the Delhi Jal Board v. National Campaign for Dignity and Rights for Sewerage and Allied Workers (2011) case, the Supreme Court held that the government could not ‘absolve themselves of the responsibility to put in place effective mechanisms for ensuring safety of the workers employed for maintaining and cleaning the sewerage system’. The Supreme Court provided several directives for health and safety standards to be adhered to, as well as compensation for families in the event of deaths. In accordance with the Workmen’s Compensation Act 1923, sewer workers are also entitled to free medical treatment until recovery or compensation in the case of occupational diseases, ailments or accidents. Despite this, workers have reported having to sign a written statement that they are entering manholes at their own risk if the manhole is more than five feet deep (Centre for Education and Communication, 2006).

The most basic safety equipment that workers must be provided with is a safety belt with a harness. However, workers often report that either these are not available, are shared between workers or are in bad condition. One worker told us, ‘How will we do the work if we use a safety harness? We can’t reach all the material that needs to be hauled out’ (Interview on 15 October, 2017). Safety belts do not account for the small diameter of many sewage pipelines and the lack of lighting in them. The gas cylinders provided also weigh over 10 kilograms. This contributes to the myth that the workers simply refuse to use safety equipment because they are uneducated and unaware of the risks of their work. Workers have also reported that the building of circular manholes to cut costs poses new hazards to their safety, and causes long-term musculoskeletal disorders.

17 For example, a Hazards Centre report on sewage workers in Delhi says, ‘[...] the brunt of the work load is borne by a few workers, all from the Valmiki community, who not only face the stigma of being low caste but are also exploited by sewage workers belonging to other religions. Thus, at Singh Sabha Road store, one of the Muslim workers said, “I can’t do such a dirty job because our Quran doesn’t allow us to perform such menial jobs. So, I take care of opening and closing the manhole covers and the safety of the worker working inside” Excerpted from Safe worker? Or safer workplace? 2010. p. 16.

We asked a contractor at a worksite in Mumbai if safety equipment was provided, and he showed us that they did have boots, gloves, and masks on the site—but they were stored away, and remained unused. Other workers have said that they have wanted to ask for safety equipment, but have been threatened with being fired from their jobs. As a matter of routine, gas measurement tests prior to entering manholes is not undertaken, and workers have evolved their own mechanisms to test for the presence of hydrogen sulphide—whether that is looking for living cockroaches, or testing the mouth of the manhole with a lit match. Hydrogen sulphide is extremely dangerous, and not detectable by odour with prolonged exposure—most deaths in sewer lines and septic tanks have been due to hydrogen sulphide exposure. Hydrogen sulphide exposure is also associated with other long-term health problems, including impairment of cognitive functions (Farahat & Kishk, 2010).

A study conducted by the Centre for Education and Communication (CEC) concluded that there was a strong correlation between exposure to sewage and health outcomes—sewage workers in Delhi suffer from high morbidity, and the high incidence of mortality after the age of 55 points to the irreversible damage that hazardous exposure can do to organ systems (Centre for Education and Communication, 2006). A 2014 study, in association with the National Campaign for Dignity and Rights for Sewerage and Allied Workers (NCDARSAW) found that among contract sewerage workers with the Delhi Jal Board, over 57 per cent did not have any insurance cover despite the hazardous nature of their job (Praxis, 2014). The same study also found that permanent employees with the Board were supposed to have health check-ups done every six months and many did, but contract workers were not covered under this. In any case, the health check-ups did not correspond to the specific health risks that sewerage workers face and were rather routine check-ups, conducted merely to comply with the Supreme Court order. Immunization against tetanus, Hepatitis A and B, and typhoid had also not been done for most respondents, who had to pay for a tetanus shot.

Deaths that occur due to a deterioration of health over a prolonged period of time are often not counted in the lists of sewer worker deaths—this indicates a need for chronic illness to be further studied and accounted for. One such incident was the death of a worker in Bangalore in early 2018, caused by inhalation of hydrogen sulphide as well as organ failure due to seven years of work in a sewage treatment plant (E. N. and Paul, 2018). The conditions of work in Indian sewage treatment plants are relatively less inquired into as compared to manholes and septic tanks, but they have many of the same occupational hazards. Drainage workers that we spoke to also reported skin rashes, gastric problems, breathlessness and small black spots on their feet that came from standing in stagnant water.

#### ***4.5. Dynamics of Privatization and Informality***

‘Private’ and ‘public’ conceptions around which functions are municipal and which are to be privately undertaken can often determine whether municipal workers will be called on for cleaning or not. For example, sanitary workers cleaned open drains that septic tanks or toilet connections emptied into; but where a septic tank was underground or attached to a private house and collected the waste, private labour was called on to enter the tank (in extremely dangerous conditions, without protective gear) and clean it. In Bangalore, the BWSSB undertakes the cleaning of drains that are clogged inside people’s homes upon payment of a fixed sum to the municipality, which would give the resident a slip and a time slot at which the cleaning would be carried out. BWSSB contract workers told us that they often faced harassment while their jetting machines were parked on the street or while cleaning ‘public’ drains from residents who expected them to clean their drains for free or without a prior appointment.<sup>18</sup> Our interview with workers on the street was disrupted by angry residents whose homes they had refused to clean without prior payment and slips. Though contract municipal workers may still be expected to undertake ‘private’ cleaning, they do not have a defined set of functions

<sup>18</sup> Interview with worker (2017, November 14).

which allow them to collectively resist the expectation that they must manually scavenge for anybody that asks. They said they are sometimes made to clean the houses of government officials even if they are not listed, and do so on midnight shifts, by the BWSSB.

A key point of contestation then becomes which functions the municipality will take responsibility for and delegate to its permanent or contract employees, and which functions it either privatizes as residents' responsibility or engages subcontractors to find casual labour to perform. The question of 'private' and 'public' cleaning—and the extent to which the municipality takes on 'private' cleaning—often determines the level of risk in the work, supervision and safety equipment that workers have access to. Where access to underground drainage is minimal, the State's abdication from providing sanitation facilities (particularly in working-class settlements) encourages the use of septic tanks that must be privately cleaned by users of flush latrines. The onus of clearing septic tanks as one that is privatized onto septic tank users is also what encourages the use of cheap casual labour, and as a result, it is extremely difficult to monitor working conditions or understand the processes by which the work is subcontracted out.

It is important to pay attention to the processes by which drainage and sewage treatment is privatized onto users. For example, in Bangalore, the Karnataka State Pollution Control Board (KSPBC) had made the construction of STPs compulsory for any apartment complex with over 20 units, in order to control water pollution. After sustained protests, it later exempted all apartments under 50 units, though residents living in apartments with over 50 apartment units have continued to register complaints against this law (Chatterjee, 2017). The BWSSB has begun to construct STPs in other parts of Bangalore, particularly around industrial areas, to control industrial effluence. But apart from the infrastructural difficulties in constructing these, as noted by Thamate, there are no regulations laid down regarding how these STPs ought to be cleaned ('Notes on STPs', 2017.). There is also no supervi-

sory agency that monitors STPs in apartment complexes or other commercial establishments, and the Board has no idea how many STPs are in operation ('KSPCB clueless', 2018). This oversight is of serious concern, given that many deaths of sewage workers in Bangalore have taken place in STPs, including that of three men in January 2018, and another death in June 2017 ('3 workers choke', 2016 & 'Death of a Dalit', 2017). Both these STPs were unauthorized by the BWSSB, and were cleaned by either unauthorized contractors or contractors who brought in casual labour, paying no attention to safety protocol. Such arrangements allow the blame for accidents and deaths to be passed around between the BWSSB, the residents' associations and the contractors—with no protocols being laid down to prevent further deaths.

Research by the Centre for Policy Research on the informal operation of septic tank emptying services noted that 'physical chores pertaining to desludging' are devolved by business owners (Xess & Zerah, 2018, p. 13). These businesses utilize vacuum trucks to suck out the waste from septic tanks, and charge privately for their services. It is unclear what the caste profile is of those who perform 'physical chores' related to septic tank emptying, and this should be investigated. The study found that service providers did not distribute protective gear to their workers, even while recognizing the harmful effect of exposure to toxic gases in the septic tank. Additionally, the machines used were of a low quality, unable to dislodge solidified faecal matter at the bottom of the septic tank. This means that human labour continues to be required to break up the faecal matter, exposing these workers to risks that will not end as a mere result of using machines.

In March 2019, Arvind Kejriwal flagged off a fleet of 200 sewer cleaning machines that were to be given to Delhi's sewer cleaners ('200 manual scavengers, 2019). In his speech, he stated, 'By the way, the government has made these workers self-employed. They can be called entrepreneurs, a status that will help them economically.' What this does in reality is to mask their relationship to the State in cleaning state-constructed sewers, by

turning it into a privatized relation with no benefits, job security or state responsibility. The State is able to say that it provisions this for ‘free’, as a favour or as a concerned patron, rather than as an evasive employer. As this chapter has argued, without a serious shift in State responsibility and an end to labour fragmentation in sanitation work, the working conditions in sanitation are not likely to improve but will be continually outsourced further down the chain to those most vulnerable.

This is part of the story that contributes to the ‘vulnerability’ of sanitation workers: a structural denial of state responsibility and accountability that is inextricably linked to wider labour market transformations. Much like the PT system in Mumbai, the Delhi Jal Board announced that the order of preference in receipt of these vehicles would be family members of deceased manual scavengers, sanitation workers, members of SCs and STs, and then other individuals. This measure then also fails to break the age-old state practice of institutionalizing the link between caste status and sanitation work; it only uses the new language of entrepreneurship while disregarding the demand for emancipation.

## 5. Collectivization and Resistance

Contract worker unions in our field sites had some successes through collective mobilization. In Ganavathi, some workers had left their jobs and committed suicide due to delayed payments in 2015. After not receiving payments for many months, they had entered into a cycle of debt that they were unable to pay off. A 21-year-old worker was owed nine months of wages, and his family was unable to claim his PF when he died, though the contractor had regularly made deductions. The AICCTU-affiliated union had filed a legal case for pending arrears and demanding ESIC, and had mounted a successful 45-day strike in 2016 for higher wages. Workers most recently went on strike for 24 days in January 2018. The same union had also filed a petition with the state Safai Karamchhari Commission on manual scavenging, as women were forced to clean flush latrines that did not have a water supply.

Union organizing has given the workers links to other unions, and made opaque institutions and processes more accessible. In Bangalore, the BWSSB contract workers we spoke to credited active union mobilization (also AICCTU-affiliated) for much of the improvements in their working conditions. It was through union efforts that they were able to ensure receipt of minimum wage as well as secure some safety equipment and restrict their working hours. It is also through union awareness activities that they began to refuse to enter manholes, citing their legal rights, and were provided a health card for government hospitals. One worker in Bangalore said:

The BWSSB would direct us to get into manholes and we had to do so. If we said no, then they would get someone else. There is a subcontractor in all this, so they would call these other workers and get the work done. When we come the next morning they would say, ‘You did not go down, so go home.’ Only after the *sangha* (union) was formed did we get to know about the law. Before that there was no union, no safety, nothing.<sup>19</sup>

The union has also helped workers file compensation claims against the principal employer for hospitalization expenses as a result of exposure to hydrogen sulphide.

At a union meeting of drainage cleaners in Mumbai in October 2017, we spoke to workers who said that after joining the union, they learned that the official union policy was not to enter manholes or drains without safety gear—and they never have. The same workers also spoke of having the courage to defy contractors who asked them to do this, and when the contractor tried to remove them from their jobs, they blocked the movement of the jetting machine and truck and forced him to keep them on.

However, many of their demands are more long-term and remain unfulfilled, such as the provision of ESIC and a PF, an end to the contract system, equal pay as permanent workers, holidays,

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<sup>19</sup> Interview with worker (2017, November 15).

yearly bonuses and healthcare for dependents. The workers that we interacted with were optimistic that continued organizing would yield results, and claimed that without unionizing they would have had no mechanism to demand better working conditions. Union leadership and activists, however, spoke of the difficulties of fighting legal battles for contract workers—court judgments have made it all the more difficult to demand regularization, and where legal cases have been successful (such as with the KVSS), cases often have to be filed for separate batches of workers at a time. Unions have been able to strengthen themselves where they have been able to affiliate themselves with broader national collectives (such as AICCTU), and have used other collective action strategies.<sup>20</sup> However, as the very same KVSS case reveals, sanitation workers across the country have also been able to unionize and demand an end to contractorization—and even win. The real difficulty comes in forcing State institutions to be accountable, and this is where the battle continues.

While unions have been successful, collective bargaining is far from the only strategy used to hold the State accountable. NGOs and civil rights groups (notably, national groups like the Safai Karamchari Andolan, the Rashtriya Garima Abhiyan and grassroots organizations like Thamate) have played a significant role in highlighting the deaths of sewer workers, by linking this struggle to that of the manual scavenging of dry latrines and in pushing for legislative change. This struggle has taken the form of writ petitions, fact-findings into deaths and Right to Information (RTI) requests on the machinery possessed by state governments for mechanical cleaning and compensation paid to families. These especially have had a strong role in securing justice for private and daily-wage cleaners, whose deaths would otherwise not be taken up by workers' unions. It is these efforts that have also resulted in the tabling of an amendment to the Prohibition of

20 Read more on the collective action strategies used by the KVSS in Serrano, M. & Xhafa, E. (2016, July). From 'precarious informal employment' to 'protected employment': the 'positive transitioning effect' of trade unions. Working Paper No. 42, Berlin: Global Labour University.

Employment as Manual Scavengers and their Rehabilitation Act, to allow the National Commission for Safai Karamcharis to investigate contraventions of the act and impose fines.

Revan and Raj from Jan Vikas expressed that the solution they envision for contract sanitation workers is a cooperative society, that is worker-led and worker-run, which would bring an end to the hierarchical structure within which the 'NGO' contract system in Mumbai operates. In such a model, the role of the BMC would remain supervisory and as one of financial support, but it would eliminate the contractors without subjugating the workers directly to the BMC's conditions of where and how to work. This speaks to an important concern: in demanding permanent jobs or regularization, it is important not to further subject workers to the control of the municipality, replacing one oppressive set of overseers with another. Our fieldwork demonstrates that direct payment from the municipality did not always mean wages were higher or received on time, or that the conditions of work improved tremendously.

As Harriss-White notes, many of the rights that permanent workers enjoy are incomplete—threatened with the loss of the relatively better position they have been able to secure and the ability to pass on these positions to their children, they are often unable to strike to improve their position (2017, p. 423). Further, the practice of subcontracting means that the benefits that permanent and contract workers are able to successfully struggle for are not extended to casual labourers. In 2013, the Government of Delhi changed the designation of workers who desilt and clean sewer lines to 'semi-skilled' workers and those of workers engaged in mechanical cleaning to 'skilled' workers—allowing them to receive higher wages under the Minimum Wages Act 1948. Though this had been a long-term demand of the contract and permanent workers of the Delhi Jal Board, if our field interviews at labour addas in Delhi are to be believed, it may well be that casual labourers have replaced permanent and contract labourers to enter small sewer lines where machinery fails.

It is also important to remember that such policy interventions will continue to leave out workers privately engaged to clean STPs and septic tanks. Specific occupational legislation and policy interventions are required to ameliorate their working conditions. That said, the working conditions of sewage workers must be contextualized within the sanitation sector as a whole—particularly because outside metropolitan areas, the same contractor or urban local body conducts both sweeping and drain cleaning work. The struggles of sanitation workers against contractorization and poor working conditions are intimately linked to the struggles of sewage workers and manual scavengers against the lack of State responsibility or accountability for their hazardous working conditions. State unaccountability is the rule, not the exception, in sanitation work. The continued posture of disregard is reminiscent of feudal relations, where caste continues to determine occupation and employer–employee relations are individualized, based on patronage and oppression. The irony of the neoliberal era of contractorization is that while workers labour on contract, the work remains wholly marked by caste status.

## 5. Conclusion and Recommendations

Casual labourers who clean drains, septic tanks and sewage treatment plants often have no bargaining power. Yet, the most serious risks of the work are displaced onto them. It is here that policy interventions, legislative change and further research are most needed, both in terms of holding private contractors responsible, as well as in the struggle against the privatization of the maintenance of sanitation infrastructure. The State ought to take responsibility both for contract and casual workers who service its own infrastructure, and also take on a more expansive role in regulating private sewage cleaning. This is the only way to ensure the implementation of policy and legislation on manual scavenging, or even to confirm mechanization is carried out, and to put an end to the system of subcontracting that renders sewage workers so vulnerable.

Concrete policy recommendations on the issue are bound to evolve as more information comes to

light and will require sustained engagement with workers and their representatives. This chapter will make a few recommendations that have emerged from the fieldwork we conducted, and propose some areas of further inquiry. In the present political and economic context, policy recommendations certainly do feel as though they are castles in the air—but we propose them more in the spirit of what ought to be done, as guiding lights to turn back to in the future.

1. In the context of the Swachh Bharat Mission, more sustained research needs to be undertaken on the cleaning and emptying of septic tanks associated with water-seal toilets in rural areas. This chapter focused a great deal on urban areas, and a deeper understanding of sewage and sanitation work in rural areas is necessary.
2. There is a need for more sustained research on informality in sanitation work, and the contracting out of work to daily-wage workers and seasonal migrants.
3. The most important and meaningful avenue of change would involve increasing the bargaining power of sanitation workers—who more often than not would prefer to leave their current occupations. Unionization must be encouraged among contract workers and informal workers, and wages ought to be increased dramatically. The practice of Preferential Treatment ought to be replaced with guaranteed government employment in another municipal function or area of work, and the project of ‘rehabilitation’ out of all sanitation work must be seriously considered. The provision of cash transfers to increase bargaining power and the use of the Right to Education scheme to increase the ability to leave the profession for workers’ children might be useful preliminary steps in this regard.
4. The question of what safety equipment is required and is feasible to use must be developed in consultation with workers and

tested thoroughly before it is procured by municipal departments.

5. State governments must consider bringing sanitation functions of all toilets within its remit, perhaps for a nominal fee, or under its scope for regulation, rather than allowing for these to be privately cleaned and escape regulation. A monitoring authority should be set up that can enforce the use of safety equipment and liaise with informal service providers to make safety equipment accessible.
6. The state must release guidelines and monitoring mechanisms for the cleaning and management of sewage treatment plants, and bring private STPs within its remit for monitoring and enforcement of safety mechanisms.
7. While there is a pressing need to increase the numbers of permanently employed sanitation staff, the first step towards this is to end the practice of contractorization. Without this, the inequality in pay will continue and the bargaining position of permanent staff will also be negatively affected. This is also manifestly illegal.
8. There must be a complete ban on all private outsourcing of sanitation functions from within the State function of cleaning and maintaining sewers and drains.
9. The cleaning of latrines without running water supply must cease immediately as it is a violation of the prohibition on manual scavenging.
10. There is a need for a vast public campaign on the employment of sanitation workers privately to clean toilets and empty septic tanks, with a notice of penalties against employers who fail to provide safety equipment. This should also include strict guidance for the construction of tanks that can be mechanically cleaned, and a move towards twin-pits and away from the septic tank in toilet construction.

11. All sanitation workers performing State functions must have the same rights as permanent staff, and STP workers must have the right to the same minimum wages as other sanitation workers.
12. Safety gear must be provided as an obligation of the government and principal employer, and there must be strict State enforcement against those who do not provision this.
13. Mechanization should not be treated as an easy solution—rather they should be operated by State authorities, manned by protected staff, and continually reviewed to ensure that they are still not drawing upon manual scavengers and requiring workers to come into contact with excreta.

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# Public Goods

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Sofiya Khatun, is a 60 year old woman who spent two and half years at a detention camp in Kokrajhar, one of Assam's six detention camps, before a Supreme Court order set her free. This photograph was taken at Sofiya's home in village Bagariguri, Assam on 27 June 2019.

*Photo:* Sandeep Yadav

# Citizenship and the Mass Production of Statelessness in Assam

Abdul Kalam Azad, M. Mohsin Alam Bhat and Harsh Mander

*Reviewed by Rafiul Ahmed*

## 1. Citizenship as a Public Good

The India Exclusion Reports (IXRs) define exclusion as processes created by the state that proliferate, tolerate or deepen barriers for individuals and groups for accessing public goods. They define a public good as ‘a good, service, attainment, capability or freedom—individual or collective—that is essential for every human being to be able to live a life of dignity.’ Threats to citizenship engendered by bureaucratic and legal processes have a subtle yet profound implication for exclusion within this meaning.

Citizenship is best understood as a multidimensional concept. From a legal standpoint, citizenship is a guarantee of political status and rights. In modern polities, citizens have secure membership in the constitutional community. This usually means that the State provides them, at least theoretically, the widest legally available bundle of civil, political and socio-economic rights. Scholars have often conceptualized citizenship in terms of this guaranteed bundle of rights. For instance, they have suggested that there could be civil citizenship that guarantees equal protection of the law and basic individual rights, political citizenship that guarantees political rights like voting, and social citizenship that guarantees all members basic standards of living (Marshall, 1963).

Modern democratic states also associate citizenship with guarantees of political participation,

like the right to vote. Citizens are legally entitled to participate in ongoing democratic deliberations and policy-formation. At the same time, a citizen is not only rights-bearing, but also duties-bearing. Modern polities expect their citizens, often through the instrumentalities of law, to contribute to collective political life.

Obviously, an individual having citizenship status does not always mean that she will de facto benefit from everything that is legally guaranteed. But it does mean that she has an institutionally viable claim to demand what is legally guaranteed (Somers, 1994). In this sense, another way to conceptualize citizenship is to think of it as the guarantee to the widest institutional access to make claims from the State and community at large.

Beyond legality, citizenship is also a mark of belonging. States lay down rules of citizenship, demarcating its qualifications and disqualifications. Thus, citizenship rules reflect how a political community understands its normative foundations. For instance, if a country provides citizenship to every person born in it (often described as *jus soli* or birth-right citizenship), we can assume that it has adopted a territorial conception of national belonging.

This multidimensional conceptualization of citizenship allows us to think about the relationship between citizenship and public goods, and the variety of ways in which exclusion can happen in relation to citizenship.

At the first level, barriers to citizenship status and its exercise amount to exclusion in an instrumental sense. Citizenship status facilitates the enjoyment of other public goods through the provision of rights and entitlements. If the State violates, or fails to fulfil or perform its obligations, citizenship allows for institutional access, participation and redress. Thus, citizenship is a *meta* public good since citizenship status allows individuals and groups to exercise most other functionalities within the meaning adopted by the IXRs. Consequently, actual denial or deprivation of citizenship results in exclusion from public goods.

The State's denial or deprivation of citizenship amounts to exclusion in a non-instrumental sense as well. Citizenship status forms an important aspect of what political philosopher John Rawls calls the 'social bases of self-respect'. In his view, a just political system must guarantee self-respect or self-esteem of individuals because this element of dignity is central for a person to lead a good life. For Rawls, this can only be done if the just society guarantees equal citizenship to everyone, as a recognition of everyone's status as an equally dignified person (Rawls, 1999, p. 386).<sup>1</sup> Martha Nussbaum subsequently included 'social bases of self-respect' in her list of core capabilities (Nussbaum, 2011, p. 34). Citizenship encapsulates the mutual recognition among the members of the community that each of them equally belongs to the community, and thus deserves equal respect. Denial or deprivation of citizenship is essentially a declaration that the individual's claim that she deserves respect as an equal member of the community is being rejected. Thus, citizenship is also a public good in a non-instrumental sense because it is a capability, within the meaning adopted by the IXRs, for people to live a life of dignity.

Hannah Arendt has articulated another compelling variation of the relationship between citizenship and human dignity. According to Arendt, human dignity is possible only when a person is a

member of a political community. Human dignity is the result of other members of the polity recognizing the individual's status and ability to be a free agent. Consequently, for Arendt, when any person is bereft of citizenship, she is stripped of humanity itself. This led her to lament that without 'the right to have rights'—the right to be part of some political community as a citizen—human dignity could not be guaranteed for everyone (1973, pp. 296–299). International law recognizes this centrality of citizenship as a human right, as indicated by Article 15 of the Universal Declaration of Human Rights that declares that everyone has a right to nationality, and no one can be arbitrarily deprived of her nationality. In this sense, denial and deprivation of citizenship is a profound exclusion because it may render a person stateless and without any political membership, and thus compromise her dignity altogether.

The appreciation of citizenship as a public good reveals that the State must secure the guarantee of status through legal and institutional means. It must not subject a person's citizenship status to arbitrary targeting. It must also create a transparent legal architecture in case the issue of citizenship verification and authentication arises. It also follows that a person must not be subjected to arbitrary and overly demanding enquiries about their citizenship status. Arbitrary questioning of someone's citizenship—particularly in the absence of transparent, fair and reasonable institutional procedures—would introduce severe uncertainty in her life, especially considering the serious consequences of the loss of citizenship. Legal processes can make citizenship precarious by making it contingent on arbitrary official discretion and whim. Precarious citizens are compelled to invest all their human and material resources to preserving their status, and this diverts them from achieving any other public good. Thus, processes that engender precarious citizenship suspend normal lives altogether. Thus, exclusion from citizenship as a public good is triggered not only when a person is *de jure* (or even *de facto*) denied or deprived of citizenship. It is also triggered when citizenship status is threatened by unfair and arbitrary procedures. They amount to indirect exclusion

<sup>1</sup> See also Cohen, Joshua (2002). For a Democratic Society. In Freeman, S. (ed.). *The Cambridge Companion to Rawls*. Cambridge: Cambridge University Press, p. 86, 109.

by creating a heightened form of vulnerability. Precarious citizenship is exclusion because it undermines the security of status, which is an important basis of self-respect.

It follows that exclusion in relation to citizenship can be of three kinds. First, there can be a de jure exclusion resulting from the withdrawal of citizenship that makes access to public goods contingent on citizenship status. Second, there can be a de facto exclusion as the indignity of citizenship deprivation, resulting from denials of public goods and the withdrawal of membership to political communities. And third, there is what the IXRs describe as adverse inclusion. In the context of the public good of citizenship, adverse inclusion results not from a de facto or de jure withdrawal of citizenship, but from unstable citizenship that undermines meaningful opportunity and access to all public goods.

## **2. Exclusion from the Public Good of Citizenship and the Mass Production of Statelessness in Assam**

On 31 August 2019, the National Register of Citizens (NRC) was published by the Government of India. This listed those residents of the Indian state of Assam who had succeeded in proving to the satisfaction of the Indian state that they were citizens of India.

This momentous list excluded nearly two million people from among the residents of Assam. The state deemed them to have failed to prove that they were Indian citizens. Until the time of writing, a year later, these people have still not fully lost their citizenship. But their legal right to belong to India as Indian citizens stands gravely threatened. Unless the rules are altered, they will be given one more chance to prove their citizenship. After they are given in writing the reasons for their exclusion, they will be authorized to plead the reasons why they should still be recognized as Indian citizens in the Foreigners Tribunals (FTs). These are quasi-judicial bodies set up by the central executive through the Foreigners (Tribunals) Order, 1964 (Tribunals Order) under the Foreigners Act, 1946. Over a year

after the publication of the NRC, none of those whose names were excluded from the register have been given a document with reasons for their exclusion. The ruling political establishment—which had hoped for a significantly larger number of excluded persons—is fervently advocating reverification in minority-concentrated districts. This has introduced further uncertainty regarding the conclusion of the process. For this reason, this final step that will decide their destinies remains in an unexplained and painful limbo. The excluded nearly two million people live, at the time of writing, in a purgatory of uncertainty.

The process was meant to update the National Register of Citizens that the State had prepared in 1951. The updating process was initiated by the Supreme Court in 2015.<sup>2</sup> The Court subsequently took charge of the whole administrative and judicial process, supervising it directly through orders issued to the NRC authority.

At the core of the systemic injustice of the NRC process is the judicial ruling that shifts the burdens on the individual citizen to establish her citizenship. The exercise thus proceeds with the assumption of foreignness. The resident has to prove her citizenship through official documents prescribed by the State. Her failure to do so is reason enough for her to be denied Indian citizenship.

The production of a range of official documents is an arduously uphill requirement in a country where most of the poor do not possess several legal documents. This is because the State has not established systems to guarantee its citizens error-free documents, and so many live in such dismal conditions that they just cannot summon the social, economic and political capital to muster whatever documentation they are entitled to. The majority of indigent rural people anywhere in the country would be unable to prove their citizenship because birth certificates were rare; many did not attend school and migrated for work or were married as children; land records are poorly maintained, and in

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<sup>2</sup> *Assam Sanmilita Mahasangha v. Union of India*. Writ Petition (Civil) No. 562 of 2012, judgment dated 17 December, 2014.

any case, many are landless or unrecorded tenants or encroachers on government land; and voters lists are replete with omissions. But in Assam, resulting from the orders of the courts and governments, impoverished and often unlettered people were required to garner myriad official documents—such as of birth, land ownership and voters lists—in desperate bids to establish their citizenship credentials.

The assumption of foreignness, unfortunately, is older than the NRC's initiation. In 2005, the Supreme Court ruled that citizenship verification in Assam—or for that matter anywhere in India—must happen under the Foreigners Act by shifting the burden of proof on the individual.<sup>3</sup> The State, on the other hand, need not prove their suspicion at all. This most lethal blow to due process is a turning on its head natural law that a person is innocent until proven guilty. The NRC process extends this logic writ large. The institutional practice of the FTs shows that they have interpreted this requirement in ways that sometimes make it practically impossible for individuals to meet this burden. Individuals, most of whom are poor, are expected to present error-free and comprehensive documents, often to be corroborated with oral evidence of their relatives and government officials who need to appear before the FTs.

The problematic nature of the process was further exposed by official orders, again ratified by India's Supreme Court, which exempted 'persons who are originally inhabitants of the State of Assam' from any 'further proof or inquiry' for automatic inclusion in the NRC.<sup>4</sup> The category of 'original inhabitant' is nowhere defined, but in practice is taken to exclude people who speak Bengali, Nepali or Hindi, even if they have lived in Assam for generations.

The highly fraught business of contesting the citizenship status of anyone whom the State chooses now threatens to transcend Assam and enter civic life in other parts of India. An order published

in the Gazette of 4 June 2019 authorizes any state government, union territory or district magistrate to establish FTs in any part of the country. Until now, this power was restricted to the Union Government and applied exclusively to the state of Assam. It is chilling to observe that the massive mandate for the Modi government in the 2019 elections in itself appears to be interpreted by the Union Government as an authorization to pass such a far-reaching directive which can throw several hundred million people into desperate and prolonged uncertainty about their rights to belong, and indeed to have rights. This carries the potential both to foment untold social strife and to fundamentally alter India's constitutional arrangements. All this without any public debate, let alone a discussion in Parliament, and without even explaining it to the millions whose citizenship today suddenly stands in danger of being interrogated. The only explanation that we have for this order so far is to fall back on Home Minister Amit Shah's incendiary pledge, repeated in his election speeches, to extend the NRC to all parts of the country to identify and deport 'infiltrators' (read undocumented Muslims and those unable to produce documents to the satisfaction of the State) who threatened India's security, unlike undocumented Hindus and Sikhs, who were refugees escaping persecution.

The NRC threatens to produce statelessness on a scale unmatched by any democracy. It caused, in Assam, enormous suffering and dread to millions of mostly poorly lettered and very impoverished people, who have squandered all their meagre belongings to pay lawyers' fees to help them negotiate the hostile and opaque maze of the NRC bureaucracy and the FTs. There have been hundreds of cases in which a small difference in the English spelling of a Bengali name, or a small variation in age, being enough for the NRC authorities and the FTs to sound the death knell of dreaded 'foreignness'. If a person has never been to school, he may have no proof of birth or citizenship. If he owns no land, he has no land records to prove his residence in India before the cut-off date. And even if he does own land, land records are notorious for their errors.

3 *Sarbananda Sonowal v. Union of India*. Writ Petition (Civil) 131 of 2000, judgment dated 12 July, 2005.

4 *Assam Public Works v. Union of India*. Writ Petition (Civil) No. 274 of 2009, order dated 13 August, 2019.

This chapter seeks to assess the implications of these questions, specifically the conceptualization, operationalization and implications of the NRC from the perspective of the analytical framework of exclusion from public goods. It argues that stable citizenship is a public good, and the NRC—as a legal and bureaucratic process—amounts to exclusion from public goods.

The first part of this chapter has argued that stable citizenship is a public good within the meaning of the IXRs since it is, first, instrumentally valuable for persons to access their entitlements and rights, and second, inherently valuable as having a bearing on their dignity as human beings. Moreover, unstable citizenship—marked by arbitrary processes and lack of accountability—engenders the third genre of exclusion. It victimizes individuals and forces them to divert their resources from achieving other public goods towards proving their citizenship.

The second part of this chapter draws from empirical evidence to argue that the NRC engenders these forms of exclusion at the three different levels of design, implementation and consequences. The chapter shows that right from the beginning, there were serious flaws in the design of the process that undercut institutional accountability and transparency. These design flaws were further aggravated by the inefficiencies and oversights at the level of implementation. We draw from empirical and ethnographic evidence to also show that institutions implementing the process reflected bias. These empirical insights—that evince the serious flaws in the NRC process—have weakened and continue to weaken stable citizenship of innumerable Indians. Flawed bureaucratic and legal processes like the NRC produce severe uncertainty for the citizenship status of persons, heightening their vulnerability, disrupting their lives and causing tangible and intangible harm to them. Such processes thus amount to exclusion.

The final part of the chapter ends with recommendations to reform, and, in some cases, substitute the existing State policies.

### 3. Background

Assam has been witnessing anti-immigrant movements and popular resentment from locals and earlier settlers, starting from the colonial era when British colonizers brought Adivasi labourers for tea plantation and Muslim peasants for agriculture work. In post-colonial Assam, the rhetoric of ‘illegal immigration’ and discontentment continued to grow over time. In 1951, the first National Register of Citizens was prepared to identify illegal immigrants from East Pakistan. Since then, anti-immigrant politics has been feeding the Assamese community with the fear of losing their land, identity and culture. On the other hand, Bengali-origin Muslim and Bengali Hindu communities have been regularly experiencing persecution and mass violence.

In the late 1960s, several thousand Muslims were forcefully deported to East Pakistan under a draconian scheme called the Prevention of Infiltration from Pakistan (PIP), without following any legal mechanism of detection and deportation. The Assam Police has a unique organization to deal with the issues of ‘illegal immigration’ from erstwhile East Bengal and present-day Bangladesh. In 1962, the Assam Police established a Special Branch Organization under the PIP scheme. Initially, the organization was headed by the Deputy Inspector General of Police (DIG), Special Branch. This special police unit was entrusted to detect and deport illegal foreigners from the then East Pakistan. Under the PIP scheme, they forcibly deported nearly 200,000 Muslims to East Pakistan without any legal due process. This was done without garnering much attention, much less any criticism. Hiranya Bhattacharjee, former DIG in 1979, stated in an interview that at the time, ‘the process of deportation was on, in spite of the fact that there was no formal agreement with East Pakistan or Bangladesh on deportation’. ‘Those days,’ he went on to say, ‘we deported thousands, there was no hue and cry. What was happening was considered natural’ (quoted in Pisharoty, 2018).

Many of such families, who were arbitrarily identified as illegal immigrants and served notice to leave the country, are found in present-day Bangladesh. They remember this as ‘Quit India Notices’—a biting irony because ‘Quit India’ was the call made by Mahatma Gandhi in 1942 against India’s colonial rulers. Numerous families were separated because a few members remained in Assam while others were deported to East Pakistan. In present-day Bangladesh, these people still relive the trauma they faced and are socially segregated. Many of their settlements and villages are known as ‘Assam Para’ and ‘Refugee Colony’.<sup>5</sup>

In 1985, the Central and Assam governments signed the ‘Assam Accord’ with the agitating groups. The government agreed to detect and deport any immigrant who entered the state after 25 March 1971. Section 6A was added to the Citizenship Act, 1955. The provision provided a route of naturalization for all migrants who entered Assam before 25 March 1971. The Accord is seen as the genesis of the updated NRC in Assam. After several years of debates, discussions, and also many rounds of violence, almost all the stakeholders—including Bengali-speaking Muslims, who are often branded as illegal Bangladeshis—reached a consensus for updating the NRC. The Muslim community hoped that an updated NRC, despite the immense burdens it was bound to place on them, would ultimately secure them from further persecution, harassment and discrimination that had been their fate for seven decades. However, today, the NRC has been made another tool for persecuting the Bengali speaking Assamese Muslims and Hindus through its range of exclusionary and discriminatory provisions.

The NRC authority is not the only agency empowered to identify non-citizens in Assam. In fact, three parallel processes, mostly dependent on low-level bureaucratic and police discretion, run

<sup>5</sup> For more details please see Azam, Abdul Kalam (2015). Abdul Kalam Azad: Speaker from the Margin. Retrieved November 13, 2020, from <https://abdulkazad.wordpress.com/2015/01/04/%e0%a6%aa%e0%a7%8d%e0%a7%b0%e0%a6%9c%e0%a6%a8%e0%a7%b0-%e0%a6%85%e0%a6%a8%e0%a7%8d%e0%a6%a8-%e0%a6%8f%e0%a6%95-%e0%a6%a6%e0%a6%bf%e0%a6%b6/> (in Assamese).

side by side in what poet Manash Bhattacharjee aptly describes as the ‘sniffer-dog’ idea of the State, hunting down ‘foreigners’. The special unit under the PIP scheme was transformed into the Assam Police Border Organization (Border Police) (APBO), an independent organization within Assam Police headed by one Additional Director General of Police (ADGP). The APBO has now swelled to more than 4,000 personnel.<sup>6</sup> The Border Police is authorized to refer suspect foreigners to the FTs.

There is another parallel process called D-voters. In 1997, the Election Commission (EC) identified several hundred thousand people as D-voters, most of them Muslims, but also including Bengali Hindus, Koch Rajbangshis, Nepalis and others. The process of identifying D-voters came into being after a huge political mobilization led by the All Assam Students Union (AASU) and other nationalist organizations, with the government being asked to carry out an intensive revision of the voters list across Assam. EC officials were supposed to conduct door-to-door surveys and revise the list after verifying people’s citizenship documents. However, it is alleged that people were randomly marked as doubtful citizens. There are numerous cases where one or two members of a family were marked as doubtful while others were marked as Indian citizens. The D-voter cases have also been referred to the FTs.

The third and, in scale, the biggest impediment to citizenship has been the NRC project, which has excluded more than 1.9 million people and made them susceptible to lose their citizenship in the FTs.

#### 4. Processes of Exclusion

Our empirical findings highlight three areas in the NRC update that create exclusion. This section focuses on exclusion resulting from design, faulty implementation, and bias and hostility.

We draw our argument from the ethnographic work undertaken in Assam during the five years

<sup>6</sup> For more details please Assam Police’s official website: <https://police.assam.gov.in/portlet-innerpage/border>

of the NRC update process.<sup>7</sup> We undertook institutional ethnography of processes at various institutions like the Local Registrar of Citizens Registration (LRCR), the Circle Registrar of Citizens Registration (CRCR), NRC Sewa Kendras (NSKs), and the temporary camps set up for disposal hearings. These are the institutions which were created by the government to undertake the NRC update.<sup>8</sup> We were a part of these institutional processes as participant observers, and interacted with the concerned officials of these institutions and the persons facing barriers in accessing these institutional spaces. These persons, among other things, were attempting to get access to their documents, legacy data codes, NRC application forms and Family Tree forms; trying to make submissions in the NSKs; and participating in the objections disposal hearings and biometric recording. We accompanied applicants to various offices to support them in the process as social workers. We also conducted in-depth interviews with officials like the LRCRs, the Circle Project Supervisors (CPS), data entry operators, field level officers and disposing officers.

#### ***4.1 Exclusion by Design: The Role of the Supreme Court***

In the Indian legal system, rulings of the courts carry the force of law. The role of the higher judiciary, particularly the Supreme Court, both in the run-up to NRC and since its initiation, therefore merits searching critical review.

The most momentous Supreme Court judgment in terms of its procedural implications was the 2005 Sarbananda Sonowal case.<sup>9</sup> The case involved the constitutionality of the Illegal Migrants (Determi-

nation by Tribunal) (IMDT) Act, 1983 that provided procedures for the identification of foreigners in Assam. The legislation was based on the objective that this identification should have adequate safeguards against misuse and minimize the possibility of targeting genuine Indian citizens. In part, it achieved this by constituting tribunals that were to be filled by persons with judicial experience. The tribunals were to ensure that no vexatious complaints were made against genuine citizens. There were clear procedures for filing of complaints that were also expected to minimize targeting.

There had already been a significant extent of disquiet in Assam about the legislation. Its critics argued that the law, with its many safeguards, would make it considerably difficult for the State to prove that a person was a foreigner. They argued that if instead of the IMDT, the application of the Foreigners Act—particularly its Section 9 that placed the burden of proof on the suspect—would result in more people being declared foreigners. The Supreme Court in the Sarbananda Sonowal case accepted this contention. It struck down the IMDT Act and held that the Foreigners Act must be applicable to citizenship determination procedures in Assam.

The most disconcerting facet of the judgment was its reasoning. It held that the IMDT Act violated the Union's constitutional duty under Article 355 of the Indian Constitution to protect states from external aggression. Illegal migration, in the Court's view, amounted to external aggression. The Court relied on the factually and legally spurious ground of national security to practically drum up paranoia about an 'Islamic invasion' through 'infiltrators'. The Court relied on this ground to strike down the IMDT Act and place the burden of proof on individuals rather than the State. It directed that all questions of citizenship determination must be referred to the FTs.

The FTs, though, have consistently deviated from basic standards of due process and fair trial. While in some important cases, for instance in *State of Assam v. Moslem Mondal*,<sup>10</sup> the Gauhati

<sup>10</sup> *State of Assam v. Moslem Mondal*. 2013 SCC OnLine Gau

<sup>7</sup> This chapter adds to the meagre systematic studies of the social costs of the NRC process in Assam. For a recent study in this genre, see Field, J. (et al) (2019, April). Bureaucratic failings in the National Register of Citizens process have worsened life for the vulnerable in Assam. O. P. Jindal Global University and the Development and Justice Initiative. Retrieved November 13, 2020, from <http://www.daji.org.in/images/NRC-Brief-final.pdf>.

<sup>8</sup> See Operating Procedure, Office of the State Coordinator of National Registration (NRC), Assam. Retrieved November 13, 2020, from <http://nrcassam.nic.in/operating.html>.

<sup>9</sup> *Sarbananda Sonowal v. Union of India*. Writ Petition (Civil) 131 of 2000, judgment dated 12 July, 2005.

High Court did lay down guidelines for referrals to the tribunals, there is growing evidence that these guidelines are rarely followed in practice. The law requires proper police enquiries before notices are issued. But such enquiries are tardy and often non-existent. The FTs ordinarily do not make enquiry reports available to the individuals, making their burden of proof difficult to meet. Under the Tribunals Order that constitutes the FTs, the tribunals are free to determine their own procedures. Evidence suggests that the FTs have operated with arbitrary procedures, often neglecting standard rules of evidence at the cost of due process (Amnesty, 2019). The Gauhati High Court has taken cognizance of bad reasoning in individual FT orders from which writ appeals have been filed. But it is not clear if the Court has taken a desirably strict view of the due process violations that are often seen at the FT level.

The Supreme Court's interventions in dealing with NRC have also been fraught with procedural irregularities. This is most clearly the case with the Court's order that initiated the NRC update. The Court initiated the NRC update in earnest on 17 December 2014, through an order in the case of *Assam Sanmilita Mahasangha v. Union of India*. The Mahasangha had challenged Section 6A of the Citizenship Act, 1955. In its petition, the Mahasangha argued that the provision violated the right to life of the citizens in the State by encouraging the 'massive influx of illegal migrants' from Bangladesh. It also argued that the distinct regime compromised their right to culture as guaranteed by the Constitution. A bench—consisting of Justice Ranjan Gogoi and Justice R. F. Nariman—recommended that the issue be referred to a larger constitutional bench for final determination. In doing so, the bench raised a serious question on the constitutional validity of Section 6A.

But in the same order, the bench also decided to commence supervising the NRC update, on a court-determined calendar, based precisely on the requirements under Section 6A. The Supreme Court initiated one of the most ambitious judiciary-led bureaucratic exercises in the history of the country, on the basis of the rules whose legal validity it is yet

to determine! This was an uncomfortable paradox at the very foundation of the court-led NRC update. The Court relied precisely on the paranoia of illegal immigration that was the basis of the Sarabnanda Sonowal judgment. It also gravely substituted the executive in taking up the role of administering and supervising the NRC update. The institutional consequence of this was that it severely weakened any mechanism of accountability. Since the Court was acting as the executive, it completely removed the possibility of judicial review.

Since the initiation, the Supreme Court left another crucial question unanswered. The original Citizenship Act of 1955 adopted the *jus soli* or birthright citizenship principle by extending to all persons born in India the qualification to be Indian citizens. Subsequent amendments to the legislation diluted this *jus soli* principle, but partly retained it. The current position of law is that anyone born in India before 1 July 1987 would be a citizen by birth. Anyone born between July 1987 and before 3 December 2004 would need at least one Indian parent to be a citizen by birth. And for anyone born after 3 December 2004, to qualify as a citizen by birth, neither of the parents should be an 'illegal migrant'. In 2019, Prateek Hajela, the coordinator of the NRC, asserted before the Supreme Court that these rules were inapplicable in Assam. According to him, even if a person was born in Assam before July 1987, she must be excluded from the NRC if any of her parents was a suspect foreigner or declared to be a foreigner by the FT. This position was completely contrary to the Citizenship Act and was expected to leave out innumerable persons from the NRC. Despite this, the Supreme Court left this question hanging, and instead ruled that it would address it—after the completion of the NRC process—in a separate judgment. In doing this, the Court left innumerable persons in a state of utter uncertainty and flux.

The Court continued to supervise the NRC through means that also compromised the accepted legal standards of transparency. The most profound example of this is the consistent use of 'sealed envelopes' by the judges to appreciate evidence. For example, in late 2014, a bench headed by the then

Chief Justice Gogoi asked the NRC coordinator to submit the steps and measures he was taking for the NRC update in a ‘sealed cover’. This soon became a pattern. Keeping such crucial information hidden from the public—and sometimes even from the government and affected parties—makes the legal process dangerously opaque. This has had a severe impact on the transparency and accountability of the NRC administration during the course of the update. Rather than keeping the executive body accountable through the judicial process, the courts have essentially become the administrators, while maintaining silence and secrecy.

#### ***4.2 Exclusion by Design: Role of the Executive***

The argument in favour of undertaking a huge project like the NRC was marketed as a bitter but necessary medicine for those who would suffer the most from the process. It was proposed as a panacea to the harassment and persecution faced by Bengali-origin Muslims and Bengali Hindus in multiple citizenship contestation processes. Hope was sown among the vulnerable communities that once the NRC would be completed, authentically Indian citizens would not be harassed anymore. However, at the core, the design of the project was exclusionary and biased at different layers and levels.

As already noted, before the NRC process started, there were two more parallel citizenship contestation processes. These were the doubtful or D-voters by the Election Commission and the reference cases by the Border Police. Without proper investigation and due process, allegedly driven by bias and prejudice, both the processes had called to question the citizenship of more than half a million people. But it stood like a dagger, a threat, over millions of other citizens as well. Many of those people with contested citizenship had been waiting for nearly two decades for their cases to come up before the FTs that are authorized to determine citizenship status.

Since the NRC project was meant to end the problem of ‘illegal migration’ and would be monitored by the appellate judiciary, the people with contested citizenship were expecting that through

the NRC process, they would get rid of the sword of ‘doubt’ hovering over their heads for decades. However, the NRC design was completely opposite to what the people with contested citizenship expected. The NRC modality—as per the instructions of the Supreme Court—kept all the people with contested citizenship who were before the FTs outside the purview of the NRC process. It also excluded the descendants of people with contested citizenship. Consequently, a large number of people were left at the mercy of the ordinary FT process despite the presence of the NRC that the government proposed was more transparent.

Another important design flaw was the segregation of applicants between the categories of ‘original inhabitants’ and non-original inhabitants. This segregation was also the result of one of the Supreme Court orders. The term ‘original inhabitant’ is nowhere defined under the law and has been used in the NRC exercise to give free pass to certain communities and has made the inclusion verification extremely difficult for Bengali-origin Muslims and Bengali Hindu communities. The NRC process also does not recognize the need of special protection for vulnerable social groups like women, children, transpeople, the destitute and orphans, among others.

#### ***4.3 Exclusion by Flawed Implementation***

It is not just flaws in the design of the process but also in the implementation that has created more barriers. Inefficiency, clubbed with bias and prejudice, has worked as a deadly weapon of exclusion against the vulnerable communities.

##### ***4.3.1 Procedural Exclusion***

Though the NRC is described as an exercise to enlist citizens, in its implementation it is an exercise to find out the alleged undocumented foreigner living in the state. To be more precise, it is an exercise to find the alleged undocumented foreigner from Bangladesh. In the process, there are certain communities who are facing more exclusion than others. So far, neither the NRC authority nor the government has released the details of the excluded people. The Supreme Court, which was monitoring the whole

exercise since the beginning, instructed the NRC authority not to disclose the data in the public domain, anticipating ethnic strife, and wished to get the details of excluded people from the final draft in a sealed envelope.

The NRC authority used certain exclusion/inclusion criteria like original inhabitants/non-original inhabitants, and migrants from specific countries (i.e. Bangladesh). These criteria are reflected in the stories of excluded people on the ground. The stories reveal that the Muslims of Bengali origin were the prime suspects. Though the current BJP government now wants to provide citizenship rights to non-Muslim undocumented migrants from neighbouring countries through the Citizenship Amendment Act, 2019, on the ground it appears that Bengali Hindus were the second most targeted population in the NRC process. Along with these two communities, there are certain communities who share some commonalities with Bengali Hindus and Muslims of Bengali-origin. These include the indigenous Bengali Muslims, locally known as Cachari Muslims, living in the southern districts of Cachar, Karimganj and Hailakandi; the indigenous Deshi Muslims whose forefathers converted to Islam from the aboriginal Koch Rajbongshi community of western Assam; the Assamese speaking indigenous Goria and Moria communities of middle and upper Assam; and the indigenous Koch Rajbongshi Hindus of western Assam.

Koch Rajbongshi is an indigenous tribe of Assam with a population of around 7 million. They were a part of the Koch kingdom that included parts of today's West Bengal, Bangladesh and lower Assam. Since they share surnames with Bengali Hindus like Roy, Ray, Rai, Barman and Sutradhar, and speak a native language that is different from the standard Assamese language, they are often seen as outsiders. A large proportion of their population has been excluded from the NRC. Keshab Roy, a student leader of Koch Rajbongshi Students Union from Baksa district, informed us that though his family members are included in the final list, his mother has been excluded. Many people from the community have been put under the D-voters list, and the Border Police has also registered a refer-

ence case under the Foreigners Act. Many of them are already declared as foreigners and put in detention camps.

Similarly, the indigenous Muslims like Deshi and Goria-Moria are also largely affected because of their religious identity. Ibadul Ali, a functionary of Goria-Moria Desi Jatiya Parishad, said that the indigenous Muslims are part and parcel of the Assamese society but have still been left out from the final NRC in large numbers and their names sent to the FTs (Sentinel Digital Desk, 2019). Though as per the design the indigenous Muslims are supposed to be included in the NRC as part of the 'original inhabitant' category, the NRC authorities did not treat them as such in many areas during the NRC update and, consequently, they were made to go through the more stringent verification process. An LRCR—the local official authorized to prepare the register at the lowest geographical level like a village or ward—alleged that the LRCR in the Muslim dominated areas did not receive instructions from higher authorities to apply the original inhabitant category. He alleged that this was done to bar the indigenous Muslims from availing attendant benefits.

Apart from these communities, there are indigenous tribal communities like the Bodo, Karbi and Mishing, who were also badly affected during the Kafkaesque implementation of the NRC. A study conducted by Rights and Risks Analysis Group (RRAG) reveals that over 100,000 tribals have been excluded from the final NRC. RRAG told the media that according to their preliminary survey, about 25,000 Bodos, 12,000 Reangs, 8,000 Hajongs and thousands of persons belonging to other indigenous tribes have been excluded from the NRC.<sup>11</sup>

#### 4.3.2 'Water-tight' Family Tree

Midway into the NRC updating process, the NRC authority suddenly introduced a new verification criterion called the Family Tree. This criterion

11 Assam NRC: Rights body says over one lakh tribals excluded, The New Indian Express, 2nd September 2019, <https://www.newindianexpress.com/nation/2019/sep/02/assam-nrc-rights-body-says-over-one-lakh-tribals-excluded-2027904.html>

was included to the process without any consultation with stakeholders who were part of preparing the modalities. Families were asked to fill up an extremely complicated form and give details like name, age, and the relationship of all the members.

For example, if someone had used the legacy data of her ancestor (say, grandfather or great-grandfather) whose name featured either in the 1951 NRC or subsequent electoral rolls upto 1971, she was expected to mention every detail of the descendants of the person. Sometimes, more than hundred people would come in one family tree, which included several families who lived in areas far from the applicant's location. Needless to mention, the application on numerous occasions would have completely lost communication with distant relatives for years and decades. The need to fill out the details of such relatives in family trees was bound to create many mismatches. And one mismatch was enough for the NRC authorities to demand several rounds of hearings, verifications and reverifications.

'The applicants filled up the handwritten "Manual Family Tree (MFT)". Based on the information provided by the applicant in the MFT, we prepared the "Computerized Family Tree (CFT)" using "Docsmen -3" software. If the data of all family members in MFT and CFT matched, their names [are] publish[ed] in the first draft NRC; those mismatch[ed] attends hearings.' – Circle Project Supervisor

Family trees of a large number of people were found to mismatch with the Manual Family Tree (MFT) and Computerized Family Tree (CFT). They were subsequently asked to appear before the hearing officials, often in far-flung areas. Lower level officers were given discretionary power to decide such cases. There have been allegations that the cases of mismatched family trees were rejected because of minor errors like spelling mistakes or if the extended family members failed to testify to the credentials of their long-separated relatives or young family members whom they have never met.

The requirement of family trees created larger sociological issues and affected the most marginal-

ized sections of the society. Transpeople who had left their families and were living separately were forced to mention their family members' details in their family trees. Their family members often did not mention the trans members of their family in their family trees. This resulted in burdensome hearings and often traumatized transpeople. LGBTQ activists allege that a large proportion of their community either did not participate in the NRC exercise or dropped out midway from the process, resulting in their exclusion.

Similarly, single women who had been abandoned by their husbands faced problems in filling up the family tree for their children. In such cases, the father's family left out the children from their family trees, either intentionally or because of sheer unawareness. The relatives did not mention their names often out of the apprehension that if they accept the abandoned siblings or children as their family members, they would end up losing shares of their inherited property. Such children, as well as the adult persons who had been abandoned by their fathers, consequently faced severe problems during the family tree verification.

'Some people have multiple marriages. One wife doesn't know about another, lives separately. But in the family tree the father has to reveal everything. We have seen many quarrels among those family members' – Circle Project Officer

Family Trees created unthinkable problems for those who are socially stigmatized as 'illegitimate' children. In a sorry instance, an applicant was unable to prepare a family tree because his father was born out of wedlock. The NRC's family tree requirement forced him to visit the relatives of his grandparents who did not legally have any relations with him. The relatives declined to include the applicant's family members in their family tree, allow him to include their names in his family tree, or testify the same during the verification hearings. Finally, he had to bribe the community leaders and officers to find alternatives. He ended up spending more than 400,000 rupees but still failed to be included in the NRC.

‘They didn’t include our names anticipating that if they recognize him as their brother and get included in the NRC they will have to give share of their ancestral property.’ – Daughter-in-law

#### 4.3.3 Inefficiency in Implementation

The NRC administration was embroiled in severe inefficiencies. Several interviews with both government employees engaged in the NRC update and employees of contracted companies revealed that much of the problem that was attributed to large-scale exclusion was actually the result of the inefficiency of the staff. There are allegations that Wipro recruited underqualified or ill-qualified data entry operators. ‘Just matriculated’ candidates, who had not even matriculated from high school and were younger than 18 years, were given the responsibility of providing legacy data to the applicant. These operators were not provided requisite training on how to handle the Linux operating system (Ubuntu), and lacked communication skills to manage huge crowds. The operators were offered only 5,000 rupees per month despite being entrusted with such huge and consequential responsibilities. In rural areas, most illiterate people who approached the NSKs to ask for their legacy data were provided incorrect legacy data slips. Many applications filed the application form with the provided legacy data code with good faith. When Family Tree was introduced at the later stage, the NRC authority discovered that many people had actually used the legacy data of other applicants instead of their own. Many officials, on the condition of anonymity, explained that had the data entry operators been trained and equipped properly, at least 50 per cent of the family tree mismatches could have been averted.

‘A person went to the operator to give him the legacy data of his father named Farhad Ali. The operator asked for the village name, which too matched and gave the legacy data that this person filled up in the NRC form before submitting. In the same village there was another person with the same, and he used the legacy data of that person, not his

father. For this sort of error many forms got rejected.’ – Circle Project Supervisor

When the NRC authority discovered that people had used the legacy data belonging to others, the local officers conducted field verifications. During verification, the NRC administration changed the legacy data documents once again for a large number of the applicants who had applied using wrong legacy data due to official errors. But these corrections were not recorded properly in the software. Consequently, the NRC administration did not rely on the rectified details during the family tree verification hearings. It sent out the Letter of Intimations (LOI) to applicants based on the incorrect data, leading to further hardship for the applicants.

Because of these mistakes, hundreds and thousands of people were called for hearings miles away from their place of residence and work without any logistic support being provided. Sometimes, all members in one family tree were summoned to places 300 or 400 kilometres from the home address. There were cases in which more than a hundred people had to identify each other with the correct name at a single hearing. And failure to do so meant complete exclusion from the draft NRC, potentially for everyone in the extended family.

There were cases where the notice was either served at the last hour or after the date of hearing. Notices were served to wrong people and wrong destinations because of data entry errors, leading to exclusion because of official errors. Moreover, there were serious issues during the hearing process. The investigating officers were provided only a few hours of training and entrusted with the responsibility of deciding an application’s fate. One investigating officer was given the responsibility to hear as many as 6 family tree-related disputes in a day, which meant examining the citizenship status of several hundred people!

#### 4.3.4 Issues with Digitization of Legacy Data

As the first step, the NRC authority digitized the legacy data that included the 1951 NRC and electoral rolls upto the midnight of 24 March 1971. Each page of the legacy data was recorded as an

image with an ID number. The NRC authority also gave each record in these documents a unique code. However, at least two major issues were reported.

First, there are many villages where all the legacy data were not available. When the census was conducted in 1951, the enumerators were unable to visit many far-flung areas. Consequently, the 1951 census—and thus the 1951 NRC that is based on the census—is not comprehensive. Second, there is also a question over the accuracy of the NRC data. The purpose of the data collection in 1951 was to prepare the census and not the NRC, which clearly serve different aims altogether.

When the process of providing legacy data was initiated, the NRC authority could not provide digitized legacy data for the entire population. In many villages, the NRC authority could not provide legacy data code to the individual applicants despite creating legacy data images. As an ad-hoc measure, the NRC authority made provisions to generate a temporary legacy data code called Star DLDD. It was supposed to generate the actual legacy data code and intimate the same to the applicant as well as NSK officials. However, this did not happen. MFT and field verification were conducted using the Star DLDD code. But alterations were not made in the metadata entry software, because of which there was no mechanism of utilizing the Star DLDD code.

‘In our Circle area, some people have copies of 1952 and 1955 electoral roll but those documents are not digitized.’ – Circle Project Supervisor

A large number of applicants were unable to find their legacy data in the NRC database, despite having copies of their pre-1971 eligible legacy documents, including the pre-1971 voters list and 1951 NRC receipt copies. On numerous occasions, the applicants approached the NSK with such documents. The NSK officials were reported to have scanned the documents and sent them to the state office for verification and generation of a legacy data code. In such cases, the NSK officials issued a system generated acknowledgement slip with a unique number against the document. Despite the

applicants being told that they would be sent the legacy data code on their mobile numbers, NRC authorities often failed to do so or even to intimate the applicants about the verification status of the documents. The applicants were also unable to use their unique acknowledgement receipt number because the online system did not have an appropriate option for processing such applications.

#### ***4.4 Exclusion by Active State Hostility***

The dominant narrative has already marked the vulnerable communities, especially Muslims of Bengali-origin and Bengali Hindus as Others, and thus the primary suspects in the citizenship contestation processes. Many policies of the NRC authority and their implementation were unsympathetic towards the vulnerable communities. This was aggravated by the continuous campaign by media and vigilante groups. These groups—comprising prominent Assamese students associations—were active throughout the NRC process, putting immense pressure on the administration to exclude as many persons as possible. The active hostility against the vulnerable population was evident in different forms and layers.

##### ***4.4.1 ‘No Ineligible Person Should Be Included’: Paradigm Shift for Exclusion***

In the beginning of the NRC update, the NRC authority undertook several public education and communication programmes to inform the residents of Assam about the process. The focus of the authority appeared to be on making sure all Indians were included in the NRC. The NRC coordinator Prateek Hajela regularly appeared in the media and assured the people of Assam that no genuine citizen would be excluded.

However with time, the focus of the NRC authority shifted. In October 2018, Hajela submitted before the Supreme Court that ‘imposters’ had subverted the NRC process by using wrong legacy data. He suggested that there was a need to shift from the old paradigm of ‘No genuine citizen should be left out’ to ‘No ineligible person should be included’ (Chakravarty, 2018). He proposed to reduce the number of permitted legacy documents.

He also proposed that panchayat or village certificates—that were often the only documents that unlettered and poor women could present to the NRC authority—be removed from the list of acceptable documents.

While the Supreme Court ultimately declined these submissions, Hajela's stance nudged the implementation towards hostility. This was further aggravated by the media and vigilante groups, who had already created an environment of hatred against Bengali-origin Muslims and Bengali Hindus. Lower level officers like lot mandals (revenue officers) were given discretionary power to reject names that were otherwise accepted by investigating officers, who were mostly college teachers. We came to know of one such case where a professor from a local college, acting as an investigating officer, had accepted the few cases that were rejected during the Special Verification Process. The professor lamented that he has a PhD and teaches in a college, but a high school educated junior official has the power to override his decision!

#### *4.4.2 Declared Indians are Excluded*

As per the modalities approved by the Supreme Court, D-voters were to be included in the updated NRC provided they had received clearance from FTs.<sup>12</sup> But in implementation, lower level officers were instructed not to include any persons who had been designated D-voters, or for that matter against whom Border Police references had been made, even if the FT had declared the person an Indian citizen. In other words, the NRC authority summarily excluded persons with contested citizenship who had been declared Indian citizens by FTs from 2015 until the end of the NRC process, as well as their siblings and children. The numbers of such persons might run into several thousands.

We also followed applicants—in various offices and interactions with officers—to understand how they were excluded and what explanation the officials provided them.

<sup>12</sup> See NRC website for more details. National Register of Citizens (NRC). *Office of the State Coordinator of National Registration(NRC), Assam*. Retrieved November 13, 2020, from <http://www.nrcassam.nic.in/faq01.html>.

In one instance, the applicant was a woman who was married to a successful businessman and politician. She had already contested her citizenship in the FT and succeeded in getting a favourable order. Her husband was running pillar to post—from the election office to the office of the Superintendent of Police—showing the tribunal order, as officials kept referring him to others. The husband understood the consequences of being excluded from the final NRC. We followed him to two NRC offices and observed his conversation with three officers of different ranks. He first approached the NRC Seva Kendra, where a junior officer told him that there was an order from a higher authority not to accept the names of any D-voters irrespective of the status of the case. Then the husband approached the LRCR who was in charge of the NSK. The LRCR repeated the same instructions. The LRCR added that there were at least 50 such cases in his NSK and suggested that the person should meet the CRCR, who was the Executive Magistrate and his immediate supervisor. We followed the husband to the CRCR's office. The CRCR asked his junior officers to check the details of the official record. The junior officer confirmed that the woman's name was in the list of people who the state office had instructed to be kept on hold. The CRCR said that his hands were tied. At that stage, we intervened and reminded him about the announced modalities as well as Prateek Hajela's press statements clarifying that any names cleared by the FTs would be included in the NRC. On hearing this, the officer lost his temper and thundered, 'Bring Hajela to my office!'

#### *4.4.3 Exclusion through Dubious Objection Mechanisms*

The NRC update process permitted anyone to file an objection against the inclusion of any person in the draft NRC. The initially approved modalities had a penal provision for frivolous objections. But owing to the pressure of vigilante organizations like AASU and the Assamese media, the NRC authority removed this provision.

After the removal of the provision, AASU and partner organizations coordinated the filing of frivolous objections against 'suspected foreigners'.

The NRC authority allowed objections even in cases where the objector had no possibility of knowing the person against whom the objection was being made. It also permitted a person to file en masse objections.

Despite the campaign, only a few thousand objections were filed until the end of the objections period. Government officers stated on record that the objections were mostly filed based on personal grudges. On the last day of the objections, AASU and other associated organizations submitted lakhs of objections in districts dominated by Bengali-origin Muslims and Bengali Hindu across the Brahmaputra valley. Evidently, their target was to implicate as many as 1.5 million people by filing 300,000 objections. On prime time television discussions, the office bearers of the most powerful students organizations openly discussed the objections as a success story. They accepted that submitting frivolous objections would help them increase the number of the excluded from 4 million (as in the draft NRC) to 5.5 million.

The NRC authority never questioned this transparent plan to persecute people from two of the most marginalized communities. Rather, there is credible allegation that the NRC authority supplied the required Application Register Numbers (ARN) to AASU and other organizations to facilitate filing objections. The NRC authority even accepted objections that lacked basic information like the address and contact details of the objector. For the disposal of the objection under law, the NRC authority was supposed to summon both the parties for hearing. However, not a single objector came for the hearing. The NRC authority did not dismiss such objections, but rather used it as another opportunity to exclude people whom they had included in the complete draft NRC after several years of scrutiny and verification. The authority asked the people against whom the objections were made to appear before a disposal officer. An interview with a disposal officer at one of the crowded hearing venues revealed that the officers were not given authority to decide the case. They were asked to reverify the documents and record their observations. The dis-

posal officer told us that the fate of the case was to be decided by higher authorities.

The NRC authority also made provisions to take biometric data of all persons who were excluded or against whom the objections had been made. One elderly person was asked to attend the hearing and provide biometrics in another district. During the process, the officer in-charge humiliated him by asking him from which part of Bangladesh he was! When the officers took the biometric data, they threatened the man. They told him that they were taking this data to make it easier for them to track him down and send him to a detention centre. Two days later, the elderly person committed suicide by consuming poison.

Though government data is not available in the public domain, it is estimated that the Unique Identification Authority of India (UIDAI) took the biometrics of up to fifty lakhs (5 million) individuals during the verification processes. This includes the 40 lakh (4 million) excluded from the complete draft NRC, and conservatively an estimated 10 lakhs (1 million) against whom objections were filed. UIDAI is the government agency that operates the Aadhaar ID that is the basis of access to numerous welfare schemes. There are serious concerns that all these persons could now be dropped from Aadhaar and be deprived from government sponsored schemes like housing, direct benefit transfer and other schemes that require the Aadhaar number.

#### *4.4.4 Exclusion by Selectively Not Appreciating Documents*

The NRC authority refused to accept documents that were issued after 31 August 2015. Thus, even if, for instance, a person had inherited land property decades ago and was part of the government record, he was not permitted to use the official extract if retrieved from the government office after this date.

While the Supreme Court later ruled that the NRC authority must accept these supporting documents, the lower level officials were given discretionary power and they often refused to accept such documents ('Apex court rejected most of 51 peti-

tions’, 2019). The local authorities were particularly hostile towards Muslims and people of Bengali descent.

Similarly, the NRC authority identified many valid documents such as birth, refugee or village certificates as weak documents. The NRC coordinator instructed the officials to take ‘extra caution’ while considering these documents (Hajela, 2018). This was despite the fact that documents like birth certificates were authenticated by the executive at the time of issuance.

#### *4.4.5 Short Notice Long Distance Hearings*

With less than a month from the scheduled date for publication of the final NRC, thousands of people from the lower Assam districts of Kamrup and Barpeta were given notice to appear before for their hearing before officers the next day in faraway places in upper Assam, sometimes more than 500 kilometres away. According to the modalities, the NRC authority was expected to give the applicants at least 15 days to appear for the hearings. Moreover, the Supreme Court order dated 10 April 2019 required the NRC authority to call the applicants to centres that were convenient for them. On 23 July 2019, Prateek Hajela submitted before the Supreme Court that the NRC authority had already reverified 27 per cent of the NRC applications included in the draft NRC. Consequent to this submission, the Court ordered that no further reverification was required. But despite this, there were numerous occasions when applicants were required to attend hearings in far-off places within a short notice period. This created panic among the people who received the notices. The sudden rush to hire vehicles to reach the hearings dramatically increased the fares. There were many cases when the vehicles were overloaded, with the drivers travelling multiple trips without taking any rest. There were numerous incidents of accidents caused by this panic, leading to several deaths and injuries (Das, 2019).

## **5. Consequences of Exclusion**

The historical and empirical account reveals that in its design and implementation, the NRC process has destabilized the citizenship of millions of Indi-

ans, threatening to produce statelessness on a scale unknown in any democracy. In its design and implementation, the NRC is an arbitrary and opaque system, which consequently weakens stable citizenship. It has introduced a lingering frightening uncertainty in people, about whether they would remain Indian citizens, be locked up for years in detention centres, forced to live as doubtful or non-citizens without elementary rights to access a range of public goods including owning property or accessing social protection such as subsidized foodgrains, or indeed be deported. This debilitating and humiliating instability and uncertainty marks the lives not only of those who were ultimately excluded from the NRC, but also those who had to go through the maze of burdensome bureaucratic procedures to prove their citizenship.

This unstable citizenship—that has rendered innumerable residents of the state precarious—amounts to adverse exclusion, especially of those belonging to vulnerable communities. The precarious citizens of the state were subjected to overly burdensome and often discriminatory procedures. These persons were compelled to divert all their meagre resources, time and energy—away from pursuing their lives and livelihoods—towards establishing their citizenship. This process heightened their vulnerability and engendered fear, harming their dignity and freedom.

Now the political establishment threatens to drag these precarious citizens through this same process all over again. It has been demanding re-verification in minority-concentrated districts, with the aim of increasing the total number of excluded persons. The NRC authority is yet to notify the final list that would entitle the excluded to file appeals in the FTs. Instead, at the time of writing the chapter, it had issued circulars instructing its officials to revisit the inclusion of several persons (Saha, 2020).

The path for those who were—or will be—ultimately excluded from the NRC is now riddled with steep challenges. They now have the right to appeal to the FTs, which are notorious for arbitrariness and disregard for ordinary laws of evidence. If

the excluded persons fail at the FT stage, they can arguably approach the Gauhati High Court and the Supreme Court. The expense of this would be an insurmountable barrier for scores of the excluded.

To make matters worse, the State has failed to announce its policy for those who are ultimately excluded after exhausting all the legal remedies. The gravest violation of constitutional justice of the entire NRC process in Assam, which now threatens to imperil minorities across India, is that to date the Union Government has not clarified what will be the fate of people who are finally declared to be foreigners. Neither the Supreme Court nor Parliament have compelled the government to clarify what the destiny of possibly one to two million people in Assam will be, if they are finally declared to be ‘foreigners’. Home Minister Amit Shah has made amply clear his determination to give citizenship to people of every religious identity except Muslim. If he succeeds in doing this, what will happen to those Muslim residents of Assam who are unable to prove their Indian citizenship?

There is no question of Bangladesh accepting those who the Indian government declares to be foreigners, but who deny that they are Bangladeshi. Thousands have been detained over time in detention centres located within prisons.<sup>13</sup> The Assam government has reported that it is building ten detention centres in the state; one of them, which is nearing the construction in Goalpara, will house 3,000 ‘declared foreigners’ (Naqvi, 2019). But what will happen to possibly half a million or more people declared by India’s judicial system, such as they are, to be non-citizens in Assam? And possibly several million more if the NRC is actually extended to the rest of India? Will the Indian government detain them in massive concentration-camps? If so,

13 In May 2020, the Supreme Court passed orders for decongesting jails in the context of COVID-19. Among the ordinary prisoners who were released, the government also released 308 of the total 802 persons in foreigners detention centres. See Karmakar, Rahul (2020, May 20). 308 ‘foreigners’ released from Assam detention centres. *The Hindu*. Retrieved November 13, 2020, from <https://www.thehindu.com/news/national/other-states/308-foreigners-released-from-assam-detention-centres/article31632918.ece>.

for how long? Will they—men, women and children—be confined there all their lives? Or will they continue to live outside detention centres in India but stripped of all citizen rights? Stripped of the rights to vote, to own property, to enter government service? What kind of lives will they live in the absence of citizenship? The spectre of intense existential uncertainty, thus, pervades the lives of millions.

## 6. Conclusion: Recommendations

### 6.1 *The Ongoing NRC Process*

At the time of writing, it has been more than a year since the final NRC was published. The government has not published the gazette notification. Rather, the Assam government is trying to discredit the NRC and is advocating a fresh NRC along with the national NRC. This would be nothing short of calamitous for the linguistic and religious minorities of Assam. It would mean that even those among these intensely vulnerable people who had been through a trial of fire to prove their citizenship to a hostile bureaucracy against immense odds would have to start all over again, and would need to go through similar painful and traumatic processes once more. The first recommendation is that the authorities should immediately issue identity cards to all the people who included.

Those who were excluded from the NRC list are living through an immense degree of anxiety and uncertainty. The authorities should immediately release to them the ‘reason of rejection’ and kick-start the process of determination of their citizenship in a fair and judicious manner.

The environment of hatred and discrimination against the vulnerable communities has been mounting in the fraught and highly polarized political environment of the state. The amended Citizenship Act that provides citizenship to excluded Bengali Hindus has actually made the community more vulnerable in Assam. On the other hand, the BJP government in Assam has been propagating hatred against Bengali-origin Muslims. In such an environment, the active hostility both of the state and the majority community against these vulner-

able communities are only increasing. Authorities should make all the officials involved in the processes of citizenship contestation and determination accountable. They should also be provided training on principles of non-discrimination, human rights and rights of vulnerable social groups like women, children and transpeople.

## 6.2 Transparent Judicial Process

The rights to fair trial and due process are fundamental human rights. They are equally constitutive of the right to equal protection (Article 14) and the right to life, personal liberty and due process (Article 21) under the Indian Constitution. Article 9(4) of the International Covenant on Civil and Political Rights (ICCPR)—that India is a party to and hence bound by—lays down that no person can be deprived of her liberty without recourse to a court of law. Article 14 of the Covenant also lays down that everyone has a right to a fair and public hearing by a tribunal. Such a tribunal must be competent, independent and impartial. These rights of fair trial and due process apply to the legal determination of citizenship status.

Since citizenship is undoubtedly one of the most significant rights under international law and has the most valued status under India's constitutional scheme, there is an even greater need to secure fair trial and due process while dealing with the question of citizenship determination and verification.

From this perspective, it is an anomaly that citizenship determination in Assam is being conducted not before India's courts but through the FTs. While the FTs appear to have trappings of courts, they are executive-created bodies constituted—not under a law of Parliament—through the government's rule-making powers under the Tribunals Order. They are meant to give their 'opinions' to the government regarding whether a person is a foreigner. There is no parliamentary legislation regarding the qualifications of its members. In fact, the government has consistently diluted the need for judicial experience for someone to be appointed as an FT member. At present, in addition to retired judges, the government recruits former civil servants and

practicing advocates without any requirement of compelling judicial experience or training. Moreover, there are no formal provisions that secure the independence of the FT members. There are many anecdotal accounts of lawyers who are ideologically aligned to the ruling establishment being selected for this office. Currently, the FT members are appointed on a contractual basis, and any extension of the tenure is left to the government's assessment of their performance. There are serious fears—borne out by numerous journalistic reports—that only those FT members have been given extensions who have indiscriminately declared people foreigners.<sup>14</sup> There is also compelling evidence to show that the FTs have adopted arbitrary procedures, often disregarding basic rules of evidence, to declare people foreigners (Amnesty, 2019). This problem is further aggravated by the fact that under the executive rules, the FTs are free to lay down their own procedures (Rahman, 2020). These factors clearly reflect that the FTs are not competent, independent or impartial, and thus do not fulfil the criteria of courts and tribunals as required under the law.

It is also relevant to note that when the question of citizenship determination comes up in other countries, they leave it to the final determination by ordinary courts. The question of citizenship determination should be left *not* to administrative bodies but to courts, which are more adept at evaluating evidence. For example, under the Immigration Act, 1971 of the United Kingdom, while the State does exercise the right to deport non-citizens, the question of determining whether a person is a UK citizen or not involves ordinary courts. Similarly, revocation of naturalization in the United States under the Immigration and Nationality Act, 1952 also involves judicial determination by courts. French law requires courts to determine if a person is a citizen owing to the 'inherent difficulties in providing proof of French nationality'.<sup>15</sup>

14 For a recent example, see Agarwal, Poonam (2020, October 6). Assam NRC | Lost Job as I Declared Fewer Foreigners: Ex-Officer. *The Quint*. Retrieved November 13, 2020, from <https://www.thequint.com/news/india/nrc-former-judicial-officer-of-assams-foreigners-tribunals-interview>.

15 See Commentaire Décision n° 2013-354 QPC du 22

Ironically, the Indian Supreme Court relied on the practice in the USA and the UK to shift the burden of proof onto individuals in citizenship determination cases in the Sarabnanda Sonowal case. But both these countries leave citizenship determination not to bodies like the FTs that are created by the executive, but to the courts of law bound by respectable rules of procedure and evidence, and with laws and conventions securing their independence and competence.

In light of this, this chapter recommends that all citizenship determination processes come within the purview of ordinary courts. The Indian Parliament may enact suitable provisions, as part of the Citizenship Act, 1955 if need be, to constitute independent, impartial and competent special courts to adjudicate such cases. These special courts must meet the criteria of due process and fair trial that are mandated by the Indian Constitution and international human rights laws. The members should be recruited through the Assam Judicial Services and employment be made permanent so that they do not have to feel insecure of losing their employment while involved in the administration of justice. Individuals must have a right to appeal to the High Court and the Supreme Court the decisions of these special courts.

### **6.3 Reform of the FTs**

In the interim, the government must seriously reform the current operation of the FTs. Reforms are needed at the three levels of structure, membership and operation. Structurally, the FTs must be given complete independence from the executive. There should be a politically insulated system for the appointment of members, who must be given security of tenure to ensure independence. The current system of contractual employment and extension based on State evaluation must be completely removed.

In terms of membership, the government must reinstate the requirement of judicial experience for the members of the FTs. Appointing lawyers or retired civil servants as members undermines the

need for transparent and rigorous legal reasoning and appreciation of evidence.

The government must also reform the operation of the FTs. At present, the FTs are not bound by any procedural and evidentiary laws, because of paragraph 3 of the Tribunals Order. The paragraph must be amended to make the ordinary laws of the land applicable in citizenship determination proceedings.

One of the biggest concerns has been the vexatious—and often non-existent—police enquiries that continue to target genuine Indian citizens. The FTs must be reminded and empowered to take punitive steps against police officers filing false cases. They must also ensure that they assess the substance of the grounds and allegations of suspicion before issuing notices to individuals. The government must appoint government pleaders in all the FTs, which is not currently the case.

### **6.4 Fair Legal Rules of Evidence**

Some of the biggest concerns about the FT process—and by extension, about the appeals after NRC exclusion—have been about the faulty appreciation of evidence. Since the FTs are not legally bound by the Indian evidence law, extensive documentation has shown that they rely on hyper technicalities, minor contradictions and overly burdensome evidentiary requirements to declare persons foreigners.

The most worrying area of concern is the question of burden of proof. The Sarabnanda Sonowal judgment placed the burden of proving citizenship on the individual rather than the State. If one is to adopt a generous reading of the judgment, the Court's ruling on the issue was based on the understanding that ordinary—and hence, reasonable, fair and just—principles of evidence law would continue to apply. Consequently, the State will also need to share the onus to showing why certain evidence presented by the individual is not admissible or persuasive. But since the judgment, this burden of proof has degenerated into unfair demands from the individual.

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novembre 2013 (Mme Charly K), Conseil constitutionnel, quoted in p. 9.

First, the FTs proceedings are overly dependent on documentary proof. This is unfair simply because most Indians do not have access to viable documents like birth certificates, school certificates and property ownership documents. Individuals are forced to spend resources on getting certified copies of public documents, most of which are already in the possession of the State. To make matters more burdensome, the FTs require many of these documents to be corroborated by officials and witnesses. This forces the individuals—mostly poor and unlettered—to incur heavy expenditure. Moreover, many FTs refuse to summon officials, who are most unlikely to come to the FTs merely on the request of the individual struggling to prove her citizenship.

Second, most of the documents are often error-ridden, which is also often the fault of the State rather than the individual. For example, individuals often present voter lists as evidence of their citizenship. These voter lists invariably have errors because of the Election Commission's machinery. The FTs regularly reject such documents during the proceedings.

Third, the FTs never make any evidentiary demands from the State. Government pleaders are often missing during the proceedings. In their place, the FT members cross-question the defence witnesses. The members also practically never require the State to argue why documentary and non-documentary evidence presented by the individual should not be accepted. Finally, the FTs almost never make the enquiry reports and grounds of suspicion available to the individuals, to allow them to satisfy their burden.

These problems demand a serious review of the FT process in relation to the appreciation of evidence. The FTs must apply ordinary principles of evidence law as a rule. They must accept both documentary and oral evidence. Grounds of suspicion and enquiry reports must be made available to the individuals the moment notices are issued. Individuals should also not be required to certify government documents in their possession. The State is better placed to authenticate and present these documents to the FT. The State must ap-

point government pleaders during all proceedings, and the FT members must ask the State—as is the case in any normal legal proceeding—to assert its own evidence and rebut the individual's evidence. The burden of proof should be shared, rather than placed only on the individual. A good practice in this regard is the African Court of Human and Peoples Rights, which in its jurisprudence has held that in citizenship determination proceedings, the burden of proof must be shared.<sup>16</sup> The Court has held that since citizenship has implications on the dignity of individuals, it is not proper for the burden to be only on the individuals. The State must share the burden if it seeks to prove that the documents that the individual is relying upon are inadequate or wrong. Finally, minor errors, especially in government documents, must never be used to declare someone a foreigner.

### **6.5 Appellate Court Supervision**

At present, the higher judiciary has limited the scope of its review of FT decisions. This review does not occur in the form of appeals from FT orders since the Tribunals Order does not provide for it. Rather, individuals who are declared foreigners by the FTs can file writs in the Gauhati High Court under Article 226 of the Constitution, beyond which they can approach the Supreme Court. Through this mechanism, the High Court has consistently refused to interfere with the factual findings of the FTs. This is despite the FTs not following standard rules of evidence and procedure, and numerous instances of badly reasoned orders. From available evidence, it also appears that the High Court never assesses the procedural lapses—absent or poor enquiries, non-delivery of ground of suspicion, inadequate opportunity to cross-question government witnesses or prove the case, and absence of government pleaders—that may have undermined due process at the FT level. In light of the serious problems with the FTs, the High Court must adopt a more searching and demanding model of review of FT orders.

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<sup>16</sup> *Anudo Ochieng Anudo v. United Republic Of Tanzania*. Application No. 012/2015 Judgment V 22 March, 2018; *Robert John Penessis v. United Republic Of Tanzania*. Application No. 013t2015 Judgment 28 November 2019.

## 6.6 Detention

Under Indian and international law, any detention that is without legitimate purpose and disproportional is illegal.<sup>17</sup> It is the duty of the State to identify less intrusive means in case there may be any justified reason to secure a person. Indefinite detention would always be illegal.<sup>18</sup> The Indian government has not made its long-term policy regarding the ends of detention clear. Nor has it raised this matter diplomatically with Bangladesh, despite the rhetoric of deportation. In these circumstances, detention—of any person excluded from the NRC or through any other route of citizenship contestation—would be illegal. The State must affirm that no person will be detained and create alternatives to detention.

## 6.7 Naturalization of Excluded Persons

One of the most worrying features of the NRC process is the uncertain fate of the persons who ultimately are unable to establish their citizenship during the appeals from their exclusion. International organizations have already raised concerns about a crisis of statelessness, and potentially a refugee crisis resulting from the NRC. In this light, there is a need to consider the best policy and legal measures to address this impending crisis.

This chapter recommends that the Indian state must immediately clarify its position on the final consequences of the NRC. It must also make necessary changes in Indian law to ensure that no person is rendered stateless. Under international law, all states are bound by the obligation of not deliberately or inadvertently rendering its nationals stateless.<sup>19</sup> The persons left out of the NRC after appeals will have no other viable nationality. India

17 See *Securing Citizenship: India's Legal Obligations Towards Precarious Citizens and Stateless Persons* (2020). Centre for Public Interest Law, O.P. Jindal Global University..

18 UN Human Rights Committee, Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2233/2013, (2016) UN Doc CCPR/C/116/D/2233/2013.

19 See UN Human Rights Council, Human rights and arbitrary deprivation of nationality: Report of the Secretary-General (2013, 19 December) A/HRC/25/28; and *Securing Citizenship: India's Legal Obligations Towards Precarious Citizens and Stateless Persons*.

has not raised this issue diplomatically with Bangladesh, which in any case will be reluctant—to say the least—to accept any Indians who may lose their Indian citizenship. Consequently, India would be violating its obligations under international law if it does not secure the citizenship of Indian nationals.

India must amend the Citizenship Act, 1955 in light of this obligation. It must provide a transparent mechanism of the naturalization of any person who may be finally rendered without Indian nationality.

## 6.8 Protecting Child Rights

India is a party to numerous international conventions that bind it to the obligation of securing the citizenship of children born in its territory.<sup>20</sup> These include the obligation to provide citizenship to children who would otherwise be rendered stateless. This is reflected in best practices across the world. For instance, countries like France and Finland confer citizenship to any child born in the country to unknown or stateless persons, or to those who cannot transmit citizenship to the child (UNHCR, 2017, p. 8, 10). Estonia grants citizenship to any child born in the country whose parents were residents in the country for five or more years, and who did not have access to citizenship of any other country (UNHCR, 2017, p. 15). Article 21 of the Indian Constitution, which guarantees right to life with dignity, must be interpreted in this light.

The best for India to meet these legal obligations is to strengthen birthright citizenship based on the *jus soli* principle.<sup>21</sup> The dilution of this principle through the 1986 and 2003 amendments to the Citizenship Act, 1955 must be reversed.

Moreover, any detention of children would violate India's commitments under international law<sup>22</sup> and also be contrary to the Juvenile Justice Act,

20 See Article 7(1), Child Rights Convention; Article 24, ICCPR, Article 18(2), CRPD.

21 See UN High Commissioner for Refugees (UNHCR). (2012, December 21). Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, HCR/GS/12/04; *Good Practices Paper - Action 2: Ensuring that No Child is Born Stateless* See *Securing Citizenship*.

22 Article 3, Convention on the Rights of the Child.

2015 that places the best interests of children at the centre of State policy.

### **6.9 Enacting a Refugee Policy in Conformity with the International Refugee Conventions**

In his historic address to the Parliament of the World's Religions in Chicago in 1893, Swami Vivekananda declared, 'I am proud to belong to a nation which has sheltered the persecuted and the refugees of all religions and all nations of the earth.' It is ironic that the Indian government that claims allegiance to Swami Vivekananda has enacted the Citizenship Amendment Act, 2019, restricting citizenship to people on the grounds of both religion and nation.

There is a moral imperative for India to adopt an expansive and humane refugee law. This must conform to what is finest in India's civilizational ethos, and to the morality of India's Constitution. In this light, India must sign and ratify the international conventions on refugees, including the 1951 Convention for the Protection of Refugees.

The Convention defines refugees as persons fleeing persecution on grounds of race, religion, nationality, social group or political opinion. Refugees get legal rights, most important of which are 'non-refoulement', which prevents states from sending back refugees to persecution in their home countries. They also get secondary rights, such as education, work and property. It also prohibits discrimination in accepting refugees.

Accepting these legal obligations would mean recognizing undocumented immigrants as refugees, based on evidence determined by due process of their persecution in their home countries. This would also assure them a set of binding rights. The most important of these is the guarantee that they would not be forced to return to the conditions of persecution, threatening their lives and liberty, which they escaped. The second is that they would be assured lives of dignity within India, with education, healthcare and livelihoods.

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Siblings.

*Photo: Mobile Creches/Meesha Holley/2017*

# Exclusion of the Young Child from Holistic Rights and Entitlements

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## 1. Introduction

The Universal Declaration of Human Rights (UDHR), adopted in 1948, resulted in the codification of human rights in national and international legal provisions across the globe. It gave universal legal guarantees to individuals, by virtue of their inestimable value as human beings, to a life of dignity and equality of opportunity. Under the declaration, states are obliged to respect, protect and fulfil human rights by safeguarding and facilitating, rather than curtailing, the enjoyment of basic rights by individuals (UNFPA & UNICEF, 2010, p. 7). By virtue of being human beings, the rights of children are universal, indivisible and interconnected, and a holistic framework to promote their optimum growth and development is necessary. However, over decades, it came to be recognized that a focus on human rights, while enshrining rights of all humans irrespective of age, sex, location and religion, did not cater to the specific needs of children and other groups—hence it is necessary to include child rights in any discussion on human rights.

In the 20<sup>th</sup> century, international attention held by policy changes and legislative interventions with regard to the child witnessed a shift from a need-based to a more rights- and development-based approach. Such a shift sees ‘children as rights-holders and States as primary duty bearers’ (Bajpai, 2010, p. v). This approach uses the argument—that a child is entitled to rights simply by virtue of his/

her existence as a human being deserving of dignity and freedoms—to further the realization of a better quality of life and to develop children’s capacities to claim the rights they are entitled to. As individuals possessing their own rights, children are thus viewed as active participants in their development.

Children, due to their young age and dependency on adults, are a vulnerable age group with potential for deprivation, poor health outcomes, neglect and abuse. Even within the larger category of children, it is the early childhood phase (under six years of age) that has been noted to be the most vulnerable and the most critical since it lays down the foundation for the lifelong developmental outcomes of an individual (NCERT, 2006, p. iv; Das & Kundu, 2014, p. 3). But states’ minimal investments and fragmented policies negatively impact millions of children from reaching their full potential (World Bank, 2017). Also, as UNICEF (2017) notes, there is little public understanding about the criticality of a child’s early years, and therefore, there is only a slight demand for relevant programmes, policies and budgetary allocations.

This chapter seeks to focus on the young child as a rights holder and the importance of Early Childhood Development (ECD) as a public good. The young child as mentioned in the chapter refers to a child in the under-six age group.<sup>1</sup> The chapter

<sup>1</sup> The early childhood stage is often also seen in continuum up to eight years of age as it presents a developmental

explores the varied issues in India—policy and legal frameworks, as well as in the programmes of action and the responsibilities of major stakeholders—that have resulted in a consistent neglect of the early childhood stage. It emphasizes the need to problematize the isolation of the rights of women and children by demonstrating the interlinked nature of the two. In recommending ECD as a justifiable right, the chapter highlights how, as a public good, ECD has the capacity to be driven by public opinion and demands and how such a change in public provisioning can in turn impact the poorest children and their families for better outcomes.

### ***1.1 Why ECD is a Public Good***

In line with the definition of public good adopted by this Exclusion Report as including all areas where government intervention is necessary ‘for securing a life of dignity with equity and sustainability, not just for an individual but for the entire community’, this chapter specifically defines it to mean universal and equitable provisioning of ECD services by the State to ensure the right of survival to children. We use the word ‘universal’ to emphasize the need for the services to be available to *all* children as an entitlement.

Varied studies have listed the multiple benefits of ECD for individuals, families and the society at large. From ensuring brain development and improving educational and lifelong outcomes of individuals to enabling women’s workforce participation, increasing tax revenues and bringing economic benefits to the country—as well as lesser investment in sectors of violence prevention—the benefits are manifold. Considering these positive outcomes, ECD is one of the fundamental ways to ensure a dignified life, and therefore must be located within the rationale of a public good.

However, as later sections in this chapter high-

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continuum. The extension to up to eight years can also ensure a smooth transition from preschool to formal primary education. Policies and the schematic framework in India, such as the National ECCE Policy and the Integrated Child Development Scheme (ICDS) recognize early childhood as the period from birth to six years. Therefore, the focus of this chapter is on children under six years of age.

light, ECD services are limited in their reach since it is not seen as an entitlement, and thereby, access to it is restricted for the most vulnerable and marginalized groups, which are often excluded from its provisions. This results in benefits of ECD not percolating equally to all, and other sectors also being impacted. Further, the rapid expansion of market forces and privatization of education have developed parents’ desire to have diverse choices available for their children in the realm of education, but the State falls short on fulfilling such aspirations. In cases where families are unable to play their due role in childcare, it becomes important for the State to enable them to carry out this duty. But the lack of State intervention further marginalizes these families and their children, throwing them into a vicious cycle of poverty and exclusion.

Further, studies have noted that the quality of education and proportion of social exclusion is severely impacted by the private provisioning of ECD, including aspects of care and education (OECD 2006, UNICEF 2008, Lloyd & Penn 2012 as cited in Urban & Rubiano, 2014, p. 10). Not only does such provisioning lack holistic intervention, it is also not universal, thus undermining the principles of equity and equality that must be at the centre of such service delivery. Therefore, ECD must be seen as a public good, one that creates a level playing field for all children as part of their very basic right to a life of dignity.

However, studies have noted that, overall, Early Childhood Care and Education (ECCE) is not a priority in the public sector in India (Kaul & Sankar, 2009, p. 9). Children continue to be malnourished, face violence and abuse and lack proper shelter or access to quality early childhood care; they do not receive due stimulation or opportunities of play, or lack a proper adult caregiver, among other things. The issues of vulnerable and marginalized children, children living in conflict and children with special needs have failed to be adequately addressed despite wide-ranging programmes and plans for action.

While there have been governmental efforts at the level of policy making, enforcement and bud-

getary interventions, there are a considerable number of challenges that have prevented substantive and equitable gains, especially since none of the provisions specific for the young child are an enforceable legal right, as the later sections of this chapter will show.

An effectively comprehensive ECD as a public good is, surprisingly, one of the most understated and undervalued issues in the public domain. The constitutional provisions are sporadic, lacking a holistic approach and addressing the issue in silos at best. These promises, however incomplete, have not been converted into actionable objectives and interventions.

### **1.2 Structure of the Chapter**

The chapter is divided into ten sections. The first section introduced the concept of ECD and argued that it is a right that is often overlooked in our society. The second section will show how ECD is a window of opportunity, for it is the period of rapid growth and development in an individual's life. The third section draws attention to the overall state of the young child in India, using data from various government and non-government sources to demonstrate the need for meaningful intervention. Section four details the legal and constitutional safeguards relevant to the young child. It discusses the international commitments India is a signatory to and the resultant local laws and policies. The fifth section explores the shortcomings in these policies in terms of their framing, implementation and budgetary outlays. Section six highlights the common vulnerabilities across various categories of the young child in India and individual vulnerabilities specific to various markers of identity and lived experiences. Section seven addresses the disparity of ECD across regions. Section eight discusses the consequences of excluding ECD as a public good. The ninth section discusses the noteworthy practices—both international and national—that have the potential to be widely replicated for better results. The final section puts forth several recommendations to actualize ECD as a public good and the dividends of investing in it for individual and societal progress.

### **1.3 Limitations**

Most data that is available in the public domain relating to ECD is about the components of health and nutrition. This data, wherever it is used here, is not employed with the intention of prioritizing these needs over the requirements for cognitive, language and socio-emotional development, early education and care and safety environment, but only because of the lack of availability of other data for the under-six age group. Data deficit has for long undermined planning, monitoring and evaluation processes in development programming, and ECD is no exception.

In addition, there are no publicly available databases recording multidimensional data on children at the district level or on the money being spent on them for various needs. Therefore, any assessment of financial utilizations is based on national level data, including ministry budgets, allocations to states, coverage under schemes etc. There is very little state-level data available in the public domain or collated by a designated office at the state level.

## **2. The Importance of Early Childhood Development**

Early childhood is the most important stage in human development. Studies in recent decades have established that the most rapid development of the brain happens in the early years. Therefore, the quality of nutrition, stimulation and nurturing care that one receives at this stage greatly impacts later development. The first 1,000 days between a woman's pregnancy and the second birthday of the child provide a window of opportunity that has a profound impact in shaping happier, healthier and safer childhoods for optimal development.

In the earliest phase of life, new neural connections—shaped by genes and life experiences—are established at the rate of more than one million every second, the highest rate compared to all other stages in life.<sup>2</sup> Every child has an intrinsic right to

<sup>2</sup> The Center on the Developing Child at Harvard University notes that the early childhood phase is the period of rapid proliferation of neural connections and skills, after which connections are reduced. For more, see Brain architecture.

have the opportunities that enable the full realization of their capabilities. Deprivation at this stage will hamper an individual's overall development. Intervention at this stage that provides equal opportunities with equity can help dismantle the vicious cycle of societal inequalities, structural poverty and widespread disparities.

In addition, impaired development at this stage can result in reduced per capita productivity and contribute negatively to economic growth. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979, the International Labour Organization Workers with Family Responsibilities Convention 1981, the ILO Policy Guidelines on the promotion of decent work for early childhood education personnel 2014 etc. stress the importance of early childhood care along with more equitable participation of women in the workforce.

According to World Bank and UNICEF, the implementation of effective ECD programmes can bring about an increment of 25 per cent in adult wages (World Bank, 2017). Not only does this imply an increase in the nation's Gross Domestic Product but it also results in huge savings on various welfare programmes and schemes, given the considerable improvement in various health and well-being indicators. It is also one of the critical factors in achieving social equity.

Another analysis in 12 countries also brings forth the long-term benefits of early childhood education, showing that children who attend preschool stay in school for nearly a year longer on an average and are more likely to be employed in high-skilled jobs (ibid).

Owing to its importance in ensuring the overall well-being of an individual and the society at large and its potential to contribute to economic growth and a sustainable order, ECD is a public good and a basic investment for long-term and lasting returns. The increasing diversity within and across societ-

ies, economic and demographic changes, and growing career aspirations have impacted the way in which childcare has been perceived and organized. The demands for formal childcare provided outside the home environment have increased. However, despite the individual, social and economic benefits of investing in ECCE, the spending on and the attention given to this sector is generally less compared to other levels of education (Vandenbroeck et al., 2018, p. 22, 49).

### 3. The State of the Young Child in India

There is a serious definitional complexity when it comes to understanding who a child is. The UN Convention on the Rights of the Child (UNCRC) defines every human being below the age of 18 as a child. However, in India, there are differing definitions of children under different provisions of the law. As Digambarrao notes, varied forms of legislation in India differently put to use the term 'child' in the context of a relationship, as an indicator of capacity and as a term for a group which requires special protection (2017, p. 138). The common standards for demographic studies divide age groups into 0–14, 15–59 and 60 and above.

Childline India Foundation<sup>3</sup> lists the different definitions of children under varied provisions in India. The Census of India, for example, regards persons below the age of 14 as children. The Child Labour Prohibition and Regulation Act 1986 defines a child as a person who has not yet completed the 14<sup>th</sup> year of age. The Prohibition of Child Marriage Act 2006 refers to the child as person who, if a male, is yet to complete 21 years of age, and if a female, is yet to complete 18 years of age. The National Plan of Action for Children 2005 defines a child as a person up to the age of 18 years. Thus, there is no consensus on who could be considered a child. Bajpai notes that although we may like to have a uniform definition that is legally prescribed

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(n. d.). Center on the developing child. Retrieved August 22, 2019, from <https://developingchild.harvard.edu/science/key-concepts/brain-architecture/#neuron-footnote>.

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3 Visit their website for more information on the initiatives undertaken by Childline India Foundation. Child Line 1098. Retrieved August 22, 2019, from <http://childlineindia.org.in/child-in-india.htm>.

with regard to the age of a child, it may not be possible or even desirable:

The absence of a comprehensive and common definition of the term ‘child’ creates confusion and a dilemma. Although one would like to have a uniform age limit legally prescribed for the status of childhood, that may perhaps not be possible. Nevertheless, some rationalization is possible or some norms can be laid down, as some of the age limits in the laws appear to be arbitrary while some are based only on socio-cultural perceptions. If ‘the best interest of the child’ interpretation were to be adopted, one could perhaps err on the side of a higher age limit for protective care and a lower age limit in respect of civil and cultural matters.

(Bajpai, 2010, p. 7)

Despite the various debates about the definition of the term and cultural differences with regard to how children are looked at and what is expected of them, there is a shared and substantial understanding that ‘childhood implies a separated and safe space’ (UNICEF, 2005). However, within the larger concerns for all children below 18 years of age, the specific issues for children under six years of age tend to get marginalized, rendering the latter invisible. Their tender age often leads to their position as rights holders and active participants in their development being ignored, and instead, promotes the perception that they are passive recipients of adult knowledge and charity. It is in this context that this chapter views the young child as entitled to rights, as the shift to a rights-based model recognizes him/her as ‘a discrete social unit to be considered as parallel to, rather than embedded within, the family unit’ (Hayes, 2002, p. 5).

There is a wide range of interlinked issues that impacts the lives of young children in India. These vary from health and nutrition and early learning to multiple marginalities emanating from poverty, gender, caste, class, location, access to services, lack of care, neglect, abuse and violence. The mother and child’s access to nutritious food, feeding practices

for the child, immunization from various diseases, clean drinking water, sanitation and hygiene, are all essential to support good healthcare interventions.

India has 13.12 per cent (158.79 million) of its population in the under-six age group. With 39 per cent (472 million) of the population under 18 years of age, India is home to the largest number of children in the world (Census 2011). In 2017, data by the World Bank showed 18 per cent of China’s population (numbered at 245,069,902) to be between the age group of 0–14, while the same data showed 28 per cent of India’s population (numbered at 372,060,792) in the same age group.

For a population greatly driven by aspiration, there has been little to no public pressure in India for ECD as a public good. In the growing demand for a private fulfilment of these aspirations as against a reliance on public systems, the needs of the young child are often ignored while framing policies. The findings of the recent Comprehensive National Nutrition Survey (CNNS) (2019), one of the largest surveys on nutrition to be conducted in India, throws light on the shocking state of India’s children and the non-fulfilment of their nutritional needs. The stunting of children under five, a direct result of chronic malnutrition, has declined by only one-third between the years 1992 and 2016, and remains as high as 38.4 per cent. Although the survey pertains to data on nutrition alone, it provides a window into the larger picture of the dismal situation of young children in India.

In 2018, half of all under-five deaths in the world occurred in just five countries, with India and Nigeria alone accounting for about one-third of them (World Health Organization, 2019). *The State of the World’s Children* notes that in 2018, India reported the highest number of under-five deaths in the world at 8.8 lakh, with such widespread disparity among states that ‘almost half of children are stunted in the worst-affected state compared with a fifth in the least-affected state’ (UNICEF, 2019, p. 38).

**Table 1:** Indicators of Child Health and Nutrition

Indicator	NFHS 4 (2015–16) (%)	NFHS 3 (2005–06) (%)
Infant mortality rate	41%	57%
Mortality rate for children under 5	50%	74%
Children under 5 who are stunted	38.4%	48.0%
Children under 5 who are wasted	21.0%	19.8%
Children under 5 who are underweight	35.8%	42.5%
<i>Sources:</i> National Family Health Survey (NFHS) 4, NFHS 3		

**Table 1** shows some indicators of child health and nutrition at the all-India level:

According to the Global Hunger Index, released on 15 October 2019, India tops the list of the countries with highest wasting rate among children as a result of acute undernutrition. The report notes that around 90 per cent of children in India between the age of 6 and 23 months do not receive the minimum required nutrition.<sup>4</sup>

Among the peer countries of BRICS, India lags behind in quality of life and nourishment, and has the highest inequality in education (World Economic Forum, 2016). Maternal and child mortality rates are also higher in India compared to the other BRICS economies (ibid). The Human Development Index 2017 ranks Brazil at 79 and China at 86 (both high human development), Russia at 49 (very high human development), and South Africa at 113 and at India 130 (medium human development).<sup>5</sup> In terms of cognitive development, while there is some nationally representative evidence on its spatial patterns for later childhood, there is a lack of comprehensive data sources to make sense of skill and capability development at the early development stage (Adhvaryu et al., 2016, p. 132).

4 For more, see 2019 Global hunger index by severity (2019). *Global Hunger Index*. Retrieved May 3, 2020, from <https://www.globalhungerindex.org/results.html>.

5 The Human Development Index by the United Nations Development Programme measures the average achievement of countries in key dimensions of human development: a long and healthy life, measured by life expectancy at birth; being knowledgeable, measured by mean and expected years of schooling; and a decent standard of living, measured by Gross National Income per capita.

## 4. International Commitments and Constitutional Safeguards

The UNCRC (1989) was the first legally binding international instrument that sought to recognize the wide range of rights within the framework of child rights. In 54 articles and two Optional Protocols, the CRC ‘spells out those basic human rights that every child should have wherever s/he may live: the right to survival; to develop to the fullest; to protection from harmful influences, abuse and exploitation; and to participate fully in family, cultural and social life’ (WHO, 2012, p. 8). These core principles of the CRC find articulation in Article 2 (non-discrimination), Article 3 (best interests of the child), Article 6 (inherent right to life, survival and development) and Article 12 (participation of the child).

The CRC calls on individuals, societies, donors and non-state actors to abide by its provisions, but it holds states to be the primary duty bearers for protecting and fulfilling the rights of the child. While India signed and ratified the UNCRC in 1992 (United Nations Treaty Collection Depository IV, 11, p. 2), it had already included in its Constitution most of the rights contained therein. Currently, 196 countries are party to the CRC (ibid).

Since there is a strong link between the overall well-being of the child and the mother’s health, educational status, age at marriage, access to nutrition and antenatal care (Raj et al., 2009; Gakidou et al., 2010, Guilimoto et al., 2018), the rights of the child and the mother are mutually reinforcing. In this context, international human rights instruments which address the rights of women need to be seen

as overlapping with the rights of children. India signed the CEDAW in 1980 and ratified it in 1993; but it is yet to sign the Optional Protocol, which was adopted by the General Assembly in 1995. CEDAW is especially important when it comes to the rights of the girl child.

In addition, India has also been a part of or has ratified other international conventions and declarations, including UN Rules for the Protection of the Juveniles Deprived of their Liberty 1990, UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules 1985), SAARC Convention on Prevention and Combating Trafficking in Women and Children for Prostitution 2002

and SAARC Convention on Regional Arrangements for the Protection and Welfare of Children 2002 among others, in addition to its commitments towards Millennium Development Goals (MDGs) and Sustainable Development Goals (SDGs). Box 1 lists the SDGs and targets related to the young child. In what was seen as a landmark moment for the protection of rights of early childhood, the G20 countries committed to the SDGs at the G20 Annual Summit in Argentina in late 2018. The summit not only flagged the issue as a high priority but also emphasized on its potential to break the cycle of poverty and inequality. **Box 1**

### **Box 1:** Sustainable Development Goals and Targets Relevant to the Young Child

*Goal 1: Ending poverty in all its forms*

*Goal 2: Ending hunger*

*Goal 3: Ensuring healthy lives and promoting well-being*

*Goal 4: Ensuring inclusive education*

*Goal 5: Achieving gender equality*

**Target 1.1:** Eradicate extreme poverty; **Target 1.2:** Reduce at least by half the proportion of men, women and children of all ages living in poverty in all its dimensions; **Target 1.3:** Implement Social Protection Systems.

**Target 2.1:** End hunger, ensure access of everyone including the poor and vulnerable (infants, disabled) to safe, nutritious and sufficient food; **Target 2.2:** End malnutrition, achieve collectively agreed targets on stunting and wasting for children below five years, address nutritional needs of adolescent girls, pregnant and lactating women.

**Target 3.1:** Reduce Global Maternal Mortality Ratio to less than 70 per 100,000 live births; **Target 3.2:** End preventable deaths of newborns and children under the age of five; **Target 3.4:** Reduce premature mortality from non-communicable diseases by one-third through prevention and treatment.

**Target 4.1:** Ensure that all girls and boys complete free, equitable and quality primary and secondary education; **Target 4.2:** Ensure that all girls and boys have access to quality early childhood development, care and pre-primary education.

**Target 5.1:** End all forms of discrimination against all women and girls everywhere; **Target 5.3:** Eliminate all harmful practices such as child, early and forced marriage and female genital mutilation.

**Target 16.2:** End abuse, exploitation, trafficking and all forms of violence against and torture of children.

(Source: United Nations, 2015)

#### **4.1 Operationalization of India's Commitments**

With the understanding that the early years are the most vulnerable and valuable phase in an individual's growth, eventually shaping later years of life, India's articulation of inclusive development has seen a reaffirmation of 'its commitment to fulfilling children's rights, recognizing them as the nation's prime asset' and thus deserving of 'special provisions and protections to secure and safeguard the entitlements of "those of tender age"' (Ministry of Women and Child Development, 2011). 'Tender age' points to children who could be most vulnerable to abuse because of their young age and not being in a position to protect themselves from harm or abuse—thus being profoundly dependent on caregivers and requiring special care.

In its efforts towards realizing child rights, India has formulated various legislative and policy initiatives, the first and foremost being the Constitution of the country. In the sections on Fundamental Rights and Directive Principles of State Policy, the Constitution of India has enshrined the rights of equality, protection of life and liberty, free and compulsory education and guarantees against exploitation (Articles 14, 15, 21, 21 A, 23 and 24), which cover all citizens, including children. The Directive Principles empower the State to make policies that protect children from exploitation and being abandoned (Article 39).

In line with its international commitments, India has introduced legislative and policy measures, formed commissions and drawn up action plans from time to time to improve the state of the children living in the country. Some of these include the National Policy for Children 1974 (later updated into National Policy for Children 2013), the Child Labour (Prohibition & Regulation) Act 1980, National Health Policy 1983, National Policy on Education 1986, National Plan of Action for Children 1992, National Nutrition Policy 1993, the Mid Day Meal programme 1995, Sarva Shiksha Abhiyan 2002, National Commission for Protection of Child Rights 2005, Right to Education as a fundamental right enforced in 2010, National Nutrition Mission

2018—covering wide ranging aspects of health, nutrition, education, protection from exploitation—all of them reflecting the State's commitment to the needs and aspirations of children.

The need to provide a comprehensive package of services to children was sought to be operationalized by the Department of Women and Child Development, which launched the Integrated Child Development Services (ICDS) scheme in 1975 as the largest outreach programme in the world. It sought to provide 'supplementary nutrition, immunization, health check-ups & referral services comprising preschool education, health & nutrition education to almost 30 million children under the age of 6 years, adolescent girls & expectant and nursing mothers all over the country' (Srivastava, 2004). The strengthening and restructuring of this scheme was initiated through increased budgetary allocations during the 12<sup>th</sup> Five Year Plan. It promised a special focus on children under three years and pregnant and lactating mothers, as well as increased focus on care and nutrition counselling services, with special attention to severely underweight children. The ICDS scheme allocation has witnessed an increase from INR 16,334.88 crore (as per Budget Estimate 2018–19) to INR 19,427.75 (BE 2019–20). This is 94.5 per cent of the overall budget of the Ministry of Women and Child Development (MWCD).

ICDS services are delivered mainly through Anganwadi Centres (AWCs) and home visits with the help of Anganwadi Workers (AWWs), helpers, Accredited Social Health Activists (ASHAs) and Auxiliary Nurse Midwives (ANMs). The AWCs under the ICDS reach out to millions of children in the country. Under the Sarva Shiksha Abhiyan, there is also coverage of the largest midday meal programme in schools. As per NFHS 4, 54 per cent of children under the age of six receive one or more services from an AWC. The service most likely to be used was found to be the provision of food supplements (48 per cent). Further, 59 per cent of rural children were found likely to receive any service from the AWC as compared to 40 per cent children in urban areas. The ICDS has instituted key action

programmes including the Prime Minister's Overarching Scheme for Holistic Nutrition (POSHAN) Abhiyaan as part of the government's new nutrition mission.<sup>6</sup>

The Public Distribution System (PDS) allows for providing subsidized food to families living below the poverty line. The food provisioning entitlements for children under six are included in the National Food Security Act (NFSA) 2013 to ensure the access to food as a legal right so that undernutrition and malnutrition are tackled in the country. It makes every child between six months and three years eligible for Take Home Ration and those between three to six years to a morning snack and a hot-cooked meal, with specific extra provisions for malnourished children to meet the required calorie intake. It also promotes the significance of exclusive breastfeeding up to the age of six months. The NFSA further provides:

every Pregnant Women & Lactating Mother (PW&LM), except those who are in regular employment with the Central Government or State Government or Public Sector Undertaking or those who are in receipt of similar benefits under any law for the time being in force, shall be entitled to maternity benefit of not less than rupees six thousand, in such instalments as may be prescribed by the Central Government

Ministry of Women and Child Development (2019).<sup>7</sup>

The holistic needs of children are also brought to focus in the National Policy for Children 2013, which listed survival, health, nutrition, development, education, protection and participation as its key priorities. With regard to the young child, it places particular emphasis on:

1. Improve maternal health care, including antenatal care, safe delivery by skilled health personnel, post-natal care and nutritional support;
2. Address key causes and determinants of child mortality through interventions based on continuum of care, with emphasis on nutrition, safe drinking water sanitation and health education;
3. Provide universal and affordable access to services for prevention, treatment, care and management of neo-natal and childhood illnesses and protect children from all water borne, vector borne, blood borne, communicable and other childhood diseases;
4. Ensure availability of essential services, supports and provisions for nutritive attainment in a life cycle approach, including infant and young child feeding (IYCF) practices.
5. Provide universal and equitable access to quality Early Childhood Care and Education (ECCE) for optimal development and active learning capacity of all children below six years of age.

(MWCD 2016, p. 121-22)

When it comes to specific initiatives in education, one of the Fundamental Duties listed under Article 51 A of the Constitution is for parents or guardians to provide opportunities for education for the child/ward between the ages of six to 14 years. Article 45 includes provisions for early childhood care and education to children below the age of six years. The 86th amendment in 2002 modified the text of the article to read: 'The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.'<sup>8</sup> The Supreme Court's 1993 judgment in the Unni Krishnan case<sup>9</sup> read Article 45 alongside

<sup>6</sup> Earlier known as the National Nutrition Mission, POSHAN Abhiyaan is the world's largest nutrition mission. It is a multi-sectoral programme that envisions a malnutrition-free India and aims to improve the nutritional status of children and pregnant and lactating mothers.

<sup>7</sup> See Ministry of Women and Child Development (2019). *Press Information Bureau*. Retrieved May 3, 2020, from <https://pib.gov.in/newsite/PrintRelease.aspx?relid=195522>.

<sup>8</sup> See Childhood provision (2016). *Government of India Ministry of Human Resource Development*. Retrieved May 3, 2020, from [http://mhrd.gov.in/directive\\_principles\\_of\\_state\\_policy\\_article-45](http://mhrd.gov.in/directive_principles_of_state_policy_article-45).

<sup>9</sup> The case under discussion is Unni Krishnan, J. P. and Ors v. State of Andhra Pradesh and Ors, 1993. The importance

Article 21 guaranteeing Right to Life and Personal Liberty as a fundamental right, effectively declaring the Right to Education as part of the Fundamental Right of Life that the Constitution guarantees.

In 2010, the Right of Children to Free and Compulsory Education Act 2009 (RTE) came into force. It prescribed free and compulsory education for children between six and 14 years as a fundamental right enshrined in the Constitution. It made India a part of 135 countries worldwide that have education as a fundamental right. This rights-based framework makes it essential for the State to ensure this right to children. Under section 11 of the RTE, which pertains to ECCE, it is the duty of the appropriate government to make necessary arrangements to prepare children over three years of age for elementary education as well as to provide for all children until six years of age with ECCE. In 2012, the MWCD declared a strong commitment to the otherwise neglected children under six as it worked towards framing the first comprehensive ECCE policy.

The National Policy on ECCE (NPC) 2013 seeks universal access to ECCE services and strengthening capacity development and outreach programmes to ensure optimal development for all children below the age of six years. In addition, the principles of NPC 2013 have been enshrined in National Plan of Action for Children 2016, which in turn aligns itself with the SDGs, thus linking policy objectives to action. The draft National Education Policy 2019 has also made varied recommendations with regard to ECCE, including improving the quality of services, the existing curriculum and training to strengthen the ECCE component in An-

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of education was fully understood by the framers of the Constitution of India, who laid down the vision of the Right to Education as a Directive Principle (Article 41), but it took challenges and legal interpretations (the Unnikrishnan Supreme Court Judgement, 1993), to expand the meaning of the Right to Life (Article 21) to include Right to Education and fully develop a Fundamental Right to Education by interpreting Article 21 (the Fundamental Right to Life) and reading it along with Article 45, a Directive Principle, which converted the Right to Education into a justiciable right, necessitating an amendment to the Constitution.

ganwadis. It also calls for the universalization of quality preschool education for children between three and six years of age.

With regard to redressal of issues concerning children in conflict with law or in need of care and protection, the government introduced the Juvenile Justice (Care and Protection of Children) Act 2000, which has been subsequently amended. It looks at juveniles both as offenders and as victims, with an objective to cater to the development needs of such children, ensuring protection and proper treatment through a child-friendly approach to aid rehabilitation. The Protection of Children from Sexual Offences Act 2012 seeks to protect children from sexual offences including sexual assault, harassment and pornography. During a time of increasing concerns over child security, the 2019–20 Budget Estimate (BE) for child protection saw a somewhat moderate increase to account for 2.11 per cent of the total child budget from 1.48 per cent the previous year, an increase of 106.9 per cent ('HAQ budget', n. d.).

Over the decades, migration owing to greater industrialization, the break-up of the traditional family support base and increase in the number of nuclear families resulted in increasing challenges for working mothers. Concerns about childcare facilities have resulted in new provisions in the (a) Maternity Benefit Act 1961, amended in 2017 and in (b) Labour Laws: Factories Act 1948, Plantation Act 1951, Mines Act 1954, Beedi and Cigar Workers Act 1966, Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 and Mahatma Gandhi National Rural Employment Guarantee Act 2005. However, it was with the Rajiv Gandhi National Crèche Scheme for children of working mothers 2006, revived from the 1979 Crèche Scheme for Working and Ailing Mothers, that attempts were made to provide childcare facilities for children of mothers working in informal sectors outside of the factory, mine or plantation setting.

The Maternity Benefit Act (MBA) 1961, amended in 2017, was brought in so that women are not hindered from participating in the work-

force owing to childbearing or childcare responsibilities. MBA 2017 allows for a leave entitlement of 22 weeks and also includes provisions for leave for adoptive and surrogate mothers. Further, it mandates for every establishment with 50 or more employees to establish a crèche facility and also lists the minimum quality standards and guidelines for the facilities.

Despite these measures, a comprehensive ECD framework in which the holistic needs of the young child are situated remains elusive. Policy has mostly focused on health and nutrition; other equally important dimensions like childcare and ECE services haven't been adequately addressed. The lack of quality interventions in this phase can hamper brain development, often irreversibly.

## **5. Mapping the Gaps: Fragmentation, Inadequate Implementation and Under-financing**

India's international commitments as well as constitutional and policy obligations necessitate the State to undertake a primary role in ensuring the fulfillment of the needs and entitlements of the young child. Since the outcomes are determined by several interlinked factors, all of which are essential to ensure the survival, physical well-being and cognitive development of the young child, holistic provisions to ensure these are needed. However, the fragmentation in determining roles and responsibilities of key stakeholders regarding issues of the young child across laws, policies and programmes has resulted in limited outcomes and the absence of a cohesive framework for action.

The age group of children up to six years, needing the most care and protection, remains under-represented while formulating policies and allocating budgets. The various commitments to human rights, specifically to child and women's rights, by the country necessitate greater and stronger intervention for creating an enabling environment within which a young child grows. However, the gains of this sector are lost owing to lack of regulation, oversight and the under-development of an

enabling infrastructure, as well as failure to commit financial and human resources for the well-being of this segment of the population.

The translation of law into action is replete with piecemeal implementation, insufficient budget allocation and under-utilization and a fragmentary approach while defining children's needs and drafting laws. Inadequate financial resources result in an extremely challenging environment to realize improvements in a child's well-being, cognitive development and care and protection. However, social sector budgets have remained constant at about 2.6 per cent of GDP despite including varied and interconnected sectors of health, education, water supply and sanitation, poverty and rural employment.

The budget for children overall saw an increase of 0.05 per cent from 3.24 per cent in the 2018–19 to 3.29 per cent in the 2019–20 fiscal year, but it is still quite low. As the Budget Analysis of the HAQ: Centre for Child Rights points out, it is quite less than the equally low share of 5 per cent recommended in the National Plan of Action for Children 2016.<sup>10</sup> The allocation has shown a continuous declining trend in the last few years.

The overall allocation to MWCD is a meagre 1.05 per cent of the total central government budget in 2019–20, at Rs. 296.6 billion. In addition, the Rajiv Gandhi National Crèche Scheme, now the National Crèche Scheme (NCS), has also witnessed a decline in the already poor allocations from 200 crore in 2017–18 BE to only 50 crore in 2019–20 BE, with the actual spending being lower than the allocation. In 2017, the central government, otherwise meant to bear 90 per cent of the costs, reduced its contribution to 60 per cent. Media reports have also noted that the number of facilities under the scheme reduced from over 23,000 in 2015 to around 7,000 in 2019, translating into one crèche per 21,000 children (Alexander, 2019).

<sup>10</sup> See Children in the 'trillion dollar economy' budget for children 2019–20 (2019). *HAQ Centre for Child Rights*. Retrieved May 3, 2020, from <https://www.haqcrc.org/new-at-haq/children-trillion-dollar-economy-budget-children-2019-2020/>.

Even in terms of the budget for reproductive and child health under the National Rural Health Mission, it has been seen that not only has the budget decreased over the years, the state governments have also not been able to utilize the approved budget. There is an average under-utilization of 41.7 per cent of the approved budget in the period between 2009–10 and 2015–16.<sup>11</sup> Low utilization can also negatively impact allocation in the subsequent years.

Another impediment stems from the lack of clear delegation of responsibilities to implement policy recommendations made by various committees, task forces and study groups. For example, while education is a state subject, ICDS is a national programme that the states have to implement. This has resulted in problems with coordination and ‘concretization of multiple efforts’ (NCERT, 2006, p. 12). There is a lack of convergence between various ministries when it comes to the issues of the young child.

Further, in certain cases, the implementation has been restricted to the policy sphere alone. A report of the Law Commission notes that although various provisions by the State are relevant to the young child, they merely articulate promises and lack the status of a law; they aren’t creating justiciable rights for the young child (2015, p. 4). It is critical to establish that in our society, even within private spheres, the young child is seen as being devoid of individual agency, resulting in them being viewed and treated without respect or dignity. This is made worse when the existing legal structures supplement social norms in worsening their situation, largely due to a lack of political will in addressing issues of children, given their negligible political participation. This then results in laws that are either inadequate or fragmented to cater to the specific needs and entitlements of the young child. These laws may largely be categorized as follows:

1. **Protection from Abuse:** Three laws in India that are aimed at protection of children under six from abuse include (a) the Indian

Penal Code (IPC) that exempts them from criminal liability as per Section 82, b) Protection of Children from Sexual Offences (POCSO) Act 2012, recently amended to POCSO 2019, c) Juvenile Justice (Care and Protection of Children) Act 2000, amended in 2015. While these provisions have contributed greatly to expanding the understanding of abuse and harassment within the legal sphere and elsewhere, they exclude issues such as mental abuse, neglect and discrimination.

2. **Crèche Facilities:** Although various acts, as previously noted, mandate the setting up of crèche facilities, their conceptualization of a child’s needs lacks a holistic perspective, and are also gender-specific, focusing only on women workers, except for the Maternity Benefit Act that mandates crèches for children of all employees irrespective of gender. However, when it puts the minimum number of employees to be 50, that restricts crèche provisions only to large organizations. Further, MBA 2017 imposes the entire cost of setting of and maintaining these facilities on the employer. This could create a negative attitude towards hiring women as employers would not want to incur additional costs for paid leave. Further, the sparse labour laws in the country with inadequate rules coupled with a lack of will from the labour departments, make implementation impossible.
3. **Right to Nutrition:** NFSA 2013 fails to identify the determinant of ‘care’ as it does not specify the arrangements regarding caregiving or feeding through which its provisions can reach the child. Nor does it address the need for universal day care facilities, which is an integral part of ensuring access to breastfeeding, nutrition, care and learning.
4. **Other Laws:** Laws such as Right to Education Act 2009, Rights of Persons with Disability Act 2016, Registration of Births

<sup>11</sup> For more details on the country’s budget, see *Union Budget*. Retrieved May 3, 2020, from [indiabudget.gov.in](http://indiabudget.gov.in).

and Deaths Act 1969 etc. fail to include children under six years of age either completely or partially. Those belonging to relatively more disadvantaged groups find themselves at a greater disadvantage and their needs unaddressed within these laws.

Although in 2009 the RTE was framed to effectively implement Article 21A, children under six—the most critical age group—continued to be excluded from acquiring a justiciable right. Article 45 continues to limit itself to the policy sphere. Such exclusion has happened despite the commitments India has made.

Besides these fragmented legal mandates, the ICDS and the national ECCE Policy, despite being the only comprehensive provisions for the under-six age group, fall short in achieving holistic care. No concrete steps have been made to implement the National ECCE Policy. The policy also fails to address the issue of day care services required by children of women employed in the informal sector. In addition, while it mentions the need to strengthen the various structures under the ICDS, it is vague when it comes to addressing malnutrition or explaining the diet that it requires.

As the previous section highlights, ICDS sounds quite holistic. However, it has come under scrutiny for its functional capacity and for its biggest conceptual flaw: the absence of a proper plan for care. The way ICDS has manifested on the ground, it effectively ignores children under three (Ramachandran, 2005). While it promotes supplementary nutrition, the questions of who feeds the child and how remain largely unaddressed.

The efficiency of ICDS is also severely constrained by weak implementation at state level as well as limited financial resource availability and poor targeting of the deprived sections of the population. The programme also came under question for excessive centralization of financial resources and food supply (Nayak & Saxena, 2006). There is also a lack of proper infrastructure at Anganwadi Centres, lack of training of Anganwadi workers, and weak monitoring and evaluation. As Ravi and

Singh note, the problems are multiplied because of ‘a lack of a nodal body responsible for multi-sectoral coordination and programme oversight’ (2016, p. 6). The data on child nutrition, as discussed in previous sections, is reflective of the lack of considerable impact of ICDS.

The data necessitates the need for better allocations and implementation and reaching out to the disadvantaged. As per research by the International Food Policy Research Institute, while the overall utilization of the programme has improved over the years, it still fails to benefit the historically disadvantaged groups, including women with low education and the poorest households (2019).<sup>12</sup> Poor delivery, difficulty of accessing remote locations as well as the particular difficulties that arise from social divisions like caste and gender have been seen as the reasons for this.

Further, the work of ICDS workers, AWWs and ASHAs is not seen as professional childcare engagement owing to the poor honorarium and the lack of importance assigned to it by State structures. The average remuneration of the AWWs over the years has been estimated at a low 4,500 INR. The ECD workforce finds no respect and importance given to them; they receive limited training and the workforce in itself is not sufficient to cater to the needs of all children.

The primacy of the role of the State in providing an enabling ecosystem for the young child and to achieve the SDGs requires budgetary commitments to also be higher. However, as we have seen, the budgetary allocations across all sectors of the young child’s needs, ranging from nutrition and education to healthcare and protection, is grossly inadequate.

In addition to these challenges, in many cases, the policies have not been framed comprehensively to properly address the rights of the young child. A

12 See PTI (2019). India’s child nutrition programme excludes poorest households: study. *Economic Times*. Retrieved May 3, 2020, from <https://economictimes.indiatimes.com/news/politics-and-nation/indias-child-nutrition-programme-excludes-poorest-households-study/articleshow/68196603.cms?from=mdr>.

case in point is the draft National Education Policy (NEP) 2019. Although it conceptualizes the foundational stage of a child's life, it stops short of addressing how the foundations of literacy skills can be laid, the role teachers can play and the curriculum and pedagogy to be followed for the under-six age group to maintain continuity of curriculum. While it acknowledges the importance of ECCE, it does not distinctly address the aims, objectives and curriculum of the same.

Further, the role of the State is also limited when it comes to providing universal day care facilities, especially for families engaged in the informal sector. With childcare primarily seen as the family's responsibility, particularly a woman's responsibility in dominant narratives in India, the State is seen to have little or no role to play. The triple burden on women—of household work, child rearing and workforce involvement—finds them bogged down as they have unequal access to the market, comparatively lower wages and have to almost single-handedly care for the child.

It is imperative that the State provides mechanisms of childcare outside the home as well as enable families to engage in childcare where they lack the required resources or avenues. However, not only has the ICDS not reached out to the most disadvantaged—and the employer bearing the costs for provisioning maternity entitlements remains problematic—there has been a mushrooming of an unregulated private sector that is the second largest provider of ECCE. The State lacks a regulatory framework to ensure quality and equity in early childhood services and it is yet to establish a system to monitor the working of the service providers. There are no norms and standards for due registration, accreditation and regulation.

The lack of holistic interventions on the part of the State has relegated concerns about the overall situation of the under-six age group to the background. It has also compounded the issues faced by certain categories within this already vulnerable age group that are even more marginalized than others and are left outside any access to public or private systems. The development discourse and

policy frameworks often overlook the specific vulnerabilities of the young child owing to their young age, as well as the ways in which factors like gender, caste, class, abilities and residence combine to subject them to particular, more aggravated exclusion. Certain sections within the under-six age group from various marginal social backgrounds end up being more disadvantaged than the rest. The next section brings forth the various categories of these children.

## 6. The Excluded Young Child

Varied groups of children are left at the margins and even excluded from public good provisioning due to the conjunction of various economic, geographical and epistemic factors, resulting in poor health and faring low on development indicators. Rural-urban differentials, disparities among families and communities, variations within and across states, identities along caste, class and gendered lines, among others, intersect with each other to result in specific experiences. While belonging to marginal groups subjects children to common vulnerabilities, abuse and neglect—including lack of access to resource and inadequate stimulation and learning opportunities—some of the ways of exclusion and the mechanisms of discrimination are specific for each category. However, once again, there is a paucity of data for these categories that specifically pertains to the under-six age group.

There is also the question of violence and abuse during early childhood that tends to be reflected in macabre headlines about sexual violence, abuse and deprivation on a regular basis in India. UNICEF notes that three in four children between the ages of two and four worldwide (approximately 300 million) experience, on a regular basis, violent forms of discipline by their caregivers (2017, p. 7). The study further highlights 176 million children under five years (one in four) live with a mother who has been a victim of intimate partner violence (p.7). Violence intersects with caste, class and gendered identities to produce more severe impacts.

The various categories discussed here are derived from the National Policy for Children 2013

and/or the references to them in the draft National Plan of Action for Children 2016 as disadvantaged groups requiring ‘special attention, care and protection’ (Ministry of Women and Child Development, 2016, p. 7). These include children belonging to families that are socially, economically or otherwise disadvantaged, children belonging to Scheduled Castes and Scheduled Tribes (SC/ST), the girl child, children with disabilities, children growing up on streets or in slums, trafficked children, children who lack parental care including orphans and those without family support, children affected or displaced by natural hazards and climate conditions or by civil disturbance, children in institutions, and children affected by HIV/AIDs, leprosy and other socially stigmatizing conditions. The categories listed here are by no means exhaustive; neither are the impacts exclusive and isolated from one another.

### ***Children in the Poorest Households***

While the living standards in India have considerably improved over the last few decades, the inequality between households and differences arising out of rural-urban locations continue to be significant. Children living in chronic poverty-stricken households generally succumb to the consequences of exposure to an unhealthy environment, lack of nutrition, inadequate access to early stimulation

and learning opportunities. This results in stunted development and low productivity in later life.

Poverty is a vicious cycle: it is both reflective of poor living standards as well as a cause for them. A child’s access to nutritious food and healthcare, safe drinking water and sanitation is severely impacted by the household’s economic conditions. Oftentimes, economic compulsions in rural areas drive families or their earning members to migrate to towns and cities, forcing them to work in unhealthy conditions and live in slums. UNICEF notes the disparities in household wealth using various indicators as well as the rural-urban location, as shown in **Table 2**:

Impoverished home environments often result in lack of access for children to good quality ECD services since it is not considered a priority in the public sector. The rationale for this is prioritizing the primary education sector in the face of limited public resources. This results in younger children ‘crowding into’ primary schools, affecting pupil-teacher ratio as well as increasing dropout and repetition rates (Kaul and Sankar, 2009, p. 9).

For parents with no option but crèches to enable them, the situation has turned worse over the last few years. At times, the need to earn for the family forces parents to leave children in the care

**Table 2:** Disparities by Household Wealth and Residence

<b>Indicator</b>	<b>Percentage (%)</b>
Birth registration 2005–2012, poorest 20%	23.9
Birth registration 2005–2012, richest 20%	72.4
Birth registration 2005–2012, urban	59.3
Birth registration 2005–2012, rural	34.8
Skilled attendant at birth 2008–2012, poorest 20%	23.6
Skilled attendant at birth 2008–2012, richest 20%	84.9
Skilled attendant at birth 2008–2012, urban	75.6
Skilled attendant at birth 2008–2012, rural	43.3
Underweight prevalence in children under five 2008–2012, poorest 20%	56.6
Underweight prevalence in children under five 2008–2012, richest 20%	19.7
Underweight prevalence in children under five 2008–2012, urban	32.7
Underweight prevalence in children under five 2008–2012, rural	45.6
<i>Source:</i> UNICEF, 2013	

of an elder sibling, mostly a girl child (ibid). The MWCD had set a target to fund 23,555 crèches by April 2018. However, reduction in the costs to be borne by the central government has witnessed the number of crèches sharply dropping since 2017 to only 7,316 operational crèches in 2019 (Pandit, 2019). This number of centrally run crèches for the poor in India was reported to be 23,000 in 2015.

A 2013 study sponsored by the Planning Commission noted that most of the beneficiaries of the crèche service lived below the poverty line. The crèches had poor infrastructure and sleeping and cooking facilities. Thus, overall, not only are the parents' needs to provide childcare not recognized, they are also not provided an enabling environment which could help them nurture the young child within the home or in formal childcare.

### ***Children with Inadequate or Lack of Parental Care***

The absence of an adult caregiver hampers the overall well-being of the young child. About 5 per cent of the total children below the age of 18 in India have lost either one or both parents. The percentage of orphans rises rapidly with age—less than 1 per cent from among the children aged below two years to 9 per cent among children between 15 and 17 years of age (Ministry of Statistics and Programme Implementation, 2018, p. 57).

While there isn't much data available on children under six who are orphaned or who lack parental care, there are general concerns that apply to this age group as well. A review of female-headed households in Neyveli, Tamil Nadu, where they were also the sole earners, found that it was difficult for them to meet the expenses of education, clothing and care and protection of their children (Buvanewari, 2008).

Orphanages may seem safe havens for the homeless, children from the streets or those orphaned with no caretakers; however, over the years, stories about exploitation, sexual violence, and abuse in orphanages have become common (Save the Children, 2017). The rampant culture of abuse results in even older children abusing the young

(ibid). Further, children in institutional care are exposed to a greater potential of suffering from 'structural neglect', which van IJzendoorn et al. define as including lack of availability of physical resources, unfavourable staffing patterns and inadequate child-caregiver interactions in the socio-emotional domain (2011, p. 4).

Although the Juvenile Justice Act 2000 mandates the auditing and monitoring of childcare institutions, it was only in 2013 after a Supreme Court order that the first-ever monitoring of such homes across the country was started. Privately-run homes often get away from scrutiny by refusing to even get registered under the act.

### ***Children in Slums, including Migrant Children***

According to the National Sample Survey Office (NSSO) 2012 estimates, there are 15 million children who have migrated to urban spaces with families in search of better economic opportunities. Slums are inhabited by children whose families are stuck within a perpetual cycle of poverty, leading a life of low-income opportunities, poor infrastructure, inadequate access to public services and unsafe and unhygienic immediate environments. Ironically, with urbanization and the consequent migration, these are also the spaces which project the illusion of affluence, attracting people from rural areas with the prospect of economic stability. While the 'better opportunities' do not break the cycle of poverty, children find themselves growing up in an unhealthy environment with poor basic services and an absolute lack of social capital and family support.

The National Institute of Urban Affairs points out that 8.1 million children in the under-six category live in urban slums, which is 18.7 per cent of total urban children in the under-six age group, and that approximately 90 per cent migrant children do not have access to ICDS and Anganwadis at their caregivers' worksites (2018, p. 5). The exclusionary nature of ICDS provisioning also becomes clear here as the migrants are excluded from its provisions: because they live in rented accommodations, they have no address proof and hence do not come

under the purview of the purview of the services.

Migrant families seeking better opportunities often leave their social support systems behind. While their earnings may increase in urban areas, the quality of life dips due to degraded environmental conditions of increasing pollution, lack of water, poor sewage systems, widespread exploitation and fragmentation of society. Lack of awareness and identity documents hampers their ability to avail of universal state benefits like subsidized food rations, free medical services or other social security entitlements.

In addition to unhygienic living conditions, life in the slums adds additional burden on women. They mostly work in construction sites, brick kilns etc., where they do not find provisioning for childcare and where maternal entitlements are severely lacking. At times, the young child is left in the care of an elder sibling, mostly a girl, who is again forced to shoulder a responsibility she/he is too young for, resulting in lack of care for both (Kaul & Sankar, 2009, p. 2).

To make ends meet, more women go out for wage work, where they work in inhumane conditions, are paid low wages and not provided due entitlements. Women are also disproportionately affected by the burden of unpaid labour. Spending up to 352 minutes per day on domestic work, women's unpaid work is 577 per cent more than men and at least 40 per cent more than that of women in South Africa and China, India's BRICS peers (Organization for Economic Cooperation and Development, 2019).

### **Children on the Streets**

The homogenization of all children in the urban setting often results in exclusionary practices in resource allocation, where children who are the most difficult to reach fall outside the development paradigm. So it becomes important to highlight the issues faced by other disadvantaged children in urban spaces—children who are homeless, live on the streets or find themselves engaged in child labour.

According to Census 2011, India has 1.77 million homeless people, out of which 0.27 million

(15.3 per cent) are children under six years of age. Despite the high visibility of street children around us, there is lesser data available about them, as they keep moving depending on time and circumstances. They also may not have official identity documents. Hence, it is difficult to fix an exact number for them.

A census study of street children in Mumbai by the Tata Institute of Social Sciences in collaboration with Action Aid in 2013 showed that 98 (13.5 per cent) of the 728 street children surveyed were in the under-six age group (p. 47). While the study found more male children on the streets than females, it also adds a note of caution as this could be a result of a lack of general gendered visibility for female street children.

A study by Save the Children in 2012 in four states—Andhra Pradesh, Bihar, West Bengal and Uttar Pradesh—noted that although the proportion of homeless children under the age of six out of the total number of children is the greatest in the city of Patna at 32 per cent, their absolute number is the highest in Hyderabad. The proportion of very young homeless children (in the under-three age group) was also highest in Patna compared to other cities at 14.4 per cent. The study further notes the need for special interventions for the under-six age group as they are more likely to be kidnapped or trafficked, or forced into begging, theft, drug abuse and bonded labour, as well as being also more vulnerable to sexual violence. The study discovers that, overall, children were not keen to talk of personal experiences, which could be the reason for fewer details about abuse; only 5.7 per cent of children under 18 reported sexual abuse.

### ***6.5 Children from Scheduled Castes/ Scheduled Tribes***

In addition to the economic dimension and location which determine a young child's access to nutrition, healthcare and other services, the caste factor in Indian society and the consequent unequal distribution of income, goods and services is also an important factor that highlights the exclusionary nature of the State's services, pushing certain sections to the margins. Restricted access to basic services such as clean water, sanitation, nutrition,

housing, education, healthcare and employment locates SC/ST groups in the category of the most disadvantaged due to a toxic combination of poor social policies and programmes, fewer occupation opportunities, lower income and active social discrimination.

NFHS 4 data shows that for children under the age of five living in the poorest quintile households, about 27 per cent were SC and 20.4 per cent were ST households while among richest quintile households, only 12 per cent were SC and less than 3 per cent were ST households. Children Under Five Mortality Rate (U5MR) among SC and ST children (56 and 57 deaths per 1,000 live births respectively) has been higher than children belonging to other castes (39 deaths per 1,000 live births). The stunting levels are also higher (NFHS 4, 2017, p. 187).

Children belonging to the STs fare worse than the SCs on many health and nutrition indicators. Mortality rates show an increase of deaths with age among the ST children, with the U5MR nearly three times the Neo-natal Mortality Rate (NMR), and twice that among non-tribal children. NFHS-3 found that the NMR among STs was 39.9 as against 34.5 among all the non-ST communities, the Infant Mortality Rate (IMR) was 62.1 as against 48.9, and U5MR was 95.7 as against 59.2 (NFHS 3, 2006, p. 181). Similar trends are seen in other parameters including undernutrition, stunting, anaemia and access to immunization.

Bêteille had argued that even between SCs and STs, the difference in development emanates from the fact that the SCs lived among, even though socially segregated from, the 'mainstream' while STs were physically isolated (1991, as cited in Das et al, 2012, p. 206). This holds true even three de-

acades later, when the geographical isolation of STs has manifested in 'relative and oftentimes absolute deprivation' (ibid). The issues around forest lands and displacement also directly impact the food security of these groups.

High child malnutrition is often attributed to lack of timely access to nutritious food and the barriers and bottlenecks that prevent utilization of health services by marginalized communities, especially those living in remote areas. They experience additional difficulties due to poor management, agenda-setting and prioritization of tribal health problems within district administration and state governments.

There are plenty of reported cases of caste discrimination, including upper-caste women refusing to leave their children with SC/ST helpers at AWCs, upper-caste Hindu helpers serving food to SC/ST children reluctantly and AWWs refusing to taste food cooked by SC/ST helpers (Acharya, 2010, p. 17; Ganesh, 2019). Such discriminatory practices further marginalize these groups, subjecting the young SC/ST children to adverse exclusion. Not only does this neglect and discrimination affect their access to nutrition, it keeps them perpetually marginalized and outside the developmental discourse of the country.

### **6.6 The Girl Child**

Gender inequality is among the root causes of children's poor development in the early years. In India, the girl child is often considered a liability, whereas boys are given the exclusive rights to inherit the family name and property. This discrimination starts even before birth. She is killed as a foetus, and if born, killed as an infant, which results in a highly skewed Child Sex Ratio (CSR). Indeed,

#### **Box 2: India Ranks Poorly in Gender Equality**

India ranks 129 among 189 countries with a Human Development Index (HDI) value of 0.647 in the UNDP Human Development Report 2019, calculated for the year 2018. This value fell by 26.3 per cent when inequalities of health, income and education were factored in. The picture looked particularly dismal when gender inequality was factored in. In terms of the Gender Inequality Index (GII), India, with an index value of 0.501, ranks 122 out of a total of 162 countries in 2018.

(Source: UNDP 2018, 2019)

declining CSR is a potent indicator of female disempowerment. Post-birth discrimination against girls is reflected in them being neglected in the distribution of food, nutrition and healthcare within the household.

India currently faces declining Sex Ratio at Birth (SRB) and adverse CSR as a result of systemic gender discrimination. It is symptomatic of a patriarchal society that prefers sons over daughters and neglects girls at every stage and in various arenas. According to Census 2011, SRB for India is 910 girls per 1,000 boys. This is also reflected in India's poor performance in the Gender Inequality Index, as Box 2 highlights. This imbalance is expected to have serious socio-demographic consequences, with 9,55,000 girls estimated as missing in the 2011 Census. Further, gender could combine with other forms of discrimination to make girls doubly disadvantaged from their early years.

In addition to the girl child, the binaries of male and female that our society restricts gender to also marginalizes children who do not identify themselves within such heteronormative categorizations, affecting young children's entitlements and sense of identity from their early years.

### ***Children with Disabilities***

Children with disabilities are in general more vulnerable to neglect, violence, abuse and exploitation. According to the 2011 Census, 1.24 per cent (20.42 lakh) children in the under-six age group in India are disabled. This is 7.62 per cent of the total number of disabled persons. About 1.4 per cent (3,97,015) of SC children and 1.1 per cent (1,76,110) of ST children below age six are disabled. Maharashtra had the highest percentage (1.63 per cent, 2,17,361 in number) of children under six with disabilities.

Faced with widespread barriers that hamper their access to services such as rehabilitation, people with disabilities have worse health outcomes (National Health Portal, 2017). Research demonstrates that access to high quality early intervention services is critical to assist children with disabilities, since the services can take advantage of the plasticity of the brain and provide opportunities for optimal development of the child's potential.

Yet, services are not ready to respond effectively and provide accessible and equitable services to children with disabilities. Only 13 per cent of children with disabilities in the age group of 5–18 years had attended any preschool intervention programme (NSSO, 2002).

### ***6.8 Children Affected or Displaced by Natural Hazards and Climate Conditions***

India has always been prone to recurring natural disasters such as floods, droughts, cyclones, earthquakes and landslides. Out of 602 districts in the country identified in a study, 125 districts have been identified as most hazard prone areas in India (Vranda & Sekar, 2012, p. 19). Exposure to a natural calamity is known to increase the likelihood of acute illnesses, like diarrhoea and fever, in children under five and the impacts vary significantly based on gender and socio-economic standards (Datar et al., 2013, p. 84). Moreover, very young children may not be able to communicate necessary information if they become separated from their caregivers and remain at high risk of trafficking.

Environmental issues also have other adverse impacts on children, especially young children, and on pregnant women. A *Lancet* study found poor air quality to be the predominant environmental health risk responsible for around 9 million excess deaths worldwide in 2015. It poses high risk to children, even at low levels of pollution, especially during the phases of in-utero development and early infancy (2018). India ranks very low on air and water pollution levels compared to the rest of the world.

While the Indian government has about 200 laws dealing with environmental protection and environmental regulations dating back to the 1970s, none of them have considered the implications of environmental pollution and disasters on children, especially their protection before, during and after a disaster.

A WHO Report on air pollution and child health notes that pregnant women exposed to polluted air are more likely to give birth prematurely and have small children with low birth weight, severely impacting the child's neurodevelopmental and cognitive abilities (2018). The report highlights

that close to 1,00,000 children under five in India died in 2016 owing to high pollution levels.

### ***Children in Areas of Armed Conflict***

Studies have noted that armed conflict worldwide affects more than one in ten children (Kadir et al, 2018, p. 1). It causes toxic stress and affects the health of the infant, child and mother. In addition to direct violence, it also results in unsafe living conditions, destruction of essential infrastructure, deterioration of public health systems, worsening of the mental health of the adult caregiver and environmental hazards (ibid). These factors are known to significantly increase childhood mortality and morbidity.

The rates of stillbirth, low birth weight and mortality in children under five years are found to be higher in conflict zones compared to the rates during peacetime in the same country (Simetka et al., 2002; Guha-Sapir & Panhuis, 2003; Lee et al., 2006). The Peace Research Institute, Oslo estimates that around 50 million children in India were living in an area of armed conflict in 2016, the highest in the world (2018). As a public health issue, armed conflict has long-term psychological, social and emotional repercussions.

The Office of the Special Representative of the UN Secretary General for Children and Armed Conflict notes that children continue to be impacted by incidence of violence between armed groups and the Government of India, particularly in Jammu and Kashmir, and areas affected by Naxalite insurgency (2019). From detentions to cases of torture, widespread abuse of human rights of children has been reported from these areas over the years. Children under six years of age exposed to conflicts are known to exhibit increased fear and anxiety, even as their parents battle mental health issues (Slone and Mann, 2016).

### ***Children Affected by HIV/AIDS and Other Stigmatizing Conditions***

While recent years have witnessed a scaling up of interventions to prevent parent-to-child transmissions of the HIV virus and antiretroviral therapy for pregnant and breastfeeding women and infants,

a large number of HIV-infected children are born each year in India. The various factors that are responsible for this include 'low health service utilization, poor drug adherence, delayed infant diagnosis, discriminatory attitude of health providers, loss to follow-up, and poor coordination in managing continuum of care' (Nath, 2017, p. 124).

Lack of awareness is a major reason for the high transmission rates of HIV. Two studies about women going to a clinic in a rural area in South India and to a tertiary hospital respectively for antenatal visits showed awareness levels at 48 per cent and 37.6 per cent respectively (Rogers et al, 2006; Sagili et al, 2015). Among the multiple reasons that women give for not visiting Anti-Retroviral Therapy (ART) centres are unavailability of childcare, financial crisis, unavailability of transport and the distance from home to the ART centre. These centres are often located in urban areas and require long hours of travel (Nyamathi et al., 2011, p. 5).

The societal stigma associated with diseases like HIV and leprosy often push children to the margins, making them subject to psychological problems including anxiety and mood disorders. Such children in India face discrimination in accessing education and healthcare services, are often refused to be taken in by orphanages and are pushed onto the streets (Human Rights Watch, 2004). Yet, the government hasn't been able to keep up in its response to the widespread epidemic that HIV/AIDS is in India, in terms of policy provisioning.

In addition to all these categories of children who are marginalized and excluded from public goods provisioning, there are some other categories as well that tend to be stigmatized and adversely excluded. These include children of sex workers and trans children. However, there is little to no data available for these groups in the larger category of children in general and the under-six age group in particular.

An important point to note is that these marginalities and exclusions are not uniform. There are wide variations across and within states in India in indicators of maternal and child health, as well as the extent of exclusions and public provisioning.

## 7. Regional Disparities across India

The globalized world order has resulted in a widening of economic disparities among and within societies. As per Census 2011, about 20 states and union territories had over one million children under six years, and many of them are among the poorest. About 52 per cent in the under-six category reside in the states of Uttar Pradesh (29.7 million), Bihar (18.6 million), Maharashtra (12.8 million), Madhya Pradesh (10.5 million) and Rajasthan (10.5 million).

A child born in a remote rural area or an urban slum does not have the same chance of survival as a child born in a rich household. Needless to say, the picture varies across different states in India, rural and urban areas, economic and social groups, gender and household education levels. The interface between gender discriminatory social norms and advances in female education and empowerment has differed across and within different states and among different social groups. In a country of the size of India, the varied performance of states could be attributed to the socio-cultural milieu, geography, political environment, historical factors, policy and governance.

The NFHS 4 assessment shows that the under-five mortality rate is highest in Uttar Pradesh (78 deaths per 1,000 live births) and lowest in Kerala (7 deaths per 1,000 live births). Uttar Pradesh also has the lowest percentage of children who are breastfed within one hour of birth (25 per cent). Further, the percentage of stunting in under-five children is the highest in Bihar (48 per cent), followed by Uttar Pradesh (46 per cent), Jharkhand (45 per cent), and Meghalaya (44 per cent), and lowest in Kerala and Goa (20 per cent each). When it comes to underweight and wasting rates in children, Jharkhand has the highest levels at 48 per cent and 29 per cent respectively.

The CNNS shows that the percentage of children receiving a minimum meal frequency was the highest in Sikkim at 67 per cent and the lowest in Andhra Pradesh at 22 per cent (2019). In seven out of 30 states, less than 5 per cent of children in the

6–23 month age group consumed iron-rich foods. The overall trends in consumption highlighted in the survey are worrying, since deprivation in early childhood is known to affect adolescence and adult life.

In their analysis of a child development index that measures child well-being across regions in India, Drèze and Khera argue that the northern heartland is ‘the big problem region, flanked by areas of higher child development in the north and south, with a patch of relatively low child development within the southern region, around northern Karnataka’ (2012, p. 44). The study notes the striking north-south contrast in the country as well as the dismal condition of the BIMARU states (undivided Bihar, Madhya Pradesh, Rajasthan and Uttar Pradesh). Interestingly, it highlights the removal of Chhattisgarh from the ‘problem region’, with the state showing evidence of rapid improvement in child development indicators (ibid., p. 45).

It further reveals that the southern states of Kerala and Tamil Nadu lead in child development indicators. Drèze and Khera note that while Kerala’s good performance has been well known over the decades, all districts of Tamil Nadu were found to be doing remarkably well in the study, evidenced by rapid improvements in child nutrition, health-care and elementary education in the state post-Independence, plausibly ‘linked with active social policies including free and universal provision of essential public services’ (ibid., p. 45).

States like Kerala have benefited from prolonged progressive social policies and investment in social protection. Demand and utilization of basic services and development infrastructure are high, along with greater public awareness. But many of the poor performing states like Bihar have not been able to utilize the PDS, ICDS and other pro-poor programmes to mitigate the distress of the very poor and marginalized households and communities. The Health Index 2019 released by NITI Aayog shows that 38 out of every 1,000 newborns die at birth in Bihar, as compared to 10 in Kerala. Bihar continues to perform poorly on parameters of infant mortality, sex ratio and health of women.

## 8. Impacts of Early Childhood Deprivation

Studies have established that early childhood deprivation has adverse consequences for neurobiological, social and cognitive development (Guilmoto et al., 2018). When a young child finds himself/herself deprived of important experiences in these critical years, it has a wide range of impacts, both immediate and long-term. Nelson et al. argue that not only are there perturbations in the brain structure and functioning and changes in cells and molecules in the body, there is a plethora of behavioural and psychological impairments in an individual in the longer term (2019, p. 1).

When caregivers respond to infant behavioural cues or initiate stimulation, they are essentially putting in an input that helps develop stress response mechanisms, attachment to others etc. However, if the caregiver's initiation, stimulation and response are inadequate or if there is no adult caregiver, such adverse neglects negatively impact the development of stress response systems, relational response and outcomes of attachment, disrupting the potential of a healthy individual contributing positively to society.

At an individual level, neglect during early childhood is known to cause multiple problems. These include, as Hildyard and Wolfe note, social withdrawal, issues with regulating emotions, low self-esteem, pathological behaviours such as tics, tantrums, stealing and self-punishment, low intellectual development and low achievement on the academic front (2002, p. 680, 685).

Exposure to violence at this stage has long-term negative physiological and mental consequences. The impact of childhood trauma is known to significantly increase negative outcomes like drug abuse, depression, dropping out of school and involvement in violence in later life (UNICEF, 2017).

In 2015, East Asia and the Pacific witnessed the region's first study detailing the economic impact of child abuse and neglect. The study noted that it costs the region the equivalent to 2 per cent of its GDP (World Economic Forum, 2015). Since

access to early childhood care is linked to raising adult wages, the lack of it can severely undermine the country's economic productivity in later years.

With such adverse short- and long-term impacts as a result of deprivation in childhood, it is important to tap into the potential of ECD as a public good at this critical age for the fulfilment of individual rights intrinsic to children being human beings as well as for the realization of the demographic dividend, well-being of society, equity for all and contribution to a country's gross income.

## 9. Noteworthy Practices

There are various programmes in India and in different countries around the world that could contribute towards the betterment of the current state of affairs in which the young child finds herself/himself.

- In India, the **Rajmata Jijau Mother-Child Health and Nutrition Mission**, operational since 2005 in eight centres in Aurangabad, Maharashtra, works as an important autonomous technical and advisory body to advocate for the importance of the first 1,000 days between a woman's pregnancy and the second birthday of the child as crucial for a child's development. It also works towards improving convergence between public health departments, the state government and ICDS functionaries to counter malnutrition.
- **State Policy for Child 2016** by the Government of Kerala was framed to 'ensure safe and secure environment for all children especially for vulnerable children, opportunity for development, prevention and protection from all forms of violence'.<sup>13</sup> It makes a special reference to the need to reduce anaemia in children between the ages of 6–59 months and the promotion of gender equity and social justice through a transformative educational curriculum. It also brings up the issue of more vul-

<sup>13</sup> Social Justice Department (May 23, 2016). State policy for child – 2016. *Government of India*. Retrieved May 3, 2020, from <https://kerala.gov.in/documents/10180/42fec73d-69ad-4922-9309-a408c31f7b16>

nerable children, including the differently abled and children of migrant labourers.

- **Mathrupoorna**, a one full-meal flagship programme in Karnataka, was launched in 2017 as an initiative towards meeting the nutritional needs of pregnant and lactating mothers in rural areas. A study commissioned by the Indian Institute of Management, Bangalore notes that the scheme covers 12 lakh pregnant and lactating women across the state who receive one nutritious meal daily for 25 days a month (2018). The scheme aims to reduce IMR and MMR and allow for a convergence of various health services.
- Government of Chhattisgarh's **Phulwari** initiative in Sarguja district in 2012, that was later replicated across the state, focuses on tackling malnutrition by mobilizing the community's support for mothers to ensure child feeding and care by running crèches and improving household availability of food through cultivation of rice, maintaining kitchen gardens, horticulture and raising poultry in backyards.
- Among NGO models, **Self Employed Women's Association (SEWA)** was an early starter in recognizing the link between women's work, social security entitlements and quality childcare services in India. It provided a flexible, community-led network of crèches to its members. In partnership with the government, SEWA has worked to help better adapt policies and programmes to the specific needs of women workers in the informal sector.
- **Mobile Creches** has, over years of grassroots work for the young child—especially children of migrant families and those living in slums—enabled the care and education of young children whose caregivers are engaged in informal work settings. It provides appropriate training resources to develop a well-trained, professional cadre of childcare workers in government as well as non-government settings. It works with the government, civil society organizations, communities and employers, running centres on construction sites and slums to provide a comprehensive set of childcare services to children in the absence of their parents who are at work.
- **The Head Start** programme in the United States provides preschool education, along with social, health and nutrition interventions over a period of two years for on both full-time and half-time bases. It also has an interesting way of ensuring parental involvement through volunteering activities.
- The **Baby Bonus** scheme implemented between 2004 and 2014 in Australia provided monetary support to families solely for the purpose of fulfilling the needs of their young children, regardless of the families' incomes. In March 2014 this scheme was abolished as since January 2011 a new scheme has been introduced for working parents which provided even more generous support, giving them 18 weeks' worth of paid leave at minimum wage.
- The **Criança Feliz** (Happy Child) programme in Brazil was instituted in 2016 to promote the holistic development of children. Its two main pillars include home visits to strengthen family skills in childcare, especially in case of the most vulnerable children, and intersectional initiatives to promote policies for education, social assistance, healthcare, culture and overarching human rights and child rights. As part of the programme, children are mandated to have their records of vaccination and nutritional follow-ups filled in a Child Booklet.
- **Mother Circles** programme in Myanmar represents a hybrid model where home-based programmes are encouraged to be pre-primary school-based early childhood centres. The programme is meant to support the most disadvantaged children and was started in a peri-urban township in Yangon in 2000. Community volunteers and support groups receive training on parenting education and then teach appropriate practices to low-income families and rural communities.
- Since there is an acute paucity of data on the

young child which could provide relevant evidence to inform policy and programmes on ECD, the **Australian Early Development Census** (AEDC) could be taken as a good example of a population measure for the development of the young child. Five key domains that are measured include physical health and well-being, social competence, emotional maturity, language and cognitive skills, communication skills and general knowledge. On a smaller level, in Kerala, the **Janani Jatak** software has been used successfully to track the health and nutrition status of the mother and under-five child.

While poor health and nutrition indicators are a major reason for the abysmal situation of the young child in India, they are not the only reason. There needs to be similar initiatives that deal with the emotional and cognitive development of the young child in a comprehensive manner, which these schemes miss out on. Monetary support alone is not enough to ensure the child's access to a safe, protected and hygienic environment. There needs to be holistic interventions through policies and public funded programmes to ensure that all needs are addressed.

## 10. Recommendations

From the above discussion, it is quite evident that ECD has the potential to transform the country by developing individual capacity, ensuring societal harmony and equality and helping to realize India's demographic dividend and accelerating economic development. It can break the vicious cycles of poverty and deprivation. In its acceptance as a public good, it will be driven by people's aspirations, helping the State move closer to achieving its international and constitutional commitments, including the SDGs. Unless the State steps up to develop a comprehensive ECD Law, and its actualization through universal, equitable quality of public provisioning is guaranteed, some or all sections within the under-six age group, and children transitioning into formal schools, through the continuum of their development between six to eight years, will continue to be excluded.

A proper understanding of ECD and its components needs to guide policy shifts and expansion of programmes for achieving universalization of ECD entitlements. Early learning for 0–3, 3–6, and 6–8 age groups needs synergistic action by parents and family members, as well as the State. It also needs to be viewed in conjunction with childcare. Although this may be a long-term goal, there are certain steps that can be taken to come closer to bridge the gap in the legal and private domains:

1. In order to deal with the challenges that arise from the fragmentation of the various needs of a child in early years, there must be a comprehensive law for ECD that ensures justiciable and holistic rights to early childhood and thereby guarantee the overall well-being of children under eight years. This must be done keeping in mind their diverse needs during the continuum of the early childhood development period.<sup>14</sup> Such a law must recognize not only the overall continuity of the foundational stage upto eight years but also the specific needs for divisions within this stage: from conception to six months, six months to three years, three to six years and six to eight years. This set of integrated rights to the youngest children in India must also include adequate financial, infrastructural and human resources to realize ECCE and ECD as public goods.
2. There is a pressing need to introduce amendments in existing legal mandates to ensure more visibility to the young child and provide them due entitlements that they have been excluded from. In this regard, Article 21A of the Constitution must be amended to extend the Right to Education to children in the under-six age group. As a report of the Law Commission taking cognizance of the Constitution's welfare approach towards children noted, the

14 See UNESCO Early childhood care and education, Retrieved May 19, 2020 from <https://en.unesco.org/themes/early-childhood-care-and-education>

child under six must be provided a safe and healthy environment for full growth and development to their human potential, while it acknowledged that this promise remains unfulfilled (2015, p. 25). Further, a new Article 24A must be inserted in Part III of the Constitution to ensure that the child's right to basic care and assistance becomes an enforceable right.

3. The ECCE Policy must be implemented in its holistic form. The ECCE advocates for a progressive realization of the rights of children under six by translating its principles into justiciable rights. This will protect the rights of the young child through various departments and the convergence of multiple interventions, so that the holistic needs of the child are met, rather than carrying out a fragmented, piecemeal intervention.
4. The ICDS services need a comprehensive overhaul. They should be decentralized. Implementation gaps need to be overcome to reach all excluded groups. The services need to be designed in such a way that it is flexible to address the needs of all children under six years of age. The provision of care for children in the age group of six months to six years needs to be a part of the programme since it is the single largest programme in the country for children in this age group. In addition, the budgetary allocations towards remunerations for AWWs/AWHs under ICDS need to be increased and state governments also need to increase their share of the amount paid to these critical field functionaries if they hope to motivate staff. Professionalization, improvements in remuneration and working conditions, capacity enhancement and supervision will be necessary to motivate, incentivize and create conditions for accountability.
5. The government needs to formulate norms and standards for enforcing legal provisions and establish a system to monitor their implementation. This could be done through a system for registration, accreditation and regulation. CSOs and childcare cooperatives could be involved in the regulatory process, which should be based on gender equity, social inclusive and protection indicators.
6. While it is important to acknowledge the triple burden (childcare and elderly care, domestic chores and economic activities) on women with childcare responsibilities, it is also important to look at the varied provisioning from a child rights lens, and not simply from the lens of women's rights, even as the two must be seen as interconnected and strengthening each other. The provisioning of childcare services by employers under labour laws, that is contingent upon the number of employees, must take into consideration the number of children so that they are centralized in these needs and entitlements. There must also be a universal family support programme by the State as it is the primary duty bearer, especially for vulnerable families, to foster parenting and childcare.
7. Social sector budgets that have remained flat at around 2.6 per cent of GDP should be enhanced immediately to at least 4 per cent of the GDP. The interconnectedness of various sectors like health, education, water supply and sanitation, poverty and rural employment makes it all the more necessary to address the inadequacy of budget allocations. As a percentage of the Union budget, childcare and welfare needs to immediately be enhanced by at least 3 percentage points.
8. The government must set up Child Resource Centres across states so that collective resources can converge. It must enable experts on various interconnected themes of child well-being—including health, nutrition, early education, protection and care, budgetary need assessment—to come to-

gether and carry out studies that assess the impact of specific policies and programmes targeted at the young child and enable an evidence-based intervention. The national ECCE Policy 2013 had placed an emphasis on states to set up their own centres at state and district levels for providing continuous support to ECCE personnel. These centres should also direct campaigns and raise awareness. They can be especially resourceful to address data paucity, which is one of the primary factors that impede a serious intervention into the issues pertaining to children under six.

As this chapter has put forth, there are major data gaps when it comes to the under-six age group in India. From lack of reliable, disaggregated data across all regions of the country on multiple dimensions of the young child's well-being, little to no data on the marginalized categories within this age group to the lack of data on women in the unorganized workforce, childcare practices and the number of children affected by intersecting marginalities, it is impossible to target these vulnerable groups in the absence of such data. For effective State intervention, and for the above mentioned recommendations to be put into effect, it is absolutely necessary for data to be gathered for vulnerability mapping and intervention. Interventions that are appropriate will require careful planning based on intelligent inquiry of the multiple factors involved, from the social sector to the governance structures to the status of service provisions.

Child rights needs to have a child-centric approach, which acknowledges their specific realities, vulnerabilities and deprivations and their intrinsic right to a life of dignity, equal opportunities and an enabling environment in which they can grow. Contingent upon other factors, this especially demands a radical change in adult behaviour, where they see children as central to their own growth .

The importance of Early Childhood Development, as this chapter establishes, and the rising aspirations of the population towards a prosperous future, necessitate smart and comprehensive inter-

ventions by the State in the youngest segment of its population. In their ability to bring joy, the young child cultivates hope—for themselves, and for us. Let the hope for happier, healthier and safer childhoods light up the strength in policymakers, practitioners and the larger society to ensure that promises are fulfilled and childhood is protected and allowed to take flight, in realization of its full capabilities, and in freedom.

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# Public Employment for Public Purpose

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*Reviewed by Ravi Srivastava, Ratna Sudarshan*

## 1. Introduction

This chapter is premised on the belief that public employment is both essential and desirable in order to fulfil public purpose, that is, governmental actions that are designed to benefit the populace as a whole. While the neoliberal focus has been on attempts to ‘shrink the State’ on the grounds of corruption and inefficiency, sensible people have long recognized that high levels of public employment tend to be associated with better quality of life for people in a society. After all, essential public services—from infrastructure to amenities to security to social services—mostly have to be delivered by governments. This is because private markets simply do not provide them, or under-provide them, and also because private provision, which is based on profitability, delivers much more unequal results. In any case, delivering public services necessarily requires employing people.

Therefore, in sharp contrast to the neoliberal view that states (and the employment they provide) are corrupt and wasteful, and therefore need to be downsized, it is here argued that public employment is necessary to secure a wide range of social goods that need to be actively provisioned by the State, including security, justice, health, sanitation, education, labour rights, development of different sectors, social protection and much else. Indeed, it can even be argued that the proportion of public employees to population provides some indication

of the extent, coverage and quality of public services provided in a country, as it is difficult—if not impossible—to deliver quality services to the entire population, including marginalized groups, without adequate personnel. Public employment can be a major way of improving the quality of life for all citizens by providing essential public services. While this has been evident for a while (although still not adequately recognized by those in power at central and state government levels) it has become starkly clear during the Covid-19 pandemic. The importance of public workers to ensure essential health services, to monitor labour rights and assist workers and to provide a range of other essential services is now apparent to all. It has also become clear how the insufficiency of such workers creates gaps in public provision that directly impact welfare of all population.

However, in India, public employment is not only inadequate, but has been falling in relation to population. As in many countries in recent years, there has been both a shrinking of public employment and a deterioration of the conditions of work (including job security) of many who deliver public services. This contributes materially to inequality, as it reduces access to essential social services and makes basic conditions of life more difficult for those who cannot afford to buy such services commercially. At the same time, public employment is itself an arena of intense inequality, with very many

different types of employees, ranging from the most well-paid, secure, privileged and powerful, to the most underpaid, insecure, marginalized and disempowered of workers. Quite often, both these forms of inequality overlap with other forms of hierarchy and discrimination, and simultaneously create conditions of unjustified inclusion and unfair exclusion with respect to public services.

In this chapter, these issues are explored in more detail.<sup>1</sup> The next section situates the Indian levels and trends in public employment in the broader international context and examines some recent trends. The third section attempts a very preliminary consideration of who gets jobs in government. It also examines inequalities within public employment, referring to both the different types of public employment and the nature of those who get such different jobs, in terms of markers of social discrimination such as caste and gender. The fourth section considers some issues in public employment in the health sector, which have become particularly relevant because of the Covid-19 pandemic. In the fifth section, the significance of the rural employment guarantee programme is discussed, even

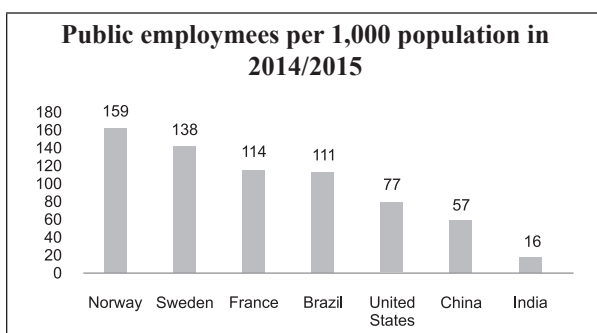
<sup>1</sup> Since the data on public employment are difficult to come by and can only be found in a more or less fragmented form, an attempt has been made to use whatever is available to point to broader tendencies. Therefore, some of the discussion is more indicative in nature.

though this does not provide regular employment but is essentially a public works programme. The final section considers the potential of public employment as part of a vision for a more just, equitable and sustainable economy and proposes some policies towards this goal.

## 2. Public Employment in India

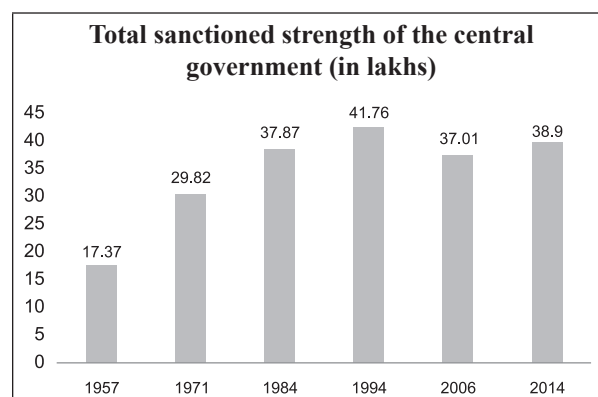
Because so many essential services must be provided by governments, and it is impossible to provide them without employing people to do so, it can be argued that the extent of public employment can be a useful indicator of the coverage and quality of public services in a country. By this marker, unsurprisingly, Scandinavian countries (known also to be among the most equal societies in the world) have the largest extent of public employment relative to population. But what is also remarkable is just how low India's public employment is by international standards. Figure 1 shows that, relative to its population, public employment in India is only one-tenth of that in Norway, only 15 per cent of that in Brazil and much less than a third of that in China. Clearly, India is hugely under-providing public services in a wide range of activities. It is, therefore, no surprise that so many people in India remain excluded from the essential public services that ensure quality of life or receive such services only very partially and inadequately.

**Figure 1:** India's Public Employment is Low by International Standards



Sources: European countries: [www.europeandatajournalism.eu](http://www.europeandatajournalism.eu); Brazil and China: calculated from World Bank data on public employment and UN population projections; United States and India: Report of the Seventh Pay Commission of India, 2015.

**Figure 2:** Sanctioned Posts in the Central Government have Fallen since the Mid-1990s



Source: Report of the Seventh Pay Commission of India, Government of India, 2015

This remarkably low level of public employees to population, which is comparable to the levels in many Least Developed Countries rather than countries at similar levels of per capita income as India, reflects a stagnation and even decline in the number of sanctioned posts since the mid-1990s. The apparent downsizing of central government posts since 1994 has led to a significant decline in the number of such positions relative to population. The data in Figure 2 relate only to the central government, but since many state governments experienced fiscal constraints over this period, it is likely that they also would have downsized their sanctioned posts in a similar, if not more extreme, manner. (Of course, there is significant diversity across state governments in this regard, with some states providing more and better funded public services than others.)

It is not only that such employment (and the number of public jobs) is absolutely low, thereby indicating that both coverage and quality of public services is grossly inadequate, it is also that the governments at both central and state levels have been very backward in filling the vacancies in existing posts, so that despite some increase in sanctioned posts, the absolute number of those employed has barely budged over time despite increasing population, as Figure 3 shows. As a result, in 2014, nearly 7.5 lakh positions were lying vacant in the central government alone, amounting to almost one in five of all sanctioned positions. Even as late as February 2020, more than 6.8 lakh posts were vacant in the central government.<sup>2</sup>

Central government employment is estimated to constitute only around 14 per cent of total public employment in India, the remainder being with the state governments, which are largely responsible for public security and social services. Unfortunately, we do not have estimates for the positions and vacancies across all state governments, but even as-

suming that a similar ratio of vacant posts holds for them in the aggregate, that would amount to 38.8 lakh vacant posts in 2014! Since then, indications are that, at least for the state governments, such vacancies have only increased.

Simply filling the vacancies would go some way towards addressing the current employment crisis in India; it would also mean much more extensive and better quality delivery of public services, because most such services cannot be delivered without people. The results of these gaps are only too evident. Stories abound across the country—of schools catering to several hundred children having only three or four teachers, of villages that are simply not served by agricultural extension officers, of health facilities that do not have adequate numbers of doctors and nurses, and so on. However, instead of trying to ensure that all vacant posts are filled, both central and state governments appear to have further reduced the number of those in employment.

One other striking feature of central government employment is its unbalanced structure. There are relatively few positions at the top, or at the more professional and managerial level. Such ‘Group A’ staff amounted to only 3 per cent of total central government employment in 2014, while mid-level ‘Group B’ staff were 8 per cent and as many as 89 per cent were ‘Group C’ staff, who are typically less qualified (Seventh Pay Commission, 2015). An increasing number of important activities are not even counted among those regularly employed by the government, most significantly those working under various schemes. The most glaring examples come from the Integrated Child Development Scheme (ICDS) and the National Health Mission (NHM), whose lakhs of workers—predominantly women—are not classified as workers and not paid even the legal minimum wages. Currently, there are estimated to be as many as 12.9 lakh Anganwadi Workers (AWWs) and 11.6 Anganwadi helpers under the ICDS alone, so they total a number that comes to more than 60 per cent of the official central government positions described in Figure 3. Therefore, ‘informal’ public workers without the status or benefits of regular government employees

2 See Careers Desk (2020, February 8). Over 6.8 lakh posts vacant in central govt, UPSC, RRB, SSC to fill 1.34 lakh vacancies this year. *Indian Express*. Retrieved June 30, 2020, from <https://indianexpress.com/article/jobs/over-6-83-lakh-posts-lying-vacant-in-centre-upsc-rrb-ssc-to-fill-1-34-lakh-vacancies-this-year-6252222/>.

actually form the majority in public employment, with serious implications on both the quantity and quality of public services, as well as for the rights of such workers.

An examination of the total employment in Central Public Sector Enterprises (CPSEs) provides a telling example of the aggregate decline (see Figure 4). Even in the period between 2011–2012 and 2017–2018, employment in CPSEs fell by as much as 2.2 lakhs in total. What is more, the biggest declines in such employment were not at the managerial and supervisory levels, because such employment remained mostly stable with only minor declines, but among ‘non-executive’ workers of all kinds. In other words, fewer actual workers were being handled by relatively more managers and supervisors.

Even worse, among such ‘non-executive’ workers, the proportion that are under contract or casual/daily work has increased significantly, as shown in Figure 5. By 2017–2018, such insecure workers accounted for more than one-third of the actual workforce. Less secure contracts and deteriorating conditions of work obviously spell bad news for the workers involved, but they also have implications for the workings of such enterprises and for long-term productivity gains, because the advantages of learning by doing are less likely to be realized.

Similar declines are evident for employment in the Indian railways—which is remarkable because this is still an expanding network. Total employ-

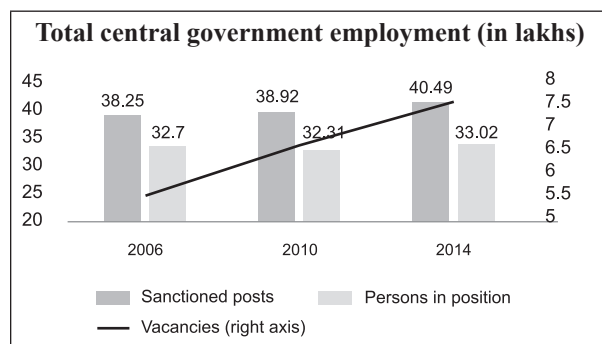
ment in the Indian Railway Catering and Tourism Corporation (IRCTC) declined from 35.6 lakhs in 2014–2015 to only 21.1 lakhs in 2017–2018, largely because of the decline in outsourced workers from 20 lakhs to 6.2 lakhs. It is not immediately evident (although it is likely) that some of this has meant a transfer from outsourced workers to outsourced companies who may be employing workers themselves—a shift from direct to indirect employment by the railways. If so, there is also the possibility that employees in companies that do the outsourced work for the railways receive inferior wages and have to deal with more adverse working conditions.

### 3. Who Gets Public Employment, and on What Terms?

The overall inadequacies of public employment, and its further recent declines, have already been noted. Within this overall stagnation and decline, who actually gets public employment? And do the terms of public employment vary with other social attributes such as gender and caste? This section explores these questions.

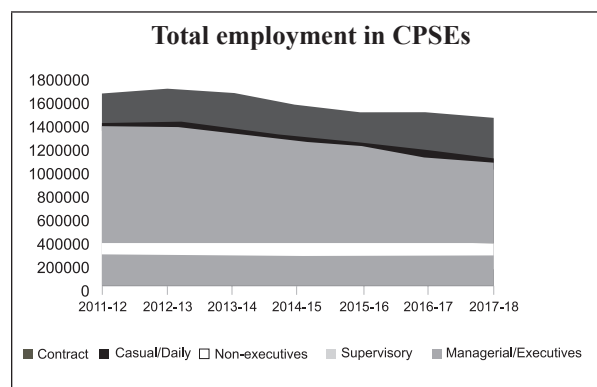
Since data on aggregate public employment at either centre or state level are hard to come by, we examined the data on CPSEs and Public Sector Banks (PSBs) to get some indication of the social attributes of those employed by them. It should be noted that these, along with central government

**Figure 3:** Vacancies in Central Government Employment Have Gone Up



Source: Report of the Seventh Pay Commission of India, Government of India, 2015

**Figure 4:** Employment in Central Public Sector Enterprises has Fallen



Source: Department of Public Enterprises, Government of India: Annual Reports, various issues

employment in regular positions, are among the most coveted forms of employment in India because of permanent tenure that provides significant job security, attractive remuneration comparable to private employment for most levels, periodic revisions of pay based on Pay Commissions that have been quite generous in their awards, and social security in the form of pension and health benefits. Contract workers employed by the government in various activities and capacities get none of these benefits, while the most disadvantaged workers with none of these advantages are those populating the various ‘schemes’ that are actually essential for the provision of major public services in health, nutrition and related areas.

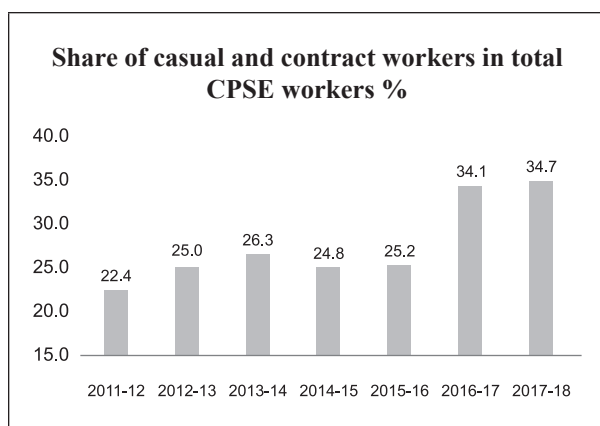
Figure 6 indicates the extent to which the caste-based reservation policy has actually been implemented. The mandated quotas in public employment are 15 per cent for Scheduled Castes (SCs), 7.5 per cent for Scheduled Tribes (STs) and 27 per cent for Other Backward Castes (OBCs). These requirements have mostly been fulfilled or have been exceeded for SCs and STs, but the ratios are significantly lower for OBCs, pointing to the fact that the mandated reservation requirements are still not being met for such workers. In a context of declin-

ing total employment in CPSEs, and outsourcing of many functions to private agencies that are not subject to any caste-based quotas in employment, it is difficult to see how and when this will be corrected in the near future. Further, as noted in the previous section, more workers in CPSEs are employed as contract workers or casual labour, and unfortunately the data on caste distribution of such workers are not available.

However, what is clear is that women workers are largely excluded from such employment. As evident from Figure 7, women accounted for less than a tenth of all workers in the aggregate. While the share of women in managerial positions was slightly higher than for other types of employees, it was still low—increased only marginally before falling back to a share of around 9 per cent. Public sector banks display a slightly better pattern. While the share of women in total employment of public sector banks has increased from 17.6 per cent in 2012 to 27.3 per cent in 2018, this varies substantially across categories, as indicated in Figure 8.

However, the labour force surveys of the National Sample Survey Office (NSSO) provide a slightly different picture. These surveys capture all

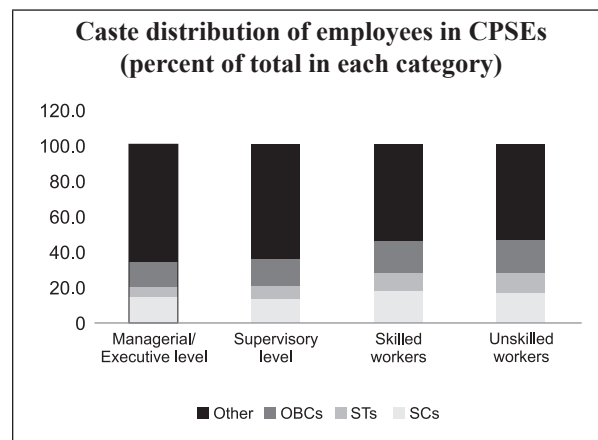
**Figure 5:** More Casual and Contract Workers in the CPSEs



Source: Department of Public Enterprises, Government of India: Annual Reports, various issues

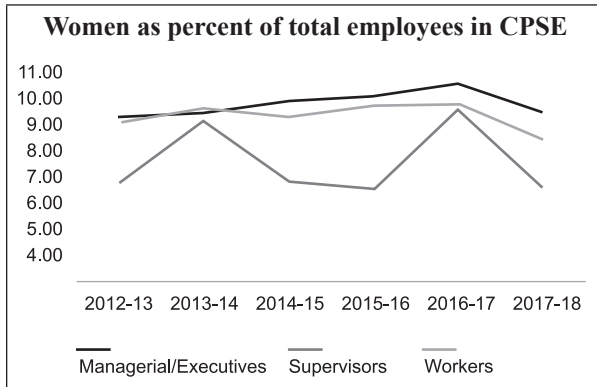
**Figure 6:** Quotas are Filled for SCs and STs but Not for OBCs in CPSEs

(average of years 2012–2013 to 2017–2018)



Source: Department of Public Enterprises, Government of India: Annual Reports, various issues

**Figure 7: Women Account for a Very Small Proportion of Employment in CPSEs**



Source: Department of Public Enterprises, Government of India: Annual Reports, various issues

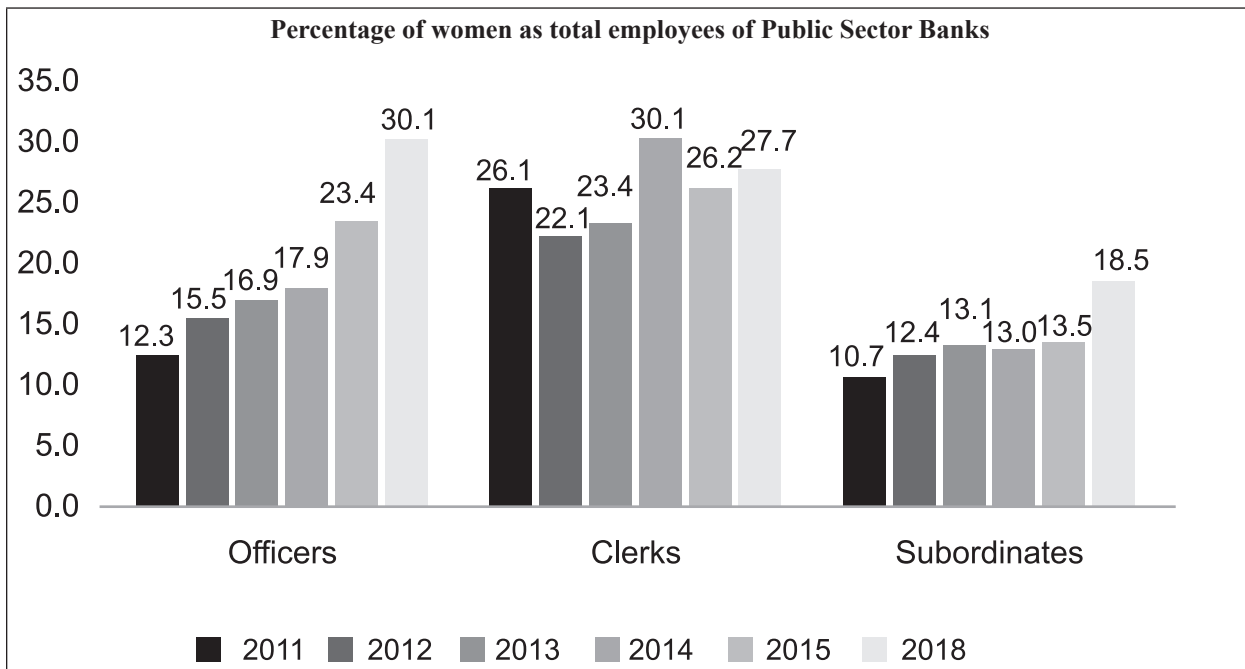
forms of employment at all levels of government (central, state and local bodies as well as public enterprises) including not just those that the government officially recognizes as employees, but also all scheme workers who identify themselves as working for the government, even when the official registers do not include them and they do not receive many of the benefits normally accruing to public employees. For example, the labour

force surveys include ‘voluntary’ workers such as AWWs and helpers and Accredited Social Health Activists (ASHAs), who do not receive even the legal minimum wages for their work, but nonetheless see themselves as regularly employed by the government.

As a result, the evidence from the labour force surveys shows that public employment actually increased in the period between 2011–2012 and 2017–2018. (In what follows, the shares of workers derived from the labour force surveys have been applied on population estimates for the relevant years to get figures for absolute changes in employment.) As Figure 9 shows, total public employment went up by nearly 200 lakh workers, which is definitely a very significant increase. This was distributed among both rural and urban areas, with the bigger increase being in rural areas.

Of course, this means that the corresponding drop in private employment must have been even greater, which should be a source of great macro-economic concern, but that is a separate story. Let us consider the pattern of public employment generated over these periods.

**Figure 8: The Share of Women Workers in Public Sector Banks has been Rising**

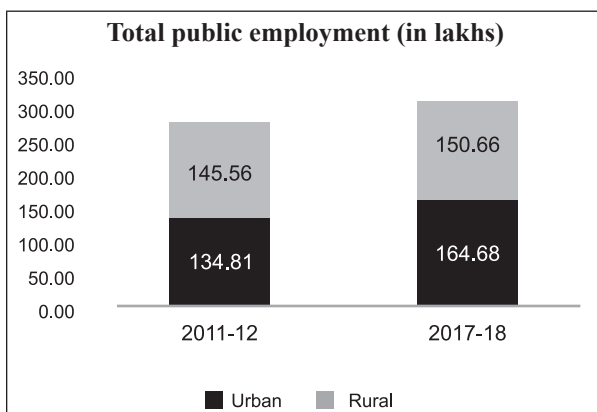


Source: Reserve Bank of India, Basic Statistical Returns of SCBs in India, www.rbi.org.in.

Figures 10a and 10b suggest that the bulk of the increase was in regular salaried employment. Indeed, casual employment in public works like the Mahatma Gandhi National Rural Employment Guarantee Act (MNREGA) actually appears to have fallen over this period. At first glance, this must surely appear to be a welcome development. After all, regular public employment is seen across Indian society as something that is much desired for the security it provides and wages that are higher than market rates for many functions. But this is where the description of regular employment may mislead, because the definition used by the NSSO surveys includes all those who see this as their regular occupation and receive some kind of monthly remuneration, even if this is not officially recognized as employment by their employer—the government.

Scheme workers, for example, are not recognized as public employees by the government, and are paid ‘honoraria’ rather than wages, which, in fact, mostly fall well below the minimum wages. They also do not receive any of the usual benefits associated with government employment such as security of tenure, minimum wages, social security and so on. Often, they do not even have proper written contracts.

**Figure 9:** Total Public Employment Increased in India between 2011–2012 and 2017–2018

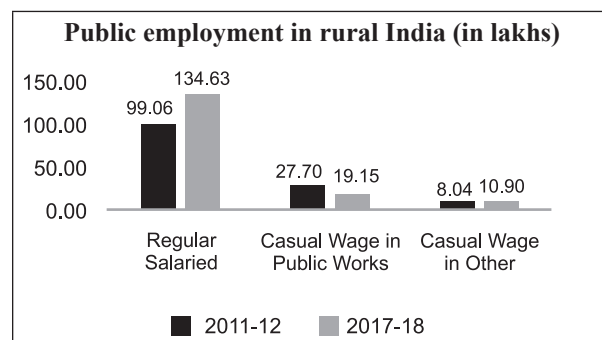


**Source:** NSSO: Reports on Employment and Unemployment, 2011–2012 and Periodic Labour Force Survey 2017–2018, New Delhi: CSO.

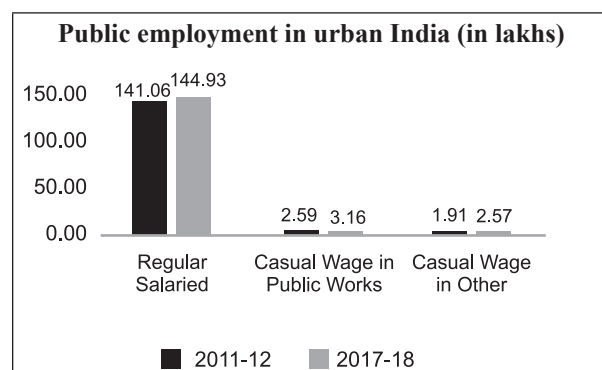
As Figure 11 shows, most of the increase in regular public employment has been of women, in both rural and urban areas. Yet, they are the ones who are more likely to be employed in these schemes, with wages well below the legal minimum and very poor working conditions. Figure 12, which disaggregates public workers according to education level, underlines this point. In rural areas, around 45 per cent of regular women workers in public employment are either illiterate or have only basic education, suggesting that they must be scheme workers. By contrast, in urban areas, where fewer of such schemes are prevalent, women public workers are more likely to have higher levels of education.

**Figure 10:** The Big Increase was in Regular Employment in Rural Areas

**Figure 10a**



**Figure 10b**



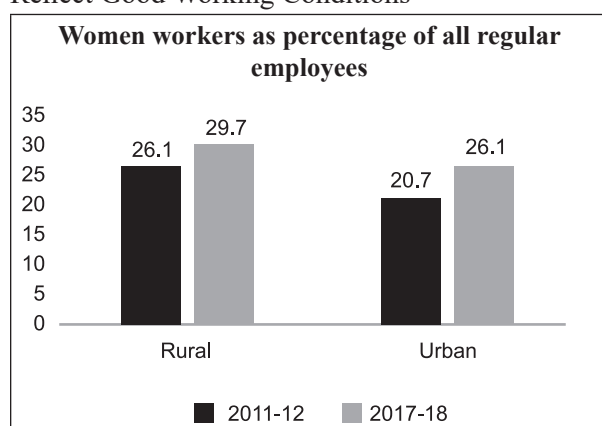
**Source:** NSSO: Reports on Employment and Unemployment, 2011–2012 and Periodic Labour Force Survey 2017–2018, New Delhi: CSO.

**Table 1:** Average Daily Wages in Public Employment in 2017–2018 (in Rs)

Regular employment		
	Rural	Urban
Male	763.5	1003.0
Female	388.5	881.7
Female as % of male	50.9	87.9
Casual employment in public works		
Male	140.2	203.2
Female	107.7	142.6
Female as % of male	76.8	70.2
Other casual employment		
Male	217.6	250.7
Female	102.4	157.6
Female as % of male	47.1	62.9

The gender wage gap in public employment further emphasizes this point. The average wage received by women regular public workers in rural areas is only around half of that received by men—a shockingly large wage gap. Indeed, it is striking that the gender wage gap is much lower in public works, pointing to the role of the MNREGA in reducing such gaps. However, even here, a sizeable gap exists, although not as extreme as that for regular public employment.

**Figure 11:** Women’s Share of Regular Public Employment has Increased—But This Need Not Reflect Good Working Conditions



Source: NSSO: Reports on Employment and Unemployment, 2011–2012 and Periodic Labour Force Survey 2017–2018, New Delhi: CSO.

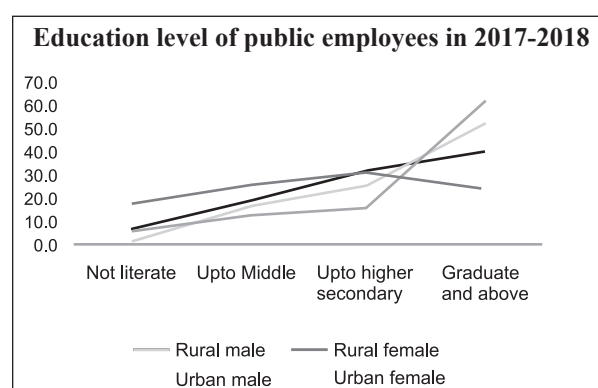
This suggests that the increase in public employment over this period need not really reflect a genuine expansion of good quality public services through the expansion of decent work by the government. Rather, it points to a continuation and intensification of a terrible failing of official policy in the past two decades: the attempt to provide essential social services on the cheap, by exploiting the underpaid labour of women.

It is clear that the most marginalized public employees are those who are not even included in official records of public employment, the so-called ‘scheme workers’ and others, who are hired on contract and denied almost all of the benefits of regular public employees. What is more, they are even denied the basic rights of workers, such as minimum wages and basic social security, since they are classified as ‘voluntary workers’ who do not receive wages but ‘honorarium’. The specific case of AWWs and helpers—who are all women—is considered in some detail below, as part of the discussion on health workers in general.

#### 4. Public Health Workers

The eruption of the Covid-19 pandemic brought out very clearly the horrifying and dangerous effects of the neglect of public health and inadequate

**Figure 12:** Rural Women Public Workers are More Likely to be Illiterate or with Only Basic Education



Source: NSSO: Periodic Labour Force Survey 2017-18, New Delhi: CSO.

spending on medical and health workers over the past decade. As the pandemic spreads, two things are becoming abundantly clear: the health of the richest person in society and the health of the poorest person are inextricably interlinked, as an infectious disease can strike both and can only be contained by public health measures; and societies that neglect and underfund public health and do not ensure sufficient numbers of public health workers per population, do so at their own peril. It has also become evident that relying on the expansion of private healthcare facilities to meet health gaps can be deeply problematic, as such amenities may fail in periods of crises; indeed, the unwillingness of private hospitals to provide their services and care to any and all Covid-19 patients, that public hospitals are duty-bound to provide, has been striking.

India has been one of the poorest performers, even in the developing world, in terms of public spending on health as a share of GDP and per capita. As a result, in the aggregate, the country is well below the World Health Organization's norms for number of doctors and nurses per population.

Those who are part of the public system are even lesser in number. On average, one government doctor attends to 11,082 people—more than ten times the WHO recommendation of one per 1,000 people. In some state like Bihar (28,391) and Uttar Pradesh (19,962) there is one doctor for nearly 30 or 20 times the number of people than the WHO norm suggests.<sup>3</sup> The capital city of Delhi, though the best performing state, nevertheless has a ratio of more than twice the WHO's norm. Other health workers, including nurses and auxiliary workers, are also very inadequate. As can be expected, the rural population is the worst affected in terms of scarcity of basic health workers. Based on official data, Maurya and Goswami (2018) note that as of 31 March 2017, primary health centres across the country had shortfalls of 3,000 doctors (with nearly 2,000 centres operating without a single doctor), 10,112 women health workers, 11,712 women health assistants and 15,592 male health assistants.

<sup>3</sup> The data pertain to 2017, and is from the Directorate of State Health Services & National Health Profile, 2018, quoted in Maurya and Goswami (2018).

**Table 2:** Changes in Remuneration of AWWs and Helpers Over Time (in Rs per month)

Qualification/ Year	1975–1976	1.4.78	1.7.86	2.10.92	16.5.97	1.4.02	1.4.08	1.4.11
Non-Matriculate	100	125	225	350	438	938	1438	2938
Matriculate	150	175	275	400	500	1000	1500	3000
Non-Matriculate With 5 year exp.	-	-	250	375	469	969	1469	2969
Matriculate With 5 year exp.	-	-	300	425	531	1031	1531	3031
Non-Matriculate With 10 year exp.	-	-	275	400	500	1000	1500	3000
Matriculate With 10 year exp.	-	-	325	450	563	1063	1563	3063
Mini-Anganwadi Workers	-	-	-	-	-	500 (w.e.f. 1.1.2007)	750	1500 2250 w.e.f 4.7.13

Honorarium of Helper:

Helper	35	50	110	200	260	500	750	1500
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Leave: Paid absence of 180 days of maternity leave.

Source: Integrated Child Development Scheme, Ministry of Women and Child Development. <https://icds-wcd.nic.in/icds.aspx>.

In addition, health sub-centres were short of more than 61,000 women health workers and auxiliary nurses and midwives, while community health centres were short of more than 5,000 surgeons.

These major gaps in the numbers of government health personnel have been sought to be filled by providing public health services ‘on the cheap’, through schemes like the ICDS and the National Health Mission, that rely on women scheme workers who are not treated as regular public employees but rather as volunteers who receive significantly less than official minimum wages to fulfil numerous tasks that should, ideally, be part of regular public health delivery.

The plight of those working in the ICDS exemplifies the problem. According to the official website of the ICDS, as on 31 March 2015, there were 13,46,815 Anganwadi Centres (AWCs) operating across 36 states and union territories, covering 10,22.33 lakh beneficiaries under supplementary nutrition and 365.44 lakh children aged 3–6 years under preschool training.<sup>4</sup> At present there are an estimated 28 lakh AWWs and helpers across the country. In every *AWC*, an AWW takes care of women and children, educates the community, and collects health and nutrition data on women and children. The AWW is supported by three people: an *Anganwadi* helper; an auxiliary nurse or midwife, who provides health services to pregnant and breastfeeding mothers and delivers babies; and an ASHA, who is a community health advocate and provides services like first aid, special needs referrals and reproductive health counselling. (Table 3)

In September 2018, the central rates for AWWs and helpers were hiked, such that those who received honorarium of Rs 3,000 earlier would now receive Rs 4,500 per month, while those who received Rs 2,200 per month would receive Rs 3,500 (‘Increase in salary’, 2019). The rates for helpers were revised from Rs 1,500 to Rs 2,500 per month. It is worth remembering that these revised rates are

still well below the minimum wages in all states, in most cases well below half the minimum wage. Some state governments have increased the wages to slightly higher rates, and most recently, the state governments of Andhra Pradesh and Telangana increased the rates from Rs 3,000 to Rs 10,000 per month.

The argument typically made by officials for providing very low rates of remuneration to AWWs and helpers is that this is part-time voluntary work for only a few hours a day (as long as the *Anganwadis* operate, usually for four hours in the morning), which cannot be classified as regular work that would justify a regular wage. But this is a false argument. The job description of the AWW lists a range of activities that, if properly performed, would require a full day’s work and possibly more. In addition to running the *crèche* every day, each *Anganwadi* is meant to provide supplementary nutrition to children below six years of age and to nursing and pregnant mothers from low-income families, in addition to immunization of all children less than six years of age and immunization against tetanus for expectant mothers. The AWWs are to provide nutrition and health education to all women in the age group of 15–45 years, as well as a basic health check-up, which includes antenatal care of expectant mothers, postnatal care of nursing mothers, care of newborn babies and care of all children under six years of age. They are supposed to be able to refer serious cases of malnutrition or illness to hospitals, community health services or district hospitals. In addition, the same two workers on their own are to provide non-formal preschool education to children of three to five years on a continuous daily basis.

AWWs have become a basic tool for collecting field data for state and central governments, as a result of which the sheer collection and recording of data has become a hugely time-consuming task. There are 13 registers that each AWW must carry and fill out regularly, with hundreds of entries relating to measurement of children’s height and weight, tracking the food intake of pregnant and lactating mothers, etc. There are also periodic surveys that they are required to undertake. They are

<sup>4</sup> See ‘Integrated Child Development Services (ICDS) Scheme’. ICDS. Retrieved July 9, 2020, from <https://icds-wcd.nic.in/icds.aspx>. The official website does not provide more recent data.

also required to lead or support various awareness programmes initiated by central and state governments.

These duties are made more onerous by the monitoring and reporting requirements, with respect to their own work, imposed on these workers. As noted by Guruswamy and Kuruganthi (2018), ‘The government has specific guidelines for these AWWs—for instance, one task should take you two minutes, another five minutes. There are various “days” that have to be organised and specific functions that must be performed. On certain days eggs have to be given to the children, on another day, vaccines; on a third day, babies have to be brought to the centre to be weighed. Then there are “meeting days”—when they must go to the meeting centres, do home visits, and meet pregnant and lactating women. It’s an impossible schedule.’

There is significant understaffing of the AWCs, with large numbers of vacancies, leading to additional burdens on the existing workers. To add to these difficulties, the poor infrastructure of many ICDS centres across the country makes it difficult for these to deliver essential services. Some still do not have their own buildings, while many of the existing buildings are in poor conditions and without basic amenities like power and regular water supply, and even supplies for cooked food provision, like plates and ladles, have been found to be lacking in some centres (Timsit, 2019). These lacunae obviously put greater pressure upon the workers, who are forced to deliver in extremely challenging circumstances and are held responsible for any inadequacies.

While such women workers are clearly the most disadvantaged and discriminated of all those in public employment, even among them there can be further hierarchies and discrimination stemming from caste, religion or ethnic differences. For example, recently there were reports of Dalit women AWWs in Madurai district of Tamil Nadu being prevented from serving in their own village because of pressure from upper caste residents (Neelambaran, 2019).

The pandemic should have underscored the extreme importance of a public healthcare system and the folly of privatization of essential services. Nevertheless, the plight of public health providers during the pandemic has been hugely aggravated, because in addition to being understaffed, overworked, underpaid and undervalued by society, they now face additional risks in terms of health and physical safety hazards. As Vaidya and Vaish (2020) have noted, the pandemic has exposed them to five additional challenges: shortage of Personal Protective Equipment (PPE) such that they are often forced to reuse such equipment, use faulty equipment or simply manage without any, all of which pose extreme health hazards; longer working hours because of inadequate personnel, even though it is now clear that this is a major health hazard; increased risk of infection; instances of violence against healthcare workers; and social and family impacts, including stigma, ostracization and ill treatment by other members of society. While some of these concerns reflect broader unpleasant tendencies within society that need to be altered, several of these issues could be eased drastically by significantly enhanced public spending. Indeed, this should be an absolutely necessary element of any future plan for public employment.

#### ***V. The MNREGA as Public Employer***

While this is not a form of regular public employment, the MNREGA has become an important form of support for the rural poor, providing a cushion in bad times, acting as an automatic macroeconomic stabiliser in periods of downswing and economic crises, and providing possibilities for improving rural infrastructure as well. These attributes make it particularly significant in the present economic conditions.

The act was tabled by the UPA government and then passed by the Indian parliament in October 2005. It came into force on February 2, 2006 and was implemented in a phased manner to cover all rural districts. In Phase I it was introduced in 200 of the most backward districts of the country. It was implemented in an additional 130 districts in Phase II, in 2007–2008. The act was notified in the re-

maintaining rural districts of India from April 1, 2008 in Phase III. Currently, it covers rural blocks of 644 districts in the country. At its peak (in terms of spending relative to GDP) in 2010–2011, it covered more than 55 million rural households (around one-third of all rural households), generating 2.6 billion person days of employment in that year (Ghosh, 2016).

The MNREGA is one of the more historic pieces of legislation in independent India.<sup>5</sup> It is based on two interlinked concepts. First, ensuring livelihood security to rural residents by providing at least one hundred days of guaranteed wage employment in a financial year to every household whose adult members volunteer to do unskilled manual work. Second, utilizing the programme for the mobilization of existing surplus labour in the countryside so as to unleash productive forces and generate more economic growth in the rural areas. Both of these features are importantly complemented by a rights-based approach, whereby employment is seen as the right of the citizen that must be delivered by the State. This involves a crucial reversal of the underlying basis of public delivery in India, which had hitherto been much more driven by a paternalistic view of the state as delivering ‘gifts’ to the people. In addition, because of the wage and work norms that are defined in the act, it has the potential to stabilize rural wages at levels that are at least close to the legal minimum and even to increase them beyond this in some cases, to reduce the extremely exploitative working conditions that prevail in rural labour markets in many parts of India, and to work on equal terms to women and other marginalized groups like SC/STs who are routinely discriminated against in rural labour markets.

The peak years of MNREGA performance in terms of both financial and employment indicators were 2009–2010 and 2010–2011, and since then there has generally been a decline. There are some states (such as Tripura) that have continued to show improvement, but this has been against the odds, and possible only because of a very determined state government. The release of funds by the

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5 This section draws on Ghosh (2016).

central government rose continuously until 2010–2011, but since then declined in nominal terms. In real terms, adjusted for inflation, the decline would be even sharper. In recent years, especially since 2016, nominal allocations to the programme have increased, but in real terms they have not, nor have they reached the levels achieved in 2010–2011 in terms of share of GDP (Ghosh, 2016). Unfortunately, especially in recent years, the programme has been underfunded, with state governments not receiving the amounts due to them within the financial year. Since the law makes the scheme demand-driven, in that workers who register their demand for work must be given work within 15 days or be provided with unemployment compensation of half the minimum wage, the continued underfunding of the programme by the central government amounts to a disregard for both the letter and spirit of the legislation.

Employment generation schemes like MNREGA, if properly implemented, go well beyond the usual attributes of ‘social protection’ to provide not only some livelihood stability and poverty reduction, but also have significant positive implications on the level of economic activity and the overall quality of life. They can also have very substantial effects in terms of creating conditions for much higher levels of economic activity and therefore growth, especially in rural areas. Because of the obvious positive multiplier effects of such spending, additional wage employment plays an important role in reviving local markets and rural industries. In addition, since the programme should ideally ensure public employment of a certain level for a continuous period, it allows local authorities to plan to put such labour to the best possible use. These uses can include creating durable rural assets, water management and watershed development, activities designed to increase land productivity and create more sustainable agriculture with less chemical use, providing essential public services such as sanitation and mobilization for health purposes, providing midday meals in school, and the like. All of these activities do not only provide sources of wage employment, they also ensure a better quality of life for rural residents and can have important positive

supply effects in enabling future economic growth on a sustainable basis.

Given the significant departure in approach that was presented by the very formulation of the MNREGA as a rights-based scheme, and the obvious effects of such a programme in raising the bargaining power of rural workers, both initial resistance and subsequent backlash to such a programme were only to be expected. Further, despite substantial safeguards with respect to transparency and accountability written into the act and the guidelines, it was always unlikely that a single programme could completely transcend the various problems of corruption, elite capture and clientelism that have been significant features of public service delivery in India. Therefore, very extensive social and political mobilization was required to ensure effective implementation. The argument that corruption and weak delivery systems have resulted in the target population receiving less of the benefits due to them is not without foundation in several areas, since even the bravest supporters of governments at state and central level would not argue that there are no leakages in government expenditure, or that there is still not widespread corruption at the local level in implementing government programmes. However, it is also evident that the amounts of wasted resources involved are tiny compared to the vast sums that have been reported in various other financial scams that have been revealed in the recent past.

This explains why, in the context of some overall success, the performance of the MNREGA has been uneven across states and even across districts within states, with some areas showing dramatically better performance and outcomes. Nevertheless, the overall indications are that there has been a significant and positive impact of the implementation of the act in different parts of the country, despite all the justified criticisms of uneven and often poor implementation in some states and the still very limited and household-based (rather than individual-based) nature of the right.

There is much to appreciate in terms of the various different levels at which the MNREGA has

worked, even in less successful locations. The programme has provided a crucial alternative source of employment and wages in rural economies where most workers were not able to access even minimally decent work for the greater part of the year. It has proved to be especially welcoming of women workers—even though the work is physically arduous and essential legal requirements like worksite crèches are frequently not made available—simply because it offers wages that are mostly on par with male workers. It is now generally accepted that the MNREGA has played a positive role in stabilizing rural wages and in reducing gender wage gaps in much of rural India. Its significance as a built-in stabilizer and its consumption-smoothing features were greatly evident during the 2008–2009 global economic crisis, when urban migrant workers who lost export-oriented employment were able to rely on some form of stable wage income being generated among their families in their rural places of origin. It has reduced to some extent the severity of short-term distress migration, which had become a pervasive feature of rural India in the period just prior to its implementation. In states where it has been implemented with some seriousness and efficiency, it has not only provided a boost to local wage incomes and local markets, but also assisted in easing supply conditions by providing and improving minor irrigations works, improving soil quality, and so on. It has also been an important means of financial inclusion for those workers who were earlier excluded from all forms of institutional finance, through wage payments made through bank accounts and post office savings accounts.

It is true that the programme has been marked by problems in implementation, which are acute in some states: corruption (although the extent of this is probably less than in many other government programmes that get less publicity); inadequate implementation, whereby most of the rules guiding the programme are ignored; lack of ensuring the right to work because the demand for work is often not registered until some work site is opened up; delayed wage payment, especially in some states, that has caused great hardship to workers; and similar issues.

Apart from the supply-side effects and the impact on improving agricultural productivity, MNREGA can have substantial effects in reviving stagnant rural economies through the injection of new demand provided by additional wage incomes. It has been found that the multiplier effects of such spending can be significant. A study conducted in Karnataka in 2010–2011 showed that the multiplier effects of expenditure from MNREGA were quite significant, ranging from 3.1 in the northwest region to 3.6 in the Malnad and coastal districts of the state (quoted in Ministry of Rural Development, 2012). A detailed study of a single village in Gujarat (Hirway, Saluja, & Yadav, 2009) using SAM modelling of the various economic activities found the increase in output to be more than double the increase in MNREGA expenditure. The relatively low value of the multiplier in this case (just above 2) was found to be related to the fact that around half the products consumed in the village are currently produced outside it, and because the village is backward, the output, income and the employment coefficients are quite low. The authors noted that value of the multipliers will increase with the MNREGA interventions because of increasing consumption of locally grown crops, likely increase in local processing of foodgrains, oilseeds etc, because of greater stability of output and more services becoming available locally with infrastructure and connectivity improvement. Further, increases in the income of the poor (who have high propensity to consume) will cause output multipliers to increase over time—these coefficients are likely to increase rapidly once the village experiences growth in productivity.

The countercyclical consumption-smoothing effects of MNREGA were particularly evident during the economic slowdown of 2009, when the effects of the Global Financial Crisis were felt in export-oriented manufacturing and hundreds of thousands of migrant workers lost their jobs in gem and garment and leather factories in the west and south of the country, and were forced to return home. The continued functioning of the MNREGA ensured both the survival of these workers and their families back home who had earlier relied on the

remittances such workers sent home. At present, as millions of formerly migrant workers are forced to return to their rural homes because of the economic collapse created by lockdown policies, such countercyclical effects are likely to be even more significant.

MNREGA has already had a substantial impact in increasing rural wages and reducing gender wage gaps, smoothening and stabilizing consumption of the poor, enabling better access to nutrition and other essential consumption, reducing extreme distress migration and providing opportunities for more household expenditure on health and education. In some areas it has also played a positive role in improving rural connectivity, improving supply conditions in agriculture and creating more sustainable forms of irrigation and production. It has also served as a built-in stabilizer of the economy during downturns and has the potential to add to long-term development possibilities. This makes it a major element of a future package of using public employment for economic revival and greater socio-economic equity. Indeed, in the current pandemic crisis, the MNREGA has proved to be the single-most important lifeline not only for the rural populations but distressed migrant workers who were forced to return home when their urban livelihood opportunities collapsed. In this context, it is absolutely essential to expand the scope and coverage of the MNREGA. At the very least the number of workdays offered per household should be doubled, since many are close to reaching the 100 days limit; ideally such employment should be offered to all adults (not per household) for an indefinite number of days as long as the economic and health crises persist.

## **6. The Positive Potential of Public Employment: A Blueprint for Future Policy**

Indian economy and society face fundamental challenges at present, only some of which are caused by the Covid-19 pandemic. While these challenges require bold and dramatic changes in economic strategy, this discussion makes it clear that a major

expansion of public employment must be an essential feature of any future macroeconomic approach. Public employment is now shown to be absolutely crucial for the basic welfare of people, whether in health, education, nutrition, labour conditions or a range of other aspects. Increasing public employment will also have a strong positive macroeconomic effect through its countercyclical properties, which will enable an infusion of much needed demand into the economic system, even as it improves the conditions of life for the citizenry.

The first and most obvious requirement is, therefore, that of filling all the existing vacancies in public employment, at both central and state levels. In addition, as has been argued in this chapter, India hugely under-provides public services, and therefore a major expansion of public employment is required—mostly at state government levels, because that is where the bulk of public services are actually provided. This in turn means that state governments must be provided with greater financial resources to enable such expansion, and the ongoing process of fiscal centralization must end.

The post-pandemic period must see significant increases in public expenditure on education and health, especially primary and secondary health, including for the urban and rural poor. This will require a tripling or more of the necessary personnel to enable quality public services in these sectors to be provided in a manner that is free and accessible to all. The ‘care economy’ provides immense scope for increasing employment. AWWs and ASHAs who provide essential services to the population, including during this pandemic, are paid a pittance and treated with extreme unfairness. Their status must be improved; they must be treated as regular government employees and given proper remuneration and associated benefits. In addition, the programme must be expanded to cover all rural settlements, including those currently excluded, as well as greatly expanded coverage in settlements of the urban poor.

The countercyclical and employment generating potential of the MNREGA has already been described. This programme must be expanded greatly

and revamped, with all pending wage arrears paid immediately. As noted above, the 100-day limit per household should be lifted to enable all adults to access wage employment for an indefinite number of days, or at least 200 days per year. The permissible work in the programme must include not just agricultural and construction work, but also work in care activities as well as in rural enterprises. It is urgently required to make farming viable, which requires a package that covers inputs, soil productivity and access to irrigation, as well as better access to non-exploitative markets and remunerative crop prices. One important element of this involves improving land productivity. The MNREGA can be used for this, paying wages for land development and farm work for small and medium farmers, apart from government support through remunerative procurement prices, subsidized institutional credit, other input subsidies and redistribution of unused land with plantations. Agricultural growth in turn can promote rural enterprises, both by creating a demand for their products and by providing inputs for them to process; and both these activities would generate substantial rural employment indirectly through positive multiplier effects.

It is also possible to think of expanding MNREGA to cover a range of care activities that could assist regularly employed public workers in various forms of provision that help to improve the quality of life, including elderly care and geriatric assistance, assistance for those with disabilities, home-based therapeutic services, and so on.

Linking MNREGA with non-agricultural enterprises will involve a significant shift, but it is worth considering at the present moment because of the extreme crisis faced by Micro, Small, and Medium Enterprises (MSMEs) in the post-pandemic economy. To enable small and microenterprises to survive, the revamped MNREGA could cover some part of the wage bills of rural enterprises started by panchayats (effectively a wage subsidy equal to the amount of the MNREGA wage), along with those of existing rural enterprises, until they can stand on their own feet. This can be an alternative strategy of development, recalling the successful experience of China’s Township and Village Enterprises (TVEs).

In urban areas, it is now time to introduce an Urban Employment Guarantee Programme to serve diverse groups of the urban unemployed, including the educated unemployed. Urban local bodies must take charge of this programme, and it would need to be revamped for this purpose. 'Permissible' work under this programme can cover a range of activities, including 'greening' of cities; revamping, repairing and refurbishing infrastructure and amenities; care work, including of old, disabled and ailing persons; educational activities and ensuring access to essential public services in slums. For the immediate conjuncture, it could also include employment in MSMEs, in the form of a wage subsidy along the same lines as noted for the rural programme. This would ensure labour supply for MSMEs and also cover their wage bills at the central government's expense until they become financially viable again as demand picks up across the economy.

This discussion makes clear that public employment should not be seen simply as a fiscal cost, which has become the approach of the government in recent times. Instead, it is not only crucial for a just, healthy, equitable and peaceful society, but can also play a hugely important role in economic revival.

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Stranded youth, construction workers, on a highway in Delhi attempting to find a means to reach their village as an unplanned and unforgiving lockdown plunged millions into the depths of despair. Worst affected were the footloose circular migrants with no real toe hold in the cities.

*Photo: Sandeep Yadav*

# Protection of Wages of Seasonal, Circular Migrant Labour in India

**Nivedita Jayaram and Priyanka Jain**

*Reviewed by Ravi Srivastava, Chinmay Tumbe*

## 1. Introduction

About half of the country's poorest households (accounting for about 470 million people) depend on wage labour for survival (NSSO, 2011; NCEUS, 2007). Therein lies the imperative for critically examining the relationship between wages of workers and the Indian state. Wage is a contentious issue. Friedrich Engels damned wage as a disguised form of enslavement and argued that it is inherently exploitative in nature, calling for an overhaul of production systems that necessitate such a relation (1847). Yet, unfortunately, the lives of millions of poor depend on the most extractive form of waged labour. Therefore, labour movements, both in India and globally, remain preoccupied with the struggle to raise and secure the earnings of poor workers. The Covid-19 pandemic, and the resultant lockdown, has brought to sharp focus the critical importance of wages to the lives of workers, and its socio-economic function. Without guaranteed and protected wages, millions of workers across the country were not able to access the basic minimum consumption required for the sustenance of their households, both within the cities where they lived and for sending as remittances to their families in villages. Wages no longer remained a feature of the

market, but determined workers' and their households' ability to survive. This was acknowledged by the central government, which brought out a circular immediately following the announcement of the lockdown, on 29<sup>th</sup> March 2020, stipulating that all employers would have to pay wages, without deductions, to workers during the duration of the lockdown. The 29<sup>th</sup> March circular, and appeals from the Prime Minister's Office (PMO), however, did not suffice to ensure wage payments to workers, who largely remained unpaid throughout the lockdown (Sarkar, 2020).

This crisis has a social dimension—it was seasonal and circular migrant workers who were the hardest hit by the pandemic. With no means of achieving accountability from their employers to provide for them due to a lack of formal contracts and standard employer–employee relations, as well as poor bargaining power and exclusion from state institutions and social support systems at their work destinations, they undertook difficult and painful, mass exodus towards their villages (Jayaram & Mehrotra, 2020).

Despite the central government's acknowledgement of its importance in sustaining the lives of a large section of the country's population, the

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proposition of securing minimum levels of wages through state intervention via minimum wage legislation has long been mired in debate. There is fearmongering by some, particularly those of the neoliberal strain such as Arvind Panagariya, that minimum wages will rob people of jobs and shut down businesses (Singh, 2019).

Contrary to these claims, many high-level reports show, through evidence and analysis, that minimum wage legislation is critical to pick the Indian economy out of its recent, worrying slowdown that had set in prior to the lockdown. The Economic Survey (2019), State Bank of India (2019) and Reserve Bank of India (2018) highlight that the stagnation in real wages, especially rural wages, has significantly dampened the consumption capacity of the poor, which in turn has slowed down the economy (Mohanty, 2019). These observations have assumed a greater significance as businesses struggle to resume operations in the vacuum of demand, and India's GDP takes a permanent hit, following the Covid-19 lockdown. Economists across the board have argued that income security is necessary for economic revival, arguing for measures that ensure disposable income in the hands of people, including through raising and protecting wages (Thomas, 2020; Muralidharan, 2020). Instead of spelling disaster on the economy, as the accusation stands from the neoliberal quarter, the implementation of minimum wages (set at an adequate level) has become central to boosting the economy.

In recent years, the strife around wages has been hitting a crescendo. In 2019, market-leading biscuit companies like Parle-G and Britannia sent alarm signals that their businesses are experiencing an unprecedented slowdown, forcing them to cut down production. Mukherjee argues that the counter-intuitive reason for their slowdown is that the purchasing power of their main consumers—labourers such as construction workers who often survive on a meal of tea and biscuits—has dipped so low that they are unable to afford Rs. 5 for a packet of biscuits! (2019) This is hardly surprising if we pay attention to the International Labour Organization's (ILO) analysis that the share of la-

bour in profits in the country has fallen alarmingly low, and to Mohanty's reporting that both rural and urban wages have been decelerating significantly (2018; 2019). Furthermore, the Economic Survey revealed that one in three workers are not even receiving the minimum levels of wages needed for survival (2019, p. 199). When read together, these instances signal the breakdown of institutions for the protection of workers' wages in India long before the Covid-19 lockdown, having adverse effects on the country's socio-economic situation which were only exacerbated with the pandemic.

The National Commission for Enterprises in the Unorganized Sector (NCEUS) Report (2007) casts a light on the overlaps and intersections that such macro-data has on India's historically disadvantaged communities and their livelihood patterns. It shows that the category of seasonal and circular migrants lies in the underbelly of India's labour market. This vast and diverse group is populated largely by stigmatized social groups of Scheduled Castes and Tribes (SC/STs) as well as religious minorities such as Muslims, whose long-standing socio-economic oppression relegates them to the bottom spheres of the labour market in the country. Despite around 44 legislations covering various aspects of wage payments and extensive provisions related to other aspects of work conditions, these low lying spheres of the labour market (where seasonal and circular migrants persist) experience among the lowest wage levels. This in turn produces and reproduces their poverty and historical disadvantages, despite their participation in the modern mainstream economy (Jain & Sharma, 2018).

This chapter focuses on the above-mentioned category of seasonal and circular migrants as they constitute one of the most excluded groups among those dependent on wage labour in the overall informal economy. It focuses on the questions: What is the role of the state in protecting wages of workers? How can the state extend this protective role to this highly excluded group who persist in one of the lowest and most insecure wage relations in the Indian economy? The chapter discusses these questions, locating them in the complex environment

of socially structured labour market dynamics; the political economy of labour migration and its relationship to India's capitalist, accumulative growth model; and, very importantly, in the Indian state's withdrawal from its role of protecting the rights of labour, including those related to wage. The chapter draws on vast secondary and primary knowledge on the topic, including macro-studies on labour market trends and micro studies on everyday realities surrounding wage. It also relies on published and unpublished documentation by authors as part of their work with Aajeevika Bureau, a migrant and labour rights organization working in different rural and urban labour markets across western India.

The paper begins by exploring the normative basis for envisioning a role for the state in protecting wages. It synthesizes how this relationship was viewed by the Indian Constitution and other institutions of a recently independent Indian state, further influenced by the country's social movements and bolstered by a growing global consciousness on wage and labour rights as central to the notion of citizenship. It goes on to streamline the role of the Indian state as a legislator, enforcer of regulations and deliverer of justice in relation to wages. The chapter argues that while wage is a component of market forces, the state's role in *protecting* wages should be as non-negotiable and foundational. It argues that state interventions—such as fixing minimum wages at levels needed for sustaining life, creating an enabling environment for workers' collective action to be able to raise wage levels further, regulating industry to prevent loss of wages through unfair deductions and cheating and utilizing the state's justice architecture to reinstate the rights of aggrieved workers over their wages—should be seen as part of the social contract between the country's citizenry and the state. The chapter argues that there are adequate legal and normative bases to view *protection of wages* in the same spirit as a public good. The realization of protected wages is so crucial to basic human, dignified life that it necessitates the role of the state to guarantee this right. Talking within this paradigm, the paper focuses on how such a protective role of the state can be extended to seasonal, circular migrants' wages.

Section III discusses the complex mechanisms that operate in India's labour market through which the rights of migrants over their wages come to be suspended. Section IV maps the worrying trends displayed by the Indian state in its role of legislator, enforcer and deliverer of justice in the arena of wages. This analysis highlights that the Indian state, particularly after the economic reforms of the 1990s, has been withdrawing from these roles. The collusion with industry in denying basic labour rights, including those related to wages, has also emerged as a marked trend in the state's approach. Read together, Section III and IV highlight a distressing gap between the role required of the state by the poorest and most vulnerable workers in the Indian labour market, and its actual trajectory. Section V traces the dire consequences created by this gap between the needs of excluded labouring groups and the current bent of the Indian state. Wrestling with this complex backdrop, the chapter moves on, in Section VI, to explore the limited examples that exist of state governments in India that have attempted to extend protection to migrant workers. It critically examines these initiatives, in particular by Kerala and Rajasthan governments, to draw lessons and insights relevant for the national context. Section VII discusses the role that the labour movement has played historically in acting as a counter-veiling force to the Indian state, forcing it to undertake its duties vis-à-vis wages. It lays out the challenges that lie ahead of the movement that are deeply connected to the ability of the state in being able to provide protection to excluded groups of waged workers. Section VIII derives from all the afore-mentioned discussions to outline mechanisms, processes and ways to extend the state's role in protection of wages to seasonal, circular migrants of the country. The chapter concludes, in Section IX, reiterating that this manner of protection is not just an immediate need of the poorest sections of the Indian population, but is also deeply connected to the larger project of inclusive and equitable economic revival in the post-pandemic phase, and for deepening Indian democracy in the midst of unrest triggered by rising unemployment and impoverishment, coupled with low and unprotected wages, which has only been aggravated by the lockdown.

## 2. Normative Bases for Protection of Wages as a Public Good by the State

Adequate wages have historically been a mainstream idea and a recurrent demand of workers' movements in India. Since colonial times, working class movements have pushed for higher wages as a central component of their strikes against employers. Several legislations that protect freedom of association and collective bargaining—such as the Trade Union Act 1926, Industrial Disputes (ID) Act 1947 and several laws that form the Factories Act 1948—have come into being as a result of workers' struggles for wage determination and pushing up wages. These legislations acknowledged that enabling workers to carry out collective bargaining as a strategy to claim workers' share in profits by increasing wages is a central mechanism for ensuring industrial peace and economic growth. A significant example is that of the Madras Labour Union, formed in 1918, amidst labour unrest fuelled by poor working conditions and repressed wages in Madras city. In the aftermath of the strikes, and its severe consequences for European capital, the colonial government was forced to enact the Trade Union Act in 1926, which decriminalized strikes and granted workers the right to form unions (Sundar, 2018).

While labour struggles in the colonial state was appropriated by the Indian National Movement as a common agenda against British government and capital, the post-Independence period in India witnessed the distancing of political leadership from working class movements. Dr. Ambedkar, in his speech at the Indian Trade Union Workers' Study Camp, critiqued the emphasis on liberty and freedom of contract without taking into account the socio-economic inequality which influences these processes as a troubling tendency of parliamentary democracy and the process of nation state building (1943). According to him, democracy is synonymous with equality, and without achieving socio-economic equality, the project of parliamentary democracy would merely signify 'a government of the hereditary subject class by a hereditary ruling class' (as cited in Sharma, 2017).

In the Indian Constitution, this tendency of parliamentary democracy is reflected in the higher priority accorded to civil and political rights of citizens, which are protected as fundamental rights. Socio-economic rights, including food, health-care, education, housing and adequate wages are accorded secondary status in the Directive Principles of State Policy (DPSP). As a result, labour movements in newly independent India focused on achieving socio-economic equality for the working class through legislations (Agarwala, 2011). The first organized labour strikes in India were focused around enactment of legislations such as the Minimum Wages Act 1948, which protected workers against 'starvation wages' and allowed them to achieve a fairer share of industrial profits (ibid). Working class struggles for achieving socio-economic equality and substantive citizenship included adequate wages as a central component along with access to welfare provisioning and regulation of working conditions.

Article 43 of the Indian Constitution states that 'The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities' Article 39 states, in particular, that the state shall direct its policies towards ensuring '(a) that the citizens, men and women equally, shall have the right to an adequate livelihood... [and] (b) that there is equal pay for equal work for both men and women' (Constitution of India, 1950) In India, the labour movement played the critical role of securing these socio-economic rights as public goods, including the rights to education, healthcare, food and housing. It also resulted in progressive and comprehensive labour legislations, including wage protection laws, which provided a minimum floor of rights to workers and protected the interests of workers against that of capital by restricting capital from extracting workers (Papola & Pais, 2007). The protection of labour rights ensured that the benefits of industrial growth would lead to the economic betterment and social regeneration of its labouring population in

order to attain social justice and establish a welfare state, in return for which workers promised industrial peace (Thakur, 2007). Following this, such a view has also been upheld through judicial activism and judgments such as Justice Bhagwati's landmark ruling (1982, cited in Agarwala, 2011):

The only solution of making civil and political rights meaningful to these large sections of society [that is the poor] would be to remake the material conditions and restructure the social and economic order so that they may be able to realize the economic, social and cultural rights.

The concept of adequate wages, as utilized in this paper, includes two components: minimum wages and living wages. The discussions at the Indian Labour Conference (ILC) in 1957 have great significance for understanding adequate wages in India. It unanimously adopted a formula for fixing of minimum wages on a needs-based criteria. Such a criteria is used to de-commoditize labour, fixing wages at a level that will allow labour-dependent households to achieve a basic dignified standard of living rather than basing it on the productivity of labour or the firm's capacity to pay alone. The needs-based criteria includes specific nutrition requirements (defined in calories), clothing and housing needs, medical expenses, family expenses, education, fuel, lighting, festival expenses, provisions for old age and other miscellaneous expenditure. Minimum wages would, therefore, not only ensure minimum consumption, but also fulfill social and cultural needs of the workers' households.

Following this, the Supreme Court, in the *Workmen v Raptakos Brett & Co* case (1992), laid down six criteria for fixing minimum wages, including: a) Three consumption units for one earner; b) minimum food requirements of 2,700 calories per average Indian adult; c) clothing requirements of 72 yards per annum per family; d) rent corresponding to the minimum area provided for under the Government Industrial Housing Scheme; e) fuel, lighting and other miscellaneous items of expenditure to constitute 20 percent of the total; (f) children, education, medical requirements, minimum recre-

ation including festivals/ceremonies and provision for old age, marriage, etc. to constitute 25 per cent of the total. This has been rearticulated in the 44<sup>th</sup> and 46<sup>th</sup> ILCs held in 2012 and 2015 respectively, and the 7<sup>th</sup> Pay Commission had set Rs. 18,000 as the minimum wage for central government employees based on this criteria. While central government employees have further demand a hike of minimum wages to Rs. 21,000, central trade unions have repeatedly pushed for the implementation of similar criteria in determining minimum wages for all wage labour—demanding Rs. 21,000 as minimum wages during the nationwide strike on 8<sup>th</sup> January 2020 (Jha, 2020). Such criteria for fixing wages has not featured in the government's methodology, but provides a strong precedent for strengthening legislation for statutory wages which balances the needs of workers as citizens against accumulative capitalist growth.

On the other hand, the transformation of an adequate minimum wage, as a statutory right, into a living wage which allows workers to share profits commensurate to their contributions is enabled through a process of collective bargaining. Gearhart argues that living wages are best determined through collective bargaining processes as workers are more aware of the level of wages that is required for them to have a decent standard of living, and can effectively gauge the wages that they deserve in terms of the labour power that they expend and the firm's capacity to pay (2009). Living wage, thus, calls for collective bargaining methods to increase workers' control over production through participation in wage determination.

The right of labour to adequate wages has not only featured in relationship to their status as citizens of liberal democracies, but also as a universal human right over and above citizenship status. It has been upheld by the Universal Declaration of Human Rights under Article 23: 'Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity' (United Nations, 1948). The normative basis for the inclusion of living wages as a human right, therefore, signals that

liberty—in the political and civil sense as well—cannot be achieved without simultaneously protecting socio-economic rights, which allow labourers and their families to remain above the poverty line, improve their material reality and participate in social and cultural life. The declarations of the ILO also establish the right to a living wage as a human right, stating in the preamble to its Constitution that living wages are the basis for social justice, without which universal and lasting peace cannot be achieved. As a signatory to ILO Conventions and the Universal Declaration of Human Rights, the Indian government has committed to protecting adequate wages and recognizing its centrality to achieving socio-economic equality and, consequently, upholding its democratic structure.

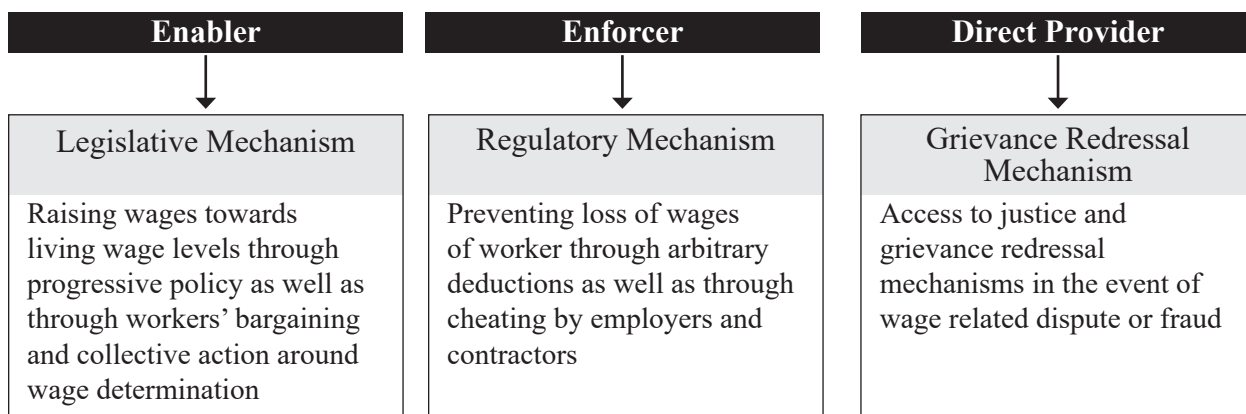
### ***2.1 Conceptualizing Protection of Wages as a Public Good***

The demands of workers' movements provided the basis of the state's protection of wages, both through legislations for setting statutory minimum wages and enabling the right to collectively bargain for pushing wages towards living wage levels. It has also established institutions for enforcing this legislative framework by regulating the employer and providing grievance redressal to workers in the case of non-compliance. This means that, as mentioned previously, labour movements have historically relied on legal empowerment through legislations to establish the minimum floor of rights available to waged workers as individuals. At the same time, they have sought state support to augment their collective bargaining ability to push industries to pay higher wages as a collective right. Labour rights, including wages, formed an essential component of the social contract between citizens and the state, where citizens promised their labour power in return for the state's commitment to protect their rights.

In other words, protection of wages can be articulated as a public good, which is essential to achieving substantive citizenship and a healthy, functional democracy. A public good, for the scope of this paper, is understood as any good or service that is to be provided by the state due to its centrality

to human well-being. It is often complementary to other public goods, or a pre-requisite for accessing them—as the lockdown period revealed that wages, and remittances from migration, were necessary for workers and their families, regardless of public provisioning, without which they were not able to meet their consumption needs for food, shelter, water, sanitation and healthcare.

The central government circular of 29<sup>th</sup> March, 2020, asking all employers to pay wages during the lockdown had little effect, and was eventually withdrawn in June 2020. This is because in the past three decades, the structure of the labour market has altered significantly—marked by the casualization and informalization of labour, a lack of employee–employer relations or written employment contracts and long chains of intermediaries between workers and employers. Such features of the labour market allow employers to act with impunity and remain unaccountable while cutting costs through wage violations (Sankaran, 2007). Alongside this, rather than attempting to extend protection to the informal and migrant workforce, the role of the state in protecting the wages of workers has been steadily eroded through the labour reforms agendas of successive governments. Since the 1990s, there has been a steady dilution of labour legislations and a weakening of the state's regulatory and justice delivery institutions which can be activated in case of non-compliance to labour protection laws (Mitchell et al., 2014). This was evident in the announcements by several states such as UP and MP, which moved ordinances for suspending core labour protective legislations, as the singular solution for ensuring economic revival by improving the 'ease of doing business'. The central government, on the other hand, has assured its commitment to its labour reforms agenda, which has been opposed by workers representatives and trade unions as effectively dismantling the labour protection regime by diluting and weakening provisions of existing legislations in consolidating them as four Labour Codes (WPC, 2019). In fact, the top policy body in the country—the NITI Aayog—welcomed the UP government's decision as 'bold' and encouraged more states to follow suit, ignoring the advice of



economists that wage and employment security is key for economic revival, rather than the suspensions of labour laws (Kant, 2020).

This reversal of the state's mandate necessitates an urgent and strong articulation of the protection of wages as a public good. Without the intervention of the state, informal and casualized labour, facing high levels of marginalization and fragmentation, will be further commoditized in the post-pandemic phase—viewed merely as a factor of production, rather than as citizens who can stake claims over profits through their socio-economic rights. The state performs this function by providing a statutory basis for capital's accountability in ensuring a fair distribution of profits and ensuring that the grievances of labourers are addressed when capital fails to provide wage security to workers (Papola et al., 2008). In such a context, the conceptualization of protection of wages as an essential public good must take on a comprehensive form, which addresses the diverse means through which the wage security of labourers is being undermined in the current model of capitalist growth. This necessitates the state to perform three roles:

1. *State as enabler*: This requires the state to establish mechanisms to set adequate wages that permit the basic economic, social and cultural fulfillment of labourers and their families. This includes both coherent methodologies to set a floor of minimum wages which allow labouring communities to meet basic standards of living, and inclusive processes such as the augmenting of workers' collective bargaining platforms to demand higher wage rates over and above the minimum wage, which prevents

the cheapening of labour and improves labour share in profits based on the firm's capacity to pay. This requires the state to act as enabler by creating an environment conducive for wage security through progressive legislations and executive action.

2. *State as enforcer*: The reality of pervasive wage thefts and non-enforcement of existing labour legislations must be corrected through mechanisms which pre-empt and prevent arbitrary deductions from wages and other measures taken by employers for cost-cutting by denying workers their rightful wages. This is possible through the state's supervisory and regulatory role over industry to ensure that violations are reported and punitive measures taken to curb and discourage non-compliance.

3. *State as direct provider*: Institutions responsible for delivering justice must be made accessible to labourers and effective in responding to violations of wage legislations by employers. In this context, the state is responsible for the direct provision of justice to labourers facing violations of wage laws.

### 3. System of Labour Migration and Protection of Living Wages

Informal, casual labour, which makes up the majority of India's workforce, faces varying levels of exclusion from the public good of protection of wages. Seasonal, circular migrants form a substantial category within the informal workforce, wholly excluded from the state's guarantee to protect wages. This can be ascertained by mapping their status vis-à-vis the three dimensions of wage protection that were laid out in the last section. Along these three

dimensions, we find that migrant workers experience a culmination of disadvantages which place them in a particularly fragile location, distant even from the possibility of enjoying wage protection.

### *1. Wage protection not accessible to sub-segments of the labour market*

India's wage crisis has affected all sections of the working class, with one in three workers not receiving minimum wages (Economic Survey, 2019). Seasonal, circular migrants form a large majority of this group of workers.

Chandrasekhar and Ghosh (2014) find that India's labour market shows strong trends of wage differential across social categories, with STs, SCs and religious minorities trapped in low wage livelihoods, and women and children within these social groups faring even worse. The 2007 report on unorganized workers by the NCEUS highlighted that there is a strong overlap between these historically marginalized groups, that are also trapped in the poorest economic quintiles in the country, and the phenomenon of seasonal and circular migration. The report argues that migrant workers come from the poorest, historically most oppressed groups that are now toiling under the lowest strata of India's highly unequal labour markets. The Labour Bureau's reports on the implementation of minimum wages corroborate this (2013; 2014). It reveals that extreme rural distress and dispossession from rural livelihoods, leading to conditions of indebtedness, loss of income-yielding assets and the non-availability of decent work in rural regions, forces impoverished and historically marginalized rural groups to migrate to seek work in informal labour markets that pay well below minimum wages. Compelled to work for low wages, these communities tend to occupy the 'bottom-of-the-heap' jobs in informal labour markets (Breman, 2013).

Many labour economists and anthropologists, such as Rodgers and Soundararajan (2016), Papola (2012), authors of the NCEUS report (2007), Breman (2013) as well as Shah and Lerche (2018), agree that in India's labour market, wage discrimination is an entrenched feature. However, the nature of this discrimination can be hard to call out.

They function less as unequal wages for equal jobs, but more through highly unequal pathways to access jobs with decent wages. The wage differential therefore manifests in a way that labour from social groups of SCs, STs and religious minorities have a disproportionately higher chance of receiving minimal wages throughout their lives, being isolated in sub-segments of the labour market (where even legally mandated minimum wages may not be paid) with very high barriers to accessing better spheres of work where living wages are a possibility.

### *2. Poor enforcement and lack of access to justice delivery institutions*

Low wages are merely the first assault on the right of migrant workers to protected, living wages. It is a very common practice among employers and contractors to make arbitrary deductions from the wages of migrant workers. The insecurity and irregularity of wage flows for migrant workers is made worse by the high rates of wage theft they experience from their employers. As mentioned previously, Aajeevika Bureau found that more than 68 per cent of the 300 migrants studied reported experiencing a major dispute at work (most frequently related to wages) at least once in the last one year (2008). Migrants reported that is a common experience for employers to deny paying wages or full wages for months at a time, effectively holding the worker hostage at the worksite without pay. If the worker leaves, he or she knows that they will never be able to recover their earnings. While there are numerous ways in which even the minimal pay of migrant workers are eroded, the study found that none of the workers had taken their case to any formal legal channel. They were all forced to forfeit their wages and reported that they were not aware of any redressal mechanism that would hear their grievances and help secure justice.

### *3. Exclusion linked to the 'system of migration'*

The deep irony in talking about living wages for migrant workers is that the very logic behind industry's strong preference for such temporary, mobile workers is that they do not have to pay living wages, not even minimum wages, in many instances. Mitra,

Samaddar and Sen argue that in India's contemporary capitalist economy, hiring migrant labour is a central way for capital to accumulate profits (2017). Cockcroft (1983) and Burawoy's (1975) critique of the system of migrant labour highlight that this is not unique to India but a dominant mode of functioning in the global capitalist system, in which employers maximize profits by hiring migrant labour, saving costs that would have been much greater in case they had employed local labour. The latter, typically, have higher bargaining power and state machinery that is less averse to taking responsibility for them as local communities. With migrant workers, employers save because they can totally avoid bearing the costs of the worker's household and family. The audacity to outrightly neglect this fundamental, social function of wages is a lot more possible for employers in case of migrant workers. Inherent in the very logic of hiring migrant labour is that the employer can abandon bearing standard costs of employees, such as health, nutrition, old-age, education and other basic human needs of the worker and the household, appropriating all of these as profits. Discussions and efforts to realize protected, living wages for migrants are doubly beset with such seemingly intractable problems and contradictions.

Though Cockcroft (1983) and Burawoy's (1975) critiques come from the larger Global South context, Breman (2013)'s landmark empirical work on migrants in India reiterate the insight—that inherent to the very logic of the system of migration is refusal to pay living wages—in India's context. Shah and Lerche also point out that the cyclical and seasonal forms of labour circulation in the country are generated by industry to cheapen labour as well as to control it; that is, to pre-empt demand-making and other forms of resistance to their methods of extraction (2018). For instance, Raj's empirical work shows that migrant labour from eastern and central India are usually paid the lowest among the various groups of labourers found at their works destinations, much lower than local workers, even if the latter are also from SC or ST backgrounds (2018). Moreover, they argue that for the industry, dividing workers by caste and region and hiring

desperately poor labourers who feel alienated in their worksites is a key strategy for taming them. Excluded from trade unions as well, such a system precludes any significant possibility that workers are able to organize and undertake the forms of collective action that have the power to raise wages of workers (Sharma et al., 2014).

### ***3.1 Mechanisms that Suspend Migrant Workers' Right to Protected, Living Wages***

Why are the experiences of seasonal and circular migrants so far removed from even the minimal degree of wage protection, as illustrated above? Such deep insecurity cannot be ascribed to an absence of protective labour legislation, since there are around 44 Central and state laws that are applicable to informal workers (including migrant labour), which have extensive provisions on wages, terms and conditions of work, right to association, social security, life and accident (NCEUS, 2007). These vary in terms of criteria and have their limitations based on firm size, but nevertheless cover a very significant section of the informal workforce (Chandrasekhar & Ghosh, 2002). Though not without shortcomings, the Minimum Wages Act 1948, the Payment of Wages Act 1936, Payment of Bonus Act 1965, and Equal Remuneration Act 1976 had provisions to prevent the wage thefts and arbitrary deductions highlighted in the last section.<sup>1</sup> Therefore, the unprotected, insecure and low wages routinely experienced by migrant labour is not the result of absent legislation, but because of their dilution through the labour reforms agenda, and poor enforcement and grievance redressal mechanisms.

Rampant wage violations experienced by migrant workers, we argue, germinate in the very structure of India's labour market and its high degree of segmentation along the lines of social hierarchies. But how do these larger structures and labour market characteristics play out on the ground,

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<sup>1</sup> These four central legislations related to wage protection have been amalgamated under the Labour Code on Wages 2019 which was enacted by the Parliament in August 2019. The rules of the Labour Code on Wages is currently in draft form, and there is no clarity on the timeline for its finalization or implementation. In the interim, the existing wage legislations continue to be in use.

in the everyday lived realities of migrant workers struggling in the country's informal markets? We argue that it is critical to unpack the norms, practices and dynamics that surround the everyday transactions and processes that govern the payment of wages to migrant labour to be able to demystify the mechanisms that generate exclusionary outcomes for them. This section highlights how these factors function to routinely suspend labour laws and instead regulate behaviour of employers and labourers based on a set of extra-legal norms. These processes explain the tragic gap between the vision of adequate and protected wages (already enshrined in existing labour laws to some degree) and the wage flexibility that has come to dominate worker–employer relations in these spheres of India's labour market.

### *3.1.1 Socio-economic Inequalities Inform Contract Negotiations*

Informal and migrant labour across different sectors and employment types are unable to access written contracts—with 80 per cent of the workforce not having any form of written contracts, and the large majority of the remaining 20 per cent with short-term contracts of less than a year (Sapkal & Sundar, 2017). In the construction sector, where migrant labour often seeks work at labour *nakas* (daily wage labour markets) or are hired directly by contractors from their villages to work on construction sites, the workers are unable to seek basic information or negotiate the terms and conditions of work (such as hours, duration for work completion or how many workers are required for the job, or even the contact details of the contractor). The authors' experience at the labour *nakas* across Rajasthan and Gujarat reveal that contractors and employers do not like to hire workers that ask questions, even if it is to seek information on the terms of employment. '*Yeh mera interview le raha hai*' ('He is trying to interview me') is an illustrative response that a contractor gave to the authors, complaining that some workers ask too many questions. Contractors also said that they prefer migrant labour as they will live on the site. If they remain on-site, they can be called in to work at any time, without negotiations about over-

time payment and work hours. Their dependency on the contractor and employer as their only connections in the city prevent them from undertaking these negotiations on equal terms. The terms and conditions of the contract is shaped by a long history of social hierarchy between workers on the one side and their contractors and employers on the other, with workers usually belonging to lower castes and tribes while contractors and employers are usually from dominant castes. This plays a huge role in how they perceive each other, in creating a sense of entitlement among the latter and an attitude of submissiveness in the former. Though there are many instances of worker resistance, caste relations continue to guide the everyday transactions and behaviours in these labour markets, including the right to seek or the duty to provide basic information, which forms the basis of contract formation.

Unlike the formal sector or relatively more standardized forms of work in the informal sector, here, 'work' constitutes many different jobs and roles that the labourers might have to perform. Especially in the construction sector, through various phases of construction, workers perform various roles with varying payment rates. Workers rarely keep an adequate, written record of the tasks performed by them, capturing measurements of time, volume or the intensity of the job. This leads to a one-way record-keeping by the employer, who after the work is performed, provides *hisaab* (an account), which workers find hard to challenge in case of discrepancies. As mentioned above, migrant workers interviewed by the authors during Aajeevika Bureau's case resolution process reported that at this stage, contractors provide abstruse calculations, use technical language or they complicate the chain of events, confusing the workers. Even if the worker is able to spot the discrepancies in the calculation, lack of a written record, poor knowledge of wage-related labour laws and fear of the contractor often prevents them from negotiating for their due wages. Often, workers are forced to leave work because of workplace accidents or harassment. In such cases, typically the employer refuses to bear the cost of medicines, treatment or accident com-

pensation, and in some cases, workers even have to even bear the risk of forfeiting wages for the days when the work was performed.

### *3.1.2 Suspension of the Standardized Notion of Wages*

These mechanisms are further complicated where a standardized notion of wages is suspended. A significant example is the perverse system of advances that exists across many sectors—where labour is paid a lump sum before migrating to work in distant worksites to pay off the amount. In the brick kilns in Punjab, for instance, as reported by Anti-Slavery International and Volunteers for Social Justice, there is a strong preference for inter-state migrant labour who tend to take higher advances due economic desperation, leading to greater indebtedness (2017). Employers and contractors then employ different means to ensure that workers are in a perpetual cycle of indebtedness to extract cheap labour. Firstly, the payments are based on a piece-rate system, where the entire family unit is paid for every 1,000 bricks that they produce. This incentivizes migrant families to work longer hours, with women and children engaged as unpaid or invisible workers. The wages and conditions surrounding work are altered unilaterally by contractors and employers, who make illegal deductions such as transportation, electricity and equipment costs. The wages are withheld until the end of the season, and it is always reported back to the workers that their advance amount has still not been paid off. Even where workers have a record of their work, it often doesn't match that of the management, and they are not able to take any action.

Similar processes are prevalent in the agricultural sector. In Idar, Gujarat, the authors interviewed migrant families who are employed as sharecroppers with a 6<sup>th</sup> or 7<sup>th</sup> share of the produce from the farms they work on. They are brought to the farms with an advance, and are expected to work throughout the season to pay off this debt. The contractor keeps an account of the work performed. Multiple deductions are made from their share based on a system where small amounts of cash are given to migrant families to pay for emergency expenses

such as health issues. This amount is then adjusted from the final share. Many migrant families reported to the authors that they end up owing the employers money at the end of the season as a result of this system, often having to pledge their labour for another season to pay it off.

In small hotels and *dhabhas* (roadside food stalls) of Gujarat, which employ single male migrants, including children, Jain and Sharma find that employers tend to withhold 15 days of wages from workers as a disincentive that prevents them from leaving work to go back home (2018). Though prohibited under the Payment of Wages Act 1936, this is a deeply entrenched system in the hotel sector, normalizing conditions of captivity by introducing a risk of wage forfeiture. Similarly, they find that contractors deduct money from migrants' wages for medicines and doctor's fees, even if the cause of illness is related to the occupation, and therefore, the employer's legal liability.

Afraid of perpetual indebtedness through advances, aggravated by the payment systems described above, workers push themselves to work more and more for rates well below minimum wage. Employers and contractors prefer migrant workers as they can easily bind them in such cycles of indebtedness, with very little power or opportunity to bargain or raise questions against these unjust systems.

### *3.1.3 Caste and Gender Relations Create Sense of Impunity amongst Offending Employer*

Wage violations among migrant labour are also closely related to poor bargaining power. Based on their observations of relationships between employers and workers in factories, construction sites and other production units in destination cities like Ahmedabad, Surat and Mumbai, Aajeevika Bureau's Workers' Right Centres report that wage theft is often accompanied by a total sense of impunity among employers, which further increases or decreases depending on the social group and standing of workers involved. For instance, while employers regularly treat workers from SC groups with disdain, use abuses to address them instead of their names, they display some degree of fear or hesitation in seizing their wages because of the existence

of Dalit groups and mobilizations in the city, even if the reach of migrant workers to these groups is rare. However, employers are aware that Adivasi workers are entirely defenceless and widely dismissed as subhuman and uncivilized. With such workers, employers display an unabashed sense of impunity in deducting and withholding wages. Employers also deploy a range of intimidation methods to prevent reporting or protest by workers, threatening them with repercussions. Workers report to Aajeevika Bureau's centres that the fear of losing work opportunities and being accused with false charges of theft by the employer that they would not be able to defend themselves against make them reluctant to report wage violations by employers.

Wage violations are also gendered in nature. In the instances of brick kilns and agriculture sector mentioned earlier, women and children work as a part of the family unit, where their labour is both unrecognized and undervalued. Even in the construction sector in urban areas, women are often hired under the *jodi* system, as a pair with their husbands or male relatives. They are paid as a labouring unit, as 1.5 labourers, rather than as two individual workers, even though both the man and women perform equally strenuous manual labour. Employers and contractors are able to utilize patriarchal norms to underpay women and push down labour costs. In Ahmedabad, this translates to a large gendered pay gap in the construction sector, with women being unable to negotiate their wages or exercise any control over their income, which is directly handed over to their husbands (Jayaram et al, 2019). Interestingly, across the country, from garments factories in Tiruppur, Tamil Nadu (De Neve, 2016) to rural non-agricultural waged work, adolescent girls and single women have become the most preferred workforce (Srivastava & Srivastava, 2010), as their low bargaining power and compulsion to work due to the economic condition of their families, alongside the easy devaluation of their work because they are young girls and women, allows employers to reduce their wages well below minimum wage levels.

#### *3.1.4 Dilution of Accountability through Obfuscation of Employee–employer Relationships*

Large chain of intermediaries in hiring migrant labour results in complex contractual chains, with information, discussions and relationship between different actors in the chain remaining undisclosed. For example, in the construction sector, it is often the case that workers do not have the means to know what their work arrangements are, including wage rates that have been decided between the subcontractors and the main contractor or the engineer and the builder, or who is responsible for ensuring their payments and welfare. At this stage itself, not only is the work contract unwritten and the basic terms and conditions of employment unclear, but the employee–employer relationship is further obscured by a contractual chain where information does not flow to migrant workers (Aajeevika Bureau, 2008).

Given the unequal historical power enjoyed by social groups that tend to occupy the worker–contractor hierarchies in the labour market, the employers have much more room to engage in opportunistic behaviour. In the 13,088 wage theft cases registered with Aajeevika Bureau, the common trend among them was that the employers would try their best to avoid any documentation that would establish an employer–employee relationship between the migrant worker and them. Simple rules of accountability such as providing receipts for payments, maintaining attendance registers, providing written hisaab of deductions made, are intentionally avoided to keep the employer–employee relationships vague and outside the purview of law. These relationships are further obscured in the case of women, who are employed as a family unit or as part of a couple.

Even in the sectors where women dominate the workforce, such as small manufacturing units through home-based work or as domestic workers, they are rarely given the status of workers and the establishment of employee–employer relations is doubly challenging. For instance, domestic workers face a multiplicity of employers, often working in many homes on any given day for a certain number of hours. This affects both their ability to hold

a single employer to account for paying adequate wages and also further obscures employer–employee relations (Sarkar, 2019). In the case of home-based workers, the authors’ investigations in Surat, Ahmedabad and Mumbai found that women perform important value added activities to products that are sold in local, national or global markets. However, it is impossible to trace the product back to the principal employer, which are usually large retail brands which produce different parts offshore to keep costs low. Women are given specialized work such as sewing buttons, cutting threads from textiles, embellishments etc. on subcontracted basis by agents who then take the final goods to local units that aggregate the product to sell in the domestic market or to export houses that supply to international brands. Home-based workers are not considered workers, but as self-employed, and are paid on a piece-rate basis. They are required to take the risks for the quality of the product and market demand, often not receiving payment due to orders being rejected or unsold. Their earnings are pushed down due to intense competition around these contracts (Jhabvala & Shaikh, n.d.). Without official recognition of their work—which is considered an extension of what is considered their natural, unpaid work as women—or any form of documentation of this work, they do not come under the ambit of law, reflecting the patriarchal norm of devaluing work performed by women within the domestic sphere.

Even where workers are able to establish work relationships, it remains restricted to contact with petty contractors who supply to big builders or large companies or marginal employers who supply products to retail brands in domestic or global value chains. During the Covid-19 lockdown, workers were only able to ask help from their petty contractors or marginal employers, who were themselves struggling to survive the lockdown due to their survivalist status and small profit margins, with no liability falling on those at the top of contracting or supply chains, where profits accumulate. The cost of the slowdown is ultimately passed by contractors and employers to workers, through renegeing on wage payments (Jayaram and Mehrotra, 2020).

The above examples illustrate that not only is the standardized notion of work as applicable to the organized sector absent in the sub-segments of the labour market where migrant labour is employed, but the standardized notion of wages does not exist as well—facilitated by long contracting chains and opaque supply chains, which pin responsibility on petty contractors and marginal employers, rather than big retailers, export houses and large builders who benefit from cheap labour. Rather, perverse payments systems, informed by caste and gender based relations, is the norm, and the means through which the costs and risks of production is passed on to the worker. Rather than extend state protection of wages through improved enforcement mechanisms and institutions for calling employers to account, the labour reforms agenda undertaken by successive governments have moved in the opposite directions.

#### **4. State’s Response to Exclusion of Migrant Labour from Wage Protection**

Rampant wage violations among migrant labour are caused by the supplanting of protective wage legislations by extra-legal norms and mechanisms of exclusion. The failure of the state to protect wages in sub-segments of the labour market, where the overwhelming majority of migrant labour is employed, is viewed as a consequence of the ungovernable nature of the informal sector rather than a result of the socio-economic structure and nature of the state. As a result, within academic discourse and policy and practice spaces, the informal sector has been vilified as the ‘illegal’ sector where labour protective laws, including wage protection, cannot be implemented (Kamath, 2017). However, trade unions and civil society organizations have actively been using existing wage-related legislations for protecting the wages of informal and migrant labour. We argue that *wage violations in the informal sector is symptomatic of a larger, more perverse, underlying structure; one which breeds, produces and reproduces wage insecurity for workers through the in-*

*creasing trend of keeping work casual and cheap, coupled with the forces that have come to normalize and legitimize this mode of hiring.*

#### **4.1 Deepening Informality as a Means for Labour Cheapening and Flexibility**

Breman argued that after Independence, the informal economy was viewed as the residual sector, with pre-modern modes of production emerging from the traditional sectors of the country (1996). The expectation was that with India's economic development, these would eventually come of age and become part of the organized, formal sector. However, the trajectory of the global capitalist economy and India's complicit neoliberal shifts have shown that the informal sector is not a leftover of the traditional, but a zone of flexibility that is actively and consciously created for modern, capitalist interests from the very top, linking formal and informal sectors in inextricable ways. A simple instance of this is that the most modern, multinational and glamorous industries such as fashion wear, sport equipment and automobiles, actively subsidize their costs by shifting production to small, dirty and dangerous informal units that are highly prone to labour rights violations (including wage theft), while maintaining an arm's-length and legal distance from the whole arena of the informal economy (Jha 2014; Khara & Lund-Thomsen, 2012; Mezzadri, 2008). Such shifting of production is not incidental but strategic and directly related to avoiding costs associated with compliance to labour regulations, including those that seek to protect wages (Sankaran, 2007).

Causalization of work allows for capital to deploy various types of flexibilities which operate as norms that shape production and labour processes. In the sub-segments where migrant workers toil, high degrees of flexibility shape the rules of the game. Sen and Dasgupta (2009) argue that there are three major ways in which employers turn a work environment shaped by laws into one shaped by their extractive norms: One, by hiring in temporary and non-standard manners through sub-contractual chains to ensure that workers' claims and rights, legally and practically, are reduced to the minimum (numerical flexibility). Secondly, by ad-

justing wage levels freely, to stay competitive and reduce costs (wage flexibility). Thirdly, by shedding workers in low season and not hiring additional workers during peak demand but making lesser number of workers perform unpaid or underpaid overtime work (temporal flexibilities). In a work environment shaped by such adverse logic, wages can be easily cheapened, arbitrarily deducted and made insecure. Sundar argues that such informality is not just a feature of India's general poverty conditions, but also actively sought by the industry that has means to bear costs of formal rules but undertakes all kinds of methods to circumvent such eventualities (2019). The industry deploys various strategies towards this end, such as ensuring that their workers do not complete more than 240 days of work to avoid provisions of the ID Act, fragmenting one production unit and registering them as smaller units to avoid coming under the purview of labour legislation among other, similar practices to circumvent regulation.

It should not be surprising, therefore, that insecure, transient and casual work is on the increase in the country, instead of declining. Legally uncertain, weak contractual relations that leave workers highly susceptible to wage theft is increasingly the norm. National statistics reveal that formal sector job creation has halted. Between 2000 and 2010, 6.4 million new jobs were added, but three-fourths of these were in the unorganized sector. Of the remaining jobs in the organized sector, more than 80 per cent were informal in nature (NSSO, 2010). Rodgers and Soundararjan argue that reasons for low wages include fragmented production structures, unequal distribution of assets, skewed power balance between capital and labour, social hierarchy as well as poor education and skills (2016).

The informal sector is not simply an ungovernable and illegal sector. Rather, it operates to promote labour cheapening and flexibility, which attracts business into the country and orients production to be competitive in global markets.

#### **4.2 Evaluating the State's Role in the Protection of Wages**

The state's inability to protect the wages of sea-

sonal, circular migrants can be also be understood as its complicity with the interests of a capital position that is far removed from the original intent of labour legislations. This can be ascertained by analysing its interaction with informal and migrant labour through the three dimensions of wage protection.

#### *4.2.1 State's Role as Enabler: Dilution of Labour Legislations*

While the implementation of labour protective laws have generally been poor, another dangerous shift has been in the legislative content and position itself on protection of labour, particularly through the changes envisaged under the proposed Labour Codes. The recently enacted Labour Code on Wages (Wage Code), for instance, completely ignores the formula that was unanimously recommended by the ILC and Supreme Court for fixing living wages that allows workers and their households to achieve minimum consumption and also meet their social and cultural needs. On the contrary, it disregards the rights of workers to adequate wages, leaving the setting of minimum wages to the discretion of administrators. There is no clarity on who will set it, or how it will be set, with the procedure being left to the rules formulated by the central government. The Wage Code states that a floor minimum wage may be set by the central government either at the national level or regional levels, and that state governments may set minimum wages at the state level. This leaves room for competition between states to set wages low enough to attract investments through labour cheapening (Jayaram, 2019).

Furthermore, while the Wage Code claims to extend the coverage of wage protection legislations to the informal sector, it is important to note that the existing laws were already applicable to informal and migrant workers. In fact, they placed special emphasis on sectors where bargaining power was low in order to ensure minimum wages to workers who did not have platforms to participate in wage determination. In diluting the provisions of existing acts and creating confusion in definitions and methodologies for setting minimum wages, the Wage Code effectively dilutes the ability to protect wag-

es. Interestingly, it has further weakened the position of women in the workforce by omitting important provisions in the Equal Remuneration Act 1976, such as equal opportunities in recruitment, promotion and transfers (ibid).

Trade unions and organized resistance by workers has played a central role in realizing higher wages for workers. Given the onslaught of late capitalism on the very basic rights associated with work, with production structures becoming even more precarious and insecure, the expectation from the state is to correct the increasingly skewed power relation between employer and employee by enabling spaces that allow the most marginal workers to organize and provide a counter-force to the unabated powers enjoyed by capital in contemporary economy. However, similar to legislations related to industry regulation, the state's dominant approach since liberalization in the country has been to stealthily but steadily reduce the bargaining powers of workers' groups. The proposed Labour Code on Industrial Relations (IR Code), for example, has proposed alarming and far-reaching provisions to effectively make it impossible for trade unions to function, protest and put pressure on employers for wage hikes towards living wage level or for other labour rights. The consequences of the provisions would be to practically make it impossible and illegal for workers to strike under any circumstance, in effect legitimizing police brutality and firing of workers for protesting. The code proposes heavy penalties and even imprisonment for workers who strike, contribute financially for a strike fund and/or for leaders who mobilize workers for resistance. This displays undeniable intentionality of the state to crack down on workers' solidarity and to end the historical role of unions of negotiating wages as well as checking capital's recurring tendency to overstep workers. Meanwhile, the code proposes an incredibly light touch while dealing with employers who violate labour laws. Another major blow that severely curtails the ability of union and workers' collectives to bargain for higher wages is the proposed move to take away the right of these worker bodies from demanding a copy of the balance sheet of the firm or unit, which unions have historical-

ly used to calculate and argue for a just share of workers in the unit's profits. The collusion of the state with capital in eliminating the very conditions from which any resistance could emerge—such as financial resources for people's movements, guarantees of minimum security of work, a rights based discourse, a state machinery mandated to protect protests of the poor—has become undeniable and all pervasive.

#### *4.2.2 State's Role as Enforcer: Dismantling of Regulatory Institutions*

The state's role in enforcing protected, living wages requires a strong, effective regulatory presence that is firmly located in the paradigm of checking the natural tendency of capital to extract labour. Given the mechanics of exclusion discussed above, the need of the hour is to invest in the capacities and resources of the country's regulatory institutions and empowering them to widen their scope to more casualized and transient segments of the labour force. Instead, there is overwhelming evidence that successive governments have unleashed a systematic weakening of regulatory institutions in the country, especially since liberalization. Pais shows evidence that the rates of reporting and prosecution by labour inspectors has been consistently falling (2008). The systematic under-resourcing, understaffing and disempowerment of labour departments and other regulatory bodies show an unmistakable intention to hollow out these central institutions that need to be reclaimed and improved (NCEUS, 2007; SNLC, 2002). There has been a drive by the state to dilute mechanisms such as labour and factory inspections, which are available to monitor the application of minimum work conditions and industry standards, in favour of attracting foreign investments, as exemplified in the case of Rajasthan and Gujarat (Bremman, 2013; Hirway, 2014). This has made it easier for employers to easily keep workers off their books (especially the most invisible ones such as circular labour migrants), declaring their firm size to be smaller than minimum size criteria of applicable laws, with no real threat of being caught (Jain & Sharma, 2018). Jenkins argues that the very institutional framework within which India's labour operates lacks coherence (2004). Increasingly, the loca-

tion of labour issues has been strategically shifted from domestic policy to the international economic agenda. Institutions dealing with labour in India are also bodies responsible for reviewing proposals for foreign investments, whereas the judiciary has exhibited an anti-labour trajectory (ibid).

There has also been a strong normative shift that has been underway since liberalization, functioning to delegitimize the role of regulatory institutions by creating an all pervasive rhetoric around India's 'inspector raj'. Sundar's discourse analyses of speeches by recent prime ministers reveal the continuous characterization of the idea of industry regulation as unnecessary, prohibitive and corrupt (2019). The hegemonic discourse around economic growth through liberalization has also meant the creation of Special Economic Zones (SEZ). In these SEZs, which predominantly employ migrants, industry has been exempt entirely from the system of inspection, with a 'Development Commissioner' replacing Labour Inspectors. The very nature and scope of the role of a Development Commissioner is contrary to the principle of checking industry's tendency to extract labour. The final assault on the notion of regulation can be found in the Wage Code, where the term 'inspector' itself has been replaced by 'facilitator', whose main role is to 'supply information and advice to employers and workers, concerning the most effective means of complying' (as cited in Jayaram, 2019). The policy renders the central oversight function of regulatory institutions toothless by diluting their punitive capacity, instead requiring the 'facilitator' to give two opportunities to the employer to comply before initiating prosecution. Regulatory inspection, as opposed to these 'guidance inspections', will be subjected to state government regimes, the rules for which are handed down by the Central government. These rules will keep regulatory inspections constrained by a web-based, auto generated system of inspections, which practically mean that registered factories might face an inspection once in three to five years. Moreover, the inspector is de-capacitated from following an intelligence lead or complaint to inspect a factory (outside of the auto-generated instructions). These changes are in strict violation

of the ILO Convention on labour inspections ratified by India (ibid).

#### *4.2.3 State as Direct Provider: Incompatible, Inactive, Hostile Justice Architecture*

The state's role as a direct provider of justice to aggrieved workers is in an abysmal state. Its approach is embedded in a view of labour relations that is heavily biased towards the formal sector, which makes it unable to even identify or verify when contracts have been breached in the informal sector. Thamarajakshi reiterates that administrative approaches towards disputes resolution created for workers in formal employment cannot be blindly reproduced and expected to work for the informal workforce (2005). The state's relationship informal labour is an awkward one. On the one hand, it understands 'informality' not as a logical space of its own, shaped by social realities as much as economic realities, but as the simplistic 'other' of the formal sector (Kamath, 2017). The piecemeal attempts to 'formalize' the 'informal' have largely been from a capital view of bringing firms and units under taxation more than being about extending legal protection to informal workers (Unni, 2017). The efforts to extend social security to informal workers has also been largely arbitrary, plagued with huge gaps (NCEUS, 2007). The state's relationship to informality continues to be shaped by a fundamental lack of understanding of its nature and composite forces.

The first step in invoking legal and justice architecture for wage violations is to prove employer-employee relationship, a puzzling requirement to demand from a migrant worker. The procedures and imagination of state officials and bureaucrats—advocates, judges, labour departments and Lok Adalats is based on formal work, where relatively standardized and documented conditions of work exist. The very logical frame within which this justice architecture is built poses a very heavy barrier for informal workers to access state institutions, particularly migrant workers. For instance, in the construction sector, a daily wage worker might perform different types of work at the construction site, like lifting and carrying, tile fitting, wall construc-

tion etc., which are all paid differentially, based on piece rate, height of wall, area of tiles fitted and similar such factors. These make wage calculations complex and difficult to fathom if approached from a standardized, formal work lens. Most often, state institutions, interfaced by officials, lawyers and judges who are unable to comprehend these work arrangements and function with incomplete documentation, tend to dismiss these cases as unviable for litigation.

Approaching the labour court is difficult for many other reasons. The timing when a migrant worker has the ability to file a case forces them to skip work, leading to loss of daily wages on which everyday subsistence depends. The ticket size of these cases tend to be relatively small (though they are significant for workers), so the heavy upfront fees required to file cases can outweigh the amount under dispute. Moreover, labour courts are infamous for time-consuming and lengthy processes which are doubly difficult for migratory labour. The lack of legal portability in the state architecture is another major hindrance for a migrant worker's access to justice. When a dispute occurs at the worksite, informal and migrant workers are forced to return to their villages as it is not possible to procure food or rent at the work destination without daily wages. Meanwhile, the formal system, governed by rules of geography-based jurisdiction, requires that cases be lodged where the dispute has occurred. For instance, workers who have suffered a workplace injury are required to visit the Employee's State Insurance (ESI) dispensary located near their worksite, acquire certification and proceed for compensations at the same location. They are disallowed from doing this in the states and districts where their households are, and where they are forced to return to in the eventuality of any distress event. The sedentary bias in these processes, do not take in to account the practical challenges faced by workers in remaining and navigating the city and its institutions without employment or any support structures in the event of a dispute.

Migrant workers have to work and live in peripheries of cities and other isolated areas, where

state institutions tend to be absent. Courts, lawyers, police stations and labour departments are usually out of reach to workers, whose mobility is also often highly limited or dependent on the employer themselves. A lack of outreach and dissemination of information by the Labour Department or the District Legal Services Authority in regions that are inhabited by workers leaves them with little understanding on where to report their cases, or the processes involved. Furthermore, migrant workers come from highly disadvantaged communities, with little exposure to administrative or legal procedures, and are easily dismissed by state officials who often use difficult terms, demand the completion of elaborate forms and documents or fulfilment complex procedures. Social stigmatization faced by these groups is reproduced in their interactions with the state, which makes the state additionally distant, unapproachable and even violent. Aajeevika's case documentation reveals that when migrant workers from SC communities approach the police with a case, the police often treat them as criminals, cross-questioning the workers and accusing them of lying, as if the worker themselves was the offender. The treatment towards Adivasis is even worse, with reports of the police asking aggrieved workers to sit on the floor at the police station, wait for long hours with no information on next steps, making them come back multiple times with vague or no reasons provided for delays. It is no surprise therefore that migrant workers are reluctant to go to the police or any state official for grievance redressal, as the experience is laced with being shamed, accused or neglected.

Given both the incompatibility of the justice delivery architecture towards cases involving informal and migrant workers, as well as the hostile position of the state towards these groups of workers, the legislative changes under the Wage Code further weakens workers' ability to report their cases with the state and access justice. Appellate authorities have been given the mandate for providing justice in the case of wage violence, taking away the jurisdiction from courts. However, the composition and functioning of these authorities have not been defined, though their decisions are binding, without

possibility for judicial review. The ability of workers to access grievance redressal from the state is also weakened as cases can only be filed with the appellate authorities by an appropriate authority, employee or trade union, with the definitions of these terms tending to exclude migrant labour, who often do not have employee status and do not belong to trade unions.

This not only removes criminal liability on the employer for wage violations, but also omits provisions from existing provisions through which employers could be called to account. For instance, through altered definitions of principal employer, it releases the employer from being held accountable for payment of wages to workers where the contractor fails to do so. This creates challenges for migrant labour, who are often employed through multiple layers of subcontracting, and are unable to hold any of their contractors or employers liable to pay wages. It has also permitted employers to deduct the wages of workers based on performance or for recovering losses, without mentioning a due process to be followed. Given the manner in which wage thefts and deductions are made from the wages of migrant labour, this provides further impunity to employers for arbitrary deductions from workers' wages. It has created challenges in claiming overtime payments by excusing employers from complying with statutory limits on working hours in the case of emergencies, urgent work or work that is preparatory or complementary in nature. The understanding of overtime as any work that goes on beyond the permitted number of hours per day has been removed, allowing employers to easily present overtime work as urgent or necessary addition to the existing work hours.

#### *4.2.4 Lack of Information and Official Data*

In addition to all of these, another central problem in the state's role in this area is related to the lack of information and official data on the issue of labour migration. Many debates have raged about the inability of national statistics to adequately capture and count seasonal and circular labour migration, given the complexity involved in treating short-distance and several other, diverse forms of movement

occurring in the country. While these statistics are important, a doubly troubling absence is that of lack of knowledge and understanding among local governance bodies such as panchayats and municipalities about migrant workers living in areas under their jurisdiction. This lack of data and understanding result in poor, or entirely absent, systems of public provisioning for migrant workers. Other existing pathways for data gathering on workers including migrant labour, such as the Inter-State Migrant Workers Act, firm-based registration under Factories Act, Building and Other Construction Workers Act, or even ESI and Provident Fund are not reliable data sources as all of these are under-used and manipulated by industry. Even where contract and daily wage workers are employed at the same firm for extended periods of time, they do not feature on the rolls of the firm. It has been the experience of the Rajasthan government's Legal Aid, Education and Advocacy (LEAD) cell that employers often maintain fake records of workers using dummy names, but do not register workers who are actually employed by them. It is also common for employers to cut PF and other social entitlements from the salaries of workers but not make it available to them. A vacuum of information on migrant labour not only suppresses public provisioning and an implementation of their rights, but on a larger level, functions to reproduce the state's neglect and amnesia in responding to the exclusions faced by them.

## **5. Consequences of Exclusion from Protection of Wages**

Exclusion from the state's mechanisms for protection of wages, characterized by low wages and wage thefts, has the effect of further immiseration of circular migrants and their households, who already face high levels of poverty and marginalization. As mentioned earlier, insecure, risky and long hours of back-breaking work that migrant workers perform in informal labour markets at the destination take a significant toll on the body and mind of the migrant worker, who often faces occupational hazards in the form of diseases such as TB, silicosis or musculoskeletal diseases, or through a depletion

of their bodies that are too exhausted to continue working as a result of toxic work conditions and poor living conditions aggravated by a lack of nutrition and access to public healthcare services. This means that migrant workers are often unable to continue working after the ages of 35 to 40 years (Sharma et al., 2014). For women migrant workers at the destination, low wages and poor living conditions create an additional gender based burden, in having to ensure the subsistence of their households without adequate income or public provisioning. Floro argues that a lack of access to basic services and infrastructure, poor wages and inflation affect women the most, as they resort to working longer hours and performing more than one task at a time to make up for the income poverty experienced by their households (1995). In the context of migrant women in Ahmedabad, Jayaram et al. (2019) reveal that women spend 17 hours a day working, of which 5.5 hours was on domestic and care work in frugal conditions, and another 3.5 hours on accessing basic facilities such as water, sanitation and fuel. This leaves them with little or no time for sleep, rest and leisure and leads to low food intake and poor health.

The case is not different for the households of migrant workers, where the women, elderly and children remain in the villages, while the adult male member(s) migrate. The lack of a living wage, or in many cases, even legally mandated minimum wages received by the migrant workers, takes a direct toll on the household, for whom remittances from migratory labour make up a substantial portion of the livelihood basket. Even though the male migrant saves by giving up dignified living conditions and essential goods in the city, they are able to remit only between Rs. 1,000 to Rs. 1,500 to their households, which does not even meet the consumption needs of their households (Sharma et al, 2014). It is women, through their labour, who subsidize capitalist growth, which is based on labour cheapening, by working more and more for the subsistence of their households, providing a 'gender subsidy' to capital (Naidu & Osome, 2016). The low amount of remittances leaves the migrant workers' households in a constant state of inadequacy, which is

made up by women workers who invest both performing paid labour in NREGA or local construction and mining, and in unpaid domestic work by processing meagre income into goods and services required for the reproduction of households. Even then, they are only able to ensure the subsistence of their households, but not meet its consumption requirements with adequacy. Once migrant men return from their work destinations between the ages of 35 and 40 years, weakened, ill and unable to work, they depend on their wives to provide for the household.

Children from migrant households grow up in a state of deprivation, leaving them with a poor start to life. Mohan et al. (2016) find high levels of malnutrition and wasting as compared to children from other communities, with over half of the children they studied across 500 families being malnourished. These children are also required to migrate for work as early as 14 to 16 years, dropping out of formal education, with little or no skills, to replace their fathers' income in informal labour markets (Sharma et al, 2014). Inadequate wages are therefore central to the intergenerational transfer of poverty, where the next generation of emaciated children—with little scope for vertical mobility and better earnings—take over the previous generation, creating a cycle where circular migrant households are kept in a state of poverty in order to facilitate cheap labour (Jain & Sharma, 2018). It deprives migrant households from access to other basic public goods, particularly, food, health and education, which form the basis of a healthy and productive population. The large wage dependent and migrant population thus remains trapped in the cycle of toxic work, inadequate and insecure wages and impoverishment.

## **6. State's Attempts for Protecting the Wages of Migrant Labour**

The growing exclusion of migrant labour from employer or state provided welfare provisioning has led some state governments to develop initiatives to improve their well-being. In Kerala and Rajasthan, state governments have set up unique initiatives,

which provide important lessons for setting up institutional mechanisms to realize the wage rights of workers. In this section, we examine these two prominent responses—by the Kerala (destination state) and Rajasthan (sending state) governments—to critically evaluate the successes and challenges of these models.

### **6.1 Kerala Government's Migrant Resource Centres (MRCs)**

The Kerala government has established a number of notable models to promote the welfare of migrant workers coming into the state, including progressive measures for improving migrant workers' access to public provisioning, such as enhancing access to education and healthcare. A flagship initiative of the Kerala government is the Awaz scheme, a state health insurance designed specifically for migrants. It has also undertaken the initiative of state-subsidized hostels, enabling migrant workers to access decent housing. While these initiatives have been met with many challenges, they remain pioneering instances of destination state governments recognizing and subsidizing migrant workers.

While these instances of welfare provisioning designed for migrant workers is easily available on the public domain, its efforts to uphold the labour rights of migrant workers—by implementing key labour legislations, regulating industry and holding employers or contractors to account—is not easily accessible. A lesser known initiative undertaken by the Kerala government is the Migrant Resource Centre (MRC) that was established in 2018, with initial plans to extend this model to all districts. However, information regarding this initiative and its implementation remains limited to our interactions with practitioners and researchers who work with the government and migrant labour, rather than official information, as we were unsuccessful in securing interviews with relevant state officials.

While other states, such as Bihar and Odisha have established MRCs, they are largely concerned with the provision of information and delivering services such as imparting skills and providing social security linkages to migrants going out of

the state. Engaging with the pervasive and deeply political issues of wage theft, poor and low wages at destination states and provision of grievance redressal to workers in the case of wage law violations is not the central mandate of these models. Based on our conversations with practitioners who were involved in discussions with the government during the its conceptualization, one of the provisions of the MRC is to integrate it with the Labour Department and envision as a space where migrant workers can register their disputes, which would then be referred to the Labour Department for resolution, allowing workers with access to justice delivery platforms. A model for protection of wages is therefore inbuilt in the MRC within a rights-based paradigm, rather than being a body which merely delivers information and services. However, the official mandate of the MRC is not available on public domain, and we were not able to procure official orders from the state government regarding MRC functions.

An evaluation of the current functioning of the MRC, however, reveals some interesting insights. This is based on the authors' conversations with researchers and practitioners in Kerala, who have to rely on their field insights and interviews with migrant labour in the absence of adequate official data on this model.

### ***6.1.1 Resourcing, Capacities and Outreach of the MRC***

We were informed by practitioners working in Kerala that the MRC faces understaffing and under-resourcing—the central issue facing labour departments across the country. Only a single officer has been appointed, on a part-time basis, without prior training on the issues facing informal and migrant workers engaged in daily wage-based, casual and contractual work, or the operating principles of informal labour markets. Rather, protection of labour rights and grievance redressal is based on the Labour Department's approach towards local, often unionized and more permanent labour. The lack of a lawyer at the MRC or the Labour Department, who is trained in representing casual and migrant

workers' cases, leads to serious deficiencies in the MRC's ability to take up migrants' cases of wage violations.

Additionally, interviews with migrant workers who visit the MRC revealed that legal outreach and education on workers' rights conducted by the government was largely restricted to the Awaz health insurance scheme. Field practitioners in Kerala report that there is a footfall of an average of 300 persons per month at the MRC. However, migrant workers visiting the MRC revealed that they feel that it is an Awaz card is a mandatory identity document to be able to continue working in Kerala, and their sole purpose for visiting the centre is to register for the Awaz scheme. A large number of the workers shared that they do not know the uses of the Awaz card and have not been able to use to access subsidized healthcare up to Rs. 15,000. Migrant workers interviewed also reported that they did not know of the grievance redressal mechanism offered by the MRC. It appears that the MRC has not taken into consideration the low status of legal literacy or the fact that migrant labour often do not know that their rights are being violated in order to report them.

The location of the MRC, which is far removed from migrant living spaces and worksites, in a locality which is largely urban and dominated by the local middle classes, is reported to create further barriers to access. The MRC also does not appear to have provisions for phone-based helplines for workers in distant locations or challenging situations to reach them.

### ***6.1.2 Enabling Migrants to Reach Out to State Institutions***

A large part of the drive for registering migrant workers under the Awaz scheme, according to practitioners interviewed, was also for the motive of maintaining a record of migrants for surveillance purposes, due to the deep-seated suspicion towards 'outsiders'. The suspicion towards and criminalization of migrant labour across public spheres and media is ingrained in the state as well. A prime example of this was the exodus of migrant

workers from Ernakulam following the police's demand that they produce No Objection Certificates (NOCs) from local police stations in their source states to be allowed to continue working in Kerala (Prasad-Aleyamma, 2019). Hostility and suspicion from front-line officials of the state is a result of the ethnic and linguistic federalism in the country, where state administration views migrants as outsiders and not citizens (Jain, 2018). This can only be overcome through conscious efforts to integrate migrant workers into the mandate of state institutions. However, the MRC does not appear to have ties with other state institutions, particularly the police, who are often the first point of state contact in cases involving migrant workers.

### *6.1.3 Migrant Labour's Integration with Local Workers' Platforms*

Kerala is one of the most successful states in bringing the labour agenda, through strong trade unions, to the centre of the state's politics. The current government, led by the Communist Party of India (Marxist)—the CPI(M)—draws from the support of Centre of Indian Trade Unions (CITU), the party's trade union, and is a labour-backed government. Local labour unions in the construction, manufacturing and plantation sectors have been able to successfully engage in collective bargaining for wage determination, with many unions forming cooperative models to eliminate middlemen and contractors, taking labour contracts directly from employers.

However, there do not appear to be visible efforts to include migrant workers in leadership and agenda-setting roles at the industry level or in central trade unions. The MRC, which can refer wage-related cases of migrant labour to the Labour Department, does not attempt to involve trade unions and workers' organizations in migrants' cases. Unions and workers' organizations are essential for demanding adequate, living wages or achieving support systems while reporting wage violations. Rather, the MRC operates as a separate model which focuses on the individual case of the migrant worker, rather than mobilizing or supporting collectives, which are essential for asserting migrant

rights in a state where migrant workers do not have access to social networks and support.

Our conversation with researchers and practitioners involved in migrant issues in Kerala revealed that labour unions in the state, especially in the plantation and construction sectors, are often involved in directly taking contracts for supplying labour. There have allegedly been cases of migrant labour being employed through labour unions, but being paid well below market rates or rates agreed upon between the union and employers (Prasad-Aleyamma, 2019). Such instances reveal the manner in which migrant labour comes to occupy the most marginalized and excluded categories in labour markets, even in a state that has a history of strong labour mobilization.

The Kerala government has expressed the view, during public consultations or official meetings attended by the authors, that the welfare mandate belongs to the state, backed by labour unions, and must not be left to civil society. As a result, it has not engaged in partnerships or collaborations with civil society organizations that work on diverse issues of migrant workers in the state, who might have greater and more detailed understanding of the nature of migrant labour markets, the living and work conditions of migrants, and might be more approachable to migrant workers. Furthermore, this alienates civil society and social movements from holding the state and established local unions accountable in their approach towards migrant workers.

Kerala bases its efforts on its recognition of migrant workers' contribution to the state's economic growth. This plays a significant role in challenging the narratives that ignore and devalue the labour power provided by migrant workers, with the top political leadership in the state recognizing their value to the state. However, the question of protection of wages requires a rights-based approach, where migrants groups are able to hold state and industry to account. It requires the state to move beyond the role of benevolent welfare provider to make space for the voices and agency of migrant workers to stake their claim over the state.

## **6.2 Rajasthan Government's Legal Aid, Education and Advocacy Cell**

Rajasthan government's Legal Aid, Education and Advocacy (LEAD) work has developed strategies for utilizing and applying labour laws and activating state institutions in cases involving informal and migrant workers. Since it was set up in 2010, it has compensated Rs. 15 crores to over 60,000 informal and migrant workers. It has achieved this through: a) legal counselling and mediation services for resolving cases by involving workers, contractors and employers; b) providing support and networks for litigation in labour courts and ensuring police action for criminal violations. These services are accessible through walk-in centres in rural and urban areas, as well as a toll-free labour helpline, supported by community led paralegals and workers' collectives.

### *6.2.1 Innovations for Responding to Informality and Migration*

LEAD's innovations are focused on overcoming the shortcomings of formal justice mechanisms by making its techniques more suitable for informal work and migrant workers, in the following ways:

1. Legal personnel with thorough understanding of informal work arrangements: Legal counsellors, advocates and staff are trained in the norms, practices and processes of the informal economy and the nature of informal work arrangements and work relationships. Rather than attempting to fit these work arrangements within the frame of formal organized work, it attempts to understand the intricacies of the different trades and work sectors in the informal economy, the challenges faced by different groups of workers and the functioning of informal labour markets in order to formulate suitable responses. It also attempts to update its understanding as per the rapidly changing dynamics of informal labour markets.
2. Developing skills and techniques to use informal documentation to establish employer–employee relationships: It makes informal documentation acceptable for formal

processes, including litigation by recording the oral testimonies of workers, contractors or employers during counseling. It mediates process in case files signed by all parties; creating documentation of work and wage calculations based on the accounts of workers and the erratic or informal documentation maintained by them, using photographs of workers at the worksite, payslips or digital payment receipts to create a record of their work and establish employer–employee relationships. This is then authenticated through a verification process with co-workers, contractors, employers or visits to the worksite to gauge the work.

3. Use of labour laws as legal tools: It uses different labour laws, including the Payment of Wages, Employee's Compensation Act, Minimum Wages Act, Equal Remuneration Act, Contract Labour Act or Interstate Migrant Workmen Act, as well as criminal laws. In this process, it identifies and activates the clauses in these laws that are sensitive to informal and migrant workers. It does so both to pressurize uncooperative employers and contractors during mediation or for litigation in labour courts. In wage disputes, it actively engages the clause that places liability on the principal employer for making wage payments to workers in order to pressurize the employer to ensure that the payments are made across the long and complex contracting chains. The Employee's Compensation Act has a clause that allows the portability of injury compensation, such that the case can be lodged and entitlements claimed at any location.
4. Leveraging on workers' collectives and community-level paralegals: It ensures last mile access through an active involvement of paralegals who are drawn from the same community as informal and migrant workers in its operational areas, as well as supports in facilitating and running informal and migrant workers' collectives. These

community platforms are able to perform campaigns that reach out to remote locations inhabited by informal and migrant workers, conduct awareness and education sessions, perform first level counselling following the occurrence of a dispute, and even resolve cases at the local level. These platforms are embedded in the community, and so they understand its dynamics, making them more accessible, sensitive and responsive.

5. Local presence and use of technology: Walk-in centres exist at the local or block level in rural areas, or at the city level or in deep industrial or other remote work locations, with a concentration of informal and migrant workers. It also ensures access through a toll-free helpline, so that workers can report their cases from isolated, far-flung locations through their phones.

Investing in strategies that creatively utilize and apply labour laws and activate state justice delivery mechanisms to address and respond to labour rights violations in the informal economy are also pertinent in the long run for creating a greater balance between the interests of labour and capital and reconciling social justice principles with that of economic growth. They have the effect of both reducing the impunity that the industry enjoys during labour rights violations of informal and migrant workers and improving labour norms and practices that are utilized by employers to extract workers to become more competitive.

#### *6.2.2 Challenges: Informality, Vulnerability and High Labour Mobility*

The strategy utilized by LEAD is restricted to mediating the cases of individual workers, on wage-related issues, but it faces severe challenges in calling to account and penalizing principal employers or creating regulatory systems at the industry level for resolving the wage-related vulnerabilities of migrant labour.

Due to this reason, it is able to reach out only to certain segments of the migrant workforce, who

are able to engage in mediation with their labour contractors. It faces several challenges in accessing the most vulnerable and marginalized migrant populations, in using informal documentation and in working with highly mobile labour. While it is easily able to reach out, counsel and register disputes concerning daily wage construction workers, it is not able to achieve the same levels of success with workers who live at their worksites or are in more long-term employment contracts, such as contract labour who live on construction sites, factory workers who live within the factory compound, in the hotels where they work or on the shop floor. These are also workers who are likely to face greater threats from their employers, alienation from state mechanisms and who are unable to report their cases due to a fear of loss of jobs. The levels of alienation and high degree of dependence on the employer make it difficult to support this large section of migrant workers to register disputes.

When workers do approach the system, they often hold back from reporting or filing cases against the employer for criminal aspects such as abuse and harassment that go hand in hand with wage disputes. Particularly in the case of women workers, direct reporting is very low, which means that they rely on men in their labour group to approach LEAD. While their wage cases might get reported through the assistance of male co-workers or relatives, harassment of women at the workplace which often occurs alongside wage disputes remain under-reported. Workers are keen on recovering their wages as it is directly linked to the sustenance of their households, but remain afraid of not finding employment or repercussions from the contractor or employer if they register a criminal complaint against them. This means that penal actions against employers, especially those who repeatedly perform these offenses, become difficult as a regulatory strategy. Therefore, while mediation is easier to achieve when contractors or principal employers are identifiable or willing to engage, cases are resolved at the individual level, without activating state machinery or creating change at the industry level.

Migrant workers often return to their source villages after the occurrence of wage disputes as they are not able to recover their wages from the contractor or employer. Despite its operation across source villages and work destinations, LEAD finds it difficult to activate the state machinery at the destination once the labourer has moved back to the source. The deep bias against mobile labour in the state machinery means that many legal entitlements of workers are not portable. Rather, cases have to be lodged at the place where the violation occurred. In such cases, workers also ultimately move on to new work destinations and become unavailable for the long drawn-out process of interstate dispute resolution.

Often, even the informal documentation kept by workers is incomplete, erratic and arbitrary and heavily manipulated by the contractor or employer, which makes it difficult for LEAD to prepare it for litigation, leaving employer–employee relationships impossible to establish or to verify and prove the number of days and extend of labour performed. This makes a large number of cases unviable for labour courts, leaving them exclusionary of migrant workers.

## **7. Role of the Labour Movement in Protection of Wages**

During the course of India's post-Independence history, the state on many occasions has upheld its duty of protecting workers' wages, meeting different degrees of success. An examination of the dynamics surrounding such instances reveals that it took a strong labour movement and workers' resistance to ensure that the state performs this role. India's postcolonial history highlights that the Indian state does not function linearly as a neutral, Weberian bureaucracy that can simply legislate rational and legal rules and then enforce it, acting from above society for transformation and national construction. Instead, the state's functioning displays the sociopolitical logic of a porous entity that has complex relations with society and markets, mediated by networks of highly politicized class and caste identities (Kumar 2005, Webb, 2013; Gupta,

1995). Given this nature of the Indian state—implicated and embedded in the hierarchies as well as the idiosyncrasies of its societies and markets, the counterweight of workers' movements fixated on labour rights has been central in ensuring that the state plays its role of protecting wages. The labour laws of the country, for instance, were not bestowed to Indian workers by independent acts of benevolent or enlightened legislators. Instead, as section II emphasized, it took a strong trade union and workers movement to work in the background to gestate these legislations.

In addition to labour law legislation, one of the tasks of the Indian state as a regulator is to participate as a stakeholder in industrial relations. The ID Act of 1947 requires that the government view demands from worker protests as a phenomenon that helps in maintaining industrial peace, giving an opportunity to broker settlements with employers through tri-partite negotiations. India is among the select countries that have a significant tradition of tri-partite relationships, dating back as far as the colonial era (Ramaswamy, 1983). Casting a light on cases of wage hikes won through tri-partite negotiations reveals a similar dynamic—that the state had to be forced by workers' movements to overcome the pressure they face from industrial lobbies to get them to perform this role in the spirit of the ID Act. For instance, in the pre-liberalization phase of Tamil Nadu's textile industry, the state played an active role through wage boards and tribunals for the enforcement of minimum wages and for fixing wage hikes for all categories of workers in the state's textile industry. However, acting in the backdrop were several trade unions. Krishnamoorthy highlights that nearly every labourer in the Tamil Nadu's 3 lakh-strong textile workforce was a member of at least one union (2005). Behind the successful wage hike, therefore, were a series of lockouts and strikes that occurred over a period of time, which pushed the state into protecting the wage demands of workers through many conciliatory efforts with industry.

From the post-liberalization phase of the country, tri-partite discussions over wage hikes for tea plantation workers in North Bengal and Kerala are

instructive. Demands of women workers in the Dohars region of North Bengal have rocked the tea industry on many occasions and halted production. Over the decades, these have resulted in state-brokered negotiations, resulting in raising wage levels of workers, though they still remain low and protests are forcing the state to take up the issue of bonus payments now (Gothoskar, 2012; Sarkar, 2019; Deb, 2018). Similarly, in the Munnar region of Kerala, then Chief Minister Oommen Chandy himself presided over tri-partite discussions that led to a 30 per cent wage hike for plantation workers. His involvement was achieved through a dramatic struggle of women workers whose demands were long ignored by the state's powerful, male trade unionists that claimed to represent them. The women ultimately by-passed these entrenched powers to organize themselves. Once they started garnering attention and led successful mobilizations, trade union leaders attempted to co-opt their movement and represent them in tri-partite negotiations, which the women flatly refused. They kept their representation to ordinary women leaders who emerged from their ranks. It took a prolonged, uncompromising and dogged resistance by the women, which ultimately forced the chief minister to push against not just the influential tea lobbies, but more importantly against the entrenched power of patriarchal trade union leaders in Kerala to back the resistance of ordinary women workers (Kamath & Ramathan, 2017; Raj, 2019).

Emphasizing the countervailing role of the labour movement is even more relevant today given the deadlock we face vis-à-vis the nature of the contemporary Indian state itself. As discussed earlier, the Indian state today is deeply entrenched in an unabashed collusion with industry to erode even basic rights of workers. Therefore, the project that this chapter is invested in, i.e. to conceptualize ways to extend state protection over wages to the most vulnerable workers in the labour market, is mired in the dissonance of moving in a contradictory direction from the logic of the contemporary Indian state. A deeper tension lies if one looks at the Marxian critique that wage labour is in itself a form of enslavement and that the project should

be a political one of reconstituting production relations away from these terms based on grave inequality (Engels, 1847). Ramaswamy argues that the Indian labour movement has been grappling with these tensions since its inception (1983). While the political project of transformation is an ideological commitment, trade unions have had to pay attention to the practical, everyday struggles of workers revolving around higher wages and better working conditions. The emphasis on union action on these issues is criticized as legitimizing exploitative capital relations and inhibiting the larger task of reconstituting relations on equal terms. However, Marx himself had sympathy for the need to look at practical imperatives and daily struggles of workers (Randive, 1985). Also, securing minimum human conditions of sustenance is needed to embark on the larger objective of shifting the very nature of production relations. The experience of the labour movement suggests that drawing strict binaries between the reformist and revolutionary agenda is a self-defeating position. Lakha (1988) and Mathew (2020) highlight that the praxis of striking, negotiating for higher wages and other incremental changes can itself be the most effective way of creating class consciousness and represents a social war between classes, a microcosm of the larger political agenda. In a similar vein, this chapter is based on the position that reforming the state for incremental changes that enable protection of wages of seasonal and circular migrant labour is part of the process of reconstituting the state away from the current paradigm of neoliberal process. In this dynamic process, Gillian and Lambert argue that the global labour movement is one of the key actors that have the potential for reclaiming the state through 'a countervailing politics to the hegemony of neo-liberalism' (2013).

One of the central reasons why the wages of seasonal and circular migrant labour remain so unprotected is also because of a near total absence of unions and workers' resistance among them. Hostility from trade unions and local labour towards migrant labour is common, and successful efforts to form platforms for these workers to increase their bargaining capacity have been very limited

(NCEUS, 2007). NGOs have been more prominent in advocating for the rights of migrant workers, rather than trade union action. The helpline operated by the Rajasthan government is a case in point. This helpline and method of intervening in the case of wage theft of migrant labour was not conceptualized or developed the state, but by an NGO that worked closely with various migrant communities to evolve ways to extend protection of wages to such workers. It was through years of advocacy, putting pressure on the state and demonstrating success that this arbitration method tailored for migrant workers was finally authenticated and adopted by the state. The following section attempts to outline such mechanisms to streamline processes and develop creative, institutional strategies for the inclusion of highly excluded categories of workers in a protective framework over their urgent imperative of adequate and secure wages. It does so based on the Indian labour movement's experience that realization of rights, even if limited by their economic nature and partial realization, has the ability to shift the norms governing the everyday sociality between workers and employers in the labour market, and the social classes they come from.

## **8. Potential Pathways for Protection of Wages**

Reclaiming the state's role in the protection of wages requires a re-imagination of augmented mechanisms for responding to wage-related violations in the context of the widespread reality of seasonal, circular migration and the increasing casualization of employment. This involves both concerted functioning and enhancing the capacities of existing institutions for responding to wage-related violations affecting migrant labour, along with an enabling legislative and policy environment for realizing the wage rights of these groups of workers.

### ***8.1 Concerted Institutional Mechanism for Responding to Wage-related Violations***

Responding to wage violations among informal and migrant labour requires the coordinated functioning of four existing institutions: a) MRCs b) Police

c) Labour Departments and d) Labour Courts. An important function of this institutional mechanism should be the timely resolution of workers' case and speedy industry inspections and regulatory processes where violations will be identified through fast-tracked processes.

#### ***8.1.1 MRCs***

A large number of MRCs are being operated across different states, such Bihar, Odisha and Kerala, run either by the state or civil society, or as a collaboration between the two. While MRCs have a wide potential to reach out to migrant populations, they remain focused on information or service delivery. While the provision of these services are important, the scope of MRCs can be utilized to re-conceptualize them as Migrants Rights Centres, which act as spaces for responding to labour rights violations and upholding the rights of casual and migrant workers, in addition to service delivery. They can undertake legal literacy and counselling so that migrant workers possess adequate information and confidence to report labour rights violations, building the reportage of cases for enabling swift response from state institutions responsible for delivering justice, as well as archiving and documenting cases in order to activate state regulatory action over industries, clusters or employers where violations are recurrent. These centres should also be equipped with lawyers trained in responding to cases involving informality and migration, and can act as capacity-building centres for training and supporting a network of lawyers and trade union representatives in these methods.

#### ***8.1.2 Police***

The police system plays an important role in addressing wage-related violations. This is because, while workers report cases where they have not been paid the wages promised to them by their employers or contractors, they often do not report the lack of payment of minimum wages or other criminal violations such as harassment, intimidation and threats that exist alongside wage violations. Similar to the case of other violations where police investigations are conducted after the filing of an FIR, police authorities, rather than dismissing wage-re-

lated violations as civil cases, must actively seek out the criminal aspects that are intertwined with these cases. Circular migrant workers who report wage-related cases are most likely not being paid even minimum wages, which amounts to forced labour under the law, making it suitable for police action. Secondly, police stations are present in most remote and far-flung localities as well. This accessibility can be utilized to improve reporting of cases by extending the Zero FIR facility—that are commonly applied to cases relating to offences against women—to wage-related cases of migrant workers. This can be facilitated by inter-police and inter-department coordination such that migrant workers are able to report their case in the places of their residence as well. Police departments must also work alongside other stakeholders such as MRCs, labour departments and labour courts to undertake action on a priority basis when labour-related cases are referred to them.

### *8.1.3 Labour Departments*

Labour Departments play two important functions, that is, a) the regulatory functions that it performs over industry through its inspections; and b) grievance redressal for workers where their rights have been violated. However, the Labour Department's role in both these instances has been highly diluted and weakened.

The dismantling of the Labour Department's inspection function through the Labour Codes as well as central schemes should be reversed, and a process for its strengthening should be put in place. Labour departments are currently present only at the district level, which makes them inaccessible to workers who live in remote and far-flung rural regions. In urban regions, circular migrants are often located in isolated industrial locations or living on their worksites, making it difficult for them to navigate the city and access the Labour Department. The presence of the Labour Department at least at the block level in rural regions, and near migrant dense clusters in urban regions, will make them more accessible.

The resourcing of the Labour Department, vis-à-vis its staffing and financial resources, is central

to its ability to perform the important role of regulatory oversight for the protection of wages. The resources allocated to labour departments should allow for an adequate number of officers to carry out inspections within reasonable time periods and conduct spot inspections in urgent cases, as well as building their capacity to perform these tasks. Rather than further weakening the state's supervisory function over industry as a response to corruption prevalent in the system, Labour Department officials at the grassroots level should be subject to strong accountability mechanisms to curb corrupt practices. This can include different processes such as timely filing and checking of reports following inspections as well as spot verification inspections by higher officials to ensure the veracity of the labour inspectors' reports. Accountability measures can be further enhanced by ensuring that trade union or worker organization members or civil society representatives accompany labour inspectors during inspections.

Labour Departments should also recover its original function of acting as a grievance redressal cell for labourers, and revive the Lok Adalat system which utilizes a 45-day mediation period for quick resolution of workers' cases. In this role, it will be able to register and address disputes that come through its own units, police or MRCs. Such a role will also have positive effects on its supervisory and inspection roles, as it can maintain a database of grievances reported by labourers, which will allow it to identify repeat offences by employers or industrial clusters, enabling pointed inspections and punitive action at the level of the individual unit or industry. This will particularly be useful in the case of forced labour cases, where workers are paid below minimum wage, in order to identify employers for whom this is a common practice and to activate appropriate criminal justice mechanisms.

### *8.1.4 Labour Courts*

Labour courts are strong judicial mechanisms available to workers for dispute resolution. However, they remain inaccessible due to lengthy and expensive processes. A fast-track mechanism for adjudicating wage-related cases of migrants may be

put in place to address this issue. In this case, labour courts can activate and work alongside the District Legal Services Authorities (DLSA) to ensure that migrant workers receive free legal aid. In order to overcome the lack of documentation which makes migrant workers' cases unviable, Labour Courts must accept and encourage creative means of informal documentation such as photographs of the worksite, digital receipts of wage payments, workers' informal records of their work and payments due to them.

Currently, in the instances where labour courts are able to take up disputes registered by workers and rule in their favour, they do not have the power to implement their judgments. Labour courts must be empowered to demand police action in the case of grave criminal violations and to demand follow-ups on the implementation of its rulings as in the case of other civil and criminal courts. In the case of recovery of wages, labour courts place the onus on the worker to prove that the employer has the capacity to pay by taking account of the employers' assets. This means that even judgments in favour of workers remain un-implementable as workers are unable to perform this task. This responsibility should be shifted from the worker to the state.

## ***8.2 Creating a Supportive Environment for Enhancing Wage Security of Workers***

The proposed institutional mechanisms for ensuring wage security of workers require a supportive environment through strong and relevant legislations, timely executive action and the simultaneous empowerment of workers and their collective bargaining powers in order to the function effectively.

### ***8.2.1 Setting an Adequate Minimum Wage Standard and Addressing Wage-related Violations through Legislations***

The Wage Code should specify the definition of minimum wages based on the principles of adequacy, social rejuvenation and economic upliftment of labour-dependent households. A methodology for ascertaining the national minimum wage should be set according to the needs-based criteria that have been outlined by the ILC resolutions, as well

as Supreme Court judgments. Continuous social dialogue and workers' representation in tripartite arrangements should be established to check the discretion of state officials in setting the Minimum Wage. Rather than omitting the provision for gender equality in recruitments, the state should strengthen legislations that prohibit discrimination not only based on gender, but also caste, religion and region, in order to address widespread wage inequalities in the country. Another serious blow dealt by the labour codes is the removal of the liability of the principal employer for payment of wages to workers, when the contractor fails to do so. This provision should be brought back by correctly defining the term principal employer, which cannot include contractors or supervisors, but the owner of the establishment. In addition to this, legislations to mandate transparency in supply chains and strengthen principal employer liabilities across domestic and international supply chains must be undertaken. Large companies, such as market facing retail brands or export houses sourcing from marginal producers or home-based workers can be identified and held liable for the payment of statutory wages. Survivalist employers or petty contractors who face cut-throat competition and rely on the small profit margins allowed by larger companies that source from them, cannot be held solely responsible for the payment of wages. Migrant workers can also benefit from ensuring the portability of their legal entitlements for all wage-related legislations, as already exists under the Employee's Compensation Act. This means that workers will not have to remain at their work destinations in order to register their cases with the state, but can do so while returning to their source villages as well.

### ***8.2.2 Workers' Organizations and Collective Bargaining Mechanisms as Central Actors in Wage Protection***

While statutory minimum wages should be based on the needs of workers and their households, wage determination through collective bargaining will enable labour to claim a higher share of the firm's profits. The Wage and IR Codes deal a serious blow to collective bargaining and freedom of association. The state should focus on the establishment of

strong voluntary processes and workers' collective bargaining platforms through which its own intervention for enforcing minimum and living wages is reduced. Previously, trade unions and worker organizations were presumed to be lawful in nature, and necessary for industrial peace and equitable growth. The state must act to once again strengthen lawful protest and workers' organizations' collective bargaining ability, in the spirit of the fundamental right to freedom of association, through its legislations.

At the same time, workers' organizations and trade unions must see adequate integration into the above-mentioned institutional mechanism for regulating industry and redressing the grievances of workers. Workers' organizations can easily identify violations at the industry level as well as individual cases of workers, while acting as accountability structures against the state and industry. State institutions should work in concert with workers' organizations to respond to cases brought in through these organizations, and to conduct inspections based on inputs from them.

#### *8.2.3 Responding to Heterogeneous Categories of Wages and Diversity in Employment Relations*

There is an urgent need to extend labour rights to sectors dominated by women and marginalized castes, which involve high levels of subcontracted work through numerous intermediaries and unclear employee-employer relations, where these groups do not even gain recognition as 'workers'. Sectors such as domestic work, home-based work in small manufacturing and the lowest rungs in modern sectors such as construction, manufacturing and hospitality are dominated by women, children and marginalized groups. In these cases, the state must take a proactive role in recognizing the heterogeneity of employment relations and wage payment practices described in previous sections by including them in the ambit of wage and labour legislations. The subcontracted nature of work and multiplicity of employers in these sectors require the state to recognize marginalized groups as workers, rather than as self-employed, regardless of the nature of these employment relations. This will allow workers in these sectors to hold the principal employ-

er to account. In the case of domestic workers and for piece-rate work, wage rates based on standard hours of work should be included in the scope of the minimum wages legislation.

#### *8.2.4 Effective Outreach and Capacity-building Measures to Improve Reporting of Wage-related Violations*

The issue of poor legal literacy among workers has to be addressed by the state through concerted outreach campaigns that cover remote and isolated locations, including the living spaces and worksites of workers. The state should also provide door to door services. This can be done by activating the DLSA, which is responsible for conducting legal literacy campaigns. The state has proven that it is capable of conducting successful public campaigns through outreach under prioritized schemes such as the Swachh Bharat Mission. Similar enthusiasm and resources can be allocated for the legal literacy of workers as well.

The establishment of a worker helpline, at least at the state level, will allow workers in distress to access grievance redressal platforms regardless of their location. This phone-based helpline can be embedded within the institutional mechanism described above, and can refer cases to the relevant authorities. This will also allow workers to reach out for redress even when they fear threats and intimidation by their employers. The local presence of labour departments as well as strengthened workers' organizations and trade unions will also help reduce employer intimidation of workers.

State officials should be provided capacity-building training for using innovative means and informal documentation in responding to cases which involve informality and migration, overcoming their challenges in using informal documentation to argue cases and understanding the specificities of the functioning of informal labour markets.

An important reason for non-reporting of cases is the stigmatization that workers face from the very institutions that are responsible for delivering justice. Providing caste and gender sensitivity training to state officials, along with strong feedback

mechanisms through which workers can register complaints against the behaviour of these officials, are necessary for alleviating this situation. Along with this, these institutions should provide support to migrant workers for following the lengthy and complex bureaucratic procedures necessary for filing and following up on complaints.

#### *8.2.5 Improving Data Collection and Utilization for Responding to Wage-related Violations*

Current macro-level data sets which estimate the magnitude and trends of migration are unable to adequately capture the movement of circular, seasonal and short-term migrants who constitute the most perilous and risky migration stream. This shortfall can be addressed by using socially grounded and decentralized methods for capturing migration data at the local level, as was done in the case of the Rajasthan State Migration Profile 2014, undertaken by civil society organizations across the state, and the Centre for Women's Development Studies' surveys on migration in 2013. Capturing local level data leads to more accurate information and takes into cognizance detailed trends and shifts in migration. This data set is relevant not only for the sake of having data on migration but also for utilizing the understanding of migrant dense clusters as well as identifying migration corridors and the nature of migration in diverse locations. Such data can be used to plan state presence and regulatory functions for the protection of labour rights including wages.

Another important data deficit that has to be addressed is the lack of registration of workers at the firm level, which obscures employer–employee relationships. Ensuring the firm-level registration of workers will require spot checks by labour inspectors, which verify that the workers on the permanent records of the establishments are actually employed there, and workers employed on a regular basis at the unit are registered by the employer. This is a crucial link in helping workers establish employer–employee relationships which are critical for registering their disputes for litigation and resolving their wage-related issues. At the same time, the common practice followed by employers to register less than the statutory limit of workers,

so that they can evade state's regulations, can also be addressed.

Urban local bodies can play an important role in filling both data gaps mentioned above through the extension of their mandate. Their responsibilities can be extended to enumeration and recognition of migrant workers in the cities, as well as taking care of their settlements. This can serve the dual purpose of understanding migrant flows into the city, as well as to ensure public provisioning to these workers and their settlements. In addition to this, urban local bodies can maintain records of employment of migrant workers as they enter the city, which clearly register their place of work and principal employer. It can then work in coordination with the labour department to ensure that workers are being paid minimum wages, and other labour rights are being upheld. This will also serve as evidence of employment relations in court.

The maintenance of records of workers' hisaab, which encompasses the different types of work performed, number of days' work and payments owed to the worker, also forms an important aspect of making data available for protecting wages. One-way record-keeping by the contractor, who is able to manipulate the payments on this account and engage in opportunistic behaviour, should be replaced with records that are accessible to, and maintained by, both workers and contractors jointly. The maintenance of this record should form a legal liability on the principal employer, and should also be verified during labour inspections.

#### *8.2.6 Decentralized Governance and Protection of Wages*

Labour rights issues, including wage security, must be at the centre of citizens' agenda in local governance processes. This is because not only are the majority of citizens either waged workers or employers themselves, but also because labour rights are vital for the realization of socio-economic equality and democracy. This can be achieved only through the sensitization of the public towards the caste, class, language and religion based stigmatization of labourers. Public sensitivity towards other, related issues, such as environmental rights,

public health, education and food should extend to labour rights issues as well. This means that wage security and access to living wages must be recognized as a public good, and inform the mandate of local democratic institutions.

Local decentralized bodies, both at the panchayat and the municipal levels, need to be both aware and capable of responding to labour rights violations. Data on migration should be captured at the local level in order to allow urban governance bodies as well as rural democratic institutions to respond to precarious migration and wage-related violations, as well as to introduce measures for protection of wages in the conceptualization and implementation of local level plans and schemes.

Civil society institutions, which work on rural development, skills training, urban planning, education, healthcare and other rights which promote the socio-economic empowerment of marginalized communities need to engage with labour issues, and view them as central aspects of accessing these diverse public goods. Labour rights have to be understood as a cross-cutting phenomenon which has implications on all other citizenship rights.

## 9. Conclusion

India's economic revival plans in the post-pandemic phase revolve around the further dilution of labour protection, rather than taking steps to ensure the wage security of its migrant population. The economic strife underway in India is deepening inequality and hurting its democratic project. In 2019, India recorded the highest rate of unemployment in 45 years (Mody, 2019)! It is not an accident that this fall into desperation for labour occurred alongside successive steps to dismantle labour laws. Having chosen a growth model that is primarily based on extraction of poorest wage-dependent populations, as well as of marginal and small employers in survivalist enterprises or of petty contractors, we are witnessing an increasing concentration of wealth built on erosion of rights. Such a situation of unemployment, competition and poor wages is antithetical to democratic peace and participation,

and is aggravating class- and caste-based conflict (Sreevatsan, 2019). Workers' protests countered by police brutality was a marked feature of the lockdown across the country (Nathanael, 2020), while measures to further dilute labour protection as a response is bound to result in labour market anarchy (Sundar & Sapkal, 2020). Reclaiming the role of the state in protecting workers' rights, especially on wages, is therefore not just a labour issue, but also a concern from the point of view of India's economic revival, as well as democratic and social fabric. The chapter attempts to frame an inclusion agenda for seasonal circular migrants, as realizing the rights of those on the extreme margins has the most potent effect towards equitable economic growth and deepening democracy. While we focus on the role of the state in the chapter, we attempt to approach the issue by putting the labour market's social dimensions centre-stage, and stressing on the need for the labour movement as well as people's resistance to continue to inform and constitute the state in its role as protector of labour rights.

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# Budget

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An old man eats from the charitable food distribution by volunteers of Karwan-E-Mohabbat, in Company Bagh, Chandni Chowk, New Delhi. While the virus does not discriminate between the rich and poor, we, our society and the economy does. And so does the policies of our government that remained oblivious of the plight of the millions of working poor faced with an unplanned, mindless and arbitrary lockdown. Even a minimal wealth tax on the rich could have generated enough resources to stave off such grinding insecurities.

*Photo: Sandeep Yadav*

# Taxing the Super-Rich to Institute Universal Socio-economic Rights

Prabhat Patnaik

The basic objection that many people raise against the introduction of a set of universal socio-economic rights is that the country does not have enough resources to implement them. This argument, however, is illegitimate. The introduction of such rights cannot be determined by the availability of resources; it is a question of principles. Resources for a set of universal, legally binding socio-economic rights, such as the right to food, the right to employment, the right to free education, the right to free healthcare and the right to adequate old-age pension and disability benefits, all of which are *essential* for the functioning of a true democracy, have *got* to be found.

Besides, the resources required for introducing such rights in India are amply available. The purpose of this chapter is to argue that such rights can be easily financed if the government taxes the super-rich. Such taxing is essential for the preservation of democracy, since democracy requires wealth and income inequalities to be kept in check, as political power in the hands of any group is highly correlated with its economic power. The introduction of such universal rights and their financing by taxing the super-rich, are thus *doubly beneficial* for democracy, as each is separately necessary on its own.

In fact, the era of neoliberalism has witnessed an increase in wealth and income inequality in India to levels unparalleled in our recent history. Ac-

ording to Chancel and Piketty (2017), who estimate income inequality by using income tax data, the share of the top 1 per cent in total national income has been higher of late than at any time since the income tax was first introduced in 1922. In fact, it had declined after Independence, and even fallen as low as 6 per cent in 1982, but has climbed up to nearly 22 per cent in 2013–14.

Wealth inequality data are highly sensitive to stock market movements and the extent of wealth inequality is also always much higher than income inequality. But one can say with certainty that the share of the top 1 per cent today in the total wealth of the country is much higher than before neoliberal ‘reforms’ were introduced.

Fiscal means for countering increases in wealth and income inequality hardly exist in contemporary India. There is no wealth tax worthy of the name and whatever progressivity there is in income taxation (which in any case would only moderate and not negate the increase in income inequality) is further diluted from time to time by the government giving tax concessions to the corporate sector under the spurious argument that it would incentivize ‘wealth creation’.

This situation is in need of urgent change. Even liberal opinion, not to speak of the left, holds that extreme inequality undermines democracy. Even the World Economic Forum has expressed concern over the current levels of wealth and income

inequality in the world on the grounds that such inequality is inimical to democracy. Hence, fiscal means must be used for reducing this inequality, a task that has to be accorded a very high priority in India today. The primary concern of this chapter, however, isn't addressing this issue; it is concerned rather with how fiscal means can be used to tax the super-rich and establish a rights-based welfare state in India.

There are two widely-held misconceptions about the effects of taxes on the capitalists' economic being and economic decisions. The first is that if taxes worth, say, Rs.100 are imposed on the profits of the capitalists, then that brings down their post-tax profits by Rs.100; likewise, if their profits are taxed Rs.100 less, then their post-tax profits go up by Rs.100.

While this is true compared to the hypothetical situation, of what would have happened in the absence of these tax changes, i.e., what would have happened if only these tax changes had taken place, it is not necessarily true in reality, since other changes also accompany these tax changes. What happens to post-tax profits compared to the initial situation in such cases because of the imposition or withdrawal of taxes on profits, depends upon what these accompanying changes are.

If an additional tax on profits worth Rs.100 is accompanied by an increase of Rs.100 in government spending, then, assuming for simplicity that savings from non-profit incomes are zero and ignoring foreign transactions, post-tax profits will remain completely unchanged. Likewise, if tax concessions worth Rs. 100 are handed to the capitalists and this is accompanied by a cut in government expenditure by Rs.100, then (under the same assumptions as above) the capitalists would be no better off than before. This conclusion is only modified, not negated, if these assumptions of a closed economy and no savings from non-profit incomes do not hold. It follows, therefore, that what appears to be true at first sight is often misleading. Simply taxing profits is not sufficient to bring down profits.

But even when profits after tax do not come down despite an increase in taxation by Rs.100, as

in the above example, the share of profits after tax in total output does. This is because taxing profits by Rs.100 and spending an exactly equal amount increases demand and hence output in the economy (as capitalist economies are typically demand-constrained); but if profits after tax remain unchanged even while output increases, then the share of profits in total output comes down.

This incidentally shows the utter folly of the Indian government in attempting to stimulate the economy by reducing taxes on capitalists. Since such tax concession is typically associated with a reduction in government spending, as the government wishes to maintain a fiscal deficit target (3 per cent of base Gross Domestic Product, or GDP), under the above assumptions (and with the outcome only altering and not negated if those assumptions do not hold) the profits after tax will remain unchanged despite the tax concession, while the actual GDP will shrink. The shrinking of GDP will be because while government expenditure shrinks because of the tax concession, the capitalists do not increase their expenditure to a matching degree (since they save a part of their post-tax income. Hence, the outcome of the government's measure would be the opposite of what it intended in the first place. In this case, the share of post-tax profits in GDP would have increased.

For reducing the share of post-tax profits in GDP, it is necessary either to increase taxes on profits but keep government expenditure unchanged, thereby reducing the fiscal deficit (but if there is some reduction in capitalists' consumption because of higher taxes, this mean a reduction in GDP and hence an increase in unemployment); or to increase taxes on profits and raise government expenditure correspondingly, thereby keeping the fiscal deficit and hence post-tax profits unchanged, but increasing GDP and employment. The latter is obviously the better option; even better from the point of view of a society committed to democracy and egalitarianism is to increase taxes on the capitalists and spend these extra resources on transfers to the working poor, raising the 'social wage', or, more germane to our present argument, financing the implementation of a set of universal social rights.

The second misconception which prevails is that a reduction in taxes on capitalists will increase corporate investment, or what is often called 'wealth creation'. This is wrong because the investment decision of each firm, or corporate entity, is determined by the expected rate of growth of its market, and hence of the overall market of which it has cornered a certain share, as enlarging a firm's share within a market of given size is difficult because of retaliation from powerful rivals. A reduction in taxes raises the post-tax rate of profit for the capitalists on what they produce but not the expected size of the market. Hence, it has no effect on investment.

For instance, if the size of the automobile market is expected to grow by 10 per cent, then this would elicit a certain amount of investment; this amount would remain unchanged, no matter whether the post-tax rate of profit on automobile production is 15 per cent or 50 per cent, as long as it exceeds a certain threshold. Corporate spokesmen pretend otherwise to get tax concessions, but what they say is wrong.

## II

We have so far talked only of taxes on profits. But taxes on capital, or wealth taxation, have the same effect as profit taxation in terms of preventing wealth concentration. And for reasons already mentioned, wealth taxation also has no adverse effects on investment, since investment is determined by the expected growth of the market (as long as the rate of profit remains adequately high). Wealth taxation, therefore, must play a pivotal role in any fiscal policy meant to institutionalize a scheme of social rights.

A rights-based approach in turn is necessary in any effort to build a welfare state in India. This assertion may sound odd in view of the fact that several suggestions have been made—and even to a certain extent accepted in principle—by different political formations for income transfers to the poor under some version of a universal basic income scheme. All such schemes, however, suffer from two major problems: first, the government may make the income transfer, but unless it makes

some provision for providing healthcare and education, i.e. unless it ensures that the actual provisions that the people should have for an improvement in their capacity to function as citizens, are provided in adequate quantities for this income to be spent on, the transfer itself will be of little use.

The usual answer to this, that if purchasing power is in the hands of the people, then supply of these services will automatically be forthcoming, is inadequate for two reasons: first, within the household this is not necessarily true, especially given our patriarchal system, since cash transfers may be spent on all kinds of other purchases (alcohol, for instance); and second, if private providers have to provide these services, then they will do so only at exorbitant prices, making the amount of initial income transfer grossly inadequate.

The second problem with all universal basic income schemes is that they are perceived as a gesture of largesse on the part of the State. Institutionalizing a set of rights so that people do not feel obliged to depend on the generosity of the State is essential for their self-respect, and an extremely important part of democracy. This is especially important in the Indian context where the poor, mostly belonging to the Dalit castes or minorities, are looked down upon by many among the upper-caste Hindus anyway. Having a rights-based approach is a legal assertion of the equality of the excluded with the rest.

At a deeper level, however, two kinds of objections are raised to a rights-based approach, one from the liberal side and the other from the left. From the liberal side the objection, raised by Ronald Dworkin for instance, states that a right has meaning only if the State is in a position to guarantee it; and socio-economic rights such as the right to employment cannot be guaranteed by the State. Instituting such rights, therefore, is meaningless.

This argument takes the existing capitalist framework of the economy for granted and, in effect, makes democracy subservient to this framework, which is unacceptable. Democracy and freedom must always have utmost priority; the economic arrangement of society must be such that it

can provide what is best suited to fulfil this priority. To say that rights cannot be instituted because this is impossible under capitalism is therefore an inversion of priorities.

The argument from the left goes back to Karl Marx's early piece, *On the Jewish Question*, where he had criticised liberalism and its conception of rights on the grounds that it looks upon persons as isolated individuals, as 'monads'; and talks of human freedom only as freedom for such isolated 'monads'. But to talk of freedom without the existence of a sense of 'community' among people is inadequate.

While this is certainly valid as a critique of the liberal conception of what a free society should look like, it does not really constitute a critique of a rights-based approach. In fact, a sense of 'community' comes into being precisely in the process of a struggle, inter alia, for such individual rights; and when it does, it transcends the 'monads', of course, but not by abrogating these rights.

The left critique of rights that invokes Marx's early essay, therefore, draws a wrong inference. Far from their being irrelevant for human freedom, such rights, including economic rights, constitute a necessary condition—though by no means a sufficient condition—for human freedom.

Rights are particularly important in a country like ours, which has had millennia of institutionalized social and economic inequality in the form of the caste system. The transition from this to a 'society of equals', which is what democracy demands, is possible only if the State guarantees a set of equal rights for *all* citizens. The Indian Constitution guarantees a set of political rights, but there must also be a set of universal, legally binding economic rights, on par with these political rights, which people must enjoy if genuine democracy is to be institutionalized in India.

I would, at least for our immediate purposes, talk of five such rights: right to food, right to employment (if for some reason employment cannot be provided, there should still be full payment of wages), right to free, publicly provided quality

healthcare, right to free publicly provided quality education, and right to an adequate non-contributory old-age pension and disability benefits.

It has been estimated that instituting these rights would require approximately 10 per cent of GDP, above what already is spent under these heads (Patnaik & Ghosh, 2020). The question is: how can these resources be raised?

Financing an additional expenditure of 10 per cent of GDP does not require raising additional revenue amounting to 10 per cent of GDP (even assuming there is no additional fiscal deficit).

This is because of the operation of what is called the 'multiplier'. Whatever the government spends accrues as income to some persons in the economy, who, in turn, spend a part of this income, which further accrues as income to some others, and so on. As a result of this infinite chain, a total additional income that is a multiple of the government's original expenditure is generated. This ratio is the multiplier.

Now, when the government is spending on socio-economic rights, the pattern of demand directly and indirectly generated by such spending would be quite different from what government expenditure generates otherwise, on average. In particular, the government, through such expenditure, would not be demanding much imported goods directly. In fact, we take import demand generated directly by government expenditure on realizing these rights to be zero. In addition, we also assume that the import demand created by the consumption of working people is negligible. As before, we continue with our assumption that they consume the bulk of their incomes, or, starkly, that they save nothing.

Now, let us take some illustrative figures to highlight the problem of resource mobilization. Let us take the base tax-GDP ratio, comprising taxes paid by both capitalists and working people, to be 15 per cent (which is roughly the figure in India, including both the central and the state governments, and both direct and indirect taxes). Let us assume that for the sort of expenditure that has to be undertaken for realizing the economic rights we are

considering, the shares of pre-tax wages and pre-tax profits in the income generated are 50 per cent each. And let us assume that 40 per cent of profits are saved and 30 per cent of profits are spent on imported consumption goods (These give figures for savings-GDP and import-GDP ratio for the country as a whole, which are different from the observed average figures).

In this case, Rs.100 of extra government expenditure would generate an additional income of Rs.200 (the reciprocal of the three ratios taken together: the tax-GDP ratio of 0.15, the savings-GDP ratio of 0.20, and import-GDP ratio of 0.15). Of the increase in GDP of Rs.200, Rs.30 would accrue to the government as additional taxes. In other words, to be able to spend 10 per cent of base GDP on realizing the set of rights, only 7 per cent of base GDP has to be raised as additional revenue, if the fiscal deficit is not to increase.

Now, if this additional revenue is not mobilized, then the fiscal deficit would be an additional 7 per cent of base GDP. Corresponding to this 7 per cent, the government would have to borrow 4 per cent from the capitalists and 3 per cent from abroad (to finance the additional import bill). But if the government takes away 7 per cent of base GDP in the form of taxes from the capitalists, then not only would the budget be balanced and not only would there be no addition to private wealth domestically, but even the import bill—and hence the external indebtedness—will not go up. True, these results follow from our assumptions, but these assumptions capture, in a highly stylized manner, certain features of the Indian economy. It is evident from this that a programme to introduce basic economic rights can be and should be financed by taxing capitalists, especially through a wealth tax.

### III

Just two taxes, a wealth tax and an inheritance tax, are quite sufficient to raise the resources required for financing the five fundamental economic rights mentioned above. The strategy of such taxation can be outlined using certain macroeconomic variables.

While the concept of capital stock and the con-

cept of wealth, though identical in an 'ideal' world, are not so in practical life—for a variety of reasons, notably because of stock market variations which radically alter the value of claims to capital stock—we shall sketch the strategy by taking the two as identical. The capital-output ratio in the country stands roughly between four and five years, usually closer to the latter. Let us take it as five and assume that privately-owned capital stock is four-fifths of total capital stock, i.e. is four times the annual GDP. Raising 7 per cent of base GDP (which would be required once we take account of automatic tax inflows from increased incomes), amounts therefore to raising 1.75 per cent of total privately owned capital stock annually. Now, it is generally believed that at least half of the total private wealth, which we assume for simplicity to be roughly equal to the total private capital stock, is held by the top 1 per cent of the population. A 2 per cent tax on the wealth of the top 1 per cent of the population, therefore, will fetch 1 per cent of total private wealth as tax revenue.

In addition, there will have to be an inheritance tax. This is not just needed to prevent people escaping the wealth tax net by dividing up their property, but also for a deeper reason, which is scarcely even discussed in India: how completely unjustifiable the very concept of wealth through inheritance is.

The typical defence of wealth under capitalism by the spokespersons of the system itself is the claim that the possessors of wealth have certain special qualities which bring wealth into existence and for which they must be rewarded by being entitled to this wealth. What exactly this quality is, is a matter on which different authors have different views. Some justify wealth because they see it as a product of thriftiness, others see it as a result of innovativeness and still others see it as a reward for the ability to take risks.

But no matter what this quality is, it certainly has to be demonstrated before a person has any entitlement to wealth. And if a person does demonstrate it and hence is considered to have merited wealth, that is no reason why this person's progeny should also have any such entitlement, merely by

virtue of being progeny, i.e., purely through inheritance. There is, in short, no justification whatsoever, even according to bourgeois theory, for wealth through inheritance.

Of course it may be argued that if the original wealth-owners did not have the assurance of being able to pass on property to their descendants, then they would not have undertaken the risk, or the innovativeness or the thriftiness that brought wealth into being. But this argument does not hold. If one person does not bring wealth into being because of the abolition of inheritance, then someone else will. After all, the exercise of the special quality that is supposed to bring wealth into being, according to this view, is not conditional upon the existence of inheritance. If inheritance is completely stopped, then that would not put an end to thriftiness or innovativeness. On the contrary, it can be argued that inheritance is a hindrance to the formation of wealth, since it gives rise to the possibility of being 'idle rich' and distorts society's evaluation of a person's worth. Hence, bourgeois theory provides no justification for wealth through inheritance.

This is the reason why in most capitalist countries there are heavy death duties. In India, by contrast, we have hardly any inheritance taxation. For many it is almost an extension of the logic of the caste system, where one's caste status is passed down to progeny. Clearly such a retrograde philosophy has no place in a democratic society.

In the above illustration, if we assume that every year, 5 per cent of private wealth is passed down because of the death of the owner, then even a modest one-third inheritance tax on the top 1 per cent of the population alone, will garner 0.833 per cent of total private wealth ( $1/2$  multiplied by 5 per cent multiplied by  $1/3$ ). Thus, these two taxes alone would have garnered 1.833 per cent of private wealth, which is more than what was required (1.75 per cent) for financing a rights-based welfare state. Thus, a 2 per cent wealth tax together with a 33 per cent inheritance tax imposed only on the top 1 per cent of the country's population will raise enough resources to finance the implementation of the five basic economic rights mentioned above.

Some absolute figures are worth quoting here to confirm what has just been said. For the year 2018–19, the total additional sum required for financing the implementation of the five economic rights has been estimated to be Rs.16.8 lakh crores (Patnaik & Ghosh, 2020). Assuming as above a multiplier of 2 and 15 per cent tax-GDP ratio, it turns out that only Rs.11.76 lakh crores of additional taxes (70 per cent of expenditure) need to be raised. According to the *Global Wealth Migration Review 2019*, the total net worth of private individuals came to Rs. 570 lakh crores in 2018, of which the top 1 per cent was estimated by Oxfam to own 58 per cent, or Rs. 330 lakh crores (cited in 'Income inequality', 2019). A 2 per cent wealth tax on this sum would yield Rs. 6.6 lakh crores. And if we take a one-third inheritance tax on the sum being passed down (5 per cent) to progeny every year out of this Rs. 330 lakh crores, it comes to Rs. 5.5 lakh crores. Hence, a 2 per cent wealth tax and a 33 per cent inheritance tax being imposed on the top 1 per cent of private wealth holders in the country would suffice to finance the five economic rights in a welfare state.

#### IV

Exactly why these taxes are required and what they achieve requires some discussion. It is generally believed that raising taxes releases real resources which the taxpayers were using earlier, and that these resources can then be used for other purposes for which the tax revenue is utilized, without creating excess demand, and hence, inflationary pressures.

This understanding, however, is misleading; and it certainly does not underlie the argument behind capital taxation for financing a rights-based welfare state. This is so for at least two reasons: first, the expenditure for such a welfare programme will generate demand for goods which are vastly different from what capital taxation can possibly release from the capitalists; secondly, since much of this taxation will in any case fall not on capitalists' consumption but on their savings, such taxation will be of little help if preventing excess demand was the motive for taxation in the first place.

Hence, the argument for wealth taxation to finance spending on a rights-based welfare state is altogether different. To see this, let us suppose the government did not impose any extra taxation but financed the entire net expenditure, of 7 per cent of base GDP, through a fiscal deficit. The condition for this not to be inflationary is that the country must already have economic resources in the form of foodgrain stocks and unutilized industrial capacity.

This is the reality in our country today, with 77 million tonnes of foodgrain stocks lying with the government at end-March, and with huge unutilized industrial capacity characterizing the economy. Hence, resources do not have to be released from any actual use; they are not being put to any use at all, because our economic system is immanently demand-constrained. And these real resources are quite sufficient to provide the wherewithal for a welfare state in India without causing any inflation.

But the logic of the system is such that if the government used a fiscal deficit to garner these resources, then it would be putting claims upon itself in the hands of private wealth-holders. It would, in short, be creating private wealth in the process of creating a welfare state, complete with economic rights. The purpose of wealth taxation is to mop up this additional wealth. Wealth taxation that is used to finance government welfare expenditure does not reduce private wealth one iota compared to its base level; it only reduces the level of private wealth compared to what it otherwise would have become. In other words, it simply prevents additional wealth from landing gratuitously into the laps of capitalists. And to the extent that government welfare expenditure *creates* additional wealth, since such wealth would be under government or community ownership, the overall effect of such a fiscal policy would be to reduce the *share* of private wealth in total wealth, since while private wealth remains unchanged, total wealth (private plus public plus community) would have gone up.

Of course, while wealth taxation is implemented only on the top 1 per cent according to our picture, the profits (and hence savings) increase for capitalists outside the top 1 per cent as well. This

means that even if the government balances its budget, and there is no net increase in private wealth, there is nonetheless some redistribution in private wealth within the capitalists, from the very rich to the smaller capitalists—and even to some petty producers. If in the process of the creation of a welfare state, some redistribution of wealth also occurs, though admittedly within a very small circle, then that is a welcome change.

## V

Let us now summarize the main arguments of this chapter. Democracy requires the institution of a set of universal socio-economic rights, in addition to the existing political rights, which provide every person in society with the material basis for a secure and meaningful life. Democracy also requires keeping wealth and income inequalities in check, for growing economic inequality eventually subverts political equality as well. Both these requirements can be achieved if taxation of the super-rich is used for financing a rights-based welfare state in India.

Instituting just five basic socio-economic rights: to food, employment, free education, free healthcare and old-age pension and disability benefits, would cost approximately an additional 10 per cent of GDP. Two taxes levied only on the top 1 per cent of the population—a wealth tax of 2 per cent and an inheritance tax of 33 per cent—on wealth being bequeathed to the progeny would be quite sufficient to finance the institution of these rights without causing either inflation (since real resources are available aplenty) or a further increase in wealth inequality which a larger fiscal deficit would generate.

Government expenditure, financed by taxation in this manner, would enlarge aggregate demand, and hence output and employment. This would serve to revive the Indian economy, which is currently slipping into a recessionary crisis, and stimulate private investment. But the government has been pursuing the exact opposite course, handing out corporate tax concessions and matching such concessions with cuts in spending, which, apart from undermining democracy by increasing the

economic clout of big capitalists, has the perverse effect of reducing aggregate demand and hence dampening private investment. This must be reversed.

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